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Justice Talking Radio Transcript

Election Reform: How We Vote —Air Date: 3/10/08

In every election year, questions arise about the fairness of the voting process. This edition of Justice Talking will take a detailed look at some of the key issues: from the debate over requiring ID to cast a ballot to the controversy over electronic voting machines. Do these measures improve our election process or just make it more difficult for voters on Election Day? Election reform, this week on Justice Talking.

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MARGOT ADLER: It's been eight years since that infamous presidential election recount with its hanging chads. States have since overhauled the way they run elections, but are we better off now? One election observer worries record voter turnout may strain the system.

UNIDENTIFIED MALE: It's reminiscent of that line from "Jaws" — "We're going to need a bigger boat." You've got state and local election officials across the country nervously watching turnout projections and hoping they've got enough ballots, poll workers and polling places to hold the demand.

MARGOT ADLER: While others fear new voter ID laws won't stop voter fraud but disenfranchise Americans.

UNIDENTIFIED FEMALE: We simply can't make voting depend on something that 10 to 12 percent of Americans currently don't have. That's putting the cart before the horse and it's solving a problem that just doesn't exist.

MARGOT ADLER: This is Justice Talking, from the University of Pennsylvania's Annenberg Public Policy Center, I'm Margot Adler. This November, voters will make their pilgrimage to the polls to elect the next president. They will mark ballots, touch screens and some will still pull levers. But voting has never been as simple as filling in a circle. Who can forget the butterfly ballots and hanging chads of eight years ago? Since then, elections seem to be decided by evermore slender margins. How we cast our ballot is now as divisive as who we vote for. Take, for instance, states that mandate you show a photo ID before you vote. Supporters say these laws deter voter impersonation, while critics argue that widespread voter fraud is itself pure fiction. We debate that issue later in today's show and tackle other voting issues from voting by mail to electronic voting. Is it as easy as a point and click? But before we look at what's happening to voters here at home, we turn abroad to see what the primary process is like for American voters overseas. Americans will cast absentee ballots from more than 160 countries and territories. But this year Democrats had a new alternative — the first ever global presidential primary. Eve Troeh reports.

EVE TROEH: If you're an American living abroad, you're not bombarded with campaign ads or live debate coverage; but the election is still everywhere. [MONTAGE OF INTERNATIONAL VOICES]

EVE TROEH: That's not the U.S., it's the U.K. — for more than 1,500 Democrats gathered in person at London's Central Library to caucus for Barack Obama, or Hillary Clinton. This year Democrats could waive their right to an absentee ballot from their home state and instead cast a ballot as part of an international pool of voters through Democrats Abroad. About six million Americans live overseas. More than 20,000 of them cast ballots in the global primary. They could vote by mail, fax, online or in person. There were polling stations in more than 30 countries with balloting in bars, private clubs and coffee shops. Democrats Abroad Executive Director, Lindsay Reynolds, says these non-traditional forms of voting are only for the primary; but they've helped Democrats reach out to more overseas voters than ever before.

LINDSAY REYNOLDS: In a practical sense it allows Americans in South Africa, the Congo, and Afghanistan to vote in our primary and have a voice in our nomination. And I think it has certainly made a symbolic gesture to them that we're out there trying to find them and make sure their voice counts.

EVE TROEH: In New Delhi, India, Carolyn Sovaj Mar helped organized the Democratic Party in a restaurant — about 100 voters turned out. The event was widely covered by the local media and she believes that showed people in India the health of American democracy.

UNIDENTIFIED MALE: There were many, many first-time voters — a couple of 18-year-olds; there was a naturalized citizen from Ghana and a naturalized citizen from the U.K. There were, of course, many Indian Americans. We had another younger person who actually flew to Delhi from Lombok — two-hour flight — just to vote.

EVE TROEH: Across the world in Oslo, Norway Fulbright scholar Elizabeth Wiley, is sitting in front of the computer at the University of Oslo casting her ballot online on Super Tuesday.

ELIZABETH WILEY: I received an email — it gave me a ballot number, a personal identification number and directed me to the website. And so I enter my name in full, my street and mailing address in Norway.

EVE TROEH: When she left to study overseas, Wiley didn't know how she would vote. She went to watch a U.S. debate on satellite TV sponsored by Democrats Abroad and learned about the global primary. It appealed to her.

ELIZABETH WILEY: First there wasn't actually a physical ballot that needed to be sent in; second is I feel like the global primary actually offered me an opportunity to cast a vote that had meaning.

EVE TROEH: Wiley felt her online vote had more meaning than an absentee ballot from her home state of Michigan. Michigan's delegates were unseated this year, while Democrats Abroad will have 11 delegates at the national convention. The party treats overseas voters as a block rallied around issues like America's image abroad and tax laws for foreign income. Barack Obama won the global primary with about 65 percent of the vote. Election scholar John Fortay says, "While the global primary energized Democrats Abroad, it might not have a big impact on who wins the White House." For the race in November, voting online, by fax or in person won't be an option overseas. Only paper absentee ballots from a state will count. Fortay says, "Problems still plague that method."

JOHN FORTAY: That system hasn't changed dramatically at all. We have problems with military ballots not having postmarks and the difficulty of the voter overseas insuring that they get their ballots in time, insuring that their ballots are back and counted in time; and here I think we are falling short.

EVE TROEH: The counterpart to Democrats Abroad, Republicans Abroad says it doesn't plan to experiment with new ways to vote. Its members say they're focused on November and on making sure every Republican overseas gets an absentee ballot and mails it in in time to count. For Justice Talking, I'm Eve Trough.

MARGOT ADLER: This global primary hasn't been the only change in the way we vote. Doug Chapin is director of Electionline.org which followed election reform. I asked him what else has changed since the disputed 2000 presidential election.

DOUG CHAPIN: What hasn't changed? We have seen billions of dollars spent on new voter machines, we have seen new laws and procedures for voter registration, for identifying voters. For giving voters a second chance at casting a ballot if their name isn't on the list — virtually no area of elections in this country has gone untouched in the last almost eight years since November 2000.

MARGOT Alder: How worried do you think Americans are about the integrity of elections, and where do you think the worry comes from? Is it all traced back to 2000 in Florida?

DOUG CHAPIN: I think it is a little bit. I think the thing that you have to remember when you're looking at elections is that no matter how much you focus on the process, at the end of the day people are most interested in the outcome. And I think that in many ways people gauge the health of the election process by the extent to which they thought their candidate had a fair chance to win. What's been interesting about the last almost eight years is that at the same time we're changing our election process at a dizzying rate. We're also seeing a level of political competition between the two major parties that's unparalleled. We live in an era now where tiny numbers of votes can have a huge outcome at the local, state and federal level. At the same time that we're changing processes and technology at a rate that sometimes those tiny numbers of votes are even within what folks might call the margin of error.

MARGOT ADLER: What aspects of our election system are troubling Americans most? Is it individual fraud, faulty machines, hacking, no paper trail, party operatives or secretaries of states or county clerks who could manipulate the vote? Which of these things trouble Americans most?

DOUG CHAPIN: You know, I think it varies — I mean, it's almost like check-off — you know, every voter's unhappy. They're just unhappy in their own way. Some folks are worried about the new breed of voting technology and think that paperless voting machines are a problem. Others worry that new photo ID laws disenfranchise certain voters and are nothing more than a ploy to keep certain classes of voters away from the polls. And still others worry that because outcomes as big as who will be our next president and who will be our next governor at stake, that the temptation to act in a partisan manner is too great for some officials. So I don't think there's any one thing that troubles people, but I think that various voters have different reasons why they're worried that the vote that goes in the front of the machine might not be the one that comes out at the end of the day.

MARGOT ADLER: So as you looked at the coming election in November, are we going to be in a mess? For example, you know, some people say: oh, it's going to be the lack of a paper trail in Pennsylvania; or is it going to be something else? Are we going to be facing some big thing that we haven't been prepared for?

DOUG CHAPIN: I think I can say beyond a doubt that maybe that will happen.

MARGOT ADLER: And what will it be?

DOUG CHAPIN: We won't know until we know if the election itself is close. I think that what we've seen time and again is that no matter how big the problem is, if it isn't seen as having some kind of an impact on the outcome that it doesn't get as much focus. If it turns out that voting machines in Pennsylvania or voter registration lists in one or more states are seen as potentially affecting the outcome of the race for the White House, then I think you will have the level of scrutiny and feel a crisis that we've had in past elections. If, on the other hand, one of the two

nominees ends up pulling away from the other, while we'll still have, I think, some of the problems we've seen over the last almost eight years. It might not rise to the level of a national crisis that we've seen in previous elections.

MARGOT ADLER: And as you've been looking at the primaries, has there been anything that's caused concern for you?

DOUG CHAPIN: Not concern. What's interesting is that what we were watching for during the primary season was evidence that one of what we call "the big three" would be an issue. Voting technology, voter ID, or voter registration. Would there be problems with machines; would the new photo ID rules in a couple of states result in controversies at the polls? Or would there be disputes about certain voters being purged or cleaned off of various voter rolls. None of those appear to have happened. What's happened, really, is that there've been more voters than the system appears to be able to handle. And we were laughing at Electionline the other day that it's reminiscent of that line from "Jaws" — "We're going to need a bigger boat." You've got state and local election officials across the country nervously watching turnout projections and hoping they've got enough ballots, poll workers and polling places to hold the demand.

MARGOT ADLER: So what we could see is huge lines and delays -- lines around the block and polling booths and so forth.

DOUG CHAPIN: We could; and what's interesting is that we don't know what the cause of those lines will be. We don't know if it'll be voting machine problems, we don't know if it'll be voters being asked for ID, or whether or not it's just a process of checking in at the table to make sure that you're eligible to vote. But if you have a high demand for voting, I think lines are almost a foregone conclusion.

MARGOT ADLER: Doug Chapin is with Electionline.org. Thank you so much for talking with us.

DOUG CHAPIN: My pleasure.

MARGOT ADLER: States have passed a raft of laws requiring voters to show valid ID in order to cast a ballot — with one of the strictest in Indiana. Officials there argue the law combats voter impersonation.

THOMAS FISHER: We have a situation where there are many names that are not attached to eligible voters any longer, and they present a tremendous opportunity for people who want to engage in fraud to vote fraudulently.

MARGOT ADLER: But voting rights advocates say mandating a photo ID to vote leads some Americans behind.

WENDY WEISER: But when you narrow the way in which you identify voters to a very strict category of documents that 10 to 12 percent of voters don't have, you're going to knock out a lot of legitimate voters and for no good reason.

MARGOT ADLER: Stay with us.

MARGOT ADLER: On today's Justice Talking: how we vote. More than 20 states require or request some form of identification in order to cast a ballot — from pay stub to a utility bill. In 2005, the state of Indiana passed one of the strictest measures: it would require voters to show a state issued photo ID. The law has been challenged and is now before the Supreme Court. Supporters of voter ID law say this is a simple way to deter voter impersonation and restore confidence in a voting system rattled by the 2000 presidential election. But voter fraud to some is voter disenfranchisement to others. Voting rights advocates argue that these laws make it more difficult for poor people and minorities to vote. Voter security or voter access will debate this with our guests, but first we ask some Philadelphians what they think about voter ID laws.

UNIDENTIFIED MALE: This election ... in the upcoming election in the future you need to present some form of ID stating who you are just to keep from any type of misidentification or someone voting and impersonating someone else.

UNIDENTIFIED FEMALE: No, I don't think it would make it less ... like make me less likely to vote if I had to bring my ID because I usually have it with me and it's not a big deterrent at all.

UNIDENTIFIED MALE: Well, I think it would be wrong to make someone do that because ... especially older people because they can't get out and get these things sometimes.

UNIDENTIFIED MALE: If you're walking the street you should have some type of identification if you are of legal voting age. It just makes sense, though. I don't see the difficulty, problem or why it would affect anybody on any income status to not have identification to vote.

UNIDENTIFIED FEMALE: There's definitely people that are marginalized because they don't have the same resources; so it's definitely unfair. I know for me, it's easy for me to pull an ID out of my wallet and kind of go ahead and vote. So I don't think that it should be mandatory. It makes me uncomfortable.

UNIDENTIFIED FEMALE: I gladly show my credentials to vote — it's certainly worth it. You have to make sure that people aren't voting two/three times; and if that's how you do it, fine.

MARGOT ADLER: In January, the U.S. Supreme Court heard arguments about Indiana's voter ID requirement. A ruling is expected later this year. Here with me to talk about the law are Thomas Fisher and Wendy Weiser. Thomas Fisher is the Solicitor General of Indiana — he argued in favor of his state's voter ID law before the Supreme Court. Wendy Weiser is the Deputy Director of the Democracy Project at the Brennan Center for Justice at New York

University School of Law. She oversees the Center's work on voting rights and elections. Welcome, both of you, to Justice Talking.

TOM FISHER: Thank you.

WENDY WEISER: Thank you.

MARGOT ADLER: Tom, you argued the case for your state's voter ID law in front of the Supreme Court. Why, in your opinion, is it important for Indiana to have this law on the books?

TOM FISHER: There are two trends that sort of came together in 2005 when the General Assembly enacted this. The first one started I think for most people in terms of observing election procedures in 2000, when all of the controversy out of Florida refocused much of the nation on the need to reform the voting process and the election process, to bring it into the 21st century; and that had implications not only for the types of ballots and the types of voting machines we use, but also for election security. This is one piece of that. In Indiana we have not only enacted a voter ID law with respect to the person voting, but we've also decided to experiment with voting centers. We've changed the types of machines we're using, and we've restricted how and when people can cast absentee ballots. So this is just one part of an overall approach to update the election process. The other problem we've got in Indiana is that we have highly inflated voter registration lists as a result of the National Voter Registration Act which restricts how states can go about maintaining those lists. And as a consequence we have a situation where there are many names that are not attached to eligible voters any longer and they present a tremendous opportunity for people who want to engage in fraud to vote fraudulently. So the voter ID law is one means of deterring people from doing that and for enabling detection when it happens because otherwise there's no way to detect when somebody's trying to vote fraudulently.

MARGOT ADLER: Wendy, the Brennan Center has been very outspoken against this law -- you filed a brief in the Supreme Court case. Why is it so important to defeat this legislation?

WENDY WEISER: Well, the real primary reason why we oppose this law is that the fact is that millions and millions of Indiana citizens, and, in fact, millions of Americans don't have the kinds of documents that are called for by Indiana's voter ID law. We don't object to asking voters to identify themselves; and, in fact, every state has some mechanism for identifying their voters. But when you narrow the way in which you identify voters to a very strict category of documents that 10 to 12 percent of voters don't have, you're going to knock out a lot of legitimate voters and for no good reason.

MARGOT ADLER: Now, Tom, opponents argue that there's very little evidence of voter fraud. Advocates say there are almost no examples of the kind of fraud that the law is designed to prevent — that is someone posing as someone else or voting twice. And I've even heard that Indiana can't cite an incident of this type of fraud ever occurring. So if there isn't this kind of fraud, how do you justify the law?

TOM FISHER: Well, I think it's a product of having a rather obvious gap in the election procedures. We've got a system that relies only on people identifying themselves and then signing their name. Which no one really, I think, realistically expects is going to reveal fraudulent voters. Now, given what we've seen around the country and the reports of fraud that have occurred around the country in various states — and that in Indiana we do have election fraud principally of the absentee ballot variety. I think that gives rise to a legitimate concern on the part of ordinary citizens. That if the state is not doing what most industries do and what happens at federal courthouses and at airports by means of checking photo identification, then there's an enormous gap in the security of elections, and there's all kinds of opportunity for fraud. And that means that they will be less likely to trust the results especially in a close election and where they may think that fraud has occurred, and, as a result, disenfranchised the legitimate voters that came out that day.

MARGOT ADLER: So you're sort of saying there is fraud — we just haven't seen it?

TOM FISHER: Well, I think that's part of it. I think that in-person voter fraud is very difficult to detect if somebody comes in and casts a fraudulent ballot. Sure, maybe the real voter whose name that really represents will come in later, but the person who cast the ballot is long gone.

MARGOT ADLER: Wendy, elections have become increasingly close and partisan. Often contests are decided by a very small percentage of votes; and after the hotly contested 2000 election the American public has clearly expressed concern over how elections are conducted. So even if there isn't a lot of fraud, isn't requiring a photo ID a reasonable step to insure that people have confidence in the system?

WENDY WEISER: It is true that Americans have expressed lack of confidence in the system, but it's not because of in-person voter fraud. This is something that study after study has repeatedly showed does not happen. They're worried about the security of our voting machines and they ought be worried. We are not safeguarding the security of our voting machines the way we should be, we are not conducting audits of our paper records/paper trails. We are not protecting against ballot tampering, we are now protecting against absentee ballot fraud. These are things that Americans can and ought to be worried about. In-person voter fraud is something that despite five years of extensive investigations by the Department of Justice; and despite real serious investigations in contested races in a number of states, has never turned up to be any problem. And I did want to respond to the point about it being difficult to detect. It very well might be difficult to catch the perpetrator — though there are mechanisms in place to catch the perpetrator. But in-person voter fraud does leave a trail. In the unlikely event that somebody is able to obtain the names of a no longer eligible voter that is still on the voter role and to somehow dupe a poll worker into letting them vote in that person's name, we can actually get evidence of that on the poll books. And no matter how much investigation has been done we have not found evidence that that is actually happening.

MARGOT ADLER: Tom, how do you answer that? I know that people clearly are worried about the security of their vote, but I don't think they're really worried about the kind of voter fraud that your law addresses. I mean, I think they're worried about vote, they're worried about

large scale vote tampering, they're worried about misconduct on the part of poll workers. I'm not sure that your law really addresses those kinds of issues.

TOM FISHER: Well, I think that the national polls regularly show overwhelming public support for these laws; so to the extent that that reveals genuine concern for what this law addresses, I think that the polls are pretty clear on that. Now as far as what that translates to in terms of the opportunities for fraud where we've got a situation with inflated voter rolls and where we are not taking a rather obvious and reasonable step to insure the security of elections. Where we're not even checking IDs where you often have to do any number of ordinary everyday activities, people become suspicious. Even if they don't have actual reports of fraud, they look around and they think: well, how can it not happen? It must be happening because there's no way to detect it and no way to prevent it from happening.

MARGOT ADLER: Tom Fisher is the Solicitor General of Indiana; also with me is Wendy Weiser with NYU's Brennan Center for Justice. You're listening to Justice Talking and we're talking about voter ID and elections. Tom, let's talk about the question of disenfranchisement. The NAACP, the League of Women Voters, various student and youth groups have all filed briefs against this law. And does the law put a disproportionate burden on the elderly, the poor and minority voters?

TOM FISHER: Well, notwithstanding that all those groups come forward, the plaintiffs in this case were never able to identify anyone who's actually injured by the law. There are not plaintiffs in this case that are voters who cannot vote because of this law. Now a part of that is because the law actually has generous exceptions and accommodations, particularly for the elderly and the indigent as well as the disabled. If you are elderly or you are disabled you are automatically entitled in Indiana to vote absentee; and that means you don't have to show photo identification. On the other hand, if you're indigent or if you have a religious objection to being photographed, you can cast a provisional ballot at the polls and then validate that with an affidavit within ten days. Now in Indiana, we do make photo identification free for those who are voting age and who need it to be able to vote; and we have an effort by the BMV to go around to neighborhoods to issue identification.

MARGOT ADLER: Wendy, did you want to respond to that?

WENDY WEISER: Now it is true that for older voters — for seniors — they can cast absentee ballots. Many of them object to being relegated to only the absentee voting process and to being excluded from the civic ritual of voting, and from being deprived of all the late breaking information in the campaign in making their decision to vote. For indigent Indiana citizens, the situation is even worse. They have a lower class process for voting where they have to go to the polls, cast a provisional ballot. And then go to another government office and cast an affidavit saying that they're indigent and are unable to afford the ID to vote. They cannot fill out that affidavit at the polling place. So it really seems like the only purpose of that is to exclude voters rather than to include them.

MARGOT ADLER: It would be ... I think you could say that it's pretty hard to function in today's society without photo ID. You need an ID usually to board a plane, to cash a check, to

enter a federal building. Usually maybe you could argue your way out of it, but it certainly is a longer process. So when Tom says the state of Indiana claims you'd be hard pressed to find someone who the law would actually disenfranchise, is he right?

WENDY WEISER: Well, it's true that it's harder to navigate in society without a photo ID, but as it turns out 10 to 12 percent of Americans do navigate without photo ID. Many, many Americans don't travel abroad — in fact, only a quarter of Americans have a passport; and many, many Americans don't drive. And, in fact, that's the most common photo ID that is available in the country. We don't have a national photo ID; we don't have a system like many other countries where they make ID available to all their citizens. So we have a hodgepodge of different government IDs that many, many Americans don't have. And we shouldn't be putting more hardships on them in depriving them of their right to vote just because they don't have something that would make their life easier.

MARGOT ADLER: I'd like you both to weigh in on what you think the Supreme Court is going to do. Reporters who've covered this issue have said that it essentially boils down to a very partisan divide — Republicans like the law, Democrats hate it. And every lower court judge who's heard this case has ruled along party lines. The Supreme Court justices hearing the oral arguments seem to favor your position, Tom — am I right?

TOM FISHER: Well, I felt very good coming out of the argument; and I thought that the questions were reflective of an understanding of the state's position in terms of a flexibility that we need to run elections. And, in particular, the flexibility that the founders decided to afford states when it comes to formulating election laws. So from that standpoint I felt like we had a good day.

MARGOT ADLER: Wendy, we have a very conservative Supreme Court. Do you have any realistic hope here?

WENDY WEISER: You know, it's always dangerous business to try and predict what the Supreme Court is going to do. I'm reluctant to do so. I think that there is a possibility that the Supreme Court will be moved by the fact that there's a real two-tier process for indigent voters for voting. That they don't actually have the same ability to vote as all other voters. And so that might be a reason for hope that the court will find fault with the law — constitutional fault with the law.

MARGOT ADLER: Any final thoughts — I'll ask you, Wendy, first and then give Tom the last word.

WENDY WEISER: The question in this case is not whether it's technically possible to go through a riggermarole to actually obtain a photo ID. What's at issue is that we have a system where 10 to 12 percent of Americans don't have these kinds of IDs; and we simply can't make voting depend on something that 10 to 12 percent of Americans currently don't have. That's putting the cart before the horse and it's solving a problem that just doesn't exist.

MARGOT ADLER: Tom?

TOM FISHER: We do not hold voting regulations to the standard that you've got to prove some minimal level of fraud before you are allowed to improve the election system. And in Indiana we've decided to incorporate an already existing system of individual identification rather than adopt a completely new system that requires voters to start from the beginning. The result is that according to data in our case, 99 percent of the electorate apparently already has qualifying photo identification. Now, if we were to look at that one percent and think about whether that is still unfair to them, then we would also have to look at voter registration and think about whether the 33.8 percent of voting age population in Indiana that is not registered is somehow unfairly disenfranchised by the voter registration law. This law really is of a piece with voter registration. It vindicates the very principle that voter registration is premised on which is that individuals need to be who they say they are when they come to vote. And that is a reasonable means of protecting the sanctity and the security of elections in the modern day.

MARGOT ADLER: Thomas Fisher is the Solicitor General of Indiana; Wendy Weiser is the Deputy Director of the Democracy Project at the Brennan Center for Justice at New York University School of Law. Thank you both for coming on Justice Talking.

WENDY WEISER: Thank you.

TOM FISHER: Thank you very much.

MARGOT ADLER: Coming up, we look at touch-screen machines and the evolution of voting technology.

UNIDENTIFIED MALE: The reason why we have lever machines is they're really hard to steal. So it turns out, you know, in the turn of the century people would steal ballot boxes. So it turns out it's really hard to steal a half-ton lever machine.

MARGOT ADLER: And we talked to one person who calls the insatiable need for voters to know who's ahead or behind in the election race a necessary evil.

UNIDENTIFIED FEMALE: I know at one point we tried not to put the horse race numbers in a poll story; and then we were criticized for it: why don't you have the horse race numbers up?

MARGOT ADLER: Stay with us.

MARGOT ADLER: This is Justice Talking where we make the connection between law, justice and American life -- I'm Margot Adler. On today's show: how we vote. One thing to be said for certain about this primary campaign so far, for both major parties there's been record turnout at the polls; which means for some voters, long lines at polling places. But head to Oregon for their primary in May and you won't find any long lines there. Everyone votes by mail. It's been that

way for 10 years. And while some Oregonians say that snail mail voting is voter-friendly, not everyone likes the Vote By Mail system. Barbara Bernstein reports.

[SOUND OF VOLUNTEERS CALLING]

BARBARA BERNSTEIN: Here in this Union Hall in northeast Portland, a handful of volunteers for the Jeff Murphy for the U.S. Senate Campaign are stationed at computer terminals scattered across this suite of basement offices. Murphy is hoping to emerge from the upcoming primary as the democratic challenger to Republican senator, Gordon Smith, in November. As part of a regular Sunday afternoon phone bank, these volunteers are calling voters. Instead of asking them to show up at the polls, the volunteers urge them to mark Murphy's name on the primary ballot that arrives in their mailboxes in early May. Oregonians have voted by mail in every election since 1998. For some the wisdom of this innovation is obvious.

UNIDENTIFIED FEMALE: We vote in this country in many places in the middle of the day, in the middle of the week, in the middle of the winter; and expect that we're going to get adequate participation in our democracy and it's not realistic. Vote By Mail provides way more access to people to vote and it's one of the reasons why Oregon has consistently one of the highest voter turnouts in the nation.

BARBARA BERNSTEIN: That's Liz Kaufman. She's a progressive activist who works on grassroots campaigns that have restricted development and protected gay rights. Kaufman has become a vocal supporter of Oregon's Vote By Mail system. She says it helps enfranchise the voters they want to reach. But some Democrats in Oregon doubted that promise and worried that people would be left out. John Isaacs is the campaign manager for the Jeff Murphy for U.S. Senate campaign.

JOHN ISAACS: I didn't feel the state had done enough to insure that low income voters, students, renters, people who did not have stable addresses would be kept on the voter rolls — that they would receive their ballots. But what's clear is that I was wrong. Vote By Mail has actually empowered voters. You see higher turnouts in Oregon among younger voters, renters, low income people that are consistently higher than the rest of the country.

BARBARA BERNSTEIN: John Isaacs isn't the only one whose views have changed. Originally, many Republicans who had highly developed absentee voter outreach liked the idea of voting by mail. But one prominent Republican, Dan Levy, has always had problems with Vote By Mail. Levy ran Gordon Smith's Republican campaign for U.S. Senate in 1996 — the first federal Vote By Mail election in U.S. history. Levy's man lost.

DAN LEVY: Vote By Mail reduces the civic ritual of the democracy to paying the phone bill.

BARBARA BERNSTEIN: Perhaps the biggest challenge that Vote By Mail poses for campaign managers like Dan Levy is that Election Day has been turned into a moving target. Ballots are now mailed out more than two weeks before Election Day, and people can turn in their ballot any time up to 8 p.m. on election night.

DAN LEVY: Essentially, anything that you were doing over 72 hours, you're now doing over three weeks. So the more time and resources and interest group support you have, it's going to benefit you. Democrat party organizations and their allies, they're in larger numbers — they're better organized in the state. And so it advantages those interest groups and those candidates.

BARBARA BERNSTEIN: Dan Levy also believes that voting should be a private act. And he worries about the growing popularity of voting parties that take place in churches, union halls and living rooms where people get together to discuss what's on the ballot and how they're going to vote. But many Oregonians say these gatherings show how the Vote By Mail system is sparked a new level of civic engagement. Still John Kitzhopper, the sitting governor when Vote By Mail first passed, maintains some of the doubts he had when he first vetoed the legislation.

JOHN KITZHOPPER: I think my biggest concern about Vote By Mail is that for many people the participation in democracy, the weighing of the candidates and the issues ends well before the Election Day. So you could have a major story, policy change or whatever could come up and you've already voted.

BARBARA BERNSTEIN: Maybe many Oregonians share Kitzhopper's concern, because a large percentage of them are voting in the last 72 hours before Election Day. Jeffrey Judkins is one of those voters. He's a big supporter of Vote By Mail and he makes a ritual of casting his ballot on Election Day.

JEFFREY JUDKINS: Right down the street from here on Morrison Street there's a little voter drop-off and they have the guys in the little Uncle Sam hats collecting the ballots and everybody's smiling and it's kind of a nice little scene.

BARBARA BERNSTEIN: A lot of Oregonians apparently feel the way that Jeff Judkins does. According to grassroots campaign manager, Liz Kaufman, that's because the Vote By Mail system gives them more time to take their votes seriously.

LIZ KAUFMAN: We're helping people with the desire to vote. We're motivating them, we're spoon feeding them the ability to participate — and it works.

BARBARA BERNSTEIN: Voter turnout is always much higher in Oregon than anywhere else in the country, and no one knows for sure if Vote By Mail has increased turnout even more. But after 10 years, it's become part of the Oregon landscape, and other states are now starting the Vote By Mail experiment too. For Justice Talking, this is Barbara Bernstein in Portland, Oregon.

MARGOT ADLER: After the 2000 presidential election, many states threw out their punch card voting machines and spent almost a quarter of a billion dollars upgrading to touch screen devices, also known as direct recording equipment or DREs. But as part of a growing touch screen backlash, states like California and Florida raising questions of reliability have now pulled the plug on their electronic machines. Even a bill to band touch-screens across the country was

introduced in the Senate last year. Thad Hall co-wrote the new book, "Electronic Elections: the Perils and Promises of Digital Democracy." In it he argues that the benefits of touch-screen machines can outweigh their drawbacks. I asked him why he thought states were turning away from them.

THAD HALL: In many jurisdictions where they adopted this technology, they didn't spend the time and the money on training and developing new procedures for the use of the machines. So they just took the procedures they had for paper machines and they applied them to electronic voting. And then there's a political issue which also has existed where people have been concerned about whether or not electronic voting machines are safe and secure. And so you had the entire debate in 2003 and 2004 about the Diebold machines and the president of Diebold saying that he was going to help make sure that Ohio went for Bush in 2004. Interestingly, Ohio did not use Diebold DREs, but he asked people — and I've been on radio shows where people have called in — and they think that Diebold machines were used in Ohio and that's why John Kerry lost. And so you have this political debate that's going on as well about the security of the systems.

MARGOT ADLER: So are people right, even if the truth of Ohio is different than they think. Are they right to be worried about these machines?

THAD HALL: The thing that's ironic about this whole debate about electronic voting is this: we had an election in 2000 on paper ballots — both punch cards and optical scan ballots in Florida. We had ballots and we couldn't count them. In 2006, there was a controversial election in Sarasota, Florida where they had a very close election and people skipped the race for the U.S. House and a Republican won in an area where the Democrat probably should've won. And the Government Accountability Office has said that they think that the problem was a ballot design problem. But we just had an election in California where in Los Angeles County alone there were over 50,000 ballots. There were almost two-and-a-half times as many ballots on paper that couldn't be counted because of a similar ballot design problem.

MARGOT ADLER: You argue, in fact, that all these voting systems tradeoff.

THAD HALL: That's exactly right.

MARGOT ADLER: And why don't you give me an example -- why don't you elaborate on that.

THAD HALL: The reason why we have lever machines is they're really hard to steal; so it turns out, you know in the turn of the century, people would steal ballot boxes; so it turns out, it's really hard to steal a half-ton lever machine. So one of the tradeoffs between paper ballots and lever machines is that lever machines are really hard to steal. And so that was one of the reasons why people moved to them. And, in fact, violence in certain communities went down when they couldn't shoot the guy with the ballot box.

MARGOT ADLER: So what's the tradeoff between electronic voting machines, touch-screen machines and optical scanners, for example?

THAD HALL: Let me say where there isn't a tradeoff. One of the big debates is whether or not voters can verify their votes; and so people will say: well, if I vote on paper I can be sure my vote gets counted. And that's actually not true. We have a secret ballot system, so once you cast your ballot, you have no idea what happens to it; and so one of the tradeoffs is between accuracy and security. So which systems are more accurate, and we know that optical scan systems and electronic voting machines are similarly accurate. We also know that there are differences, though, among ethnic groups. For instance, when Georgia switched to electronic voting in 2002, prior to that they had had a variety of different technologies. And the counties that benefited the most from their transition were counties that had high minority populations and counties that had high populations of low income voters.

MARGOT ADLER: So how dependable do you feel electronic or touch screen devices are? You know, we do read stories about machines that mysteriously turn off, votes that disappear. I gather that you've said there's no credible evidence that electronic voting machines are unreliable; but is there any downside?

THAD HALL: Let me say that if you think about it in the terms of tradeoffs between paper, there are similar problems with both technologies. And they often go back to the training that poll workers receive and the education voters receive on how to use the machine. So if you look at problems that are in the media often, where they report problems with electronic voting machines, they are often problems that are facilitated by poll workers doing something they shouldn't do with the voting machine. So, for instance, they don't check the machine to make sure it has zero votes on it at the beginning of the day. And there was a case, actually, in the primaries where they didn't clear out all these tests votes, and that's a problem. And those same problems can happen with paper ballots. And we're doing this audit project, actually, in New Mexico where we've been looking at ballots. And there was a voter who voted straight party for a democrat or a republican, and they decided they didn't want to. So they scratched through it and wrote "no." So people can do stupid things with all sorts of voting technologies; and so we shouldn't think that they just fit into the electronic side — there are problems with paper systems, too.

MARGOT ADLER: Thad Hall is an assistant professor in the Department of Political Science at the University of Utah. Thank you so much for coming on Justice Talking.

THAD HALL: Thank you.

MARGOT ADLER: With every election come the polls — those prognostications that can fuel our horse race fever. But every poll comes with a margin of error. And during this primary season, one error in particular had pollsters scratching their heads. To talk about election polling, Susan Pinkas joins me. She directs the Los Angeles Times poll. Welcome to Justice Talking.

SUSAN PINKAS: Thank you.

MARGOT ADLER: One of the most surprising upsets in the primary season happened in January. Most pollsters predicted a big win for Senator Barack Obama in New Hampshire after his victory in Iowa. But then Clinton, of course, ultimately won the New Hampshire primary. A fellow pollster was quoted later in an article that I read saying, "Any shred of reputation that pollsters have for being accurate barometers of public opinion goes out the window." What was your reaction?

SUSAN PINKAS: Well, I think that was a little drastic statement that he said. Yeah, there was a blip on the polling screen, so to speak, on what happened in New Hampshire; and the polling industry is not really taking that lightly.

MARGOT ADLER: And so did you sit around with a whole bunch of different pollsters and sort of say: well, what happened and what are the theories, and...

SUSAN PINKAS: A few theories are that some polls stopped before it should have. Like if it stopped on Sunday they should've continued on through Monday, because there are a lot of changes going on in the last weekend. Some were looking at the likely voter modeling to make a more accurate estimate of who will actually vote instead of introducing error. And if you looked at pre-election polling it showed that there was maybe one in ten or maybe more than one in ten who were undecided — they didn't know who to vote for. And that there was a good number of people who that they could change their vote.

MARGOT ADLER: And what about the theory that I've heard over and over again that right now some 20 percent of American voters may not have a landline, they are mostly younger people with cell phones. Does that change the way polls work?

SUSAN PINKAS: It could. I mean, we just did a poll with cell phone only users, landline only users and ones that are landline plus cell phones; because cell phones is becoming an issue for us. And there have been many studies done to try to figure out whether cell phone users have different attitudes or opinions than those with landlines. Right now, we could say that there really isn't a difference in voting habits, but it could change at this time because of the 18 to 29 year olds, because so many of the younger people have cell phones and not landlines. And it might sway it a couple of points to one candidate or another.

MARGOT ADLER: We're seeing a lot of polls in this election season — in this primary season — and I'm wondering as someone who deals with this every day, what would you tell people that polls are best at telling us?

SUSAN PINKAS: Well, you know, it's unfortunate that most people are interested in the horse race numbers. I mean, you're going to get that on Election Day. When the polls close you'll know who's going to win. For me the most important part of polling would be the internals — why? Why is someone voting for a candidate? What are the demographics? Who is voting for them? Are women going to Clinton? Are the very educated going for Obama? Has there been a shift in those kinds of demographics where the women are now going for Obama? That would be an interesting story.

MARGOT ADLER: And you said earlier that the most interesting part of it was not the horse race but finding out sort of these other sort of larger issues. Do you worry that the poll numbers you put out there in the public do fuel the horse race and are problematic in that way?

SUSAN PINKAS: I don't think it's problematic, but it's a necessary evil. I mean, I know at one point we tried not to put the horse race numbers in a poll story, and then we were criticized for it. You know, why don't you have the horse race numbers up? So what we try to do in a lot of the stories is, let's say in the lead if something happens. You know, Obama has turned the race around nationally where Clinton was leading in our last poll, Obama is leading in this poll — and then not give the number. But then maybe further down — three, four, five paragraphs down — then give the number. And in that way you're able to give a little...

MARGOT ADLER: Well, you're able certainly to let people have to deal with the larger story before they get the facts.

SUSAN PINKAS: Exactly, exactly. And that to me is a really good poll story.

MARGOT ADLER: Susan Pinkas directs the Los Angeles Times poll. Thanks for coming on our show.

SUSAN PINKAS: Thank you.

MARGOT ADLER: How do you think we should vote? Weigh in at our website, JusticeTalking.org. This week the founder of our show, executive producer Kathryn Kolbert, is leaving. Justice talking was her idea and her creation. As a well known litigator who argued twice before the US Supreme Court, Kitty brought this show a wealth of ideas a strong belief in the power of civil argument and reasoned debate, and a love of the constitution. After eight years, she has decided to return to her first passion, activism. We wish her well and will miss her creative ideas and legal insight. Thanks for listening, we'll be back next week. I'm Margot Adler.