



## Should Georgia Adopt Early Voting?

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In Georgia, as in other states, we are concerned over the continuing decline in voter turnout. On a national level, the 49% turnout in the presidential election of 1996 was the lowest turnout in a presidential election since Calvin Coolidge was elected in 1924 and the second lowest since 1824. The national turnout of 36%<sup>1</sup> of the eligible electorate in the 1998 mid-term election was the lowest turnout in congressional elections since 1942, when America was deeply involved in World War II and millions of American servicemen were overseas. The turnout in Georgia was even lower: in 1996 it was 42.6% and in 1998 it was 31.6%.

Early voting, the ability to vote a ballot during a period prior to the normal election day (usually up to 21 days); has been proposed as a way of increasing turnout in Georgia<sup>2</sup> and has actually been implemented in some states. The theory put forward is that it is simply too difficult for voters to make it to the polls during the 12 hours that polls are open in Georgia (7:00 a.m. to 7:00 p.m.) and other states. Providing an extended period of time for individuals to vote will, therefore, supposedly increase turnout. If this theory sounds familiar, it is because the same assertion was used to promote the passage of the National Voter Registration Act of 1993, or Motor Voter. At that time, the long-term decline in turnout that we have been experiencing in the United States was said to be due to the alleged “complexity” of registering to vote. Motor Voter was needed to make it “easier” to register to vote — turnout would increase if Motor Voter was passed. The number of individuals *registering* to vote *has* increased since Motor Voter went into effect; however, *turnouts* have continued to decline, making it clear that any problems associated with registering to vote were not the culprit for declining turnout. The real reasons for declining

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<sup>1</sup> Using a percentage of the population eligible to vote rather than the percentage of registered voters is a more accurate comparison from year to year, as the number of registered voters fluctuates. All figures for turnout provided in this article are a percentage of the voting-age population.

<sup>2</sup> Senate Bill 235 was introduced in the Georgia General Assembly in the 1999 session. Although the bill passed the Senate, it did not make it to the floor of the House for consideration.

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turnout are based on a variety of substantive causes, including public cynicism and satisfaction with the status quo, not the procedural rules for registering and voting.

In the same way that Motor Voter was not a solution to low turnout, early voting is also not a panacea for declining turnout and decreasing participation in the political process by the average citizen. Twelve states have put some form of early voting into effect.<sup>3</sup> But according to a recent study on voter turnout by the highly respected nonpartisan Committee for the Study of the American Electorate ("CSAE"), early voting has not stemmed the decrease in turnout. In an exhaustive study of turnout in all fifty states, CSAE concluded that those states that have adopted early voting or no-fault absentee voting "performed worse in terms of either greater average turnout declines" in years when turnout went down such as 1996 and 1998 and experienced "lesser average turnout increases" in election years when turnout increased such as 1992 and 1994, than states that did not adopt either of these voting procedures. What is worse, prior to adopting early voting and no-fault absentee voting, the states that adopted such procedures "had been performing better than those states that never adopted these procedures."<sup>4</sup>

For example, the average turnout of the voting age population in the 1998 election in states with early voting was more than 3 percentage points lower than in all other states (33% versus 36.6%). The average turnout in early voting states in the 1994 election was 0.7 percentage points less than in all other states (38.1% versus 38.8%). Turnout in early voting and no-fault absentee voting states declined 3% in 1998 but only decreased 2.5% in all other states. Turnout went up 1.4% in 1994 in early voting and no-fault absentee states versus an increase of 2.6% in all other states.<sup>5</sup>

Why, contrary to expectations, would turnout worsen in states that have adopted early voting? CSAE concluded that early voters are probably individuals "who are sufficiently motivated that they would likely vote anyway and because it is so easy, they tend to forget to do their duty." By allowing a longer period to vote, you "are diffusing mobilization and get-out-the vote activities over a long time and reducing their one-day intensity." Finally, one is encouraging "values that reduce the call of citizen responsibility in the name of making voting easier," and therefore reducing the impulse to vote.<sup>6</sup>

Aside from its failure to increase turnout, there are other problems with early voting. Early voting statutes typically give local election officials the choice of where to open early voting precincts. For instance, Georgia Senate Bill 235 as originally introduced provided that in addition to the main office of a county or city, the location of other polling places would be decided by "the board of registrars or early ballot clerk."<sup>7</sup> This creates the possibility that a local municipality could attempt to manipulate the outcome of an election by opening up early voting locations in those precincts that may vote in a particular way based on past election results, thus,

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<sup>3</sup> Arizona, Arkansas, Colorado, Hawaii, Idaho, Iowa, Nevada, New Mexico, Oklahoma, Tennessee, Texas, and Wisconsin. Seventeen states have also instituted some form of liberal absentee balloting that allows a voter to vote absentee without having to state any reason.

<sup>4</sup> Report released February 8, 1999, by the Committee for the Study of the American Electorate, 421 New Jersey Avenue, Washington, D.C. 20003.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Senate Bill 235, Section 13, page 10.

altering the composition of the participating electorate. If Precinct A has voted strongly for Republican Party candidates in prior elections while Precinct B has voted strongly for Democratic Party candidates, local election officials may be able to raise the vote totals for one of the parties by only opening an early voting location in one of these precincts and not the other. As another example, if election officials want to increase the likelihood that a school bond referendum will pass, they could open up early voting locations only in schools with the probability that parents taking their children to school would be more likely to vote in favor of such a referendum.

In 1997, there were allegations that such a result occurred in Bastrop, Texas. The Bastrop Independent School District had a school bond issue soundly defeated two to one in 1996 when only two early voting sites were open. In 1997, the School District rescheduled a vote on the bond issue but this time opened multiple early voting sites only at local schools with extended evening hours during school events.<sup>8</sup> The bond issue passed by a very narrow margin, with about one third of the votes cast early. Of those early votes, two-thirds were in favor of the bonds. However, if the votes cast on election day had been the only votes counted, the bond issue would have failed.<sup>9</sup> Whether or not the School District intended to affect the vote, the differing results of the early votes and those votes cast on election day make it clear that early voting can affect the outcome of an election. That raises serious questions about the selection of early voting locations by municipalities.

In addition, early voting will significantly raise the cost of political campaigns. Most political candidates and campaigns spend the bulk of their money in the last few days before election day on direct mail, advertising, phone banking, and get-out-the-vote efforts. With early voting, such expenses will stretch over a much longer period, resulting in more expensive campaigns. Any candidate who does *not* spend money on such efforts during the early voting period will be at an inherent disadvantage. Early voting will, therefore, increase the cost barrier to the ability of the average citizen to participate in the political process as a candidate.

This has been the experience of candidates in states that have instituted early voting, mail-in balloting, and liberal absentee voting. Brian Baird, a Democratic candidate in Washington State's Third Congressional District, spent nearly one million dollars more in his 1998 race than in his earlier unsuccessful race in 1996.<sup>10</sup> Almost all of those additional funds were used to target early mail voters, something he had not done in his prior run. In 1998, Baird won.<sup>11</sup> Unless candidates reach early voters, they cannot hope to win elections.

Early voting can be very expensive for local government as well as candidates and may delay election results. Counties and municipalities hire hundreds of temporary workers on election day

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<sup>8</sup> "Board Calls for Early Voting on Bond Election," The School Report, Bastrop Independent School District, March 1997.

<sup>9</sup> "Vote Manipulation Suit Filed Against BISD," The Bastrop Advertiser, July 24, 1997. The bond issue was approved by a vote of only 1,823 to 1,627. During early voting, the issue passed 819 to 394; on election day, it failed 1,233 to 1,004.

<sup>10</sup> Baird lost his 1996 race by 887 late-counted absentee ballots. "Growing Use of Mail Voting Puts its Stamp on Campaigns, Early Voters are Targeted, Reducing Election Day Focus," The Washington Post, November 29, 1998, Page A01.

<sup>11</sup> Id.

to staff polling locations. Hiring temporary workers for up to three weeks at additional polling sites can be very expensive. Harris County, Texas, spends an additional \$250,000 during each election to open just 26 additional polling locations for early voting.<sup>12</sup> Travis County, Texas, which had 357,737 registered voters in 1992, incurred \$93,609 in early voting costs in that election.<sup>13</sup>

As proposed in Georgia, registered voters would go to an early voting polling location and vote a ballot. However, the ballot would then be sealed in two envelopes and held until election day. The outer envelope could be opened beginning at noon on election day and the inner envelope could be opened when the polls close at 7:00 to begin preparing the ballots for tabulating.<sup>14</sup> Thus, early ballots would be treated the same as absentee ballots. Absentee ballots are the last ballots counted in most counties on election day because of the time it takes to open up the two sealed envelopes that such ballots are in and to prepare the ballots for counting after the polls close.

In Fulton County, Georgia, in the 1996 election, it took a team of 57 staff members almost six hours to prepare 12,833 absentee ballots for counting. Early voting jurisdictions have experienced early voting turnout of 20% to 50% of the total votes cast.<sup>15</sup> Based on the 1996 turnout in Fulton County,<sup>16</sup> this would have resulted in upwards of 50,000 to 125,000 ballots that would have had to be opened. Such a large number of ballots would greatly expand the time required to count the votes, even if the election staff is greatly increased (with corresponding increased costs) and could significantly delay final vote tallies and election results.

Early voting in Georgia will make it more difficult for election officials to discard the ballots of voters who vote early but die before the ballots are tabulated. In Georgia, the process for notification to the Secretary of State by the local registrars of vital statistics of the names of deceased individuals is only required once a month.<sup>17</sup> Such reports must be filed by the tenth day of the month and contain the names of individuals who die during the *preceding* month. The Secretary of State is then obligated to forward that information to the appropriate county so that county election officials can delete such individuals from the registered voter list.<sup>18</sup> Therefore, even if the Secretary of State acts immediately, the earliest that county election officials would be notified that an individual is deceased would be at least a week after a general election. At that time, it will be too late to void such ballots. This is currently a problem with absentee ballots, but would be a much larger problem with early voting.

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<sup>12</sup> *Id.* Fulton County, the largest county in Georgia, has almost 300 precincts. Local officials would have to decide how many of those precincts should be opened for early voters.

<sup>13</sup> "Early Voting," Margaret Rosenfield, National Clearinghouse on Election Administration, April 1994, page 46. As another example, Dallas County incurred \$465,608 in early voting costs in the 1992 election.

<sup>14</sup> Senate Bill 235, Section 13, page 11, 14, and 15.

<sup>15</sup> "Early Voting," page 4.

<sup>16</sup> Turnout in Fulton County in the 1996 general election was 60% or 253,699 voters.

<sup>17</sup> O.C.G.A. Sec. 21-2-231.

<sup>18</sup> *Id.*

Early voting can hurt the integrity of the election process by limiting independent oversight of election procedures. The ability of candidates and political parties to appoint poll watchers as observers at polling locations maintains the security of our election process and helps prevent the commission of vote fraud by both voters and election officials. It is already difficult for most candidates and parties to find enough volunteers to cover polling locations in the larger counties on election day. Trying to organize such a poll-watching program at additional polling locations for up to three weeks will probably be impossible, making it very difficult for outside observers to monitor the election.

Finally, there is a possibility that in elections where a candidate for federal office is on the ballot, early voting may violate the U.S. Constitution. Although a number of states have had early voting statutes in place for some time, there is currently a lawsuit pending in Texas to have that state's early voting statute declared unconstitutional.<sup>19</sup> Under the authority of the Constitution, federal law specifies a single federal election day (the Tuesday after the first Monday in November) as the exclusive day throughout the U.S. for balloting for U.S. Representatives, U.S. Senators, and Presidential Electors.<sup>20</sup> By allowing up to three weeks for balloting, early voting statutes may unconstitutionally lengthen the one-day nationwide election prescribed by federal law for candidates for federal offices. Louisiana's October open primary balloting system, which can result in a candidate winning prior to the November election, has already been found unconstitutional as a violation of federal election-day statutes by the U.S. Supreme Court.<sup>21</sup> Similarly, extending voting over a three-week period rather than holding it on one day as mandated by federal law could be found to be a violation of federal law and the exclusive authority of Congress under the Constitution to promulgate rules for election to federal office. Therefore, even if Georgia were to adopt early voting, it could be declared invalid in the future at least for federal offices. A two-part election, i.e., one for state offices with early voting and another for federal offices with a single election day, would create numerous practical and legal problems and would be very confusing.

All of these considerations show that early voting is not a solution to the continuing problem of declining turnout in our elections. In fact, based on the experience of other states, it may hasten the decline. It also promotes many negative trends. The higher costs of campaigning caused by early voting may discourage participation in the political process and increase the costs of elections to local governments. The ability of election officials to manipulate results and the increased difficulty for political parties and candidates of organizing poll-watching programs to monitor elections may lessen the confidence of the public in the security of the voting process and lead to increased cynicism. That is not a result that we should encourage as citizens of a great democracy. Our goal must be to encourage participation in the political process while maintaining the security of elections and voting. Early voting does not help us reach that goal.

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<sup>19</sup> *Voting Integrity Project v. Bomer*, Civ. No. H-99-0247 (S.D. Tex).

<sup>20</sup> 1 U.S.C. Sec. 1, 2 U.S.C. Sec. 7, and 3 U.S.C. Sec. 1.

<sup>21</sup> *Foster v. Love*, 522 U.S. 67 (1997).