Florida State University Law Review

Volume 43
Issue 2 *Winter 2016*

Article 2

Winter 2016

A "Checklist Manifesto" for Election Day: How to Prevent Mistakes at the Polls

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A "CHECKLIST MANIFESTO"* FOR ELECTION DAY: HOW TO PREVENT MISTAKES AT THE POLLS

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ABSTRACT

Mistakes happen—especially at the polls on Election Day. To fix this complex problem inherent in election administration, this Article proposes the use of simple checklists. Errors occur in every election, yet many of them are avoidable. Poll workers should have easy-to-use tools to help them on Election Day as they handle throngs of voters. Checklists can assist poll workers in pausing during a complex process to avoid errors. This is a simple idea with a big payoff: fewer lost votes, shorter lines at the polls, a reduction in post-election litigation, and smoother election administration. Further, unlike many other suggested election reforms, this idea is likely to gain traction and see actual implementation. That is because the idea is "non-legal" in nature, in that it comes from the private sector and is achievable outside of the political process. Given the structural impediments to legislative or judicial change, non-legal solutions such as the use of checklists are the way forward in election reform.

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* ATUL GAWANDE, THE CHECKLIST MANIFESTO: HOW TO GET THINGS RIGHT (2009).

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I. INTRODUCTION

Mistakes happen. Nowhere is that more true than at the polls on Election Day. Poll workers may erroneously ask voters to show a photo identification in a state that does not require one;[1] voters may go to the wrong precinct, where poll workers make them cast provisional ballots instead of directing them to the correct location;[2] election officials may fail to verify that they have the correct vote count in their computers;[3] machines may falter, without adequate backups.[4] These errors cause disenfranchisement, confusion, long lines, and even possibly Election Day or post-election litigation.[5]

These problems occur in part because poll workers, who run our elections, often have little training and few resources to help them when issues arise. Their errors, which happen in every election, are avoidable if we give them the right tools.

A simple solution can prevent many of these Election Day mistakes: a checklist. Checklists are powerful instruments. They can stop doctors from making crucial errors during surgery, assist pilots in crash-landing a plane safely, and ensure buildings are constructed so they do not collapse.[6] Poll workers are like surgeons and distressed pilots—under pressure and with significant time constraints—but they have much less training in completing their tasks. They can certainly benefit from tools like checklists to help them avoid mistakes. One paradox of human existence is that we continue to learn about and understand extremely complex matters, and yet we still make routine errors that can have grave consequences.[7] A simple,

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1. *ID Issue: Poll Worker Asks for Identification*, WHOTV.COM (Nov. 6, 2012, 4:25 PM), http://whotv.com/2012/11/06/id-issue-poll-worker-asks-for-identification/ [hereinafter *ID Issue*]; Rebecca Leber, *Were Ferguson Voters Asked to Show IDs That Missouri Law Doesn't Require?*, NEW REPUBLIC (Nov. 4, 2014), http://www.newrepublic.com/article/120127/ferguson-voters-asked-photo-id-against-missouri-law-report.

2. *See* Service Employees International Union Local 1 v. Husted, 698 F.3d 341 (6th Cir. 2012).

3. *See* Monica Davey, *Wisconsin Awaits Outcome of Supreme Court Vote*, N.Y. TIMES (Apr. 12, 2011), http://www.nytimes.com/2011/04/13/us/13wisconsin.html.

4. *See* Jonathan Kaminsky, *Voting Machine, ID Problems Crop up in U.S. Elections*, REUTERS (Nov. 4, 2014, 9:16 PM), http://www.reuters.com/article/2014/11/05/us-usa-elections-irregularities-idUSKBN0IP06M20141105.

5. *See, e.g.*, *In re* Contest of Gen. Election Held on Nov. 4, 2008, 767 N.W.2d 453, 462 (Minn. 2009) (per curiam) (resolving post-election dispute for Minnesota's U.S. Senate seat); Jake Miller, *Citing Delays, Connecticut Democrats Seek to Extend Voting Hours*, CBS NEWS (Nov. 4, 2014, 4:37 PM), http://www.cbsnews.com/news/2014-midterm-elections-citing-delays-connecticut-democrats-seek-to-extend-voting-hours/.

6. *See* ATUL GAWANDE, THE CHECKLIST MANIFESTO: HOW TO GET THINGS RIGHT 28-30, 53, 34-35, 60-62, 134-35 (2009).

7. *See id.* at 28-30.

well-designed checklist can force us to stop at crucial pause points during a process to ensure we take the required steps to complete the task correctly.

The proposal to use Election Day checklists follows other calls to reform our election administration, but unlike the others, adopting checklists is an easily achievable goal. Other reform efforts are often as complex as the voting process itself.[8] Further, most of the ideas require new legislation, which make them politically unfeasible. Judicial reforms are also hard to achieve. Numerous scholars have suggested judicial remedies and specific rules to apply when an election goes awry, but these ideas do not address how to avoid the errors in the first place.[9] They also require judges or legislatures to alter the substance of judicial analysis, an admittedly tall task.

The more successful proposed reforms, like checklists, derive from the private sector and can be implemented outside of the political or judicial realm—making them "non-legal" in nature.[10] For instance, drawing on the power of rankings, Professor Heather Gerken crafted a "Democracy Index" to rank states on their election administration, providing easily digestible information that can spur greater reform

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8. For example, Professor Rick Hasen has offered three reforms that might help to avoid the next "electoral meltdown": government-run universal voter registration coupled with a voter identification program, nonpartisan election administration, and procedurally easier modes for pre-election litigation accompanied with higher hurdles for a post-election lawsuit. Richard L. Hasen, *Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown*, 62 WASH. & LEE L. REV. 937, 945 (2005).

9. *See generally, e.g.*, Joshua A. Douglas, *Procedural Fairness in Election Contests*, 88 IND. L.J. 1 (2013) (suggesting the creation of a five-member tribunal to decide post-election disputes); Edward B. Foley, *The Analysis and Mitigation of Electoral Errors: Theory, Practice, Policy*, 18 STAN. L. & POL'Y REV. 350 (2007) (considering how to determine the extent of electoral error in an election); Steven F. Huefner, *Remedying Election Wrongs*, 44 HARV. J. ON LEGIS. 265 (2007) (considering the remedies available to resolve a post-election dispute); Justin Levitt, *Resolving Election Error: The Dynamic Assessment of Materiality*, 54 WM. & MARY L. REV. 83 (2012) (providing a test for courts to use in determining whether an election error is "material").

10. "Non-legal" or "extra-legal" solutions are often used where traditional legal recourse proves inadequate. *See, e.g.*, Camille Calman, *Spy vs. Spouse: Regulating Surveillance Software on Shared Marital Computers*, 105 COLUM. L. REV. 2097, 2127 (2005) (noting that "[s]ocial problems do not always require legal solutions; problems can be solved extralegally through technological or market means" (citing Lawrence Lessig, *Preface to a Conference on Trust*, 81 B.U. L. REV. 329, 329 (2001))); Aya Gruber, *Victim Wrongs: The Case for a General Criminal Defense Based on Wrongful Victim Behavior in an Era of Victims' Rights*, 76 TEMP. L. REV. 645, 683 (2003) (proposing extra-legal solutions to the problem of jury nullification in rape cases); Bradford L. Smith, *The Third Industrial Revolution: Policymaking for the Internet*, 3 COLUM. SCI. & TECH. L. REV. 1, 3 (2001) (endorsing the use of self-regulatory and other "extra-legal solutions" to address the challenges posed by online information collection).

on the voting process.[11] Although a Democracy Index, which the Pew Charitable Trusts actually created based on Professor Gerken's idea,[12] is an immensely worthwhile heuristic, it is simply a first step that can help to create the impetus for reform rather than a tool that we can implement at the polls themselves.[13] Similarly, President Obama's 2013 bipartisan Presidential Commission on Election Administration also relied on the private sector to craft non-political solutions to improve our voting system, but the Commission's report mentioned checklists only once.[14]

Like these approaches, the idea to use checklists for elections draws on the best practices of the private sector to solve a problem that plagues many industries: how do we complete complex tasks without error?[15] The proposal is politically feasible, as the use of checklists is unlikely to favor systematically one political party or the other, meaning that both sides can support it. Checklists are scalable, as larger jurisdictions with greater resources can create initial checklists that smaller jurisdictions can then adopt and tweak for their own use. Crafting the best checklists requires time, effort, trial-and-error, and revision, but the payoffs can be significant: fewer lost votes, less confusion on Election Day, shorter lines at the polls, a lower likelihood of post-election litigation, and better overall election administration.

This Article explains how checklists for poll workers and voters can help to improve the voting process. Part II considers the kinds of mistakes that routinely occur on Election Day through the fault of both poll workers and voters.[16] Part III looks at the training guides that states and localities use to train their poll workers. These

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11. HEATHER K. GERKEN, THE DEMOCRACY INDEX: WHY OUR ELECTION SYSTEM IS FAILING AND HOW TO FIX IT (2009) [hereinafter GERKEN, INDEX]; *see* Heather K. Gerken, *Shortcuts to Reform*, 93 MINN. L. REV. 1582 (2009).

12. *See infra* notes 141-42 and accompanying text.

13. Using tools such as checklists during the voting process would presumably help states move up in the Democracy Index rankings because their election administration will become better.

14. PRESIDENTIAL COMM'N ON ELECTION ADMIN., THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION (2014), http://www.supportthevoter.gov/. The Commission suggests using checklists as a "best practice" for polling place accessibility, but it did not mention checklists elsewhere. *Id.* at 51.

15. Indeed, some jurisdictions already have checklists for certain election-related processes, like closing the polling place at the end of the night. But, their use is inconsistent, and hardly any jurisdictions employ checklists throughout the day when processing voters. *See* discussion *infra* Part III.

16. By "Election Day," I mean more broadly any time votes are cast and counted, which can include early voting periods and absentee balloting as well as the official Election Day itself.

training manuals are long, complex, and wordy. They include anything and everything that might happen on Election Day, making them essentially useless as a reference in the heat of the moment when an issue actually arises. Well-designed, easy-to-use checklists can supplement these guides. Part IV equates the call for checklists with other proposed non-legal approaches to fixing our election system; these ideas, which come from the private sector and are achievable outside of the political process, are the best way forward in election reform. Part V considers the power of checklists, explaining how we can implement checklists as part of the voting process for both poll workers and voters. It offers some suggestions for the kinds of checklists that would be most useful, such as for poll workers in processing provisional ballots or for voters in filling out absentee ballot envelopes. It further provides models for jurisdictions to use as a starting place for their own Election Day checklists.

II. COMMON MISTAKES IN CASTING A BALLOT

It is inevitable that errors will occur in the vote-casting process. Election regulations are complex, and it is unrealistic to expect perfection when millions of voters interact with thousands of poll workers to follow detailed requirements for voting in a short period of time. As just one example, Professor Justin Levitt describes poignantly the minutia of regulations with which a voter must comply to vote successfully via an absentee ballot in California:

> [O]fficials must prepare a specific application form, with particular notices and particular requests for information; the voter must complete the application with specified information in specified locations on the specified form; the voter must ensure that the application is received by specified officials within a designated period; officials must process the application according to specific criteria; officials must prepare the actual ballots, with specified notices and instructions; officials must deliver the appropriate absentee ballot, enclosure envelope, and ballot pamphlet to the voter at a specified address within a designated period; the voter must complete the enclosure envelope, with specified information in specified locations; the voter must complete the absentee ballot itself; the voter must enclose the absentee ballot in the proper manner within the enclosure envelope; the voter must ensure that the ballot and envelope are delivered by specified means to specified officials within a designated period; officials must compare information on the envelope with information on other election records in a specified

> manner; and officials must transmit the envelopes to the entity responsible for counting ballots within a specific time frame.[17]

These byzantine procedures "breed[] plentiful opportunities for error."[18] As Professor Mike Pitts notes, "Elections are fundamentally imperfect."[19] The "complicated structure" of federal, state, and local laws that poll workers must administer, "combined with the fact that those responsible for conducting elections are typically hired just for that day to facilitate voting, creates an election system that is ripe for error."[20]

Indeed, we should applaud the fact that the error rate in most elections is fairly small.[21] But that does not mean that we should be complacent in trying to avoid these mistakes. Election errors sometimes lead to post-election disputes about the correct winner of the election.[22] As Professor Levitt explains, "In every single election cycle, errors occur. Some are major, some are minor; some are novel, some familiar. And in every single cycle, these errors prove outcome determinative somewhere."[23] We therefore must understand what kinds of errors occur and find solutions to avoid them.

Both election officials and voters may make mistakes in the voting process. Poll workers might erroneously preclude an eligible voter from casting a ballot or allow an ineligible person to vote, might give incorrect instructions to voters, or might cause voters to cast provisional instead of regular ballots. Voters may not follow instructions on how to vote, or more commonly, on how to fill out a provisional or absentee ballot. This Part examines the most common electoral errors both groups make, which in turn will help to identify the kinds of mistakes that a simple checklist can prevent.

A. Errors by Poll Workers

Poll workers are at the front lines of our election system. We do not have one method of voting but hundreds of precincts with thou-

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17. Levitt, *supra* note 9, at 94 (footnotes omitted).

18. *Id.* at 95.

19. Michael J. Pitts, *Heads or Tails? A Modest Proposal for Deciding Close Elections*, 39 CONN. L. REV. 739, 739 (2006).

20. Lauren Watts, Comment, *Reexamining* Crawford*: Poll Worker Error as a Burden on Voters*, 89 WASH. L. REV. 175, 189 (2014).

21. For example, the residual vote rate—the difference between the total number of ballots cast and the number of valid votes counted—was 1.8% in 2000 and 1.1% in both 2004 and 2008. MARTHA KROPF & DAVID C. KIMBALL, HELPING AMERICA VOTE: THE LIMITS OF ELECTION REFORM 37 (2012); *see* Foley, *supra* note 9, at 353 (suggesting the creation of an Electoral Error Rate to capture the amount of wrongly excluded and included votes).

22. *See, e.g.*, Douglas, *supra* note 9, at 2; Levitt, *supra* note 9, at 89-93.

23. Levitt, *supra* note 9, at 92.

sands of election officials administering our elections.[24] These mostly-volunteer or low-paid temporary workers are prone to make errors during the course of the thousands of interactions they have with voters.[25] The U.S. Election Assistance Commission has stated that the rising age of poll workers presents one of the "biggest threat[s]" to election administration because of the likelihood that they will suffer confusion and commit errors.[26]

Most poll worker errors on Election Day fall into one of four categories: improperly operating the polling place or voting technology, making mistakes when checking in voters, erroneously forcing an individual to vote using a provisional ballot or providing wrong instructions for the provisional or absentee balloting process, and misplacing or otherwise failing to secure the ballots on Election Night.[27] Often these errors come about through a poll worker's wrong decision, particularly when aspects of the voting process are open to

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24. *See, e.g.*, Daniel P. Tokaji, *Public Rights and Private Rights of Action: The Enforcement of Federal Election Laws*, 44 IND. L. REV. 113, 117 (2010).

25. These errors are in addition to the mistakes full-time election workers might make in compiling registration lists, creating a readable and correct ballot, crafting voter instructions, or otherwise administering the election leading up to Election Day. *See, e.g.*, Willis v. Thomas, 600 P.2d 1079, 1087 (Alaska 1979) (discussing mistakes in the registration lists); *see also* RICHARD L. HASEN, THE VOTING WARS: FROM FLORIDA 2000 TO THE NEXT ELECTION MELTDOWN 16-17 (2012) (discussing the flawed "butterfly ballot" in Palm Beach County, Florida for the 2000 presidential election); Daniel P. Tokaji, *Voter Registration and Election Reform*, 17 WM. & MARY BILL RTS. J. 453, 476 (2008) (highlighting election official mistakes in compiling registration lists); Ed Payne & Michael Martinez, *Arizona County Gives Wrong Election Date in Spanish Voter Cards*, CNN (Oct. 18, 2012, 5:40 AM), http://www.cnn.com/2012/10/18/us/arizona-spanish-election-ballot. Election officials might also make errors in the vote counting process. *See, e.g.*, Alex Isenstadt, *West, Barber in Vote-Count Limbo*, POLITICO (Nov. 15, 2012, 8:08 PM), http://www.politico.com/news/stories/1112/83955.html#ixzz2VLz4wAp6 (discussing vote tabulation errors).

This Article focuses mainly on checklists that voters and poll workers can use on Election Day when time pressures are paramount. Pre-Election Day issues such as registration lists and ballot design, or post-Election Day issues involving the vote counting process, also can benefit from reform, including the use of checklists. *See, e.g.*, KROPF & KIMBALL, *supra* note 21, at 73-75 (discussing the impact of ballot design on voting accuracy); Edward B. Foley, *How Fair Can Be Faster: The Lessons of* Coleman v. Franken, 10 ELECTION L.J. 187 (2011) (proposing model procedures for post-election disputes); Tokaji, *supra*, at 495-505 (advocating for reforms in the registration process). Checklists make the most sense, however, in time-pressured situations when routine and rote activities can lead to errors, such as on Election Day itself. *See* discussion *infra* Part V.

26. Jim Drinkard, *Panel Cites Poll Workers' Age as Problem*, USA TODAY (Aug. 8, 2004, 11:25 PM), http://www.usatoday.com/news/politicselections/nation/2004-08-08-voting-workers_x.htm.

27. *See* Huefner, *supra* note 9, at 273-74 ("Mistakes could also include errors in who is allowed to vote, errors (including miscommunications) in voting instructions, errors in providing appropriate accommodations for voters with disabilities, other errors related to polling place operations, and confusing, misleading, or defective ballots or equipment.").

interpretation—such as whether the identification a voter presents satisfies the state's law. That is, mistakes occur when poll workers use their discretion to administer a voting rule.[28]

First, poll workers can make mistakes in setting up the polling place and operating the voting technology. For example, Florida received new electronic touchscreen voting machines for the 2002 midterm election, but some election officials did not turn them on until right before the polls opened—requiring voters to wait during the long boot-up time—or failed to plug them in to ensure the machines would keep running if the backup batteries ran out of power.[29] In San Diego, California, about 600 sites experienced delays because poll workers did not know how to troubleshoot the new electronic voting machines.[30] Election officials also can fail to understand a machine's capacities in storing information, leading to lost votes.[31] Even paper ballots can create opportunities for error: in one Kentucky county election, workers gave some voters the wrong paper ballot, meaning that they were unable to vote for a particular local office.[32]

Second, checking in voters presents another category of potential errors. Poll workers can direct voters to the wrong precinct within a polling location[33] or improperly turn voters away.[34] During the 2014 election, some Hartford, Connecticut election officials refused to issue ballots when the polls opened because the registration lists were not

28. *See* R. Michael Alvarez & Thad E. Hall, *Controlling Democracy: The Principal-Agent Problems in Election Administration*, 34 POL'Y STUD. J. 491, 496 (2006); Watts, *supra* note 20, at 209-10, 213.

29. Clifford A. Jones, *Out of Guatemala?: Election Law Reform in Florida and the Legacy of* Bush v. Gore *in the 2004 Presidential Election*, 5 ELECTION L.J. 121, 134 (2006).

30. *See* Jeanne Zaino, *The Unknown Threat: Improperly Trained Poll Workers Lead to Election Day Problems*, *in* 3 VOTING IN AMERICA: AMERICAN VOTING SYSTEMS IN FLUX: DEBACLES, DANGERS, AND BRAVE NEW DESIGNS 36, 38 (Morgan E. Felchner ed., 2008).

31. *See* Hasen, *supra* note 8, at 951.

32. Janet Patton & Jim Warren, *Voter Turnout Statewide Appears to Have Been Lower Than in 2008*, LEXINGTON HERALD-LEADER (Nov. 6, 2012), http://www.kentucky.com/2012/11/06/2397606/kentuckians-head-to-the-polls.html.

33. *See* Hunter v. Hamilton Cty. Bd. of Elections, 635 F.3d 219, 243 (6th Cir. 2011).

34. *See, e.g.*, *Voter ID Problems in Florida*, N.Y. TIMES (Sept. 7, 2004), http://www.nytimes.com/2004/09/07/opinion/voter-id-problems-in-florida.html.

delivered on time, even though their training supposedly directed them to allow voters to write their names down and then cast a ballot.[35] As a city election official lamented,

> Throughout the city, the right thing that should have taken place this morning was allow the voter to vote, write their names down and issue a ballot. We don't stop the process; I apologize if people, moderators, election officials, did not recall that from the training and put that into practice this morning.[36]

Similarly, in recent elections, poll workers have asked voters to show their photo identification even though the state's law does not require an ID.[37] During a 2014 primary election, elderly voters in Kansas were turned away because they did not have a photo ID; poll workers failed to offer them provisional ballots.[38] As Secretary of State Kris Kobach commented, the poll workers "just didn't understand the instructions."[39]

Poll workers sometimes record individuals as voting even though they did not yet vote because election workers incorrectly marked off the wrong person in the poll book.[40] In the converse situation, poll workers can improperly allow an individual to vote again even though that person already voted in the election, perhaps via an absentee ballot.[41] Poll workers also might simply allow ineligible people to vote.[42] Accordingly, "poll workers, and not professional election

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35. *See Polls Close Across Connecticut*, NBC CONN. (Nov. 4, 2014), http://www.nbcconnecticut.com/news/local/Voters-Report-Problems-at-Polls-281425521.html. It is not clear, however, whether Connecticut law actually mandated this procedure. According to Connecticut's 117-page "Moderator's Handbook for Elections and Primaries," "[n]o ballot shall be issued until the elector's name has been marked as voting on the official checklist." SEC'Y OF THE STATE OF CONN., MODERATOR'S HANDBOOK FOR ELECTIONS AND PRIMARIES 16 (2013) (citing § 9-257, Regs. 9-242a-14), http://www.sots.ct.gov/sots/lib/sots/electionservices/handbooks/2013moderatorhandbook.pdf.

36. *Polls Close Across Connecticut*, *supra* note 35.

37. *ID Issue*, *supra* note 1; Daniel Lippman, *Maryland Voter Registration Glitch Complicates Election: Today's Votes of Incompetence*, HUFFINGTON POST (Oct. 25, 2012, 6:43 PM), http://www.huffingtonpost.com/2012/10/25/maryland-voter-registration-glitch_n_2018809.html.

38. *See* Andy Marso, *Topeka Seniors Shut Out of Primary by ID Law, Poll Worker*, CJONLINE.COM (Aug. 8, 2014), http://m.cjonline.com/news/2014-08-08/topeka-seniors-shut-out-primary-id-law-poll-worker.

39. *Id.*

40. Michael P. McDonald & Justin Levitt, *Seeing Double Voting: An Extension of the Birthday Problem*, 7 ELECTION L.J. 111, 121 n.33 (2008).

41. *See* Huefner, *supra* note 9, at 273.

42. *See, e.g.*, Darrel Rowland, *Voter Rolls in Ohio Are Bloated, Experts Say*, COLUMBUS DISPATCH (Sept. 16, 2012, 10:50 AM), http://www.dispatch.com/content/stories/local/2012/09/16/voter-rolls-in-ohio-are-bloated-experts-say.html.

staff, often make final determinations with regards to important decisions like individual voter eligibility," and "their ability to do their job well impacts the franchise."[43]

Third, provisional ballots, which voters may be forced to use if there is a problem with their registration or eligibility, present a further area of confusion and error. Under federal law, if a voter's name is not in the poll books or the voter does not have the required ID, poll workers must allow that person to cast a provisional ballot, which is set aside and considered later.[44] There are many steps in the provisional voting process, which, when done incorrectly, can lead to the rejection of otherwise-valid votes.[45] Yet poll workers sometimes wrongly require people to vote provisionally even though the voters should actually receive a regular ballot. This might occur if, for instance, the election officials fail to find the voter's name in the poll books or improperly try to enforce certain eligibility requirements like a nonexistent voter identification law.[46] Poll workers also might provide erroneous instructions to voters on how to fill out the provisional ballot envelope, which can render the vote invalid.[47]

Improper implementation of the provisional balloting process affects thousands of voters, leading to uncounted ballots. In a report studying the 2012 presidential election, the city of Philadelphia found that almost 5000 voters citywide were incorrectly forced to cast provisional ballots due to poll worker error, largely because poll workers erroneously failed to locate the voters' names in the poll books.[48] These problems occurred despite the fact that poll workers had a fairly comprehensive "Guide for Election Officers" that laid out the proper procedures.[49] The report laments the fact that the election worker guide was not "user friendly" because it was presented in a "tabloid" format that was "time consuming and impractical" to use.[50]

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43. Watts, *supra* note 20, at 193-94.

44. Help America Vote Act of 2002, 52 U.S.C. § 21082 (Supp. II 2014) (originally enacted as 42 U.S.C. § 15482 (2006)).

45. *See* Foley, *supra* note 9, at 357 n.14 (citing EAGLETON INST. OF POLITICS, RUTGERS, STATE UNIV. OF N.J. & MORITZ COLL. OF LAW, OHIO STATE UNIV., REPORT TO THE U.S. ELECTION ASSISTANCE COMMISSION ON BEST PRACTICES TO IMPROVE PROVISIONAL VOTING (2006)) (suggesting that inexperience in processing provisional ballots can lead to administrative errors that disqualify otherwise-eligible provisional votes).

46. *See* Edward B. Foley, Crawford v. Marion County Election Board: *Voter ID, 5-4? If So, So What?*, 7 ELECTION L.J. 63, 78 n.42 (2008).

47. *See* Levitt, *supra* note 9, at 92-93 n.38.

48. *See* OFFICE OF THE CONTROLLER, CITY OF PHILA., REVIEW OF PROVISIONAL BALLOTS CAST IN THE 2012 PRESIDENTIAL ELECTION 5-7 (2013), http://www.philadelphiacontroller.org/publications/audits/ProvisionalBallotsAudit_2012PresidentialElection.pdf.

49. *Id.* at 5.

50. *Id.* at 6.

Mistakes leading to provisional balloting can also affect election outcomes. A 2010 Juvenile Court Judge race in Hamilton County, Ohio exemplifies the problems that can occur from poll worker error that results in voters having to cast provisional ballots. Hamilton County (which includes Cincinnati) often locates several precincts within the same polling location.[51] Voters must both find their correct polling location and go to the correct precinct—or table—within that polling place.[52] Many voters showed up to the polling place believing that they were in the correct spot without realizing that they also had to find the right precinct at that location.[53] Poll workers sometimes failed to direct voters to the correct table at the polling station.[54] Then, at the table, instead of sending the voters to the correct precinct across the room, poll workers told these individuals to vote via a provisional ballot.[55] Poll workers testified that if a voter showed up at their table, they preferred giving the voter a ballot instead of turning them away, which had the effect of rendering the provisional ballot invalid under state law.[56] Some voters experienced similar problems when they went to the County's Board of Election office to vote early: the election workers mistakenly gave many of these voters a provisional ballot for the wrong precinct.[57] These two sets of provisional ballots spelled the difference in the extremely close race for Juvenile Court Judge.[58] After a year-and-a-half-long battle, the courts ultimately required Hamilton County to count all of the ballots that voters had cast incorrectly due to poll worker error.[59] Still, we could have avoided a lot of time, hassle, and court involvement had election officials not made these mistakes in the first place.

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51. Hunter v. Hamilton Cty. Bd. of Elections, 635 F.3d 219, 223 (6th Cir. 2011), *remanded to* 850 F. Supp. 2d 795 (S.D. Ohio 2012) (reviewing Defendants' motions for dismissal and for summary judgment).

52. *Id.*

53. *See* Hunter v. Hamilton Cty. Bd. of Elections, 850 F. Supp. 2d at 818 (denying Defendants' motions for dismissal and for summary judgment). Being at the correct polling location but going to the wrong precinct at that site is known as the "right church, wrong pew" problem.

54. *Id.*

55. *Id.*

56. *Id.* at 820 (quoting a poll worker who testified, "I have a rule . . . . let's say a person walks in and then we'll look and then they'll say, well, they're not supposed to be here, I figure if they made enough effort to vote, I am going to let them vote and I am going to just make it provisional.") (alteration in original).

57. *See Hunter*, 635 F.3d at 237.

58. *See id.* at 222.

59. *Id.* at 247.

Finally, sometimes ballots go missing based on the honest mistakes of election officials.[60] In Sacramento County, California, warehouse workers found a bag containing over 400 uncounted ballots more than three months after the election.[61] Similarly, in Broward County, Florida, workers found almost 1000 ballots in a warehouse.[62] One of the issues in the 2008 Norm Coleman-Al Franken contested election for U.S. Senate in Minnesota involved missing ballots.[63] In another notable example that actually changed the outcome of a race, an election official in Waukesha County, Wisconsin failed to save on her computer and then tally 14,315 votes for the 2011 state Supreme Court Justice election; once counted, these ballots altered the result.[64]

In sum, election worker errors run the gamut, encompassing most interactions these officials have with voters and their ballots: from setting up the polling station in the morning, to checking in voters during the day, to erroneously requiring people to vote via a provisional ballot, to securing the ballots at the end of the night. Although poll workers receive comprehensive training guides, these materials obviously have not been sufficient to prevent these mistakes.[65] We need a simpler solution, such as a checklist, for election workers to use on Election Day.

B. Errors by Voters

Voters are also prone to make mistakes, especially when trying to comply with complex rules for an activity they perform only intermittently, such as voting. In particular, both absentee and provisional ballots invite errors because voters must follow very specific instructions to fill them out properly.

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60. Of course, this assumes that poll workers are not themselves engaging in fraud. As Professors Heather Gerken and Rick Hasen have both pointed out, however, most often what looks like election worker malfeasance in reality exemplifies "Hanlon's razor": "one should never attribute something to malice that can be adequately explained by stupidity." GERKEN, INDEX, *supra* note 11, at 84-85; HASEN, *supra* note 25, at 7.

61. Loretta Kalb, *County Finds 407 Sealed Ballots – Officials Say They Wouldn't Affect Results of Any Races*, SACRAMENTO BEE (Feb. 15, 2013), *reprinted at* http://earc.berkeley.edu/news/2013/February/ElectionsCountyFinds.php.

62. *Florida: Almost 1K Ballots Found in Broward Elections Warehouse*, VOTING NEWS (Nov. 14, 2012), (citing *Almost 1K Ballots Found in Broward Elections Warehouse*, WSVN.COM (Nov. 14, 2012)), http://thevotingnews.com/almost-1k-ballots-found-in-broward-elections-warehouse-wsvn.

63. *See* Edward B. Foley, *The Lake Wobegone Recount: Minnesota's Disputed 2008 U.S. Senate Election*, 10 ELECTION L.J. 129, 134 (2011).

64. *See* Jason Stein, Laurel Walker & Bill Glauber, *Corrected Brookfield Tally Puts Prosser Ahead After 7,500-Vote Gain*, MILWAUKEE WIS. J. SENTINEL (Apr. 7, 2011), http://www.jsonline.com/news/statepolitics/119410124.html.

65. *See* discussion *infra* Part III.

The most common voter errors fall into three main categories based on the type of ballot that voters use: absentee ballots, provisional ballots, or regular ballots.[66] First, voters can make mistakes in applying for and then completing an absentee ballot.[67] To vote via an absentee ballot, voters must first apply for the absentee ballot by the specified date, receive the ballot, fill it out correctly, and then mail in the completed ballot on time. The specific requirements at each stage of this process can generate mistakes. For example, the Ohio Secretary of State rejected absentee ballot applications when the voters failed to check a box on the application form designating them as qualified electors.[68] Voters might also fail to sign an absentee ballot or sign it in the wrong place,[69] or the signature on the absentee ballot application might not sufficiently match the signature on the ballot.[70]

Second, voters can make errors on the ballot itself when they are required to vote provisionally.[71] Voters might fail to both print and sign their names in the correct spot on a provisional ballot.[72] They can also forget to check the box describing why they had to vote provisionally or commit other errors on the provisional ballot envelope.[73] These mistakes will often render the ballots invalid under state laws.[74]

Finally, voters can make mistakes in the regular ballot-casting process. They might show up at the wrong precinct to vote.[75] They

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66. Voters also can make mistakes when registering to vote. *See* Tokaji, *supra* note 25, at 475. Moreover, with the increased use of alternative voting forms such as in-person early voting, these categories are somewhat fluid.

67. Election workers, too, can make mistakes with absentee ballots. For instance, officials might fail to sign off on an in-person absentee ballot, meaning it might not count as a valid vote. *See* Daysha Eaton, *Some Ballots Thrown Out of Anchorage Election Because of Officials' Error, New Results Expected Friday*, ALASKA PUB. MEDIA (Apr. 12, 2013), http://www.alaskapublic.org/2013/04/12/ballots-thrown-out-because-officials-forgot-to-sign-off-on-ballots-new-results-expected-friday/.

68. *See* State *ex rel.* Myles v. Brunner, 899 N.E.2d 120, 121-22 (Ohio 2008) (per curiam). The Ohio Supreme Court ultimately ordered the Secretary of State to issue a directive to local boards of elections to accept these absentee ballot applications. *Id.* at 125.

69. *See, e.g.*, Contestants' Memorandum of Law in Support of Motion for Summary Judgment at 27-30, 34-37, *In re* Contest of Gen. Election Held on Nov. 4, 2008 (Minn. Dist. Ct. 2009) (No. 62-CV-09-56), 2009 WL 981934; Jane Musgrave, *372 Absentee Ballots Tossed*, SUN SENTINEL (Nov. 15, 2008), http://articles.sun-sentinel.com/2008-11-15/news/0811150020_1_voter-s-signature-absentee-ballots-military-ballots.

70. *See* Harrison v. Stanley, 193 S.W.3d 581, 582-83, 585-86 (Tex. App. 2006).

71. *See* 52 U.S.C. § 21082(a) (Supp. II 2014) (originally enacted as 42 U.S.C. § 15482(a) (2006)).

72. *See* State *ex rel.* Skaggs v. Brunner, 900 N.E.2d 982, 991-92 (Ohio 2008) (per curiam).

73. *See* Editorial, *Count All Valid Votes*, DENVER POST, Nov. 21, 2002, at B-06.

74. *See* Foley, *supra* note 9, at 372.

75. *See* Serv. Emps. Int'l Union Local 1 v. Husted, 698 F.3d 341, 343 (6th Cir. 2012).

might forget to bring a proper form of identification.[76] They can misspell a candidate's name on a write-in ballot[77] or fail to check the box next to the write-in candidate spot.[78] They could also mistakenly fail to vote for all races (undervotes) or vote for more than one candidate for a race (overvotes).[79] They can fail to press "confirm" when the voting machine includes a summary screen before the ballot is cast, which can lead to the votes not counting or even open the door to fraud if a complicit poll worker changes the vote after the voter leaves, as occurred in several eastern Kentucky elections.[80] All of these errors can cause inaccurate vote counts and post-election litigation.

Many of the errors listed above are avoidable. We need clearer guidance for voters so that they can more easily cast an absentee, provisional, or regular ballot without making a harmful mistake. Checklists are an easy solution.

III. THE INEFFECTIVENESS OF CURRENT POLL WORKER GUIDES FOR ELECTION DAY

Election Day is fraught with potential mistakes, and yet the people who are supposed to be the stopgap to avoid these errors—poll workers—are temporary employees with little training and inadequate resources to do their jobs effectively.[81] States hire thousands of poll workers, who must set up and open polling places, ensure that the polling site is accessible, process voters throughout the day, control access to the precinct, manage lines, check voter IDs, administer provisional ballots, close down the precincts, and sometimes even tabulate and secure the ballots.[82] Accordingly, states and localities have training processes in place for these individuals, requiring poll workers to read lengthy manuals and usually mandating that poll workers attend a training session.[83]

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76. *See, e.g.*, Sara Morrison, *Voter ID-Supporting Candidate Forgets ID, Becomes Latest Victim of Voter ID Law*, WIRE (May 20, 2014, 8:25 PM), http://www.thewire.com/politics/2014/05/voter-id-supporting-candidate-forgets-id-becomes-latest-victim-of-voter-id-law/371302/.

77. *See* Miller v. Treadwell, 245 P.3d 867, 869 (Alaska 2010) (per curiam).

78. *See* Dayhoff v. Weaver, 808 A.2d 1002, 1005-13 (Pa. Commw. Ct. 2002).

79. S*ee* KROPF & KIMBALL, *supra* note 21, at 36.

80. *See* Bill Estep, *Former Clay Circuit Judge, Magistrate Sentenced in Vote-Buying Case*, LEXINGTON HERALD-LEADER (Mar. 11, 2011), http://www.kentucky.com/2011/03/11/1665117/former-clay-circuit-judge-sentenced.html.

81. *See* Watts, *supra* note 20, at 176.

82. *Id.* at 177.

83. *Id.* at 188-89.

Yet mistakes still occur despite these resources. "[P]oll workers operate in an environment where they may have to make quick decisions, based on little information, with few concrete incentives for accuracy, and with minimum opportunity to learn from their errors."[84]

As detailed below, the training guides that states and counties provide to poll workers are lengthy and overly comprehensive, rendering them virtually unusable on Election Day. Poll workers might have to read two long poll worker manuals, one from the state and the other from the local county. No one, especially a temporary employee who performs the job only once every two years, can master all of that information and then apply it correctly in a high-pressure situation while voters are waiting. Even the U.S. Election Assistance Commission admits that election officials should not "expect anyone, except the editor, to read the entire manual."[85] Moreover, few states or counties supplement these guides with simplified tools, such as a checklist, to assist poll workers in carrying out their numerous responsibilities.

A. State Poll Worker Guides

Most state training guides for poll workers are long, bulky, and filled to the brim with information about how to run the election. This is not necessarily bad; poll workers need all of the relevant information ahead of time to operate their precinct successfully on Election Day. It is important to have training guides that are complete and comprehensive. But these guides are generally not written in an easy-to-use format for quick reference in the heat of the moment when the issues actually arise. And it is too much to think that poll workers can remember all of the various details from memory. Checklists should not replace these guides, but they can serve as useful supplements on Election Day itself.

Kentucky, for example, gives its "election officers" a sixty-four page "Quick Reference Guide" that contains all aspects of Kentucky election law.[86] The sheer size of this document makes referring to it anything but "quick."

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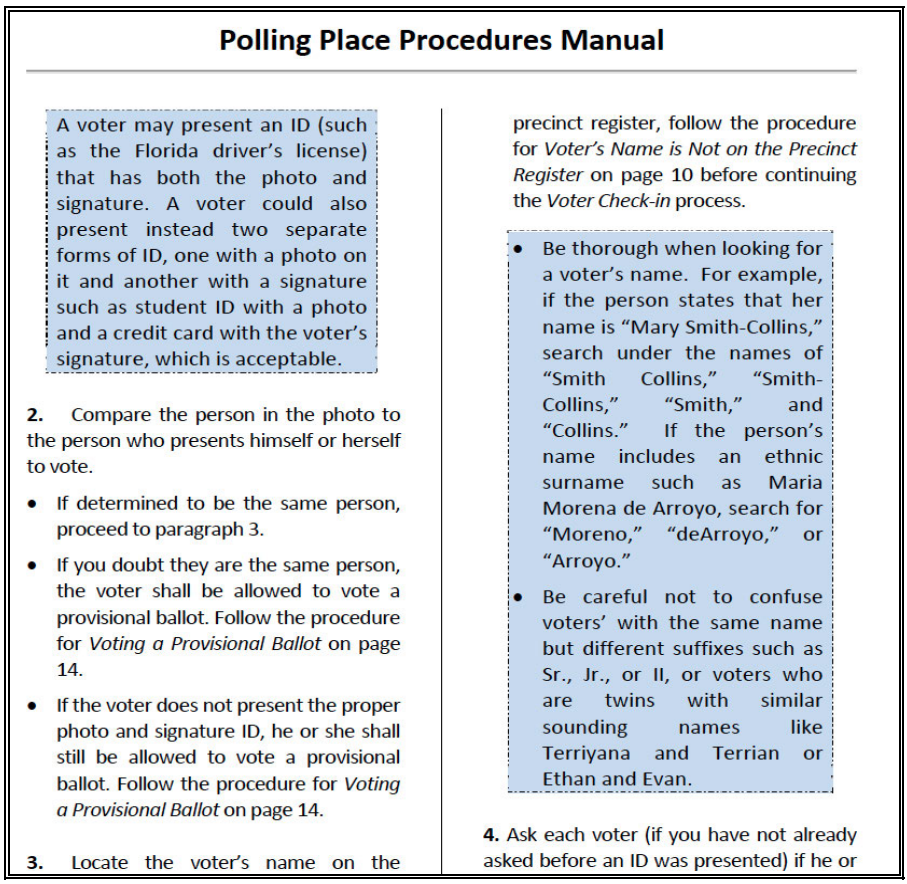
84. Antony Page & Michael J. Pitts, *Poll Workers, Election Administration, and the Problem of Implicit Bias*, 15 MICH. J. RACE & L. 1, 5 (2009).

85. U.S. ELECTION ASSISTANCE COMM'N, SUCCESSFUL PRACTICES FOR POLL WORKER RECRUITMENT, TRAINING, AND RETENTION 125 (2007), http://www.eac.gov/election_management_resources/poll_worker_best_practices.aspx (follow "Section1 – Recruitment," "Section 2 – Training," "Section 3 – Retention," and "Section 4 – Management").

86. KY. STATE BD. OF ELECTIONS, PRECINCT ELECTION OFFICER'S QUICK REFERENCE GUIDE, GENERAL ELECTION, NOVEMBER 6, 2012 (2012), http://elect.ky.gov/Pages/default.

Florida's poll worker guide is thirty-three pages long.[87] Although there is an index at the back to make it easier to find certain topics, the descriptions and explanations are too wordy. The guide is printed in a two-column format that uses long paragraphs to explain the various issues poll workers might encounter on Election Day. The explanations do not provide an easy sequence to follow. For instance, the training guide uses a lot of cross-references, thereby forcing the reader to jump to different pages to resolve scenarios, making the guide even more cumbersome to use on Election Day when lines are long and voters are frustrated. Here is a sample page:

Figure 1: Florida Polling Place Procedures Manual, page 8



Polling Place Procedures Manual

A voter may present an ID (such as the Florida driver's license) that has both the photo and signature. A voter could also present instead two separate forms of ID, one with a photo on it and another with a signature such as student ID with a photo and a credit card with the voter's signature, which is acceptable.

2. Compare the person in the photo to the person who presents himself or herself to vote.

- If determined to be the same person, proceed to paragraph 3.
- If you doubt they are the same person, the voter shall be allowed to vote a provisional ballot. Follow the procedure for *Voting a Provisional Ballot* on page 14.
- If the voter does not present the proper photo and signature ID, he or she shall still be allowed to vote a provisional ballot. Follow the procedure for *Voting a Provisional Ballot* on page 14.

3. Locate the voter's name on the precinct register, follow the procedure for *Voter's Name is Not on the Precinct Register* on page 10 before continuing the *Voter Check-in* process.

- Be thorough when looking for a voter's name. For example, if the person states that her name is "Mary Smith-Collins," search under the names of "Smith Collins," "Smith-Collins," "Smith," and "Collins." If the person's name includes an ethnic surname such as Maria Morena de Arroyo, search for "Moreno," "deArroyo," or "Arroyo."
- Be careful not to confuse voters' with the same name but different suffixes such as Sr., Jr., or II, or voters who are twins with similar sounding names like Terriyana and Terrian or Ethan and Evan.

4. Ask each voter (if you have not already asked before an ID was presented) if he or

aspx (search in search bar for "Quick Reference Guide"; then follow the link provided for the first result, "Precinct Election Officer's Quick Reference Guide . . .").

87. DIV. OF ELECTIONS, FLA. DEP'T OF STATE, POLLING PLACE PROCEDURES MANUAL (2012).

California's guide, which is directed at those who will train poll workers, is thirty-one pages long.[88] It includes a six-page section on "Procedures for New Voters, Vote-by-Mail Voting, Provisional Voting, and Other Situations."[89] The explanations are wordy and technical. It is useful only if the training session actually goes over this information and a poll worker retains it when the situation arises; it is not helpful on Election Day itself when the poll worker is confronted with the voter. Here is one example from this training manual:

Figure 2: California Poll Worker Training Standards, page 19

- If voters are in the wrong polling place, poll workers should tell them they can either go to their assigned polling place to vote a regular ballot or they can stay and cast a provisional ballot. The poll workers should also explain the advantages and disadvantages of each option. For example, the polling place ballot may not contain all of the same candidates and measures as the ballot in a voter's home precinct. If this type of situation occurs late in the day, the poll worker should let the voter know that if the voter arrives at their assigned polling place after 8:00 p.m., the voter will not be allowed to cast a ballot.

- Poll workers should be informed how to handle provisional ballots and ensure voters fill out and sign the provisional envelopes. Poll workers should segregate provisional ballots so they can be processed separately. (§ 14310)

Texas gives its poll workers a fifty-four-page handbook.[90] It is difficult to follow. The guide contains eleven sample "situations" of potential problems voters might present and details the steps poll workers should take for each one. But the explanations are technical and likely confusing to most poll workers. For instance, the guide has over two full-text pages on how to handle the fairly routine problem of a voter showing up at the wrong precinct because he or she has moved.[91] Here is just one paragraph of that explanation to give a flavor of the technical detail of the instructions:

> A voter who has moved from one county to another may, under some circumstances, be eligible to vote a limited ballot in the new

88. DEBRA BOWEN, CAL. SEC'Y OF STATE, 2010 POLL WORKER TRAINING STANDARDS (2010), http://elections.cdn.sos.ca.gov/poll-worker-training-standards/poll-worker-training-standards-final-031210.pdf.

89. *Id.* at 17-22.

90. ELECTIONS DIV., OFFICE OF THE TEX. SEC'Y OF STATE, QUALIFYING VOTERS ON ELECTION DAY: HANDBOOK FOR ELECTION JUDGES AND CLERKS 2010-2011, FOR USE IN GENERAL, PRIMARY, AND OTHER ELECTIONS BY ALL POLITICAL SUBDIVISIONS (n.d.), http://www.texaspollworkertraining.com/resources/txhandbook.pdf.

91. *Id.* at 14-16.

> county of residence before his or her registration in the new county is effective, but voting under this procedure may only be done by personal appearance or by mail during the early voting period. [Sec. 112.001, et seq.] The voter must be a current registered voter in his or her county of former residence when the voter requests a limited ballot. When the voter completes a limited ballot application, the application will act as a voter registration, if the voter has not already submitted a voter registration application to the new county voter registrar.[92]

There are also lengthy paragraphs on specific rules for primary elections, which muddy the instructions and make it harder for poll workers to find the relevant information during a general election.[93] In its effort to be as comprehensive as possible, Texas has made its poll worker guide virtually unusable on Election Day itself—the very time when poll workers need to refer to it.

Not every state has taken the approach of putting anything and everything into its Election Day guides. Ohio, for example, provides both a comprehensive precinct manual and a flow chart for dealing with the most common issues poll workers will face.[94] The guide is written in different colors with numerous headings, few lengthy paragraphs, and easy-to-read font. The state also issues a supplemental training guide for primary elections.[95]The "Processing Voters Flowchart," printed in the training guide, but also available separately, leads poll workers through various scenarios involving a voter whose name is not in the poll book, whose address is incorrect, or who does not have a proper form of identification.[96]

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92. *Id.* at 15.

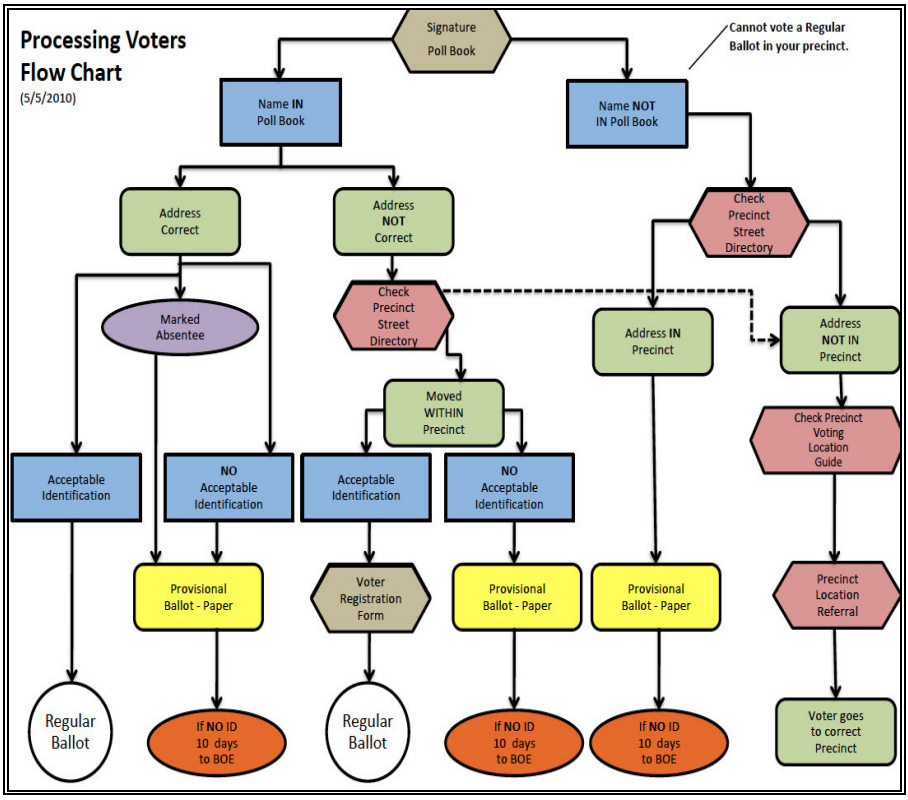
93. *See, e.g.*, *id.* at 15 ("In a primary runoff election, only one list of registered voters is used. This list will indicate voters who voted in the first primary of the opposite party. If a voter attempts to vote in a party primary runoff of a different party than the one in which the voter voted in the first primary, the voter is ineligible to vote. A voter becomes affiliated with a political party when the voter votes in that party's primary. A voter commits an offense if the voter votes or attempts to vote in a primary election after having voted in a primary election of another party during the same voting year. (The voting year is January 1 through December 31.) [Sec. 162.014]").

94. JON HUSTED, OHIO SEC'Y OF STATE, PRECINCT ELECTION OFFICIAL: MANUAL FOR NOVEMBER 2012 (2012).

95. JON HUSTED, OHIO SEC'Y OF STATE, PRECINCT ELECTION OFFICIAL: TRAINING SUPPLEMENT FOR MAY 7, 2013 PRIMARY ELECTION (2013).

96. HUSTED, *supra* note 94, at 28.

Figure 3: Ohio Precinct Election Official Training Supplement for May 7, 2013, Primary Election, page 28



Although perhaps daunting at first glance, this flowchart is relatively easy to follow and provides guidance to poll workers on how to handle these various common issues. It is similar to a checklist in that it can reduce the possibility of human error. Ohio's example can serve as a model for other states that want to strengthen their election administration. However, as the flowchart does not cover all aspects of the voting process, Ohio should create additional, simplified flowcharts or checklists for other issues that might arise.

It may seem strange to tout Ohio's election processes when the state has been the site of various Election Day errors and regularly has a high rate of provisional balloting.[97] Why should we emulate a system that has produced well-known election mistakes?

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97. *See* DARON SHAW & VINCENT HUTCHINGS, PRESIDENTIAL COMM'N ON ELECTION ADMIN., REPORT ON PROVISIONAL BALLOTS AND AMERICAN ELECTIONS 3 (2013), https://www.supportthevoter.gov/files/2013/08/Daron-Shaw-Provisional-Ballots-Shaw-and-Hutchings.pdf (noting that Ohio and three other states account for two-thirds of all provi-

The simple answer is that these errors have occurred in spite of poll workers having this flowchart. We just know more about Ohio's struggles because it is a swing state, meaning that campaigns and the national media pay more attention to its voting problems.[98] It is also unclear if poll workers actually use the flowchart with regularity when issues arise. Indeed, Ohio ranks in the middle of the pack on the Election Performance Index—a measure of how well states run their elections—suggesting that its problems are typical of other states.[99] Even with its useful training manuals, therefore, Ohio and other states need better tools to assist poll workers on Election Day. Of course, checklists or flowcharts cannot address every possible problem or human error. But they can make significant headway in helping poll workers avoid common mistakes.

In sum, state poll worker guides are long and comprehensive—so long, in fact, that they are too difficult to use. The sheer amount of information the training materials provide to poll workers, no matter how well organized, makes clear why poll workers are prone to commit simple mistakes. There is simply too much information for volunteer workers to be expected to master and recall instantly during an election. A poll worker facing a long line of voters on Election Day does not have the time to flip through a multi-page document with lengthy paragraph descriptions to figure out what to do. A user-friendly checklist would help to alleviate that pressure. We need to equip poll workers with tools that are easy to use. We then need to inculcate a culture in which poll workers routinely reference these checklists throughout Election Day.

B. Local Poll Worker Guides

Local election worker guides are also generally difficult to use and, in many instances, are even more confusing than state guides. They are extremely comprehensive, but, as one post-2012 election report noted, are awkward for a poll worker to access while trying to resolve an issue on Election Day.[100]

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sional ballots cast since the passage of HAVA); Edward B. Foley, *Electoral Dispute Resolution: The Need for a New Sub-Specialty*, 27 OHIO ST. J. ON DISP. RESOL. 281, 285 (2012) (noting that during the 2008 election, Ohio's use of provisional ballots was higher than in most other states).

98. *See* Adam Liptak, *The Vanishing Battleground*, N.Y. TIMES (Nov. 3, 2012), http://www.nytimes.com/2012/11/04/sunday-review/the-vanishing-electoral-battleground.html.

99. *See Elections Performance Index*, PEW CHARITABLE TRUSTS (Apr. 8, 2014), http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/elections-performance-index#overview; *see also infra* note 141 and accompanying text (describing the Pew Charitable Trusts' Elections Performance Index).

100. *See* OFFICE OF THE CONTROLLER, *supra* note 48, at 5.

Miami-Dade County—a jurisdiction with regular Election Day woes[101]—produces a 108-page training manual for "Clerks, Assistant Clerks, Inspectors, and Deputies."[102] The guide walks users through the materials for a four-hour training class on Election Day procedures. This manual is, quite likely, very useful during the class itself, but it would have little utility for poll workers in the heat of the moment on Election Day, especially with long lines and frustrated voters. The forty-seven-page training manual for Harris County, Texas—where Houston is located—is also geared toward a pre-Election Day class, not for use on Election Day.[103]

New York City gives its poll workers a nearly 200-page manual.[104] Notably, the manual references an Election Day checklist that the Inspectors—one of eleven positions on an election team at each precinct—can use: "An Election Day Checklist for Inspectors at the ED/AD Table is provided in the ED Supply Bag. The checklist summarizes the steps for opening, serving the voter an``````d closing. Please use the checklist."[105] The training manual, however, says nothing more about this checklist, such as explaining its contents or how Inspectors should use it.

Jefferson County, Kentucky, which includes Louisville, gives its poll workers a seventy-three-page document with lots of text.[106] It includes a chapter on "What If & FAQs"[107] that would be difficult to reference if the "What If" situations actually occurred on Election Day. The pages are full of lengthy prose, with the largest words on each one being "What If . . . ," making it difficult to find relevant information about the actual situation.[108] Here is an example:

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101. *See, e.g.*, Patricia Mazzei, *Miami-Dade Elections Report: County to Blame for Some Problems*, MIAMI HERALD (Dec. 19, 2012), http://www.miamiherald.com/news/politics-government/article1945623.html.

102. MIAMI-DADE CTY. ELECTIONS DEP'T, COMBINATION TRAINING: CLERKS, ASSISTANT CLERKS, INSPECTORS, AND DEPUTIES (2012).

103. *See* STAN STANART, ESLATE TRAINING MANUAL (2015), http://www.harrisvotes.com/PollWorkers/eSlateTrainingManual.pdf.

104. BD. OF ELECTIONS, CITY OF N.Y., POLL WORKER'S MANUAL (2012), http://vote.nyc.ny.us/downloads/pdf/documents/boe/pollworkers/pollworkersmanual.pdf.

105. *Id.* at 60.

106. JEFFERSON CTY. CLERK'S OFFICE ELECTION CTR., ELECTION OFFICER TRAINING MANUAL: PRIMARY ELECTION (2012), http://elections.jeffersoncountyclerk.org/pdfs/training-manual.pdf.

107. *Id.* at 33.

108. *See id.*

Figure 4: Jefferson County, KY Election Officer Training Manual, page 33

What If - A Voter's Name is not on the Precinct Signature Roster or the Supplemental Precinct Roster?
If a voter is not listed in your Precinct Signature Roster or your Supplemental Precinct Roster, **you MUST contact 574-VOTE (8683) to verify the voters eligibility to vote - NO EXCEPTIONS!**
Advise the voter that eligibility must be verified. If the phone lines are busy, have a member of the team *continue to call until you speak with an Election Center customer service representative.*
If an Election Officer allows a voter (whose name is not on your precinct rosters) to fill out an Oath of Voter form and cast a ballot without first verifying his/her eligibility to vote with the Election Center, that Election Officer *may be removed* from future service as an Election Officer**.** Verifying eligibility to vote is a safeguard on the integrity of the voting process. There is little point in checking ID's if all other processes are not followed with the same level of efficiency.

The only checklists in Jefferson County's guide are in an appendix, and they are for the return of voting equipment, not for managing the polls or processing voters.[109]

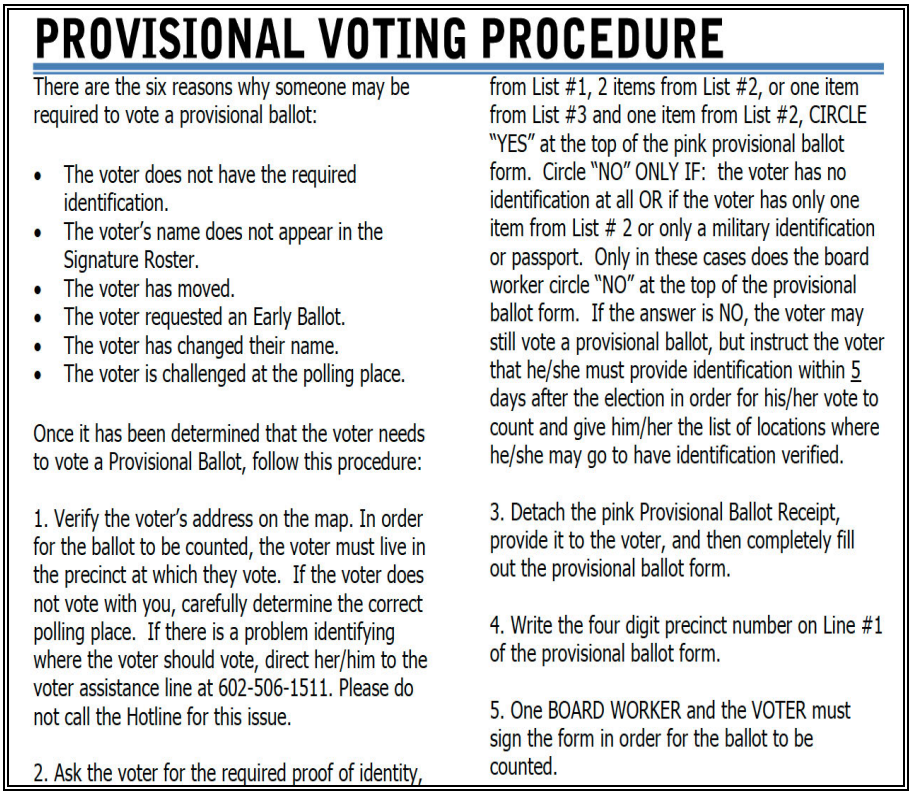
The guidebook for poll workers in Maricopa County, Arizona (Phoenix) is fifty-three pages long, comprised of lengthy double-column explanations in small font.[110] There are a few checklists—with text-heavy instructions—for setting up and closing the polls, but none for processing voters.[111] Here is a sample page:

109. *Id.* at 50-52.

110. MARICOPA CTY. ELECTIONS DEP'T, BOARD WORKER TRAINING MANUAL: GENERAL ELECTION 2012 (2012), http://www.recorder.maricopa.gov/pdf/BWTrainingManual2012.pdf.

111. *See id.* at 12, 14-26, 31, 41, 44-49.

Figure 5: Maricopa County, AZ Elections Department Board Worker Training Manual, page 34



PROVISIONAL VOTING PROCEDURE

There are the six reasons why someone may be required to vote a provisional ballot:

- The voter does not have the required identification.
- The voter's name does not appear in the Signature Roster.
- The voter has moved.
- The voter requested an Early Ballot.
- The voter has changed their name.
- The voter is challenged at the polling place.

Once it has been determined that the voter needs to vote a Provisional Ballot, follow this procedure:

1. Verify the voter's address on the map. In order for the ballot to be counted, the voter must live in the precinct at which they vote. If the voter does not vote with you, carefully determine the correct polling place. If there is a problem identifying where the voter should vote, direct her/him to the voter assistance line at 602-506-1511. Please do not call the Hotline for this issue.

2. Ask the voter for the required proof of identity, from List #1, 2 items from List #2, or one item from List #3 and one item from List #2, CIRCLE "YES" at the top of the pink provisional ballot form. Circle "NO" ONLY IF: the voter has no identification at all OR if the voter has only one item from List # 2 or only a military identification or passport. Only in these cases does the board worker circle "NO" at the top of the provisional ballot form. If the answer is NO, the voter may still vote a provisional ballot, but instruct the voter that he/she must provide identification within 5 days after the election in order for his/her vote to count and give him/her the list of locations where he/she may go to have identification verified.

3. Detach the pink Provisional Ballot Receipt, provide it to the voter, and then completely fill out the provisional ballot form.

4. Write the four digit precinct number on Line #1 of the provisional ballot form.

5. One BOARD WORKER and the VOTER must sign the form in order for the ballot to be counted.

Philadelphia's thirty-seven-page Election Board Training Manual[112] looks like a PowerPoint presentation with lots of text and many bullet points. Madison, Wisconsin has separate training manuals for new versus experienced poll workers, but they, too, are PowerPoint-style documents that are probably great for a training session but are likely difficult to use on Election Day.[113] Some cities in Wisconsin, such as Waukesha—the site of recent election irregularities[114]—simply rely

112. CITY OF PHILA., ELECTION BOARD TRAINING (2013), http://www.philadelphiavotes.com/files/Election_Board_Training_Spring_2013.pdf.

113. *See* MADISON, WIS., ELECTION OFFICIAL TRAINING FOR EXPERIENCED POLL WORKERS (2008); CITY OF MADISON., ELECTION OFFICIAL TRAINING FOR NEW POLL WORKERS, http://www.cityofmadison.com/election/pollWorkers/documents/BeginnerTraining.pdf (last updated Oct. 9, 2014).

114. *See* Mary Spicuzza, *State Investigating Vote Irregularities in Waukesha County Going Back 5 Years*, MADISON.COM (Apr. 15, 2011, 5:10 AM), http://host.madison.com/news/local/govt-and-politics/elections/state-investigating-vote-irregularities-in-waukesha-county-going-back-years/article_46644a68-6704-11e0-907e-001cc4c03286.html.

on the state's training manual, a 154-page document titled "Election Day Manual for Wisconsin Election Officials," which has a few checklists for polling place supplies and post-election procedures but nothing for workers to reference during voting hours.[115]

Poll workers in the Cincinnati area—the site of the contested Hamilton County Juvenile Court Judge race that was fraught with poll worker errors—had to rely on the county's thirty-seven page "Poll Worker Quick Guide," which contained a few checklists for opening and closing the polls and for ensuring that polling places had the required supplies but did not have easy-to-use tools for processing voters during the day.[116] The County, moreover, did not even intend for poll workers to use the Quick Guide on Election Day itself; the beginning of the manual directs poll workers to "study the material in advance of the election, as well as use the Comprehensive Manual during election day," thereby implying that the lengthier manual was the proper reference tool when issues arose.[117]

Some poll worker guides have useful materials embedded within the lengthy descriptions, and these can be models for other jurisdictions. Franklin County, Ohio, the home of the state's largest city, Columbus, has a 226-page election official guidebook.[118] Although a manual of this length is obviously too long for an individual to process in a single day, the guide does include a few checklists, such as for handling "curbside voting" for mobility-impaired voters,[119] setting up a table at the polling place,[120] and processing regular voters.[121] The checklists, however, are too wordy, making them difficult to follow and therefore less useful. Moreover, the checklists are buried within

115. *See* ELECTIONS DIV., GOV'T ACCOUNTABILITY BD., STATE OF WIS., ELECTION DAY MANUAL FOR WISCONSIN ELECTION OFFICIALS (2015), http://www.gab.wi.gov/sites/default/files/publication/65/election_day_manual_june_2015_pdf_35346.pdf; E-mail from Sandee Policello, Deputy Clerk/Treasurer, City of Waukesha, to Joshua A. Douglas, Robert G. Lawson & William H. Fortune Assoc. Professor of Law, Univ. of Ky. Coll. of Law (July 24, 2014, 11:13 AM) (on file with author) ("The City of Waukesha uses the Government Accountability Board's manual for training its poll workers.").

116. Hunter v. Hamilton Cty. Bd. of Elections, 850 F. Supp. 2d. 795, 813-17 (S.D. Ohio 2012) (describing poll worker training and the Hamilton County "Quick Guide"); *see* HAMILTON CTY. BD. OF ELECTIONS, POLL WORKER QUICK GUIDE: NOV. 2 2010 GENERAL ELECTION, 4-6, 21, 25, 32-35 (2010). The directions on processing "regular" voters and "provisional" voters span several pages and are filled with paragraphs and bullet point lists. *See* POLL WORKER QUICK GUIDE, *supra*, at 13-24.

117. POLL WORKER QUICK GUIDE, *supra* note 116, at 2.

118. BD. OF ELECTIONS, FRANKLIN CTY., PRECINCT ELECTION OFFICIALS TRAINING MANUAL (2015), https://vote.franklincountyohio.gov/assets/pdf/poll-worker/Training-Manual.pdf.

119. *Id.* at 17.

120. *Id.* at 78.

121. *Id.* at 87.

the other descriptions for Election Day processes, and it is unclear if poll workers receive the checklists separately from the lengthier manual.

Chicago's guidebook is the best example of how a local jurisdiction can provide usable materials in the form of checklists.[122] Although the manual is nearly eighty pages long, there are several simple and easy-to-follow checklists included within the materials.[123] The majority of the checklists are only a single page, and they list out every step in numbered order, with a box to actually check off once the poll worker has completed the task.

Figure 6: Cook County Clerk Judge, Election Manual, page 14

Handout 2: Setup - the VSC and Optical Scanner

Follow the steps on this checklist to set up the VSC and Optical Scanner.

Check the box next to each item as it is completed.

CHECK	STEP #	Tasks to Complete
	1	Open the side door and front panel of the VSC.
	2	Pull out the scanner. (NOTE: The silver release latch must click into place)
	3	Slide the blue write-in ballot bag underneath the scanner. Make sure the bag is not bunched up. Seal the bag with a red seal. Record the seal number on the Record of Seals Form. Two judges, one from each party, must initial the box next to the seal number.
	4	Open the ballot box (the bin labeled "Ballot Box") underneath the scanner. Remove all the touch screen machines from the VSC before closing the ballot box door. Verify that the ballot box is empty.
	5	Unlock the back door of the scanner using the barrel key. Check the connection inside the scanner and on the inside of the VSC. Relock the scanner using the barrel key.
	6	Record the white seal numbers on the memory pack door on the Record of Seals Form. Two judges, one from each party, must initial the box next to the seal number.

The Chicago manual has checklists for verifying the supplies in the morning, setting up the voting equipment, closing the equipment at night, and processing write-in votes, to name just a few examples.[124] The checklists even have a notation with a bold icon saying

122. DAVID ORR, COOK CTY. CLERK, ELECTION JUDGE MANUAL (2013), http://www.cookcountyclerk.com/elections/DocumentLibrary/EJ%20Manual%20%202013.pdf.

123. *Id.* at 12, 14-18, 56-59, 63.

124. *Id.*

"new" when there is an added step from previous years.[125] Chicago's poll worker manual has excellent checklists for opening and closing the polling site; however, it does not include any checklists or flowcharts for managing voters during the day.[126] Nevertheless, Chicago's checklists are good models for other jurisdictions to consider when reforming their own poll worker materials. Similarly, some California counties have "What To Do If" flipbooks for poll workers to consult that, although too wordy and detailed to catch all mistakes, can serve as a starting place for creating usable checklists.[127]

In sum, current election worker materials are generally sufficient for what they are: guides for pre-election training. But few state or local jurisdictions provide poll workers with easy-to-use tools for Election Day itself. Although some of the training guides include checklists, these checklists are wordy, incomplete, and embedded within other material. Election administrators can augment these guides with simple checklists for poll workers to use while they are actually managing the polls. In addition, election officials can design simple voter checklists to help voters avoid mistakes and speed the process along.

IV. NON-LEGAL APPROACHES TO FIXING ELECTION ADMINISTRATION PROBLEMS

Adopting checklists might seem like an easy reform. But the reality of our political environment is that hardly any election reform is easy. One of the difficulties in finding a workable solution to the election administration issues plaguing our voting processes is that any proposed reform must clear a significant political hurdle: legislators are highly unlikely to pass a law if it might hurt their side's electoral chances.

This struggle is what Professor Gerken refers to as the "here-to-there" problem in election reform[128]: scholars and policymakers can come up with great ideas to improve our election system, but it is often difficult to enact these changes because of political realities.[129] There is a structural impediment in moving from the "here" of reform

125. *See, e.g.*, *id.* at 56.

126. The manual provides several sections with text and images for handling tasks during polling hours, but this information is not translated into usable checklists. *Id.* at 23-55.

127. *See, e.g.*, REGISTRAR OF VOTERS, ALAMEDA CTY., *Election Day: What To Do If …* (2009), https://www.acgov.org/rov/documents/pollworker_WhatToDoIF.pdf.

128. Heather K. Gerken, *Getting from Here to There in Election Reform*, 34 OKLA. CITY U. L. REV. 33, 33 (2009).

129. *See id.* at 38.

proposals to the "there" of actual change because one side or the other will block the reform if it might negatively impact their side on Election Day. After all, legislators are also politicians, so they will support changes to election processes only if it will not hurt their electoral chances in the future.

We can achieve meaningful election reform, however, if we create solutions that are "non-legal," such that they draw from the lessons of the private sector and do not require legislators to cast difficult political votes. Creative, non-legal solutions are the best path forward for legal or policy problems, such as difficulties in election administration, because election officials can implement the changes outside of the political process.[130] We should borrow from the private sector to solve the same kinds of problems that come up in similar situations. Doctors, airline pilots, and building contractors use checklists to ensure that they do not make crucial mistakes when completing complex tasks.[131] Poll workers also engage in complex processes that often lead to mistakes; checklists can help them too. Further, election administrators are less likely to face opposition to the changes if they do not obviously impact one side versus the other and, instead, simply improve the election experience for all voters.

This Part examines two reform efforts that are achievable outside of the legal system, draw on private sector techniques, and do not have an obvious political impact. Checklists also have these same traits. The overarching point is that these kinds of non-legal approaches are the best way to fix our election mechanics.

A. The Democracy Index

Every election has problems with election administration, yet the voting experience varies across states and jurisdictions.[132] By and large, we do not have a strong grasp on which jurisdictions do well in running their elections and which ones do poorly.[133] Professor Heather Gerken's "Democracy Index"[134]—a non-legal solution that derives from private sector success and does not require politically-charged legislation—represents one path toward solving that problem.

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130. *See* sources cited *supra* note 10.

131. *See* GAWANDE, *supra* note 6 and accompanying text.

132. *See* discussion *supra* Part II.

133. *See* GERKEN, INDEX, *supra* note 11, at 13.

134. *Id.* at 5.

The Democracy Index is a ranking of states and localities on their election performance.[135] It is a data-driven indicator of how well, comparatively, each election system performs in registering voters, allowing voters to cast ballots, and counting votes.[136] Importantly, it takes the lessons of the private sector and some governmental agencies—that data-driven rankings can help to improve performance—and applies them to the election administration setting.[137] As Professor Gerken writes, "The Democracy Index would . . . give us the same diagnostic tool used routinely by corporations and government agencies to figure out what's working and what's not."[138]

A state ranking of election administration has the potential to improve how our elections are run. People and institutions care about rankings; no one wants to be at the bottom. The Democracy Index creates incentives for passing meaningful reforms as well as inculcates a standard of professional norms for election administrators.[139] In explaining the practicality of the idea, Professor Gerken notes:

> The Democracy Index is a quintessentially here-to-there solution. It doesn't impose standards on how our elections are run. It doesn't take power away from partisan officials. It doesn't professionalize the bureaucracy that runs our elections. Instead, it pushes in the direction of better performance, less partisanship, and greater professionalism.[140]

It is thus a non-legal proposal that can have a meaningful impact on our elections.

Indeed, the Democracy Index is now a reality. The Pew Charitable Trusts, a non-profit organization, has created an Elections Performance Index, which uses quantifiable data on seventeen different metrics to assess all fifty states' election administration.[141] Users can determine which state has the best overall election system (North Dakota) and the worst (Mississippi) as well as analyze how each state performs for each of the measured factors.[142] This data can spur election officials to study what the best states do and change their processes to try to "climb the rankings."

The Democracy Index, and its actual implementation, shows that an idea from outside the partisan-laden world of election law that

135. *Id.*
136. *Id.* at 28.
137. *Id.* at 49-52.
138. *Id.* at 59.
139. *Id.* at 92.
140. *Id.* at 134.
141. *See Elections Performance Index*, *supra* note 99.
142. *See id.*

does not require politically-untenable legislation is the way forward for election reform. The proposal to adopt checklists has the same attributes: it is a non-legal proposal that uses guidance from the private sector and is implementable without requiring a difficult legislative vote. Moreover, using checklists might help states improve their performance on several of the factors that comprise the Democracy Index, thereby assisting states in strengthening their overall election administration.

B. Presidential Commission on Election Administration

The recommendations of the bipartisan Presidential Commission on Election Administration—the most recent federal study into our voting processes—are similarly "non-legal," drawing on private sector practices to propose easily-adoptable reforms.

President Obama created the Commission to address the significant long lines and other pervasive voting problems that occurred during the 2012 election.[143] The co-chairs were Obama's (Democrat) and Mitt Romney's (Republican) election lawyers, Bob Bauer and Ben Ginsberg,[144] but importantly, many of the commissioners were members of the private sector, such as the Vice President of Global Park Operations and Initiatives at Walt Disney World.[145] Having business leaders on the Commission was significant because they could draw upon their experiences to craft solutions to election problems that have analogs in their own industries.

In January 2014, the Commission issued a 112-page report that contained various suggestions for reforming election administration.[146] The Commission's formal recommendations and list of best practices were unanimous, written with the goal of "significantly improv[ing] the American voter's experience and promot[ing] confidence in the administration of U.S. elections."[147] Importantly, many of the proposals were "non-legal" in nature, drawing from the best

143. *See* Pam Fessler, *Obama Forms Presidential Commission to Study Voting Problems*, NPR (Mar. 28, 2013, 3:52 PM), http://www.npr.org/sections/itsallpolitics/2013/03/28/175605639/obama-forms-presidential-commission-to-study-voting-problems.

144. *Id.*

145. *President Obama Announces His Intent to Appoint Individuals to the Presidential Commission on Election Administration*, WHITE HOUSE (May 21, 2013), http://www.whitehouse.gov/the-press-office/2013/05/21/president-obama-announces-his-intent-appoint-individuals-presidential-co.

146. *See* Scott Wilson, *Bipartisan Election Commission Releases List of Suggested Fixes*, WASH. POST (Jan. 22, 2014), http://www.washingtonpost.com/politics/bipartisan-election-commission-releases-list-of-suggested-fixes/2014/01/22/76902880-8374-11e3-bbe5-6a2a3141e3a9_story.html.

147. PRESIDENTIAL COMM'N ON ELECTION ADMIN., *supra* note 14 (introducing the report in a cover letter addressed to the President).

practices of the private sector.[148] The ideas were also non-legal in that election officials can implement many of them under their administrative authority without new legislation.

The report placed its "key recommendations" into four main categories: voter registration, access to the polls, poll management, and voting technology.[149] For example, on poll management, the report states that "[l]ocal officials need to maintain a diagram of every polling place used in the jurisdiction to include at a minimum: room dimensions, location of power outlets, the proposed positioning of voting and voter processing equipment, the entry and exit routes, and signage required by the Americans with Disabilities Act."[150] Having a diagram of the polling place is a non-partisan, easily implementable solution that can have an immediate impact. Although it is not part of the report's recommendations, a checklist that includes these necessary attributes of a polling station would further assist poll workers in ensuring that everything is in order on Election Day.

The report also suggests that local officials employ "line walkers" to assist voters and address potential problems as voters wait—a non-legal solution that the private sector already uses, much like at airport security.[151] Similarly, election officials should "[k]eep[] track of wait times at individual polling places [by] using simple management techniques, such as recording line length at regular intervals during Election Day and giving time-stamped cards to voters during the day to monitor turnout flow."[152] Checklists would assist poll workers in completing these tasks correctly. On voting technology, checklists could help jurisdictions certify their machines, which is currently a costly and difficult task.[153]

The report, however, does not provide specific details on how jurisdictions should help poll workers in handling issues that arise on Election Day itself. It gives little guidance on how to train poll

148. *See, e.g.*, *id.* at 70 ("Much has been made in recent years of the puzzling gap between the technological revolution in the lives of most Americans and the technological systems voters encounter when they register and when they cast their ballots. A new technological gap is beginning to emerge, between the data analytical capacity that has improved customer service in the private sector, and the lack of data-driven efforts to improve the experience of voters. Without new management capacities and tools that draw on what is available in the private sector, the problems that gave rise to this Commission's creation are guaranteed to recur in the future.").

149. *Id.* at i.

150. *Id.* at 33.

151. *Id.* at 36-37.

152. *Id.* at 43; *see also id.* at 37 ("The private sector employs other techniques to deal with long lines. Whether in restaurants or theme parks, customers are quite familiar with the notion of 'taking a number' or 'making an appointment' instead of waiting in line.").

153. *See id.* at 64-66.

workers or provide them with the tools they need to deal with the problems that inevitably will occur.[154] On the training of poll workers, for instance, the Commission simply rests on a report from the U.S. Election Assistance Commission (EAC) titled Successful Practices for Poll Worker Recruitment, Training, and Retention.[155] That report, in turn, focuses on how to conduct training simulations, not on providing Election Day tools for poll workers.[156]

Effective checklists can greatly assist poll workers in responding to the Election Day issues that the Presidential Commission on Election Administration highlighted. Indeed, the report itself recommends that states use a checklist to ensure that a polling place is accessible for disabled individuals.[157] Beyond that brief mention, however, the Commission did not discuss the power of checklists in helping to solve many of the problems with election administration that it identified in its report.

As both the Democracy Index and the Commission's recommendations show, the best election reforms are those that come from outside of the political process. Ranking states, or improving access to the polls and poll management, are inherently non-controversial, or at least non-ideological, solutions to the political problem of election reform. Similarly, the creation of checklists for both poll workers and voters is an easily adoptable and non-partisan solution that, drawing on private sector experience, will have an immediate impact on our elections.

Checklists are a "there" solution to the "here-to-there" problem[158]: although legislative bodies are unlikely to enact most proposed reforms because there are strong political incentives to block the change, there are no obvious partisan motivations against using a checklist as part of the voting process. No one knows, especially ahead of time, which side's voters are hurt more by poll worker mistakes, so the benefit of smoother election administration can fall on both sides of the party line. Checklists would also help to institutionalize greater professionalism among election administrators because

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154. *Id.* at 46.

155. *Id.*; *see* U.S. ELECTION ASSISTANCE COMM'N, *supra* note 85.

156. U.S. ELECTION ASSISTANCE COMM'N, *supra* note 85, § 2, at 97-100.

157. Specifically, the Commission lists as a best practice: "A checklist ensuring that each polling place is accessible should be kept by the responsible election official for each election and kept on file to prepare for the next election." PRESIDENTIAL COMM'N ON ELECTION ADMIN., *supra* note 14, at vi. The report then simply points to a checklist that the Civil Rights Division of the Department of Justice has published as part of its materials on ensuring accessibility of polling places. *Id.* at 51.

158. *See* Gerken, *supra* note 128 and accompanying text.

the officials will see how these tools, used successfully in many other industries, also will have a positive impact on their jobs.[159]

V. INCORPORATING CHECKLISTS INTO ELECTION DAY PROCEDURES

Our current approach to poll worker materials is flawed. The number of mistakes that routinely occur on Election Day shows that providing only lengthy training guides is counterproductive. Most poll workers will not read the entire guide, and if they do, it is unlikely they will memorize most of the information. We need to take the opposite approach, giving poll workers simple, easily digestible tools to facilitate their work and reduce discretion when issues arise. Checklists are the answer.

A. Finding a Solution to Complex Problems Where Mistakes Are Likely to Occur

We have more human knowledge than ever before. As Atul Gawande remarks in *The Checklist Manifesto*, "Know-how and sophistication have increased remarkably across almost all our realms of endeavor . . . ."[160] As society has gained a better understanding of our world, our world in turn has become more complex.[161] Gawande, a surgeon, explains this phenomenon most clearly with respect to medicine. "Medicine has become the art of managing extreme complexity—and a test of whether such complexity can, in fact, be humanly mastered."[162] For instance, we have uncovered the existence of over 13,000 diseases or ailments, and most have different procedures or tactics to handle them.[163] It is inevitable, then, that humans will fail repeatedly when trying to manage this extreme complexity. As Gawande laments, "The complexity is increasing so fast that even the computers cannot keep up."[164] There is so much knowledge, and so many intricacies to manage, that simple things are sometimes forgotten. For example, every year there are nearly 150,000 deaths or major complications following surgery, and at least half of those problems would not have occurred if medical professionals had followed the correct procedures.[165] "The knowledge exists. But

159. *See* PRESIDENTIAL COMM'N ON ELECTION ADMIN., *supra* note 14, at 18-19 (discussing the value of creating professional norms for election administration).

160. GAWANDE, *supra* note 6, at 11.

161. *See id.* at 19.

162. *Id.*

163. *Id.*

164. *Id.* at 22.

165. *Id.* at 31.

however supremely specialized and trained we may have become, steps are still missed. Mistakes are still made."[166]

Medicine, of course, is not unique in this regard. Flying a plane is extremely complex, especially when something goes awry.[167] Constructing a new building entails layers upon layers of specialized knowledge and proper implementation.[168] For the best venture capitalists, choosing the start-up companies in which to invest requires mastery and assimilation of tons of information and data.[169] Lawyers are not immune to making avoidable mistakes. As Gawande notes, our struggle to deliver on increased knowledge and specialization in the legal field resulted in a thirty-six percent increase between 2004 and 2007 in legal malpractice lawsuits; "the most common [mistakes were] simple administrative errors, like missed calendar dates and clerical screwups [sic], as well as errors in applying the law."[170]

Administering Election Day is similarly complex and prone to error. Poll workers must complete a multitude of tasks under an array of legal regulations. They must properly set up the polling place and ensure everything is ready by the time the polls open early in the morning.[171] They must check voters in, which often involves complexities with poll books or issues regarding voter eligibility.[172] They must understand various legal rules, such as how to process provisional ballots, which, if there are both federal and state candidates, requires knowledge of both federal and state law.[173] They have to ensure the integrity of the polling station and ward off voter fraud.[174] And they must do all of this in high-pressure situations when lines are long, voters are anxious, and, for high-profile elections, the nation is watching. In almost every election, something

166. *Id.*

167. *Id.* at 33-34, 132-35, 175-79.

168. *Id.* at 53.

169. *Id.* at 162.

170. *Id.* at 11.

171. *See Galveston County Polls Stay Open Late to Make Up for Morning Delays*, KHOU.COM (Nov. 6, 2012, 8:09 PM), http://www.khou.com/story/local/2014/08/05/11862028/.

172. *See Missouri Voter Registration System Glitch Leads to Delays*, FOX NEWS (Nov. 2, 2010), http://www.foxnews.com/politics/2010/11/02/missouri-voter-registration-glitch-leads-voter-delays/.

173. *See* 52 U.S.C. § 21082(a) (Supp. II 2014) (originally enacted as 42 U.S.C. § 15482(a) (2006)) (federal provisional balloting law); *see also, e.g.*, 31 KY. ADMIN. REGS. 6:020 (2015) (state provisional balloting law).

174. *See* Steve Cavendish, *Irregularities in May 6 Voter Data Led to Double Voting*, NASHVILLE POST (May 12, 2014), http://nashvillepost.com/blogs/postpolitics/2014/5/12/irregularities_in_may_6_voter_data_led_to_double_voting (noting that a poll worker made the first report of voting irregularities).

along this process fails.[175] Often the mistakes do not alter the outcome of the election. But sometimes they do.[176] Therefore, we need to understand what kinds of election errors poll workers make and then design effective solutions to combat them. We can also help voters prevent their own mistakes by giving them easy-to-use guidelines on how to vote correctly.

As Gawande notes, "We don't study routine failures in teaching, in law, in government programs, the financial industry, or elsewhere. We don't look for the patterns of our recurrent mistakes or devise and refine potential solutions for them. But we could, and that is the ultimate point."[177]

B. The Power of Checklists

Implementing a simple checklist for complex processes can alter outcomes dramatically. "[C]hecklists seem able to defend anyone, even the experienced, against failure in many more tasks than we realized. They provide a kind of cognitive net. They catch mental flaws inherent in all of us—flaws of memory and attention and thoroughness."[178] In Gawande's own field of surgery, using a checklist in the operating room reduced infections by nearly fifty percent, saving scores of people from death or serious complications.[179] The checklists were effective in both rich and poor hospitals, in both rich and poor countries.[180]

An effective checklist has various attributes. First, there must be a clear "pause point" when the user must stop doing the task and reference the checklist.[181] This pause, at key moments, will ensure that the checklist actually hits upon the important parts of the process. Second, the checklist must be the correct type for the situation. Gawande explains the two primary kinds of checklists, which he calls

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175. *See* Foley, *supra* note 9, at 351-53.

176. *See, e.g.*, Bush v. Gore, 531 U.S. 98 (2000); Hunter v. Hamilton Cty. Bd. of Elections, 635 F.3d 219 (6th Cir. 2011); *In re* Contest of Gen. Election Held on Nov. 4, 2008, 767 N.W.2d 453, 457 (Minn. 2009) (per curiam).

177. GAWANDE, *supra* note 6, at 185.

178. *Id.* at 48.

179. *Id.* at 154.

180 *Id.* at 155. Given these results, it may be somewhat surprising that doctors and other medical professionals are slow to adopt checklists in their own operating rooms. Gawande explains that in today's age of increased knowledge and specialization, people are reluctant to believe that something as simple as a checklist can help. *See id.* at 161. Therefore, in the broader sense, Gawande calls for not just the implementation of checklists, but also for a change in our culture regarding how we manage increased knowledge and complexity. *Id.* at 160-61.

181. *Id.* at 122-23.

"DO-CONFIRM" and "READ-DO."[182] When using a DO-CONFIRM checklist, the individual completes several tasks from memory and experience but then stops at set points to confirm that he or she has done each one.[183] That is, the user proceeds through the activity, having completed the process before many times, but pauses throughout to reference the checklist and ensure that nothing was missed. When using a READ-DO checklist, by contrast, the individual references each stated task and then completes it in turn.[184] DO-CONFIRM checklists are best for routine processes in which pausing intermittently can help to verify that everything was done; READ-DO checklists are best for activities that occur less frequently and require certain steps in a certain order or otherwise benefit from the user going through the task one step at a time.[185]

Third, the checklist must be the correct length; between five to nine items is about right.[186] This means that the checklist must focus on the "killer items"—"the steps that are most dangerous to skip and sometimes overlooked nonetheless."[187] They must be precise. Good checklists "do not try to spell out everything—a checklist cannot fly a plane. Instead, they provide reminders of only the most critical and important steps—the ones that even the highly skilled professionals using them could miss."[188] Fourth, the font and formatting must be easy to read and use so that individuals do not have to spend extra effort deciphering the text or looking for the relevant part. After all, a checklist is supposed to help all kinds of potential users, especially in high-pressure situations, not make it harder for them to complete the task.[189] Finally, and crucially, the drafters should test the checklist in actual or simulated settings and revise accordingly until it actually works well.[190] A good checklist requires trial and error and revision so

182. *Id.* at 123.

183. *Id.*

184. *Id.* For example, recipes are usually READ-DO checklists. *Id.*

185. S*ee id.*

186. *Id.*

187. *Id.* Narrowing the checklist to only certain items thus requires good data on where the mistakes happen.

188. *Id.* at 120.

189. *See id.* at 123-24.

190. *Id.* at 124.

that it touches on only the most crucial points in the process. On his website, Gawande has a "checklist for checklists," listing the items that all effective checklists should include.[191]

C. Checklists for Election Day

States and localities can improve their Election Day administration through the creation and implementation of checklists. In doing so, election officials should break down their processes, step-by-step, to identify precisely where mistakes occur. The triggers for common errors will then become the crucial pause points in the checklist when poll workers must stop to make sure they are completing the process correctly.

A single "Election Day Checklist" will not do. Instead, states and counties should create various checklists for the different situations poll workers might encounter.[192] Election officials must understand the kinds of errors their poll workers make most frequently. They should then devise checklists that aid these individuals in completing their processes without committing a mistake that will disenfranchise someone or lead to lost votes. Regarding appearance, election officials should consult the "checklist for checklists"[193] to ensure that their checklists are of the proper length, font, and design. Jurisdictions can also create checklists for voters to use before they head to the polls or for absentee balloting. Officials must then simulate the use of these checklists before Election Day and tweak the checklists before every election to respond to evolving knowledge.

Creating a useful checklist is hard work. Election officials will have to take a large and complex web of regulations and accurately distill them into the most salient and useful points, all in a format that is understandable for temporary, non-professional poll workers. Moreover, there must be safeguards to ensure that the checklists themselves are non-partisan, so that election officials are not skewing the process in a way that could affect election outcomes. That said, the difficult work is worthwhile. Strong checklists can protect voters and ward off Election Day headaches. They are less expensive than other potential reforms or post-election litigation and can save

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191. *See* Atul Gawande, Brigham & Women's Hosp. Ctr. for Surgery & Pub. Health Dissemination Team & Dan Boorman, *A Checklist for Checklists*, PROJECT CHECK (Jan. 14, 2010), http://www.projectcheck.org/checklist-for-checklists.html.

192. This is similar to the approach that airlines take for their airplanes. The various checklists are in a spiral binder with numerous tabs, each one a different one-page checklist for various scenarios. *See* GAWANDE, *supra* note 6, at 116.

193. *See* Gawande, Brigham & Women's Hosp. Ctr. for Surgery & Pub. Health Dissemination Team & Boorman, *supra* note 191.

money in the long term. Further, checklists are scalable—once created, perhaps by a larger jurisdiction that has the resources—smaller jurisdictions can adopt them, simply tweaking them for their own needs. The initial allocation of resources for this reform can pay large dividends for years to come.

1. Checklists for Poll Workers

States and counties should include simple checklists in their materials for poll workers. They should simulate the use of these checklists during training and update and revise the checklists to respond to poll worker feedback. They should also mandate that poll workers actually use the checklists on Election Day in the myriad tasks they undertake.

One significant benefit of checklists is that they generally reduce the amount of discretion that a poll worker can exercise in completing a task. Many Election Day errors result from poll workers improperly using their discretion to administer an election regulation.[194] Checklists can reduce that discretion by requiring poll workers to follow a particular order to accomplish various steps in the voting process.

Although they represent an addition to current procedures in processing voters, checklists will not increase the overall wait time on Election Day; in fact, a checklist's streamlined process will mean that election officials can more quickly handle voters with problems. In addition, any marginal extra time a checklist might require is certainly offset by the benefits of smoother election administration.

Several poll worker processes can benefit from checklists. First, there should be a checklist for preparing the precinct before the polls open. This should be a READ-DO checklist, which requires poll workers to pause along the way, read each step, and then complete the task before moving on to the next step.[195] This process will ensure that the poll worker does not miss something important. A READ-DO checklist makes sense in this setting because timing is not much of a concern, meaning that the poll worker has the luxury of stopping at each step before moving on to the next one. This checklist should include items such as (1) ensuring that each machine is on and working a sufficient time before the polls open, (2) checking to see if there are enough paper ballots and other supplies available, (3) posting the required signage, and (4) ensuring that the polling place is accessible for voters with disabilities. Many jurisdictions already include these

194. *See* Alvarez & Hall, *supra* note 28, at 496.

195. *See supra* Section V.B.

kinds of checklists in their training guides,[196] so the key here is to update them for each election cycle to respond to anything that occurred previously.

Next, election administrators should create checklists for processing voters during the day. For most "regular" voters, this can consist of a simple DO-CONFIRM checklist posted at the poll worker table. When using a DO-CONFIRM checklist, the poll worker completes all tasks required when checking in a voter before referencing the checklist to make sure nothing was missed. Poll workers will process hundreds or thousands of these voters throughout the day, making it a routine activity that would benefit most from a check at the end for each voter, without causing significant delays.[197] For instance, in a state that requires a voter ID, the checklist could provide the following:

- ☑ Voter name is in poll book
- ☑ Voter is not marked as requesting absentee ballot
- ☑ Voter is not marked as voting already
- ☑ Address in poll book is correct
- ☑ Voter presents acceptable identification

A pause before the poll worker moves on to the next voter, for a glance at the DO-CONFIRM checklist to ensure everything was done properly, will help alert poll workers to errors in this routine process. It will also assist poll workers in ensuring that they treat each voter uniformly.

When there is a problem with one of the five items in the simple checklist for "regular" voters, however, a READ-DO checklist would work best so that the poll worker can carefully go through each step in the less-than-routine process of handling the voter's issue. There should be a separate checklist for each problem the voter might present. In the situation from above, then, there should be five READ-DO checklists: one to use if the voter's name is not in the poll book, one if the poll book says the voter requested an absentee ballot, one if the poll book says that the individual has voted already, one if the voter's address is incorrect, and one if the voter does not have the correct form of identification.

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196. *See supra* Part III.

197. Requiring the poll workers to stop and work through a READ-DO checklist for every routine voter—forcing a pause for each step—would slow down the process considerably. This is also not the area in which mistakes are common, so there is no need for multiple pause points during the checking-in process.

For instance, if the voter's name is not in the poll books, the READ-DO checklist could provide the following, which is taken from Ohio's Processing Voters Flowchart:[198]

- ☑ Check the precinct street directory
- ☑ If address is in precinct street directory, give voter provisional ballot
- ☑ If address is not in precinct street directory, check precinct voting location guide. Direct voter to the correct precinct
- ☑ If voter insists on voting at this precinct, give voter provisional ballot but advise that vote will not count if voter does not live in precinct

If the voter's name is in the poll book, but the address in the poll book does not match the voter's stated address because the voter moved within the precinct, the READ-DO checklist could provide:

- ☑ Check the precinct street directory to ensure new address is in precinct
- ☑ Ask for acceptable identification
- ☑ Give voter new voter registration form
- ☑ Provide regular ballot

The previous two checklists could have prevented the significant poll worker error that was the subject of lengthy litigation in Hamilton County, Ohio over a Juvenile Court Judge election.[199] In that case, many voters used provisional ballots in the wrong precinct because poll workers directed them to the wrong tables at the multi-precinct polling location.[200] At the precinct's table, the poll workers gave the voters provisional ballots instead of looking up their addresses in the precinct street directory.[201] If the poll workers had looked up the addresses, they would have sent these voters to cast regular ballots at their correct precinct—which was across the room! Actively working through a checklist that sets out each step likely would have avoided this kind of mistake and the subsequent litigation that it caused.

Closing the polls and securing the ballots are additional areas in which checklists can help. Indeed, many jurisdictions already use

198. *See* HUSTED, *supra* note 95, at 28.

199. Hunter v. Hamilton Cty. Bd. of Elections, 635 F.3d 219, 222 (6th Cir. 2011), *remanded to* 850 F. Supp. 2d 795 (S.D. Ohio 2012).

200. *Hunter*, 850 F. Supp. at 820.

201. *Id.*

checklists at this step in the process, but they are either poorly designed or focus on less important items like creating an "Inspector's statement" as opposed to processing the vote totals accurately.[202] Wisconsin's post-election checklist, for example, has nineteen items listed in two columns for poll workers to complete.[203] This is too long. Moreover, this checklist does not address an issue that has plagued at least one county in Wisconsin—accurately reporting the vote totals.[204]

On the evening of the 2011 Wisconsin Supreme Court election, the Waukesha County Clerk, Kathy Nickolaus, initially omitted over 14,000 votes that she "lost" on her computer, which changed the outcome of the race.[205] She made a human mistake, probably because she was rushing the process on election night in an effort to declare who won, resulting in missing votes in the reported totals. As an independent investigation revealed,

> It appears [that] Ms. Nickolaus simply inadvertently uploaded a blank template into the database that did not contain the vote totals for Brookfield and posted inaccurate results on election night. While this error may be fairly characterized as a human error, the problem appears to stem from potentially larger issues.
>
> Ms. Nickolaus was the sole person responsible for uploading the spreadsheet/templates into the Access 2007 database on election night. There was not a system in place to check for potential errors in this process. Ms. Nickolaus also was responsible for posting the results to the website. By her own account, she failed to go back and double check the numbers before posting the final results. The Waukesha County Clerk's Office failed to have adequate systems and procedures in place to receive and verify vote totals before posting the results to the public.[206]

A checklist for county clerks, which would detail the steps for tabulating each precinct's totals, double checking the results, and then conducting a separate verification of these numbers, would have reduced the potential for this kind of human error.

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202. *See, e.g.*, ELECTIONS DIV., *supra* note 115, at 104.

203. *Id.* at 134.

204. *See* Laurel Walker, *More Election Night Problems in Waukesha*, MILWAUKEE WIS. J. SENTINEL (Apr. 4, 2012), http://www.jsonline.com/news/waukesha/more-election-night-problems-in-waukesha-il4sbmm-146106695.html.

205. Davey, *supra* note 3. In the April 2012 primary, the same county's reporting program would not function, requiring workers to count the vote totals manually. Walker, *supra* note 204.

206. *See* TIMOTHY R. VERHOFF, SPECIAL INVESTIGATION REPORT: IN THE MATTER OF WAUKESHA COUNTY CLERK KATHY NICKOLAUS G.A.B. CASE # 2011-04, at 38-39 (2011), http://www.gab.wi.gov/sites/default/files/news/65/waukesha_independent_investigation_final_report_pd_71534.pdf.

Some jurisdictions do try to employ checklists in the election process, but their actual use is inconsistent. For example, a report on provisional ballots cast in Philadelphia during the 2012 presidential election noted that the "Pennsylvania Department of State created a checklist of procedures to be completed by the counties prior to finalizing voter information and printing the poll books."[207] However, the city commissioners in Philadelphia admitted that "the checklist is not formally signed-off by the individual performing the procedures."[208] This had a tangible result: the officials preparing the poll books in Philadelphia failed to change the status for voters who were seventeen years old when they registered but eighteen by Election Day from a pending file to actively registered.[209] This meant that these voters were not officially registered to vote. Properly using a READ-DO checklist would have avoided this problem, as it would have required election officials to pause at the key moments to ensure they were completing each step.

Thus, even when jurisdictions have checklists, election administrators need to ensure widespread and uniform use. Officials can encourage poll workers to follow these checklists through training simulations, by posting the checklists at the spots where the person would actually use them (such as at the poll worker table), and by emphasizing their importance even when the tasks seem ministerial. Local election officials should adopt well-vetted checklists and create a professional culture among poll workers that encourages their use.

Checklists, when used at various points throughout the voting process, can benefit election officials, poll workers, and ultimately voters. Each checklist must be specific to the particular task at hand, tested in hands-on simulations, and revised accordingly.[210] State and local election officials know the kinds of issues poll workers face and the types of mistakes they are most likely to make. Using the framework and models offered above, these election professionals can create checklists attuned to the needs of their precincts. They should refine and tweak the checklists based on simulations and poll worker feedback. They should then update their checklists each election cycle to respond to issues that may have arisen. Further, those jurisdictions that have the resources to take on the task initially can share their checklists with other jurisdictions, spreading these best practices throughout the country. None of this is expensive, but

207. *See* OFF. OF THE CONTROLLER, *supra* note 48, at 9.

208. *Id.*

209. *Id.*

210. *See* GAWANDE, *supra* note 6, at 124.

it takes a commitment from election officials who want to provide user-friendly materials to poll workers. This small step can reap big rewards in the form of smoother election administration.

2. Checklists for Voters

Voters can also benefit from checklists regarding their responsibilities in casting a ballot. There could be a checklist for absentee balloting as well as a checklist for in-person voting. States could mail these checklists to every voter and make them available electronically and could also sponsor advertisements to encourage their use.

For absentee balloting, a state could create a checklist for the steps a voter must take to cast his or her ballot successfully and include it with the absentee ballot instructions. This checklist would help voters avoid mistakes that may render their ballots invalid. Using Minnesota's rules for absentee balloting as an example,[211] a balloting checklist for these voters might provide:

- ☑ Request absentee ballot using absentee ballot request form (or online)
- ☑ After receiving ballot, find a registered voter or notary willing to serve as a witness
- ☑ Have witness or notary observe that the ballot is blank before you fill it out
- ☑ Have witness or notary observe you filling out the ballot (from a distance)
- ☑ Place ballot in absentee ballot envelope
- ☑ Sign and date ballot envelope in correct spot
- ☑ Have witness sign and date ballot envelope in correct spot
- ☑ Have witness write his or her mailing address where indicated
- ☑ If witness is a notary, have notary place seal in correct spot
- ☑ Return ballot envelope to county clerk via mail by Election Day, in person by 5:00 on Election Day, or by someone else in person by 3:00 on Election Day

To be sure, Minnesota's absentee balloting instructions now already provide all of this information, albeit in a numbered list in-

211. *Vote Absentee by Mail*, MNVOTES, http://mnvotesinfo.sos.state.mn.us/voters/vote-absentee/how-to-vote-absentee/vote-absentee-by-mail/ (last visited Mar. 8, 2016); *see also* Rachel E. Stassen-Berger, *No Excuse Needed to Vote Absentee in Minnesota*, STARTRIBUNE (June 23, 2014, 3:57 AM), http://www.startribune.com/politics/statelocal/264181781.html.

stead of a formal checklist.[212] But that is only after Minnesota "clarified ballot instructions for voters" following the 2008 Senate recount and post-election litigation that revolved around mistakes in the absentee balloting process.[213]

In that 2008 election, many voters failed to "strictly comply" with the absentee balloting procedure.[214] For example, some voters failed to sign the absentee ballot envelope in the designated space.[215] Other voters made mistakes with respect to the witness or notary information they needed to provide on the ballot envelope.[216] These ballots were the main focus of the post-election dispute between Republican Norm Coleman and Democrat Al Franken, which was finally resolved in Franken's favor over seven months after Election Day when the Minnesota Supreme Court ruled that ballots were invalid if the voters did not "strictly comply" with the absentee balloting rules.[217] It is not surprising that thousands of voters made mistakes when completing their absentee ballot envelopes. The instructions that the state sent with the absentee ballots were lengthy, wordy, written in paragraph form, and generally difficult to follow.[218]

A clearer sequence for voters back in 2008 might have avoided some of these troubles, which is surely why Minnesota has re-written its absentee ballot instructions to be more user-friendly. Minnesota should go further by crafting its instructions as a READ-DO checklist so that voters stop at each crucial point in the process. Other states should follow Minnesota's lead and revise their absentee balloting instructions to be clearer and easier to use. A simple checklist can avoid disenfranchisement due to mistakes and reduce the likelihood of post-election litigation.

Even the typical in-person voter could benefit from a checklist. States should create checklists for voters and then encourage voters to consult them before they go to the polls—perhaps by mailing them to every registered voter and making them available at the polling

212. *See Absentee/Mail Ballot Instructions*, MINN. SEC'Y OF ST., http://www.sos.state.mn.us/index.aspx?page=975 (last visited Mar. 8, 2016) (follow first link, "AB instructions – third envelope – English").

213. Stassen-Berger, *supra* note 211.

214. *See In re* Contest of Gen. Election Held on Nov. 4, 2008, 767 N.W.2d 453, 462 (Minn. 2009) (per curiam).

215. *See* Levitt, *supra* note 9, at 127.

216. *See id.*

217. *See In re* Contest of Gen. Election, 767 N.W.2d at 462.

218. *Compare* MINN. R. 8210.0500 subp. 3 (2008) (using paragraph-long, wordy instructions for absentee ballots), *with* MINN. R. 8210.0500 subp. 3 (2014) (employing simplified language and cleaner-formatted absentee ballot instructions).

sites. States could use the following voter checklist as a guideline, adding whatever state-specific instructions are necessary to this template:

> Before heading to your precinct on Election Day, complete the following tasks:
>
> ☑ Ensure you are registered to vote by checking your registration status on the voter registration website (applicable for all states besides those that have Election Day registration, such as Minnesota)
>
> ☑ Find your correct precinct by visiting the voter registration website
>
> ☑ Know the hours the polls will be open, and ensure you have time in the day to go to the polls
>
> ☑ Ensure you have the proper form of identification with you before you leave (if the state has a voter ID requirement)
>
> ☑ Inform yourself of the candidates and their positions, and familiarize yourself with the language and purpose of any ballot referenda

There could also be a checklist for the steps the voter should take at the polling place, walking them through the check-in process and how to use the voting machine.[219] For instance, if the voting machine requires a voter both to select the candidates and also click "vote" on a final confirmation screen, a checklist could lay out those steps. Listing this step on a checklist would reduce the likelihood that a voter might forget to click the final "vote" confirmation button, a common voter error.[220] It also would have prevented the election fraud that occurred in eastern Kentucky, where complicit poll workers noticed when voters failed to confirm and went into the voting booth afterward to change their votes.[221]

Of course, as with any of these checklists, the particular checklist a state or county creates would have to reflect the current law and voting process of that jurisdiction. Further, election officials will have to educate the public and convince voters of the benefits of using the checklist, pointing out that by taking a couple of minutes to follow the checklist, they are less likely to have problems at the polls and more likely to have their votes included in the count.

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219. State and local officials should also create specific checklists for voters with disabilities.

220. *See* Estep, *supra* note 80.

221. *Id.*

Creating a checklist for voters can make election administration easier for election officials. If voters have an easy-to-use guide for how to cast their ballot, they are less likely to have questions, slow up lines, or make mistakes. In turn, the rate of provisional ballots will go down. Fewer mistakes will produce a more accurate vote-casting and counting process. A well-designed checklist that voters actually use could also reduce the number of disputed ballots in a post-election contest. Checklists work to ensure people do not skip important steps in a complex process. If states educate voters on using a checklist, everyone benefits.

Implementing checklists for Election Day is an inexpensive, non-partisan solution to reform election administration. It will take time and foresight, but few other resources. Election officials can create the checklists using the guidelines and models above, test them in simulations, and revise them accordingly. They can then share their efforts with other election officials. Because the idea is scalable and adoptable across jurisdictions, it just takes one locality to try this out; others will surely follow suit once they see the benefits.

Both Democrats and Republicans should support this idea, as it will help to ensure a smoother and more accurate voting process and does not obviously benefit one party over the other. Election officials will like it because it will make their precincts operate more smoothly. And voters will support any measure that makes Election Day easier. Although checklists cannot fix every problem with our elections, they offer a positive step in helping poll workers and voters avoid mistakes as they wade through the complexities of the voting process.

VI. CONCLUSION

Sometimes the simplest solutions are the best, even for complex problems. This certainly rings true for Election Day. The voting process involves a complicated web of rules and regulations, run largely by poll workers who are not professional election administrators. Poll workers are faced with myriad situations in which voting can go awry, and voters must comply with various requirements to ensure their votes count. But poll workers and voters are not given simple tools to help them through the process. Instead, the training guides poll workers receive are lengthy, comprehensive, and difficult to use in the heat of the moment when an issue arises. It is no wonder that poll workers, other election officials, and voters make mistakes in every election, which lead to long lines and lost votes. A simple checklist can supplement these materials and help to avoid the human errors that occur in elections. Checklists have helped improve outcomes in various private sector industries; elections can also bene-

fit from these tools. Further, it is hard to object, on political or other grounds, to a jurisdiction using a checklist to fix its voting system. Well-designed and well-vetted checklists are therefore the perfect non-legal solution to the legal and policy problem of reducing errors in the operation of our elections. In a time in which policymakers are searching for how to remedy the voting woes in our country, checklists provide a simple, non-legal, non-partisan, and low-cost idea to improve election administration.