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A Rule to Avert Balloting Woes Adds to Them

By FORD FESSENDEN

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CHICAGO - When poll workers could not find Kelly Pierce's name on the registration rolls during the primary here in March, they told him to take advantage of a new election rule that allowed him to cast his vote using a provisional ballot.

The rule is intended to prevent one of the major problems experienced in Florida during the 2000 presidential election, when scores of voters, especially minority voters, were turned away at the polls over registration questions that could not be resolved quickly.

So Mr. Pierce, who had voted regularly since 1989, filled out his paper ballot. Election administrators then proceeded to throw it out, determining that poll workers had Mr. Pierce file it in the wrong precinct.

He was hardly alone. Of the 5,914 provisional ballots cast in the Chicago primary, 5,498 were disqualified, mostly on technical grounds.

Provisional voting, the centerpiece of the Help America Vote Act that Congress passed in 2002, will be put into effect across the nation in the coming presidential election in an effort to ensure that more votes are counted.

But election officials say the experience of Mr. Pierce - and hundreds like him across the country during primary season - show how failures in carrying out the measure could end up disenfranchising voters instead.

All but a handful of states have passed legislation creating some form of provisional balloting. Most states adopted the new rules to make a deadline to get federal election money this year.

An examination of those rules, however, shows there is no uniformity in how they are applied. Some states, for example, allow provisional ballots to be counted even if they are filed in the wrong precinct, but at least 16 states, including Illinois, throw them out.

And few states have worked out the details of how to train workers to carry out provisional balloting and other voting changes, setting up the potential for a protracted ballot-by-ballot fight in any election that is close.

"You talk about testing with real bullets, this is going to be testing election reform with real ballots," said Doug Chapin, executive director of a nonpartisan election watchdog group, electionline.org.

In the primary in Chicago, one in 90 ballots was provisionally cast. The majority of the 93 percent that were thrown out were disqualified because of technical errors caused by election workers; these included more than 1,200 ballots filed in the wrong precinct. Some 2,400 were discounted because affidavits were incompletely or incorrectly filled out. Only 416 provisional votes were ultimately counted.

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The extent of the problems surprised Chicago election officials, who said they had hoped provisional ballots would not be widely used. They blamed inadequate training of poll workers for the high rate of disqualification.

"Training your poll workers gets harder every election," said Tom Leach, a spokesman for the Chicago Board of Elections. "We're laying more and more on the judges, and they're not professionals, they're senior citizens and housewives."

When poll workers could not find Mr. Pierce on the list in the March primary, he said they made no effort to check whether his voting precinct had been changed.

"Someone floated the idea that if I was not in the book, I ought to vote provisionally," Mr. Pierce said. "They kind of went forward in lockstep with that idea, rather than thinking about it."

He has lived in the same apartment since the 1980's, but the city had recently redrawn precinct lines, he discovered when he called election officials to see what had happened to his ballot. His new polling place was just 10 feet from where he filed his doomed ballot, at another table in the high school gymnasium that served several voting districts that day.

In the primary, provisional ballot problems were more likely to disenfranchise minority voters in Chicago than white voters, exactly the problem in Florida four years ago that provisional voting was intended to address. In wards that are 80 percent or more minority members, the rate of disqualified ballots was double that of wards that are 80 percent white.

The major races in the primary in Chicago were not close, but the disqualified ballots could have been decisive in three close local races, where they far outnumbered the margin of victory - re-creating another Florida situation. An incumbent in one race took the matter to court but eventually conceded, citing a lack of money to pursue the case.

Mr. Leach said the city's Board of Elections would install phone lines to help workers navigate the provisional ballot system and gain access to registration rolls for the November election, when the number of voters could double and much more is at stake. Officials have also recorded a training video on provisional ballots and will print detailed maps of the precincts to distribute to its poll workers.

Still, Mr. Leach said he would not encourage provisional balloting.

"We're not going to advertise provisional ballots," Mr. Leach said. "We don't need thousands of these to go through after Election Day. We don't have time."

Across the country, election administrators echoed Mr. Leach's fear: being swamped with waves of provisional ballots, and short deadlines to sort them out. The practical situation creates tension with the supposedly inclusive purpose of provisional balloting - the harder you try to extend the franchise, the more difficult the post-election task.

"You don't want to tell someone their vote didn't count because they were in the wrong polling place," said Jennifer Collins-Foley, who works on recommended practices for provisional balloting with the Election Assistance Commission, the new panel overseeing the voting act. "But you can understand why election officials have concerns about the use of provisional ballots."

In Pennsylvania where the law requires that provisional ballots be counted even if they are filed in the wrong

precinct, the election administrator has a narrow window for deciding which votes to count.

"We have three days to make sure they're registered, compare legislative districts they're eligible for, check the paper poll book to make sure they didn't vote in the division where they're registered, check the signature on the provisional ballot with the signature on the books," said Bob Lee, the election administrator in Philadelphia.

In the April primary, Philadelphia had 683 provisional ballots. That city was far more successful than Chicago in enfranchising those who filed, counting votes on 70 percent of the ballots. But Mr. Lee fears a general election that could generate 10 times the workload.

"In all likelihood, you're going to have the situation where all these provisional ballots have to be counted after Election Day, with no rules about how they should be counted," said Tracy Warren, executive director of the Democracy Project.

Colorado enacted one of the first provisional-balloting laws in 2002, and immediately fell into an ugly dispute in a close Congressional race. Secretary of State Donetta Davidson issued a series of conflicting directives during the contentious post-election count. Counties used different standards for counting, and the race ended up in court.

Election officials expressed additional concerns over other changes instituted under the Help America Vote Act, including one that requires new voters to present identification at polling sites.

The requirement was intended to apply to people who had recently registered by mail, under the logic that they had to prove their identities at some point before they could vote. States had to adopt it as well to get the federal money, and were free to expand the identification requirement. Five states did, adding to the 11 that required identification of all voters before the voting act was passed in 2002.

Most of the rest require identification only from first-time voters, but the distinction has been confused or misused by poll workers during primary elections this year.

In East Chicago, Ind., Helen Hernandez was mistakenly asked to produce identification in the primary there in May, even though she has lived there since the 1950's and has voted in just about every election since.

"This is the first time anyone has ever asked me for identification," Mrs. Hernandez said she told the worker at her polling place. She said the poll worker did not offer her a provisional ballot, either, which the law requires when there is a dispute over voting eligibility.

Mrs. Hernandez was on a half-hour lunch break from her janitor's job and did not have time to retrieve her identification.

It is not clear how many other voters were turned away in East Chicago, but the Justice Department said problems were widespread. Monitors who visited 27 of 32 city precincts that day found that poll workers in all of them misunderstood voter identification and provisional voting requirements.

In South Dakota, site of close House and Senate races in the last two years, the United States attorney is looking into charges that poll workers on Indian reservations used the state's identification requirement to discourage voting.

Civil rights organizations celebrated passage of the 2002 voting act, but putting it into effect this election year has cast it in a different light for many supporters.

"The Help America Vote Act to many civil rights organizations is not so much about enfranchising the voter," said Maria Valdez, the regional counsel for the Mexican American Legal Defense and Education Fund in Chicago, "but just the opposite, limiting access."