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Means to reduce lines at the polls

The increased attention to excessive lines at the polls after the 2012 election is both welcome and overdue. Two years ago, I wrote about the excessive lines of the 2008 cycle.1 Since then, policy changes in many states have increased, not reduced, the stress on election day polling operations.2 “By the way, we have to fix that.”3

Excessive lines stretched to ten hours in 2004,4 eleven hours in 2008,5 and seven hours in 2012.6 We do not tolerate that sort of customer service in the private sector, and we should not tolerate it in our most fundamental of public rights. Excessive waits exact a real toll on real voters. And this toll is not evenly shared: seniors and individuals with medical conditions or disabilities may feel the pain of lines more keenly, and excessive lines arise disproportionately in minority areas, where voters are already underserved.7 There are available solutions. We should not wait any longer to ensure that we need not wait any longer.

Scientists have actually spent quite a bit of time studying lines, albeit more often in commercial settings than in the context of our most fundamental constitutional right. “Queuing theory” is the name given to the study of lines and wait times: similar problems show up in managing vehicular and telecommunications traffic, in product assembly lines, and in lines to procure or purchase services (like the DMV) or goods (like the latest iPhone).8 The basic contours are clear: the more people or items arriving for a given transaction within a given window of time, the fewer points of service, and the longer each transaction, the longer the line.

This means that there are three basic levers to reduce peak wait times: reduce the number of people arriving at any one time, increase the points of service, or decrease the length of the transactions. No intervention is cost-free: easing any particular pressure point will likely cost money, or involve policy tradeoffs, or both. And most of the ideas will work best in combination — rarely is one particular policy idea the optimal silver bullet.

1 Justin Levitt, Long Lines at the Courthouse: Pre-Election Litigation of Election Day Burdens, 9 Election L.J. 19 (2010).
4 Michael Powell & Peter Slevin, Several Factors Contributed to “Lost” Voters in Ohio, WASH. POST, Dec. 15, 2004.
6 Frances Robles et al., Miami-Dade Will Not Have Full Results Until Wednesday, MIAMI HERALD, Nov. 7, 2012.
8 See, e.g., DONALD GROSS ET AL., FUNDAMENTALS OF QUEUING THEORY (4th Ed. 2008); G.F. NEWELL, APPLICATIONS OF QUEUING THEORY (2d ed. 1982).
**Smooth arrival time**

One of the basic levers to reduce wait times is policy that reduces the number of people who arrive at the polls at any one time: the arrival rate. I take as a given that one of the principal goals of the American election system is to increase turnout among eligible voters, so the trick is to manage ever-increasing numbers of people while ensuring that they do not all arrive at the same time. In this context, there are several opportunities to reduce the arrival rate:

1. Increased opportunities to vote by mail. More individuals voting absentee means fewer individuals waiting at the polls. Beyond the ability to reduce lines, there are both benefits and risks to expanded voting by mail. Access to absentee ballots may increase turnout in low-salience, off-cycle elections — particularly if absentee ballots are delivered automatically — and may offer voters more opportunities to consider their ballot choices. On the other hand, there are valid concerns about the security of absentee ballots, about voters’ abilities to follow instructions on absentee ballots, about late-breaking news arriving after absentee ballots are cast, and about the administrative costs of processing and tallying absentee ballots after election day.
   a. Though most states permit no-excuse absentee voting, 21 states allow only certain voters to vote absentee.\(^9\) Allowing any eligible voter to cast an absentee ballot would encourage more voting by mail.
   b. It is also possible to smooth the absentee application process. Rather than ask voters to apply for an absentee ballot in each cycle, allowing voters to request “permanent” absentee status\(^10\) — even on the same form as an application for voter registration, much like the single registration-and-absentee form for military and overseas citizens\(^11\) — will encourage voting by mail.
   c. In 2012, Ohio proactively sent all eligible electors an application for an absentee ballot.\(^12\) Note that many states currently restrict the circumstances under which a voter may vote in person after receiving an absentee ballot; if states begin proactively sending absentee ballot applications (or, even more aggressively, absentee ballots) to all, these statutes may need revision in order to preserve voters’ ability to choose to vote at the polling place instead.

2. Increased opportunities to vote early, in person. More individuals voting before Election Day means fewer individuals voting on Election Day. When Florida reduced the available days for early voting in 2011, it headed in precisely the wrong direction with respect to anticipated lines at the polls.\(^13\) And because early voting essentially mimics the Election Day experience, albeit in consolidated polling centers, it raises few of the

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\(^10\) Seven states currently offer voters the opportunity to become “permanent” absentee voters. See id.


\(^13\) See, e.g., Levitt, supra note 2, at 101-02.
security and usability concerns with respect to absentee ballots; the primary downside appears to be cost.

3. Make Election Day a holiday. Lines are generally the longest at the beginning of the day and the end of the day, because voters are trying to vote before going to work or after coming from work. (Particular patterns in particular precincts may vary depending on the prevailing work schedule in that precinct.) If voters need not work on the day of the election, they may more naturally spread out their arrival time. (It may also be possible to suggest that certain groups of voters vote within a certain window, to nudge the electorate toward a dispersed arrival time.) The major caveat to this suggestion is that holidays are, typically, not truly holidays for much of the eligible electorate — those on holiday can often buy goods or services on the holiday, which means that the sellers and providers are working; an Election Day holiday would create the prospect of a distinct electoral skew if the holiday were not meaningfully enjoyed by all, equally.

*Increase the points of service*

The second basic lever to reduce wait times is policy that increases the functional points of service for the voters who do arrive, to process more voters in parallel. The trickiest issue here is the need to preserve efficiency: undercapacity causes the lines, overcapacity wastes money, and some precincts may be over capacity at some points of the day and under capacity at others. That said, with the will to spend resources, there are several opportunities to increase the points of service:

1. Increase the number of polling places. In an era of cost squeezes, the trend has been in the opposite direction, toward consolidation — but consolidated polling places mean that more people are arriving in the same place. The more polling places there are, the fewer each location will serve, and the less long any individual should have to wait.

2. Larger polling places with more space. When a polling place is sited in a small building — like a citizen’s garage — there may be limited space for multiple voting machines or booths to fill out ballots, which decreases the ability to process multiple voters at once. Larger polling places avoid that problem (and, as public buildings or commercial sites, may also be more likely to be ADA-compliant).

3. More pollworkers. One of the opportunities for a bottleneck is in the process for checking voters in to the polling place. Several counties were identified by international observers as having difficulty recruiting a sufficient number of pollworkers to facilitate check-in;\(^\text{14}\) it is likely that many more shared difficulty recruiting qualified staff. Nebraska allows counties to require pollworker service, much like jury service;\(^\text{15}\) Ohio

\(^\text{14}\) OSCE, Statement of Preliminary Findings and Conclusions 4 n.7 (Nov. 2012), http://www.osce.org/odihr/96960
\(^\text{15}\) Neb. Rev. Stat. 32-221(2).
recently considered the idea. Short of requiring pollworker service, there are multiple other ways to facilitate recruitment, including better pay, shorter shifts, course credit for students, or — counterintuitively — allowing pollworkers to forego payment, to avoid any possibility that service might interfere with volunteers’ pensions.

4. Adjust pollbooks. Standard operating procedure in many precincts is to have one check-in station, with a printed pollbook containing all of the voters in the precinct. By splitting the pollbook (e.g., last names A-I, J-Q, R-Z), it may be possible to create several lines moving at the same time, instead of just one. The downside of split pollbooks is that it may be substantially more difficult to locate a name variation: if Gabriel Garcia Marquez is listed under “Garcia,” rather than “Marquez,” he may be in a different pollbook. Electronic pollbooks can mitigate this problem: each of several linked stations contains the full pollbook, and allows for splitting the lines accordingly; however, if the electronic pollbooks fail — temporarily or permanently, as some county systems did in 2012 — it may be even more difficult to continue with a smooth and secure check-in process. And either a split pollbook or several electronic pollbooks will require increased pollworkers to staff them.

5. More machines/voting stations/scanners. Sometimes the bottleneck is in the voting process, rather than the check-in process. In some polling places, there are simply too few voting machines, or privacy stations for paper ballots, or optical scanners to scan those paper ballots, and lines develop while waiting for the machines or stations. If the physical space exists, more voting stations (or scanning machines to process the ballots) will help move more voters through at one time.

6. Keeping machines operational. On occasion, polling places are allocated adequate numbers of voting machines or scanners — and then they jam or break (or are left unplugged). In every cycle, there are many reports of machine failures on Election Day: sometimes the failures are temporary and sometimes they linger all day; sometimes they affect just one machine and sometimes several. And when the machines are down, lines get longer. Investing in proper maintenance may help keep machines operational. But it is also important to minimize user error: better pollworker training — or selecting machines with simple design resistant to pollworker mistakes — may help keep machines running.

7. Paper ballots as alternative to machines. When electronic pollbooks break down, it can be cumbersome to transition to paper pollbooks (particularly because it is difficult to account for those voters who have already been checked in using the machines). But when voting machines break down, paper ballots serve as a ready alternative to keep voters moving through the polls at a convenient clip. And when scanners break down, the paper ballots that have already been completed can simply be stored for later

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scanning. Technological solutions may well be superior when the technology is functioning — but there is little downside to being legally and logistically prepared to use older technology as a backup for when the technology fails.

8. More ballots. Finally, sometimes the resource constraint at the point of service is itself paper. Several polling stations in 2012 simply ran out of either regular ballots, or provisional ballots, or both — or the pens to mark them.\textsuperscript{18} This is not a new problem. And it is not excusable. When there are no more ballots or pens, voters must wait in line until more supplies are procured, and when voters continue to arrive during the wait, lines grow ever larger. The marginal cost of the incremental paper or pens to serve the jurisdiction is surely a cost that the richest country in the world can afford. Or, if extra paper supplies are a concern, particularly at centralized polling sites with many different ballot styles for many consolidated precincts, it may be worth investing in ballot-on-demand printers: printers that can print the appropriate ballot right at the moment, for any given precinct configuration given the voter’s street address.

\textit{Decrease the time for each transaction}

The third basic lever to reduce wait times is policy reducing the amount of time that each voter spends at the polls. The longer each transaction, the more the lines grow. Some of the opportunities here can be addressed at the polls themselves, but some of them are opportunities existing far upstream:

1. Better information for voters. One of the most common calls that nonpartisan election protection hotlines receive is a simple informational call from a voter wanting to know where her polling place is or whether she is registered. Many of the voters who do not call the hotline arrive at their local polling place with similar questions, and find that they are not registered, or that they have come to the wrong precinct. When pollworkers don’t immediately see a voter on the pollbook, and have to work to resolve the problem, that encounter takes time. Better information for voters — ensuring that people knew readily how to get registered, whether they are registered at their current address, and where their local polling place is located — would help save substantial time for each voter arriving.

2. Fix the voter registration system. In many ways, the problems above are best attributed to an antiquated, 19\textsuperscript{th}-century system of voter registration that depends primarily on repeated private efforts to get registered and stay registered despite data-entry and other mistakes. We have the means, instead, to modernize the voter registration system, tying citizens’ individual interactions with government more closely to the rolls, so that people can be registered easily and accurately whenever they interact with public systems, and stay registered when they move. Such modernized systems keep the rolls more up to date, minimizing opportunities for fraud, and are significantly cheaper than the

cumbersome and error-laden system in place in most jurisdictions today.\textsuperscript{19} And when they work well, citizens go to the polls and find themselves correctly registered, which cuts down on the time that they spend checking in.

3. Electronic pollbooks with smart search. Without fixing the registration system, the rolls will contain errors — and when “John Smith” is listed in an alphabetized pollbook as “John Wmith” or “John Smoth,” it can be very difficult (and time-consuming) to find the right place to sign in. Electronic pollbooks can be designed with “smart searches,” to pull up the correct name corresponding to the correct address, with signature or other verification to ensure that the voter is the right person. These smart search technologies — most readily seen in engines like Google, which compensates for minor typographical error — can cut down on time and confusion. The downside: as mentioned above, if the electronic pollbooks fail, substitute check-in systems may actually take more time.

4. Election-day registration. Election-day registration is a sort of failsafe procedure for the registration system: it never supplants regular registration, but it does offer a procedure for correcting problems without a last-minute scramble. Jurisdictions that are set up for election-day registration usually have a separate check-in station for voters that need to register anew or correct their registration information. This provides, without any meaningful loss of security or jeopardy to the franchise, a separate but equally valid track for the relatively few people whose registration has been snagged in some way and will require the most time for check-in. And as a result, it speeds the voting process for everyone else in line.

5. Pollworker training. Pollworkers are the backbone of the American electoral system: without the volunteer or quasi-volunteer efforts of these citizens, elections simply would not function. But the vast majority of pollworkers do not live and breathe the election code, and are brought in for just a few hours of training before any given election. When unusual situations arise, many pollworkers are not sufficiently trained to handle the situation with accuracy. Fights with voters or observers about the proper application of the law take time, holding up the voting process for all. The better trained that pollworkers are, the better they will be able to address — accurately — unusual concerns that may arise.

6. Accessibility. Some of the situations with which pollworkers may be less familiar involve eligible voters with disabilities or limited English proficiency; as a result, serving these citizens may end up requiring extra time. The more thought that goes into accommodating disabilities or providing readily accessible translated materials (via paper or electronically) before an election, the smoother these procedures are likely to be on Election Day. More generally, the more user-friendly the election systems and procedures, the less time that each voter will need in the polls.

7. Simplify pollsite procedural design. Even the best training could use an assist from election procedures that are better designed to promote simplicity without sacrificing any other electoral value. Some “extra” steps are not extra at all: they improve security or promote flexibility so that ineligible persons are excluded and eligible voters are not unnecessarily shut out of the process. But some procedures are unduly complex, without any good reason. Professionals have devoted a great deal of attention to physical design characteristics that improve both accuracy and speed for filling out registration forms and ballots, but these principles are still too seldom adopted.20 And we have only just begun, for example, to experiment with cues like color-coding to help pollworkers manage the flow of procedural paper. Far more could be done to make the process at the polls easier — and therefore quicker — for both voters and pollworkers alike.

8. Sample ballots. Ballots vary tremendously in length and complexity; in some of the Florida precincts where voters waited longest, the ballots were many pages long.21 Voters who examine the ballots for the first time in the voting booth may, understandably, take a long time to decide on their choices, particularly if the ballot includes lengthy initiatives. Providing voters with sample ballots, and encouraging voters to mark those ballots ahead of time and bring their sample ballots to the polling place as a guide, may help speed the voting process and compensate for the length of the ballot in extreme circumstances.

The structure of policy change

It is unlikely that a one-size-fits-all solution to the problem of excessive lines will be appropriately tailored to every jurisdiction, from the smallest rural Wisconsin municipality to the 7.4 million voting-age citizens of Los Angeles County. Many combinations of the above ideas will help relieve congestion at the polls, but some combinations may be more suited to certain jurisdictions than others. Several legal regimes may encourage jurisdictions to determine the appropriate mix for themselves, allowing flexibility and local variation to be a positive engine of change:

1. Carrots. Though vanishingly few jurisdictions currently enjoy ample budget surplus, 10-hour lines to cast a ballot ought to be beyond the pale even in lean times. Local, state, or federal legislators might offer resources for strapped administrators: budget allocations for more machines or ballots, or roomier polling places, or pollworker recruiting and training, or cash incentives for meeting predetermined thresholds like a set number of machines per hundred voters. Jurisdictions with particular foresight might even be persuaded to invest in some of the changes that require more significant upfront outlays for more significant downstream returns, like modernizing the voter registration system. This mirrors the approach of the federal Help America Vote Act, which provided resources for local jurisdictions to purchase voting systems replacing punchcard ballots,

and to upgrade paper registration files to statewide registration databases;\textsuperscript{22} the FAST Voting Act proposed in late 2012 would similarly provide funds for programs expediting voting at the polls.\textsuperscript{23}

2. Sticks. Another model of policy change relies on legal requirements, with or without dedicated resources. Some jurisdictions purport to require that lines be no longer than a prescribed amount of time.\textsuperscript{24} Some, instead, provide minimum resource thresholds.\textsuperscript{25} Still others provide procedures, like no-excuse absentee voting or early voting, designed to draw demand away from Election Day in order to reduce lines. The Count Every Vote Act of 2007, proposed but never passed, adopted a blend of all three approaches;\textsuperscript{26} the SIMPLE Voting Act proposed in late 2012 adopts the first and third approach.\textsuperscript{27}

3. Heavier sticks. Though not yet seen in practice, a jurisdiction might well attempt to reduce wait time by coupling available resources with a heavy stick realigning local incentives: a private cause of action, with liquidated damages, for every voter forced to wait more than a certain amount of time. Jurisdictions might offer, as a defense to such an action, evidence that they had provided a threshold amount of resources. Such a policy would create a natural and rather firm incentive for jurisdictions to think creatively about their resources and procedures, in order to avoid a distinct fiscal hit when lines reached excessive levels.

\textsuperscript{24} \textit{See, e.g.}, 9 NYC Reg. § 6210.19(c)(1).
\textsuperscript{25} Some jurisdictions set guidelines for the maximum voters per precinct. \textit{See, e.g.}, CAL. ELEC. CODE § 12223; 10 ILL. COMP. STAT. 5/11-2, -3; IND. CODE § 3-11-1.5-3; KY. REV. STAT. § 117.055; LA. REV. STAT. §18:532; NEB. REV. STAT. § 32-903; NEV. REV. STAT. § 293.207; 25 PA. STAT. § 2702; TEX. ELEC. CODE § 42.006; VA. CODE § 24.2-307; REV. CODE WASH. § 29A.16.040; W.V. CODE § 3-1-5. Others set guidelines for the number of voters per machine, see ALA. CODE § 17-6-3; ARIZ. REV. STAT. § 16-430; DEL. CODE tit. 15, § 5004; GA. CODE § 21-2-323; 10 ILL. COMP. STAT. 5/24-1, -6; IOWA CODE § 49.25; LA. REV. STAT. §18:1363; ME. REV. STAT. tit. 21-A, § 811; Mich. Comp. LAWS §§ 168.661, 168.796A; NEB. REV. STAT. § 32-903; N.J. STAT. § 19:4-12; N.M. STAT. § 1-9-5; N.Y. ELEC. § 7-203; OHIO REV. CODE § 3506.22; 25 PA. STAT. §§ 2730, 3031.5(B); S.C. CODE § 7-13-1680; TENN. CODE ANN. § 2-3-104; VA. CODE § 24.2-627; the number of voters per privacy booth, see ME. REV. STAT. tit. 21-A, § 629; NEB. REV. STAT. § 32-906; or the minimum numbers of ballots, see ARK. CODE § 7-5-210; CAL. ELEC. CODE § 14102; IND. CODE § 3-11-3-1; OKLA. STAT. TIT. 26, § 6-104; S.C. CODE § 7-13-430; TEX. ELEC. CODE § 51.005.
\textsuperscript{26} S. 804, 110th Cong. (2007), \textit{available at} http://www.gpo.gov/fdsys/pkg/BILLS-110s804is/pdf/BILLS-110s804is.pdf.