

Still some kinks in new law

By Dan Webber

I could see it in her face — frustration, disappointment, helplessness. The woman had been turned away from the polls. She was a prospective voter at a metropolitan-area precinct on election night. I was among a group of Democratic attorneys who volunteered to be on call for election problems.

I was asked by party workers to go to this location due to reports of long lines less than an hour before the polls closed at 7 p.m. My goal was to make sure precinct officials and those in line knew that anyone in line by closing time had the right to vote, and I quickly learned the officials had a good plan for the cutoff.

Standing outside, I noticed the woman leaving. She looked at me and said, "After all that time," referring to her stay in line, most of it in the cold. She believed she was at the right precinct, but she wasn't on the list. She didn't have her voter card, nor were the precinct officials in a position to check if she was on the rolls elsewhere.

Her situation was exactly that envisioned by Congress when it passed the Help America Vote Act in 2002 after the Florida debacle and

included in the law a "fail-safe" requirement that persons in this predicament be offered a provisional ballot. Such ballots aren't immediately counted, but *may* be counted later if the voter turns out to be correctly registered in that precinct. Precinct officials, however, were under the impression they couldn't offer provisional bal-

lots without approval from county officers, whom they had been unable to reach by phone since peak hours had begun around 4 p.m.

If this was indeed the procedure, it was wrong. I pointed out that the workers' own guidebook indicated county approval was needed to give an unlisted person a *regular* ballot, not a provisional one. They insisted they were told to clear each provisional ballot through the county board and acknowledged



ROGER KLOCK, THE OKLAHOMAN

Voters wait in long lines to vote Tuesday at the Oaktree Assembly of God Church, 400 W Danforth, Edmond.

that a few folks like this woman had been turned away. The fail-safe requirement had failed. Party workers later told me the same thing was reported at other precincts.

The woman eventually was allowed to cast a provisional ballot at 8 p.m. It's possible her ballot was later correctly disallowed, but at least she had a chance to have her vote counted when more information was available.

I imagine the officials gave in so they could end their marathon day. These volunteers work hard under strenuous circumstances. I understand that states initially had little time to implement the Help America Vote Act, that voters have to bear some responsibility for knowing their polling place, and that no race hangs in the balance — this time.

Still, provisional balloting is at the heart of the act's protections. It became law because bureaucracies make mistakes. Congress decided it was better to hedge against potential discrepancies by using provisional ballots than to turn people away in the midst of confusion. Provisional balloting isn't a minor detail, nor is it a partisan issue. It's the law of the land and it protects a fundamental right.

We've been through an entire election cycle with Help America Vote Act, but apparently still don't have it right. Overall, Oklahomans can be proud of our election system, but we must correctly carry out this important law when and where it counts — at the polling place at closing time.

Webber served as U.S. attorney for the Western District of Oklahoma from 1999-2001 and now practices law in Oklahoma City.



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