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Malfunctioning Machines, Ballot Glitches, Election-Law Litigation -- and a Busy Day for Lawyers

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Lawyers who volunteered to take calls and monitor polling locations nationwide on Tuesday reported voting machine malfunctions, polling places opening late and numerous incidences of names missing from voter registration rolls.

In Ohio, New Hampshire and Virginia, lawyers scrambled to file court documents in election-related lawsuits. But in most states, lawyers were working to prevent litigation by fielding calls at centers housed at area law firm offices or traveling to polling locations to address voter concerns. Some states had unique issues, such as improper signage in Florida, missing absentee ballots in California and a shortage of interpreters for Asian-American voters in New York's Chinatown.

Most of the lawyers who volunteered were part of [Election Protection](#), a nonpartisan coalition that is administered by the Voting Rights project of the [Lawyers' Committee for Civil Rights Under Law](#).

Jon Greenbaum, director of the Voting Rights Project, said the election did not go smoothly in Virginia, Pennsylvania, Florida, Michigan and New Jersey.

Most of the problems in those states related to the optical scan machines, which were implemented since the last election after complaints about electronic voting machines. On Tuesday, the scanning machines broke down, leading elections workers to hand out paper ballots as an alternative to thousands of voters, said Greenbaum. Additionally, many ballots were put in duffel bags and even thrown on the floor by poll workers.

The bottom line, according to Greenbaum: "The system is not designed to deal with a high turnout election and we're seeing the effects of a lack of planning and resources."

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Scanning machines didn't work in Florida, either.

In Broward County, voters vote by blackening circles on vote cards. The cards are then fed through optical scanners. Each precinct has just one scanner. According to Valerie Shea, a partner at [Gordon Hargrove & James](#) who headed the operation in Broward, the scanner broke in a few precincts, so poll workers collected ballots and promised to feed them through later.

"Voters get upset when the optical scan machines are not working," Shea said.

Gordon Hargrove & James, in Fort Lauderdale, is hosting a call center with 10 lawyers manning the phones and another 10 lawyers roaming the field.

Similar call centers were set up in Miami-Dade County, at the offices of Washington's [Hogan & Hartson](#), and in Palm Beach County, at the offices of New York's [Proskauer Rose](#).

Volunteers in Florida also received calls about improper signage at the polls and voters wrongfully being turned away because they were told they already voted in early voting. Also, one election official locked the poll lists in her car accidentally, and a precinct ran out of ballots.

Perhaps most concerning, Shea said, were reports that voters in Pompano Beach, Fla., were intimidated by numerous police at the polls. "They were apparently intimidated by what appears to be excessive police presence," she said.

Despite the problems, Shea said the election is still going far smoother than ones in Broward County in 2004 and 2000, because so many people voted during early voting. "Early voting took a lot of the burden off," she said.

Additionally, the problems in 2000 and 2004 concerned touch screen machines mysteriously switching candidates after votes were cast. Now that touch screen machines are not being used, that problem no longer exists, she said.

Voting machine breakdowns also were reported in New Jersey and Pennsylvania, and jammed machines popped up in San Francisco and Los Angeles, said Jenny DaSilva, a volunteer attorney who was working in the San Francisco call center at [Bingham McCutchen](#), which sent more than 120 lawyers to polls in Florida, Nevada, Virginia and San Francisco.

Voting machine breakdowns also were reported in New Jersey and Pennsylvania, and jammed machines popped up in San Francisco and Los Angeles.

In a San Francisco precinct, a jammed machine prompted poll workers to stack ballots, unsecured, outside the ballot box, according to John Danforth, an intellectual property attorney in Silicon Valley who volunteered to help on Election Day.

"There has to be a chain of custody, and ballots are not to be touched by anyone but election workers," he said. "It was quite disconcerting to a line of people voting," he said.

In Northern California, several polling places reported running out of ballots in English and Spanish before noon, DaSilva said.

In another instance, San Francisco poll workers posted a sign telling people to have identification ready, although identification is not required for voting. Election officials ordered it removed after a complaint from the hotline attorneys.

Santa Clara County, which includes San Jose, Calif., posed the biggest problem, according to Nora Cregan, director of the call center at the [Mitchell Kapor Foundation](#) in San Francisco, and an attorney with the Lawyers' Committee for Civil Rights. People who dropped off absentee ballots at the polls or City Hall in significant numbers were told the county would be too busy counting regular ballots to count absentees for at least 24 hours.

She said there is a legal obligation to count absentee ballots like live ballots.

Santa Clara County's Registrar's office quickly knocked down a rumor that they planned to close polls at 8 p.m., no matter how many voters were in line.

In Los Angeles and Riverside Counties, an estimated 13,000 absentee ballot requests had not been filled by Election Day, leaving voters without a ballot unless they could physically make it to their polling place, DaSilva said.

Amos Hartston, pro bono counsel at [Latham & Watkins](#), who oversaw volunteer lawyers stationed at polling places in

Los Angeles County, said the main issue in Southern California was an inordinate number of voters receiving provisional ballots.

"This has been a pretty large problem," he said.

Miles Cooley, a partner at [Reed Smith](#), who oversaw a call center at the law firm's office in downtown Los Angeles, said some poll workers even gave voters provisional ballots without checking registration lists.

He said poll workers at one polling place in Pico Rivera, Calif., some people were electioneering and blocking entrances.

In the San Diego area, one precinct did not have the right materials, while another precinct near Riverside, Calif., did not get enough ballots delivered, prompting poll workers to turn away voters.

At several polling places in Boston, ballots were not translated into Chinese and Vietnamese, according to the [Asian American Legal Defense and Education Fund](#) (AALDEF), which dispersed more than 1,000 lawyers, law students and other volunteers to polling sites in 11 states.

In New York, a large number of Asian Americans were asked for their identification, even though they didn't need to provide it, said Margaret Fung, executive director of AALDEF. In Manhattan's Chinatown, several polling places had a shortage of Chinese interpreters, in violation of the U.S. Voting Rights Act.

At a polling place in Brooklyn, an Arab-American voter was told by a poll worker: "We don't trust you; you're not voting." Other poll workers at another polling place in Brooklyn referred to two Arab-American voters as terrorists.

Polling places in Philadelphia reported a shortage of Hmong interpreters and, in Michigan, a shortage of Bengali interpreters.

Not all areas reported problems, however.

Poll monitors for Illinois and Indiana reported heavy voter turnouts that caused long lines and some difficulties with voters' names not showing up on election rolls, malfunctioning equipment and polling places not opening on time, but the problems were not widespread.

Terry Dee, a [Kirkland & Ellis](#) partner who was overseeing field monitoring in the Chicago metropolitan area, said some election judges were improperly turning people away, contrary to state and federal law, but, as far as equipment problems, most of those issues seemed to be resolved fairly quickly. "There were no systematic breakdowns of machines across the state," Dee said. "We've seen isolated incidents that seem to clear up."

Dee was working with about 200 legal volunteers placed in six Chicago area counties.

All across metro Detroit, dozens of private attorneys took on the role of gatekeepers of the polls, addressing everything from registration questions to voter intimidation.

[Butzel Long](#) transformed its downtown Detroit office into a command center, where more than a dozen lawyers from across the city took calls from voters facing problems at the polls. Dozens more attorneys were on the ground patrolling the polls, addressing everything from registration problems to voter intimidation.

"It's not been too bad a day, but we've had a consistent set of calls from folks, ranking from folks who don't know where they're registered, if they're registered, and some incidents of voter intimidation," said attorney Jim Gehrke, shareholder at Butzel Long.

Other states needed lawyers to file court documents on Election Day.

On Tuesday, the Ohio Republican Party filed motions in U.S. District Court for the Southern District of Ohio to revive a challenge to state laws that allow residents to cast a ballot fewer than 30 days after registering to vote and let local election boards call for reviews of ballots in certain situations. *Ohio Republican Party v. Brunner*, No., 08-913.

The party, which initially sued Ohio Secretary of State Jennifer Brunner last month over the issues, sought preliminary and permanent injunctions to force the secretary to rescind the state laws allowing the less than 30-day registration period and the ballot reviews. The party argues that the shorter-term registration period would allow for voter fraud and that the ballot review procedures would lead to inconsistent procedures across the state with respect to counting ballots.

William Todd, of counsel at [Benesch Friedlander Coplan & Aronoff](#), filed the Republican Party motions. Todd couldn't immediately be reached for comment.

"While Ohioans are voting with confidence in record numbers, partisan attempts to re-litigate issues that have been decided by the Ohio Supreme Court and the U.S. Supreme Court are troubling," Brunner's office said in a statement.

The Ohio Attorney General's Office said in a statement that it would ask the federal judge overseeing the case to remove Todd because he previously represented former Secretary of State Kenneth Blackwell in similar cases. His arguments, while representing Blackwell, "are absolutely inconsistent with the arguments he now presents against Secretary of State Brunner," the statement said.

The state encountered few other difficulties in the voting process, said Jim Gravelle, a spokesman for Ohio Attorney General Nancy Rogers' office. "So far, things from a legal point of view have been extremely quiet," Gravelle said.

Boston and other Northeastern firms fielded state officials' legal questions about absentee ballot rules and manned voter call questions but also delved into legal tangles at the polls in the swing state of New Hampshire.

Boston's [Goodwin Procter](#) sent about 60 volunteers to a Boston call center and to polling places in Boston or Manchester, N.H., said Boston litigation partner Jack Falvey.

The volunteers fielded questions about broken ballot machines and helped officials in Cambridge, Mass., cope with incomplete voter lists, he said.

"Lots of voters were being told they weren't on the voter rolls and needed to cast provisional ballots," Falvey said. "That problem was worked out during the day."

Nixon Peabody's Boston attorneys who trekked to N.H. wore identifying clothing to let voters at the polls know there were lawyers available to answer legal questions, said Boston real estate partner Larry DiCara.

"We are trained in the law to protect people and this is as important a right as exists," DiCara said.

Firm lawyers in New York City, upstate New York, Washington, D.C. and San Francisco also volunteered.

[Devine, Millimet & Branch](#) of Manchester, N.H., the N.H. legal counsel for John McCain's campaign and the outside general counsel of the New Hampshire Republican Committee, sent volunteer lawyers to serve as challengers to potential voters, said firm shareholder Ovide Lamontagne.

Under certain circumstances, N.H. law lets voters register on the same day as the election, and the challengers help determine whether someone is eligible on a technical or substantive basis, Lamontagne said.

On Election Day, the firm helped the Republican committee get an emergency injunction from a state Superior Court judge directing the secretary of state to instruct local election officials to let challengers hear their discussions with potential voters, he said. *New Hampshire Republican State Committee v. Gardner*, No. 08-E-428 (Hillsborough Co., N. H., Super. Ct.)

At Bingham McCutchen, about 10 volunteers reached out to state officials in recent weeks and wrote legal memos about particular state's laws, said New York litigator Phil Blum.

The team was looking for any inconsistency between the federal statute that oversees voting and state statutes, Blum said. In Virginia, for example, the group got the state's attorney general to issue an advisory opinion that federal law preempted a state statute that would have excluded about 100 ballots, Blum said.

"The real battle is when the polls close and when we contact election officials about how many were counted and how many discarded," Blum said.

Also in Virginia, a federal judge on Tuesday granted a preliminary injunction and ordered the state's election officials to put aside late absentee ballots from members of the military stationed overseas. Lawyers for McCain had sued the state election board, arguing that many ballots were not sent to those voters until October. *McCain-Palin 2008 Inc. v. Cunningham*, No. 08-709 (E.D. Va.).

Staff reporters Pamela Maclean, Lynne Marek, Julie Kay, Sheri Qualters and Tresa Baldas contributed to this article.