

FAIR ELECTIONS LEGAL NETWORK

No --- This is *REALLY* AN EMERGENCY

Every election there are emergencies of one kind or other. Paper jams, a poll worker gets sick or has to rush home to take care of a child, or the only optical scanner on premises starts eating the ballots. Some problems are within the range of the expected, but some are not. Some problems can be expected to be resolved fairly quickly, while others may take time – in some cases, undeterminable amounts of time. There are two sets of matters to consider in connection with emergencies: when to shift to Plan B and what kinds of measures is it reasonable to include in Plan B.

- The worst time to decide when an emergency is really an emergency is when it happens. That does not mean anyone can anticipate every problem, real or imagined, but what it does mean is that an emergency, requiring a significant change in operations, should be determined by criteria set in advance, and not by the subjective reaction of panic, either by a precinct supervisor or by the county clerk. This is an area where uniformity should generally prevail, which means that the Secretary of State should issue the standards for emergencies, in consultation with local officials and with public input. Some situations, like a fire requiring the shutting down of a polling place, are obvious, but others require fine line drawing. If, for example, one of two machines breaks, with a minimum repair time of an hour and waiting times of two hours, is that the time to pull out the paper ballots as a backup? Or suppose there is no breakdown, but waiting time is two hours and not getting any shorter: should voters be at least given the option of a paper ballot and/or should headquarters send in additional workers to process the intake faster? And when should election officials themselves have the authority (or obligation) to extend voting hours, or ask a court to do so, so that even late arrivals can vote? These kinds of questions should not be left to “local option,” especially if those decisions are made in the heat of battle. This is one part of an election where equal treatment is particularly important, so that it is less likely that anyone will protest unfair discrimination after the election. Of course, there will be facts to be determined and judgments made on the spot, but those should be limited to the greatest extent possible.
- Assuming that machines can not easily be moved around, or can not be shifted without causing problems elsewhere, paper ballots are the most likely fallback – so long as they are treated as real and not provisional ballots, as some jurisdictions have done. But most jurisdictions have more than one ballot because of different local races and/or initiatives, and so printing up lots of extra ballots that can be used everywhere is not a solution – although perhaps “jurisdiction-wide” ballots could be the ultimate backup so that at least everyone can vote in all common races, which is probably better than not being able to vote at all. Or suppose that the optical scanner breaks, and there is no other immediate way to process the votes: should the whole process stop, or should there be methods in place to continue the voting while ensuring the integrity of the ballots? These questions are merely suggestive of the range of issues that state and local officials should confront – and try to resolve in advance and on a state-wide basis, to the greatest extent possible.