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FEDERAL ELECTION PRACTICES AND PROCEDURES

HEARINGS

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

MAY 3 AND 9, 2001

Printed for the use of the Committee on Governmental Affairs

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FEDERAL ELECTION PRACTICES AND PROCEDURES

THURSDAY, MAY 3, 2001

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson, Bennett, Lieberman, Levin, Durbin, and Carnahan.

OPENING STATEMENT OF CHAIRMAN THOMPSON

Chairman THOMPSON. Let's come to order, please. Good morning. Today, we began two hearings on election reform. Pursuant to the voters' decision to make us 50–50 in the Senate, Senator Lieberman and I agreed that we would work together to have a certain number of hearings of his suggestion, and try to schedule those on a regular basis. He has been extremely cooperative with me over the years, in scheduling hearings that we have scheduled, and I have tried to be just as cooperative pursuant to that arrangement, and this is the first hearing we have had pursuant to that arrangement, pursuant to Senator Lieberman's suggestion.

During the first hearing, we will discuss issues involving access to the polls, including problems with registration and voter rolls. On May 9, we will have a second hearing regarding problems people encountered at the polls, including problems with equipment, instructions and various irregularities.

The subject of election reform has been studied at great length over the last few months. There has been some criticism that this issue has not received adequate attention, that it has fallen by the wayside. I cannot agree with that. Already the Senate Rules and Commerce Committees have conducted hearings on the issue, and I believe both have more scheduled. The House Administration Committee is holding hearings. The House Democratic Caucus Special Committee on Election Reform has held public hearings and plans to hold more. The NAACP has conducted public hearings in multiple States on problems encountered in the last election, some of which have been carried by C–SPAN. The National Commission on Federal election reform has been organized with such distinguished members as former Presidents Carter and Ford, Lloyd Cutler, Bob Michel, Slade Gorton, and many others.

That commission is also holding several public hearings and will issue a report later in the year. The U.S. Commission on Civil

Rights held hearings and received testimony. I believe the Center for Governmental Studies at Virginia and Larry Sabato, one of our witnesses, has been holding public symposia on the issue and will release a report later this year. The League of Women Voters has also held public forums on the subject. I believe there are over 30 bills that have been introduced in Congress, and NBC has reported there have been some 1,200 introduced in State legislatures, which are also holding hearings on the subject.

So I think almost all of our witnesses today have participated in at least one of these various panels. So I do not believe the subject has been deprived of attention, especially as far as the factual allegations are concerned. Perhaps we can concentrate on solutions and decide maybe what we ought to do about this factual record that we have heard time and time again.

The fact of the matter is it is perhaps not as simple as a lot of people thought it would be, in arriving at correct solutions for these problems. In the first place, we have to decide what is or should be the Federal role in all of this. Under the Constitution, the Constitution has delegated to the States substantial authority in this regard, time, place, and manner and so forth, unless Congress chooses to act. Congress has acted to a certain extent. The question is should it go further now and step into these roles that have heretofore been the province of the States, or is it a matter of money, and if we are going to start sending money to the States to help clean up this process, should we direct it in a particular provision? In other words, should it be targeted, because we have decided better than what the States have been able to decide what the problem is and here is where the money ought to go.

So those are pretty tough decisions. Plus, I think, we are becoming more and more aware of the fact, those of us maybe—who were not as aware of the history on it as perhaps we should be—is that what we are seeing now probably, in my opinion anyway, is an example of what goes on in every election every year. We are going to have at least one witness talk about the legacy we have in this country. Unfortunately, over the years, we have had substantial problems and cause for both Democrats and Republicans and Independents and Whigs and everyone else, I guess, to complain at one time or another.

So we have thousands and thousands of locales in every major election where these potential problems arise. The big difference here, of course, is that this last election—we had an extremely close election and it was a Presidential election. So it is justly getting more attention, but it is not like these problems just started, by any stretch of the imagination. So that has to be figured into the equation, too, and I think Congress is rightfully not leaping in with something that changes something that has been a problem with us for a long time, and evidently one in which we have felt, up until now, that it is best to expose those problems and get the localities in which they exist, some year after year, in some cities in America, presumably—to get them to do something about it. So those are the issues, as I see them, that we are confronting, and they are not easy issues to deal with. Congress has received a great deal of testimony already describing how individuals were denied the opportunity to vote because their registrations were not proc-

essed in a timely fashion; they were mistakenly purged from the voter rolls and for other reasons.

Clearly, that is a problem that needs to be remedied. People who register honestly should be able to vote. However, it should be noted that voter fraud can be just as damaging to the electoral process as other registration problems. When people vote multiple times or under fictitious names, it dilutes the single vote of the honest individual. There are safeguards that I hope we will hear about today, that could be put into place to deter and prevent voter fraud, such as requiring identification at the polls, tightening rules on absentee ballots and putting in place a computer system that makes maintaining voter rolls easier and more efficient.

I think also one of the problems we have is that it is so easily turned into a partisan debate, one side saying you do not want people to vote and the other side saying you want people who are not entitled to vote to vote. But it appears to me that in the end, we all want the same thing, and that is we want those that are properly registered to vote to be on the rolls on election day. On the other hand, we want to protect the integrity of our elections by deterring and preventing voter fraud. Perhaps today we can continue the ongoing dialogue on these goals and come to a better understanding of how to ensure the integrity of our electoral process.

Senator Lieberman.

OPENING STATEMENT OF SENATOR LIEBERMAN

Senator LIEBERMAN. Thanks, Mr. Chairman, thanks for an excellent statement, and thanks also for agreeing to hold this hearing today and a second one next Wednesday, as you indicated, because the subject that we are about to explore could not be any more important to our national values, and I think could not be more directly related to the jurisdiction of this Committee which is, as you know, of course, in our rules, gives us jurisdiction over intergovernmental matters; and that, in one perspective, is exactly what the organization of elections is about, certainly national elections in which we delegate the rules and the administration of the process to State and local governments.

So I think this Committee has a very strong interest in this matter. Talking about interest in the matter, Mr. Chairman, you may remember that I had some personal involvement in last year's election. I hope you remember, anyway. [Laughter.]

Chairman THOMPSON. Good to have you back. That is all I will say. [Laughter.]

Senator LIEBERMAN. Thank you. I was thinking, when you were talking about the multiple voting, that I am grateful that the people of Connecticut voted for me twice, legally, last year, which enables me to have the honor of returning as your colleague on this Committee. But while I obviously would have preferred a different outcome to last year's election, that is not at all what this hearing is about. It is not about the outcome. It is not about Florida.

I dearly believe that what this hearing is and should be about is the much larger problem that we came across on Election Day 2000, that you spoke of, concerning our national voting processes; and, of course, we came across this problem because of the extreme

closeness of the election, certainly in Florida, where, whichever point of view you take, it was virtually a tie.

The fact is an enormous number of Americans, as we discovered last year across the country, were disfranchised. Many were denied access, as you said, to the polling booth because of a breakdown in the registration system; others cast ballots that were simply never counted. Either way, these problems strike at the heart of who we are as Americans, and I think call on us in Congress to try to do something to make sure that these problems never occur again, certainly not to the extent that we discovered they occurred last year, and presumably, as your statement indicated, have been occurring in elections for quite a long time.

Our Nation was founded upon and continues to flourish according to the essential principle of self-government. The authority of our self-governing democracy derives from the right of our citizens to vote. When that right is compromised, the strength and integrity of our democracy is diminished.

As the majority wrote in a 1964 Supreme Court opinion: "To the extent that a citizen's right to vote is debased, he is that much less a citizen." I would add that to the extent that a citizen's right to vote is debased, we are all that much less citizens.

Over our history, and most notably in the modern era, since the 1960's, we have struggled to remove barriers, both legal and practical, that have stood between citizens and their right to vote. The sobering lesson of last year's Presidential election is that the struggle for full voting rights is not over. Difficult as it was for some to believe, American still cannot take for granted that their votes will be counted or even that they will be permitted to cast a ballot in the first place when they clearly have a right to do so.

I have seen estimates that say that as many as 2.5 million ballots that were cast around the country last year went uncounted; and, of course, we will never know how many more Americans were denied even the right to vote because of registration problems and questions at the polls. We do have a pretty good idea of all the things that went wrong in different places: Faulty voting equipment failed to record voters' choices; voters received poor instructions or no instructions at all about how to mark the ballot or use the machines; poll workers hassled voters with a supposed 1-minute rule for voting or demanded to see identification from some voters, and here there were particular allegations about that being done to African-American voters, but not from others.

In some places, there were no ballots for non-English-language voters. Long lines prevented others with a time clock to punch or children to attend to from voting at all; and some disabled voters faced a disenfranchising lack of access to a polling machine or place. These were the problems confronted by those who made it into a polling booth, but in cities and towns across the country, registered voters or at least people who believe they were registered, were turned away at the polls by workers who could not find their names on the voting lists.

These mishaps are troubling, and, of course, have eroded the faith of many Americans in what they had assumed was their right to vote. That is clearly one of the reasons this Committee is holding this hearing and why so many others in Washington and through-

out America are exploring ways to reform our voting systems. We must together find a solution to this problem, so that we can achieve our Nation's ideal and restore our Nation's confidence, not only in every citizen's right to vote, but then, of course, to have his or her vote counted.

Today, as you have said, Mr. Chairman, we will address the problems voters had in reaching the polls; that is, in getting registered to vote and remaining on the rolls. Next Wednesday, we are going to look at the problems voters had once they got to the polls, in getting their votes cast and counted. In the last century, voter registration was actually the original barrier to the ballot, and according to news accounts last fall from States as far-flung and diverse as Maine, Virginia, Pennsylvania, Illinois, Florida, and elsewhere, it remains a barrier today.

In 1993, Congress passed the National Voter Registration Act, or Motor Voter, as it is known, with the intent of broadening the franchise by making it more accessible. The law was meant to make it easier for a potential voter to be added to the rolls, and harder for a voter to be taken off.

According to the 1999 Federal Election Commission survey, 75 percent of registration applications were submitted at motor vehicle departments, other State agencies, or by mail. That was a surprisingly large number to me, and impressively so. Voter registration was up 4 percent in 2 years, an addition of more than 7 million voters to the rolls, and I think that is an unequivocally good thing for American democracy.

Yet some States are obviously still struggling to keep their rolls clean, and to ensure that applications submitted at agencies like the DMVs are actually sent to the registrar with the necessary information; and the specter of fraud is often used to argue for restricting access to registration applications and for more frequent purges of the rolls. It is not a Hobson's Choice, I think, between open access or widespread fraud. I certainly hope not. Actual evidence of fraudulent voting, as you look at national patterns, is not great.

Innovation and planning can help to deter and detect voter mischief, and, of course, we must be persistent and relentless in pursuit of that. We are not a society governed by fear. We are a society governed by openness and freedom, and our ultimate priority has to be encouraging as many people to vote as possible. Local officials cannot and should not shoulder the blame for these problems. Most do the best they can with the resources they have. I think we all have to take some responsibility here.

In numerous public opinion surveys, the American people have expressed their support for improving the elections system, and I hope that these two hearings that we are holding, Mr. Chairman, will create some context in which we in Congress can go forward to do our part, and also join with the administration to find the necessary funds to facilitate State and local election reform.

Voting is at the heart of our political system. Our political system is also, largely and I suppose too often, a partisan system, and therefore efforts to change the rules or improve by some lights, confused by other lights, the way in which our electoral systems work, can always be touched and, in fact, derailed by partisanship. That

seems to have happened, in part, in the House of Representatives on this question this year, thus far.

Mr. Chairman, you and I have worked well together over a host of different problems, some even more controversial and potentially partisan than this one, and I hope that we and the Members of this Committee can set a similar tone here, in trying to find problems and correct them. I hope that we can move forward together and prove that even the *New York Times* was wrong in its recent editorial prediction, that election reform will become, "merely another partisan battleground." I hope not. The integrity of our national policy depends on us making more progress than that.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much. Senator Bennett.

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

I cannot resist making the comment that the *New York Times* is almost always wrong, at least on the editorial page.

Senator LIEBERMAN. You notice the representative of the *Times* chose to walk in at just that moment.

Senator BENNETT. Just that moment. That is why I added the comment about the editorial page, assuming this was a reporter.

Senator LIEBERMAN. I am going to repeat my kind words. [Laughter.]

Senator BENNETT. Close elections always bring out the difficulties in our system. When somebody wins by 65 percent, everybody relaxes and says, "Well, it does not really matter. The election was so overwhelming that if somebody was not allowed to get to the polls or if someone went to the polls and voted seven times, it does not really matter, because the decision was so decisive—the outcome was so decisive that we do not have to look at it."

This last election, arguably the closest in our history, throws a spotlight on all of the problems, and therefore I think it is appropriate for us, in the aftermath of the last election, to look at those problems. If I could go back in history for just a minute and give you an example of how this happens, we used to have a Senator around here known as Landslide Lyndon, and the history of Lyndon Johnson's being elected to the Senate was that he was actually elected twice before he got to take his seat.

He made the mistake in Texas, the first time he was elected, of releasing or allowing to be released the number of votes that had been cast for him, and that meant his opponent had time to scrounge up the necessary votes to defeat him. When he ran for the Senate the second time, he and his operatives made sure they would never release how many votes he had until the other side had released their votes, and it went late into the night, with each side holding back and holding back, until finally the then-incumbent Governor's forces said, "Well, this is how many votes we have." It was kind of like a poker game: "This is the card we have." And then Landslide Lyndon was somehow able to come up with 87 more votes at the last possible moment, having learned his lesson in the previous election, which is you never, ever release your total until you see the other person's total, because you can then go back and create new votes.

I think that was one of the most dramatic examples of how the election system in this country did not work properly, and no one will ever know how many votes Lyndon Johnson really got, and no one will ever know how many votes his opponent got. The historians that have looked at that have said, "Well, both sides were cheating enormously by the votes they were manufacturing, that we really do not know which side was more corrupt."

I do not think we had that kind of wholesale corruption in this last election, but because it was so close and because we were fighting for an electoral victory that turned on a single vote, it has thrown a spotlight on the whole question of who did not get to the polls and would that have made a difference, who went to the polls multiple times and did that make a difference, that we are having this hearing today; and I think it is appropriate that we explore all aspects of that.

One other comment; Senator Lieberman has mentioned Motor Voter. I am not expert in how Motor Voter has worked in other States. I talked to the people that administer Motor Voter in the State of Utah, and they consider, basically, it has been, at best, a waste of time and, at worst, a disaster; that it has not increased access to the registration rolls on the part of those who really want to vote. It has, in fact, cluttered up the rolls as some aggressive folks have gone after welfare recipients and said, "You will not get your welfare unless you register to vote," and the people who thus registered say, "What is this all about?" They have no interest in voting, and then somebody else may try to vote their names.

Now, fortunately, we have sufficient bipartisan poll watchers in the State of Utah, that has not happened; but at least in my State, the Motor Voter law has not contributed in any positive sense to increasing access to the election. One other comment; as we deal with this question of getting people into the polls, I note that we now have a Federal mandate, for which I voted, against some criticism, that says you have to present photo ID before you can buy cigarettes, and yet you do not have to present photo ID before you can vote.

You have to present photo ID before you can get on an airplane, but you do not have to present photo ID before you can vote. The days when all of your neighbors knew you, which is when our voter laws were written in the State of Utah; so that you showed up, the poll watcher took one look at you and said, "Yeah, I know who you are; go ahead and vote," are over.

We now have so many people showing up at the polling places that, I think, to add to the confidence in the outcome that Senator Lieberman talks about, we ought to consider some kind of mandate for a photo ID for people showing up, so that the arguments over who is this person and did this person really have the right to vote and so on, all disappear. You can present a photo ID the same way you do when you buy cigarettes. It can be checked off, the name can be recorded, and there can be no suspicion anymore that anybody is trying to do something that they should not do.

With that, Mr. Chairman, I will be happy to hear the witnesses.

Chairman THOMPSON. Thank you very much. Senator Carnahan.

OPENING STATEMENT OF SENATOR CARNAHAN

Senator CARNAHAN. Last November, when Missourians walked into the voting booth, a majority of them did something they had never done before. They voted for my husband, though he had perished in an airplane accident 3 weeks earlier. It was a defiant act on their part. It was a bold statement, but that is the way voters speak: "We will not be defeated. We will be heard," and that was the clear message that they wanted to convey.

You see, a vote is a voice. By itself, it is just a soft whisper; but combined with others, it becomes a thunderous roar. It is reported that the children of Israel, standing outside the city of Jericho, shouted with a great voice and the walls fell down. Well, the voice of voting Americans has leveled many walls of repression and injustice during the past 227 years of our Republic.

The 15th Amendment gave African-Americans a say in our government. The 19th Amendment gave the same right to women; and the 26th Amendment ensured that Americans considered old enough to give their lives for their country were counted old enough to vote in our Nation's elections. Yes, the voice of voters must be augmented, not diminished. We must continue to look for the most reliable ways to make the will of the voter known.

For that reason, I join with those today who call for electoral reform; and I want to say to those urging us to eliminate voter fraud and to punish those who abuse the system, that I agree with you most heartily. But far too many States and local registrars are handicapped by insufficient technology, so we must work harder to put systems in place that will help us maintain accurate voter rolls, and we must educate our citizens to understand what steps they should take to register properly; and we must make sure that poll workers are properly trained in their duties, making them better able to deal with potential problems that might arise on Election Day. To those who say we must live up to the promise of the Constitution and bring more people into the process, I say that I agree with you, as well. The struggle for suffrage has been too long and too costly to be sacrificed in the voting booth. Any barrier to the exercise of this hard earned right diminishes us as a free people.

There are several ways that we can make sure that we promote and not impede the voting process. We should implement uniform, statewide standards; modernize the voting process, including voting machines and other ballot technologies; and we should protect the voting rights of our Nation's military personnel.

I look forward to the testimony today, including that of the testimony of two distinguished Missourians, Senator Kit Bond and Congressman Lacy Clay, as well as to hearing from others who want to strengthen our democracy by reforming the electoral process. But as we listen today, I urge you to heed the words of Franklin D. Roosevelt, who said, "Let us never forget that government is ourselves, and not an alien over us. The ultimate rulers of our democracy are not the President or Senators or Congressman or Government officials, but the voters of this country."

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much. It is difficult to pursue these matters without talking about specifics, and it is dif-

ficult to seem like you are singling some situations out and leaving out others, but some have received quite a bit more publicity than others. One of those situations has been St. Louis, Election Day, and we do have with us a distinguished Senator and a distinguished Representative, to discuss those matters as to what may have happened, what happened, and what we might constructively do about it? So we are delighted to have leading off today Senator Christopher Bond.

Senator Bond, do you have a statement?

TESTIMONY HON. CHRISTOPHER S. "KIT" BOND,[1] A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator BOND. Thank you very much, Mr. Chairman, distinguished Ranking Member, my colleagues from Illinois, from the State of Missouri, Delaware and Utah. I thank you for giving me the opportunity to testify today. No one wants their State to be the poster child for a problem. No one wants their home town to become a laughingstock, so it is with much dismay that I come before you today, to describe what has gone on in the City of St. Louis, and what is going on with some reforms that I think are vital.

Over the past months, many Americans saw for the first time how actual vote counting is done—or not done. We have had a real-life civics lesson, and those of us in positions of responsibility need to fix what needs fixing, reform what needs reforming, and prosecute where actual wrongdoing has occurred.

Voting is the most important duty and responsibility of a citizen of our Republic. It should not be diluted by fraud, false filing in lawsuits, judges who do not follow the law, and politicians who try to profit from the confusion.

At the same time, voters should not be unduly confused by complicated ballots, voting rosters, or confounded by inadequate poll lines or voting booths or other facilities, in an effort to vote.

Mr. Chairman, I want to make one simple point as I begin. Vote fraud is not about partisanship. It is not about Democrats versus Republicans. It is not about the north side of St. Louis versus the south side of St. Louis. It is about justice. As has already been said by the distinguished panel, vote fraud is a criminal, not a political act.

Illegal votes dilute the value of votes cast legally. When people try to stuff the ballot box, what they are really doing is trying to steal political power from those who follow election laws.

The Missouri Court of Appeals recently wrote: "Equal vigilance is required to ensure that only those entitled to vote are allowed to cast a ballot. Otherwise, the rights of those lawfully entitled to vote are inevitably diluted."

St. Louis City Democrats had this to say over the past few months, my own friend, State Representative Quincy Troupe: "There is no doubt in any black elected official's mind that the whole process has discouraged honest elections in the City of St. Louis for some time. We know that we have people who cheat in every election. The only way you can win a close election in this town, you have to beat the cheat."

[1] The prepared statement of Senator Bond appears in the Appendix on page 123.

St. Louis' outgoing Mayor Clarence Harmon: "I think there is ample, longstanding evidence of voter fraud in our community."

Eleventh Ward Alderman Matt Villa: "Who knows who did it, but it is apparent they are trying to cheat and steal this election."

What we have seen in St. Louis over the past few months has been nothing short of astonishing, and that's why I say a laughingstock. We have had dead people registered, and, yes, even a dog, Ritsy Meckler. Ritsy was on the poll list for 6 years—do not know how many times she voted. We have had fake names registered. We have had people registered from addresses which are vacant lots and voter rolls with more names than there are people of voting age in the City of St. Louis.

A city judge violated State law by providing extended voting hours just for a few selected polling places with an overwhelming dominance of one party; and allowing voters going to the polls to vote, even though they are not registered. We have discovered in our ongoing review another major problem in St. Louis. The voter rolls are so clogged with incorrect or fraudulent data that legal voters are shortchanged. St. Louis City actually has more voters listed on its voter rolls than the voting age population in the city, over 100 percent registration rate. That is amazing, but not surprising, if you have dogs and dead people registered.

Equally amazing, we discovered, in the City of St. Louis, 1 out of every 10 registered voters is also registered somewhere else in the State. In fact, over 24,000 people are dual-registered in St. Louis City, as well as somewhere else in Missouri. My staff reviewed almost 17,000 multiple-registered names, found that 12,420 had moved out of the city and registered at new addresses; 487 voters were actually registered twice in the city itself; 285 voters were registered three different places, and of these, 285 were actually registered three times in St. Louis. Three voters were registered at four different places in this State. It gives you a real opportunity to participate in an election.

It is painfully clear that the registration system is broken and desperately needs repairing. We have seen all kinds of illegal registration schemes. A city grand jury in St. Louis is now investigating 3,800 voter registration cards dumped on the election board on the last day to register before the March 6 primary. Press reports noted that at least 1,000 were bogus registrations for people already registered, and, of course, some were the deceased public officials. Now a Federal grand jury investigation is underway as the FBI recently issued a subpoena to the St. Louis Election Board for all records pertaining to any person who registered to vote between October 1, 2000 and March 6, 2001; it also requested all records of anyone who cast absentee ballots or regular ballots during that period, as well as anyone turned away from the polls and barred from voting.

Mr. Chairman, I think it is obvious there has been brazen fraud with these bogus voter registration—dead people, fake names, and phony addresses. The system is being abused. Because nearly all of these fraudulent registrations were mail-in forms, I would urge the Committee to make real reforms in the Federal law in this area. At a minimum, States need to be given the authority to re-

quire on a mail registration form a place for a notarization or some other form of identification.

Current Federal law prohibits States from including this safeguard. That is one area where Federal law is an impediment to anti-fraud efforts. In addition, election boards need time to review cards, as they are most likely to be brought in on the last days of registration. Given what we have seen the past months, same-day registration would be an absolute invitation to fraud.

As the Missouri Court of Appeals wrote when they shut down the improper efforts to keep certain polling places open on election night in November, 2000: ". . . Commendable zeal to protect voting rights must be tempered by the corresponding duty to protect the integrity of the voting process. . . . Equal vigilance is required to ensure that only those entitled to vote are allowed to cast a ballot. Otherwise, the rights of those lawfully entitled to vote are inevitably diluted."

As I noted earlier, I believe it is our duty to fix what needs to be fixed, reform what needs to be reformed and prosecute where necessary. Criminal investigations are ongoing. I hope if criminal violations are found, they will be prosecuted, but we must get a handle on voter rolls.

People who register and follow the rules should not be frustrated by inadequate polling places, phone lines or confused, out-of-date lists. At the same time, we must require voter lists to be scrubbed and reviewed in a much more timely manner, so that cheaters cannot use confusion as their friend.

States should be permitted, when voters come in after having registered by mail for the first time in a Federal election, to present a photo ID, as my colleague from Utah has said, to indicate that they are who they say they are; that they are not a dog; that they are not dead; that they do have a real, physical presence. I do not want the City of St. Louis to continue to have a lasting regulation as that described by Representative Troupe: "The only way you can win a close election in this town, you have to beat the cheat."

Unfortunately, some of the provisions in Federal law make it difficult to ensure honest elections. We have had investigations by the outgoing Secretary of State in Missouri. The newly-elected Secretary of State in Missouri is continuing those investigations. I believe the Missouri General Assembly will be acting on recommendations for State improvement in voting procedures, and I think that is where much of the reform needs to be done, but we at the Federal level must be sure that our Federal requirements do not impede the ability of State and local officials to ensure that the election process is honest, that all eligible voters are allowed to vote, and no one is allowed to vote illegally.

I thank the Chairman.

Chairman THOMPSON. Thank you very much, Senator. You mentioned the Federal prohibition on States providing for a place for a notarization on a registration. Is that what you referred to?

Senator BOND. Yes, sir.

Chairman THOMPSON. Are there any other Federal provisions you think would bear revisiting, that present a problem. It seems

to me like most of the things that you have listed still remain under the purview of the local election officials.

Senator BOND. Well, one of the things that makes it more difficult is when you have inaccurate voter registration lists if you have registered, and it is a mail-in registration, the election authority, the local election authority, sends out a notice to the voter, and under the Motor Voter law, if that notice is returned as undeliverable, then you cannot remove that voter from the list until they have not voted for two elections.

It would seem to me that States should be given some greater leeway. The States should not be hampered in their ability to clean up the rolls. That is one of the most important things I think is needed, and I would require before a voter casts a vote in a Federal election. If they have voted by mail—if they have registered by mail, they should be required to vote in person and show a photo ID when they come in to vote. That would at least get the dog off the rolls.

Chairman THOMPSON. Would that be in any way prohibited under Federal law as it now stands, in your opinion?

Senator BOND. Well, there is some question about what Federal law would permit or prevent. I think the requirement should be a Federal requirement, if we have required that voters be allowed to register by mail, I think we ought to build some safeguards into it. The City of St. Louis, after the tremendous attention focused on the voting in the general election of November 2000, required photo IDs; and they found that the system worked surprisingly well. There was great concern about fraud, because it was really an important election. It was a mayor's primary election. It was not one dealing with Presidents and Governors and Senators and Congressman. It was about jobs in St. Louis City. So they took that very seriously.

Chairman THOMPSON. In the general election, there was a lawsuit filed, as I recall, to keep the polls open. That was upheld by the local Federal District Judge, as I understand it, and overturned by the Court of Appeals. What was the nature of that lawsuit and the circumstances surrounding that; and what was the significance of that lawsuit with regard to this election?

Senator BOND. That is an old-time Missouri custom. Prior to my election as Governor in 1972, there was an anomaly in 1940. A Republican was elected, apparently elected, Governor of Missouri. Challenges went on until March of that year. He was finally seated, but he was the only one between the Depression and 1972. In 1972, I ran for Governor against Mr. Dowd, a leading official in the City of St. Louis. And we found on election afternoon an order was issued keeping the polls open in the City of St. Louis, and they stayed open and they stayed open. Finally, after midnight on election night, November 1972, when enough votes came in from out-of-state to give me a margin greater than all the voters in the City of St. Louis, the polls were allowed to close.

So this time around, we were very interested when we read in the paper the morning of the election that there were plans to keep the polls open. I asked that lawyers be prepared to go in to challenge that, and sure enough an order was entered on the election afternoon. The Gore-Lieberman campaign filed a lawsuit on behalf

of Robert D. Odom, who claimed in court that he has not been able to vote and fears he will not be able to vote because of long lines at the polling places and machine breakdowns. His attorney said Mr. Odom is here and prepared to testify. He was denied the right to vote based on the allegations of the petition. We found out a little problem: Robert D. Odom had passed away 2 years previously.

His lawyer then came back and said that our team was just wrong; we cannot even keep the voters straight. What they really meant was that it was Robert M. Odom, who is known as Mark Odom. Well, it turns out that Mark Odom had already voted before the lawsuit was filed. So he probably would have a tough time testifying truthfully that he was afraid he would not be able to vote. About that time, recorded calls, which had been prepared by Reverend Jesse Jackson, started coming in to the City of St. Louis, saying you can vote until 10 o'clock, the polls will be kept open, and if you want to vote as late as midnight, you can go to the city election board.

It strikes me—it strikes one as perhaps having been planned. There was a charge that, somehow, the St. Louis City Election Board, which was democratically appointed, although it is supposed to be bipartisan, approved by the Democratic Senate in a city, the City of St. Louis, which is 4–1 Democratic, that the election board was somehow taking steps to deny Democratic voters the right to vote for Democratic candidates. It seems to me that one does not pass the laugh test. This was a major effort consistent with what had been done in the past. Fortunately, the Missouri Court of Appeals overturned the Missouri trial judge's order and closed the polls within about 45 minutes; but we found the other evidence, as we looked at the election, of questionable registrations, some 30,000 voter registration postcards were dropped in a month before the election, right on the close of the registration, and we understand that some 17,000 of those people voted. We do not know all the details, but there was a major effort, I believe, to change the will of the people as it had been expressed by those lawfully voting as eligible voters during the time when polls were supposed to be open.

Incidentally, a similar suit was filed by Gore-Lieberman in Kansas City, to keep polls open there. That application was denied by the court in Jackson County.

Chairman THOMPSON. Thank you very much. My time is almost up. Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman. I do not know enough about the situation that Senator Bond describes in St. Louis to get into the details, but I do want to try to draw from it a few lessons for our concern, because it does highlight some of the choices we have to make. Obviously, if I heard you correctly, Senator, there were more names on the registration lists in St. Louis than there were voters of voting age.

Senator BOND. That is correct.

Senator LIEBERMAN. So, as I believe you said, obviously, the first thing necessary there was to clean up the list.

Senator BOND. That is correct.

Senator LIEBERMAN. In other words, the number of voters shows that there is clearly a problem, but not inherently that there is

fraud, based on that list, because a lot of people continue to move. Young people, minorities, etc., tend to move more frequently. Is there any indication on the record in St. Louis why the lists were not cleaned up?

Senator BOND. One of the things is that Federal law makes it difficult to clean them up. You have to, if they mail a notice to you and it is returned, you cannot take voters off the rolls until they have not voted in two consecutive elections. So the city election board, the State, cannot develop more effective means for cleaning up the election rolls; and there is evidence, I believe, before the grand jury about possible abuses of the votes. But, again, that will await final determination by either the circuit attorney or the U.S. Attorney relying on the work of the FBI. I do not have any—I cannot give you a specific example of any crime that was committed there.

Senator LIEBERMAN. I must say that the more I get into these kinds of cases, the more I get focused—because of the difficulties on the voter registration lists—on what we can do at the polls to make it easy for people to, if they come, to vote, and the photo ID is one possibility.

I know that there has been criticism or concern expressed about that, because not everybody has a photo ID, and I believe there is a court case—I think it might have been Louisiana—where is says you can require a photo ID, but in the alternative, if a person does not have it, they have to sign an affirmation under penalty of perjury that they are who they say they are. How would you feel about that combination?

Senator BOND. If there is a means of identifying that person through affirmation and a notarized application—if there is a means for the election board or the election authority and the prosecuting authorities to follow up on it, then that would seem to work.

If, however, you are engaged in a wholesale vote scam, it may be difficult if people have been brought in from other areas. Of course, you can also manufacture a phony ID. For every better mousetrap, there is a smarter mouse. But we need to have, at least, some decent mousetraps in place that would make it more difficult and threaten the wrongdoer with some kind of criminal activity—punishment.

Senator LIEBERMAN. Part of the balance here I think we are all dealing with is you obviously do not want to tolerate voter fraud. In fact, you want to punish it and deter it by any means you can, but you do not want to do so much that you are ending up discouraging or making it harder for people who have a legitimate right to vote, to vote; and that is the balance, I think, we are looking for.

Whenever I heard the numbers that came out last year nationally, that as many as 2.5 million people cast votes that were not counted, not to mention those who did not get to vote when they came to the polling place, my guess is—and this is a totally unscientific guess—that the number of those who may be voting fraudulently, which is unacceptable, is much less than the number of those who are coming to vote and not getting to vote or having their votes counted, and we have got to find a way to balance that.

One of the ways that people have talked about is either provisional registration or same-day, election day, registration, which exists in—each of those ideas exist in some other State. Provisional registration is somewhat similar to the affirmation we have talked about, where you show up at the poll, you sign your name, you affirm your citizenship, your age, your address, and you sign a document, again under the penalty of perjury. If, afterward, as the registrars have the chance—in other words, when you are challenged, you can resolve the challenge quickly and vote by provisionally registering right there, and then it is understood after that, there will be an investigation by the registrar. Your vote will not count until that investigation is completed, or the other, of course, is same-day registration, which existed in at least one State. I have forgotten which one right now. What would you think about those two ideas?

Senator BOND. I think they are open invitations to fraud. Unfortunately, it is very difficult to clean up the registration rolls when we have a month between the close of registration and actual voting day. There are instances, I believe, too many instances where people have voted twice and they have never been prosecuted. That is against the law right now, but it is difficult, after the election is over, to get people to go out and make the investigations.

I think we ought to do a better job of prosecuting where these fraudulent activities have occurred. There is information that we have turned over, where it appears that a number of people may have voted twice. Generally, this is not regarded as a serious crime. Voting twice is just showing a healthy appetite for participation in the electoral process. I do not think it is a healthy appetite.

Senator LIEBERMAN. I am sure all of us agree with you.

Senator BOND. I think it is one that is a crime, and same-day registration or provisional registration, I think, would increase the number of people attempting to vote numerous times.

Senator LIEBERMAN. I look forward to asking some of the expert witnesses on the panels that follow about that, because I believe that has not been the case in the places where it has been tried. I do not have any further questions. My staff just handed me a copy of an article from the *St. Louis Post Dispatch,* January 6, 2001, which reports on an investigation of this election that you refer to in St. Louis, by the former Secretary of State, Becky Cook, and this is in regard to the polls being kept open after 7 p.m., that apparently fewer than 100 people actually voted after 7 p.m., when the polls were kept open because of a court order, which was not enough to sway any of the elections being held there.

So, thank you, Senator Bond.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much. Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

You talk about Missouri. One of the books I have read in my lifetime was the biography of Harry Truman, by his daughter, Margaret, and you trigger a memory here. In that book, she is somewhat defensive of her father's good friend, Tom Pendergast, and describing one of his elections, she goes on at great length about how corrupt things are in St. Louis, where another political boss, whose name I cannot remember, was running up a huge anti-Truman majority, and it was clearly fraud, because there were 89 percent, 90

percent of the voters in St. Louis in this Democratic primary voting for Truman's opponent, and that kind of thing could only be achieved by fraud.

But, she says in the book, good old loyal Tom Pendergast did his best, and in Kansas City, they got 91 percent and Truman got elected, and I thought, now, wait a minute, that is the way politics is played, and you have given us an indication that Missouri does have some of that history.

I want to raise with you this possibility and get your reaction to it. As we talk about voter fraud and, frankly, voter problems, the access problems to which Senator Lieberman referred, they seem almost always to come in big cities. This is where anonymity is. Again, you go back to my district in Utah, when I walk in there, everybody knows me. We do not get that concerned, because we do not have the kind of anonymity that comes in what the social scientists call the Lonely Crowd.

I hear anecdotes, do not know how true they are, about Chicago. We do know, in the 1960 election, there were more votes cast than there were people living in some districts, and the ballots were destroyed within 24 hours of having been counted. So there was no way to go back and deal with it.

The story is told in Boston about the election official. The press approach him and say, "Do you own that triplex at such-and-such an address?" And he said, "Yes." They said, "According to the voting registrar, there are over 300 voters at that address and there are only three apartments, 300 voters. How do you explain that?" He said, "Very simple. Haven't rented out the third floor yet."

I have been told that, in Philadelphia, they do it differently than the way you have described in St. Louis, and in Philadelphia there are some precincts where, at 8 o'clock, they close the doors very promptly, and then they go to the back of the machine, open it up, find out how many votes short of registered voters have been cast, go back to the front of the machine, grab the favored lever, and pull it 75 times or 87 times, or however many necessary to bring the vote up to the established number of registered voters.

It seems to me, as I think about these examples, the problem arises from the fact that in many of these precincts there are not, in fact, poll watchers for the other party. If you have one party running the poll, absolutely, even if you have photo ID in place, even if you have the laws in place, the opportunity to do what I have just described is always there because there is no one watching.

In contrast, in Florida, there were lawyers for both sides, watching every single dangling chad, so that nobody could really get away with anything. Indeed, even better than that, the television cameras were there. As I talked to some of the people that were monitoring what was happening in Florida, they said the results changed, whether the television cameras were there or were not, that one candidate would surge when the cameras were turned off, and then would not do so well when the cameras were turned on.

This kind of sunshine exposure seems to me to be the solution, both to too long of lines. If lines are too long and the people cannot vote, the party that thinks, "Gee, we are being disadvantaged by that," will be the one that will speak out, accurately and proper.

But if there is only one party there and they can say, "Well, we are going to go do what we do in court or whatever, and nobody is watching us," that is where you get the difficulty.

First, I would like your response to that, and then assume that you agree with me that accurate poll watchers of both parties will help solve both the fraudulent problem and the access problem. How do we do it from the Federal level? Are we talking about funding federally-paid poll watchers, things of that kind? I have not thought that one through, and I would appreciate your reaction.

Senator BOND. I would agree with you on the importance of sunshine and full disclosure and coverage. I would agree with you that true partisans representing both parties or more than two parties, if that is the case, are essential. I do not think the Federal Government is going to be able to go out and select poll watchers. The voting mechanisms are basically controlled by the States. The States are the entities responsible. The local election boards—we have boards in St. Louis City and County, and Jackson County. We have county clerks in other parts of the State. They have to be responsible.

I think it is incumbent upon the parties to make sure that they have *bona fide* representatives of their parties available at every polling place and, to some extent, there have been instances, I know in Missouri, where there have not been, where the Republican Party has not put up good poll watchers. I would agree with you, as I said, that having coverage is vitally important.

I believe the coverage resulting from the questions raised about the November election may have made the mayor's primary in St. Louis, Missouri, in 2001, perhaps the cleanest election it has ever had. I hope they might like it and continue to try it in the future, but I think the scrutiny of the media and the media in St. Louis, with help from other media around the State, have focused attention on it, and that is one of the best disinfectants, is to publicize the wrongdoing.

I would say with respect to lengths of polls, there are areas where—Republican areas of the State—friends of mine waited an hour and 45 minutes, 2 hours, anecdotal. This is unacceptable, whether it is in a Democratic area, a Republican area or an evenly divided area, and that is something that the Missouri Secretary of State, the general assembly, the local election officials, must look at to make sure that you have adequate polling places and adequate equipment, so that everybody who is an eligible voter who presents himself or herself for an election, has the opportunity to vote in a reasonable time.

There were cases where people I know had to go to work and left the polls after an hour or so, because they were still too far away to vote, and those people were not able to vote, and this is a problem. This is unacceptable, whether it is a partisan area or a bipartisan area.

Senator BENNETT. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much. Senator Durbin.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. Thank you, Mr. Chairman. I am glad you are having this hearing. There cannot be a topic that is of more impor-

tance and more timely than to talk about how elections are run in our country and whether they are fair.

I still think, as we travel around, that we find a lot of people are harboring anger and resentment over what happened last November. I think we have an obligation, both parties have an obligation, to try to make this system better. But I think it is worthwhile at least for a moment or two, to reflect on the history of this debate and this issue, and I see that Ralph Neas is going to be making note of some of this in his testimony. But after the Civil War and Reconstruction, what happened across America, particularly in the South, was something which was reprehensible.

It was a coordinated effort to make certain that people of color did not have a chance to vote, and it worked. It worked effectively, with poll taxes and literacy tests and, "cleaning up the rolls," they virtually disenfranchised African-Americans in this country. In the 1960's, as part of the civil rights debate, one of the most important elements was our decision to really put an end to that practice, and to say that wherever you lived in this country, black, white, or brown, you had a right to vote as an American.

That Voting Rights Act, I think, really spoke to some basic values in this country, and values we should not forget. In 1993, we updated that earlier Voting Rights Act, to try to make it easier for people to have a chance to vote in this country. I do not disagree with Senator Bond's suggestion of a photo ID. I think there are ways we can deal with that, and I hope we will. I hope, during the course of this conversation on our elections, that we will try to get rid of some of the haphazard procedures that are used for registration across our country.

How in the world can we countenance all the obstacles we throw in the paths of people who just want to exercise their right as Americans to vote? How can we explain to them that when they come to the polling place, they are going to face voting machinery that is virtually antiquated? Over 120,000 voters in Cook County did their civic duty, took off time from their job, went into the polling place, cast their votes, and they were not counted because the machinery there is so bad. What a coincidence that the worst voting machinery in America happens to be the voting machinery used the most by minorities. That is a fact.

But there are other problems in the system, too. Thousands of voters in Republican DuPage County were disenfranchised because the Motor Voter rolls and the regular rolls in that county were not reconciled. Good, strong Republican voters, Senator Bond, were turned away. They did not get their chance to vote, either, and we should be ashamed of that. At this time in our history, when we have the technological capability to not only register people and do it effectively, and give them a means to vote effectively, it is disgraceful that we are ignoring it.

I think of some of the people that have taken the time to meet their civic responsibility, who must be so angry and frustrated at what they ran into in the November 7 election. I hope that we can do something about this, and I hope we can do it on a bipartisan basis, and I can tell you from the experiences in your home State of Missouri and my home State of Illinois, the State legislatures

are not giving us much hope that they are going to address it at all, not at all.

Now, here is our challenge. If this is truly a national value and a national right and a national principle, can we really surrender all jurisdiction to the maintenance and coordination of the elections to local and State officials, and expect anything other than the haphazard results we have seen? If we want to purge the rolls of any people who should not be on them, and I certainly do, who are illegally and dishonestly trying to vote more than once or vote when they are not entitled to, then frankly we have to talk about national standards.

We hate to do that. We like to leave all this authority at the State and local level, and look what you end up with: People who are conscientiously trying to exercise their right to vote, trying to figure out what in the world is going to meet them if they turn up at the polls to vote. One last point I want to make: 24 million Americans are illiterate. Tens of millions of Americans have limited skills. They walk into a polling place once every year or 2 years. They are handed some instructions and a piece of machinery with a long line behind them and told quickly vote and let's get going.

They are trying to do their best, and we ought to be able to create a process in this country where a person with a limited education, limited experience, still has a chance to be a full-fledged American. I think that is part of what our mandate should be as a result of these hearings.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much. Senator Carnahan.

Senator CARNAHAN. No questions at this time.

Chairman THOMPSON. Thank you very much, Senator Bond. We appreciate your being with us today.

Senator BOND. Thank you very much, Mr. Chairman and Members of the Committee.

Chairman THOMPSON. We will now proceed with Representative Lacy Clay. Welcome to the Governmental Affairs Committee, Congressman; appreciate your being with us today. Please proceed with your testimony. Your written remarks will be entered into the record in their entirety.

TESTIMONY OF HON. WILLIAM LACY CLAY,[1] A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. CLAY. Thank you, Mr. Chairman, Senator Lieberman, and distinguished Members of the Committee. Thank you for allowing me this opportunity to detail the election problems that occurred in the City of St. Louis during the November 2000 Presidential elections, and to add my voice to those calling for meaningful and comprehensive election reform.

Last November's general election in the City of St. Louis exposed a voting system that is riddled with serious election procedural mistakes, major deficiencies in poll worker training, obsolete and inadequate equipment, and gross errors in maintaining accurate voter rolls that resulted in the disenfranchisement of thousands of qualified voters in my district.

[1] The prepared statement of Mr. Clay appears in the Appendix on page 131.

These factors led to an election conducted amid widespread voter chaos at polling places throughout the city, the result of a record voter turnout and the arbitrary and capricious removal by the St. Louis Board of Elections, of over 50,000 qualified voters from the city's active voter rolls. When these voters, most of whom were African-American, arrived at the polls to cast their votes, they were told by election officials they were not on the active voter list and that they would not be allowed to vote at their normal voter precinct.

Due to inadequate communication between polling precincts and the central election office, election workers were unable to verify the eligibility of these voters. Additionally, poll workers did not receive training for dealing with these situations, so they ultimately directed all of the affected voters to go to the central election board office downtown, to verify their status.

The resulting confusion at the central election office led to a near-riot as thousands of eligible voters attempted to cast their vote, some to no avail. To make matters worse, while the election board was clearly unprepared for the massive voter turnout, they were also slow to react to the growing voter confusion they created as the day progressed. Equally troubling was the election board officials' resistance to reasonable remedies designed to ensure that every qualified voter be afforded the opportunity to cast his or her vote without obstruction. Clearly, such a situation cannot and must not be tolerated. Such conditions not only create confusion among voters, they also threaten the integrity of the electoral process itself.

It is imperative that Federal, State and local officials join in a common effort to reform how we conduct our elections. The Nation should never again be subjected to the voting travesty of the last Presidential election. The system is broken and it is time that we admit it and work toward common sense solutions.

First, we must take legislative action to provide the necessary funds for modern, state-of-the-art, uniform voting equipment, paying particular attention to lower-income communities that have long been burdened with outdated and obsolete voting equipment; and to the maximum extent possible, we must mandate uniform ballot designs and eliminate the current 40-year-old punch card system. We must also require that local election officials develop comprehensive training standards for their workers, and hold them accountable for implementing such training.

Last, and most importantly, we must mandate election procedure reform to ensure that qualified voters are not arbitrarily or inadvertently removed from active voter rolls. This was a major failure in the City of St. Louis, and I suspect the situation is widespread across the country. Voters should not continue to suffer disenfranchisement because election officials are unwilling or unable to safeguard their fundamental right to vote. If we fail to act now, we will not only inflict further damage to the democratic process, we will also fail in our sworn duty to protect and defend the fundamental rights of every citizen.Thank you, Mr. Chairman, and I will yield for any questions at this time.

Chairman THOMPSON. Thank you, Representative Clay. The 50,000 voters you were talking about, are those voters who showed

up at the polls and were determined to be—or later it appears that they were inactive voters, and the people at the polling places only had lists of active voters, they had no lists of inactive voters?

Mr. CLAY. No. The inactive voter list was compiled illegally by the St. Louis City Board of Election Commissioners. Now, under the Motor Voter Act, there is a method of compiling and purging voters from the rolls. The St. Louis City Board of Election Commissioners, if you go to the Cook report, the former Secretary of State's report, in Exhibit B, it will tell you that the St. Louis City Board of Election Commissioners illegally compiled this voter list, did not follow NVRA, did not follow the Voting Rights Act, and so, therefore, they compiled an arbitrary list and did not distribute it properly to poll workers, to poll judges.

So, when they showed up, they had the list for the entire city, and if your name was on that list, you were told that you could participate. Now, the criteria for making the list was that you had not voted in the last 6 years. Mr. Chairman, because you did not participate in an election in the last 6 years does not preclude you from voting. I am sorry. If you register one time in your life, you are qualified to vote.

Chairman THOMPSON. Well, the law, though, provides for a purging after a certain period of time; does it not?

Mr. CLAY. Yes, it does.

Chairman THOMPSON. Then you are not on the list, and then you cannot——

Mr. CLAY. No, then you are actually purged. However, in this case, the city election board did not follow Federal or State statutes to actually purge the voter. They had an arbitrary list that was there to more or less discourage voter participation, but not to actually purge those voters.

Chairman THOMPSON. You actually think those local election officials there in St. Louis were trying to discourage people from voting?

Mr. CLAY. That was the ultimate use of the list, and what happened on Election Day was that those people sought to exercise their constitutional right to vote, and so they follow the judge's instructions, to go to the central office downtown. They went downtown, insisting of voting, and there was a near-riot downtown, Mr. Chairman.

Chairman THOMPSON. Well, my understanding is that if there is no activity with regard to a voter in a certain number of years, you are put on an inactive list. You are not purged yet, but you are on an inactive list. You can still vote, and that is where the confusion was. They had an active list, but they did not have an inactive list, and some people were turned away that should not have been turned away.

Mr. CLAY. That is accurate, Mr. Chairman.

Chairman THOMPSON. You heard Senator Bond's testimony of what appears to be massive fraud or attempts at fraud. Do you generally subscribe to the extent of the problem there with regard to that last election?

Mr. CLAY. I am very disappointed at the mischaracterization of the election process in the City of St. Louis. Having been on the ballot for about 20 elections myself, I was never taught that you

had to cheat to win an election. We do not subscribe to that. I agree with everyone in this room that any fraudulent election activity should be prosecuted to its fullest, and so I am disappointed at the characterization of my hometown and its election process.

You do not have to cheat to win, and that is one thing I have always been taught and one thing that we have always followed in our politics. You do not need to cheat to win, you just turn out your vote. You get the maximum number of people out to the polls and beat your opponent. That is what elections are all about. That is what the American process of electioneering is all about. So I am really disappointed at the characterization that I have heard here today.

Chairman THOMPSON. You mentioned, and other Members up here today, have mentioned the problem with regard to the equipment, and the heavy implication, anyway, is that it is more than perhaps a coincidence that faulty equipment shows up in some places or better equipment shows up in other places. I was looking at a study conducted by Dr. Steven Knack, University of Maryland, along with Professor Martha Kroft, from the University of Missouri, Kansas City, and I guess the best way to refer to this is Mr. Knack's statement before the Rules Committee, and he said this: That their study showed first that nationally racial differences in punch card use across the country are negligible; 31.9 percent of whites and 31.4 percent of African-Americans live in counties using punch card equipment.

First, controlling for county size and other factors that affect the type of equipment in use, it turns out that a higher percentage of African-Americans actually is associated with a significantly lower probability that counties use punch card voting equipment. Second, African-Americans are more likely than whites to live in counties using electronic voting or lever machines, the two types of equipment in which overvoting is impossible if the equipment is programmed correctly.

Third, Hispanics are more likely to live in punch card counties than blacks or whites. This disparity is entirely attributable to the use of punch card voting in Los Angeles County. Fourth, based on Presidential voting patterns in 1996, Democratic and Republican voters across the country were equally likely to live in punch card counties. He further says public resources do not seem to matter much. Counties with punch card systems tend to have higher incomes, higher property tax revenues per capita, and larger populations than do counties with more modern voting equipment.

In counties using electronic voting systems, the most expensive type, income and tax revenues are actually lower than in counties using punch card or other type of voting technology. Florida fits this pattern. In Florida, it is the largest and richest counties, with the highest property tax revenue, that tend to have punch card equipment. I was wondering if that is an accurate study, that funds might be better spent in modernizing our registration system.

Of course, any comments you might have about that, but do you support setting up a centralized, statewide database, for example, in Missouri?

Mr. CLAY. On the issue of centralized database, sure, I would support that wholeheartedly. The system should be that if you reg-

ister in one locale, then you should be purged from the other locale. In order to do that, you would need a statewide database. On the issue of punch cards, we know that is the one voting device that gave us the most difficulty in November 2000, nationally. Having voted myself since 1974, since I was 18 years old, never missed an election, always voted in the City of St. Louis, I have never voted on any type of machine but a punch card machine.

So electronic voting, maybe we need to find a uniform system of voting, and maybe it is electronic, because it seems to me that the punch card gives us the most difficulty. It allows for more confusion with the butterfly ballot. So, therefore, I would look for a uniform system of voting nationally.

Chairman THOMPSON. Thank you. Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman. I was interested in that study you read, and I would actually like to take a look at it, but I do remember that part from where the different voting machines were; that there was a study awhile ago, within the last 3 or 4 weeks, in *USA Today,* that said that African-Americans in this country had a four times greater rate of uncounted votes cast than other voters. That ought to be a focus of our inquiry here. Obviously, some of it was the voting machines or processes. Some must have been other factors, but that was a stunning number to me when I read it.

I appreciate your testimony, Congressman Clay. I am curious as to—there was reference earlier to the March election in St. Louis—whether you saw improvements in that election from last November?

Mr. CLAY. There were improvements from November because there was so much attention to the process. We were able to press the election board to suspend the use of the inactive voter list. I petitioned U.S. Attorney General Ashcroft to send in Federal observers for the March election, so that they could determine whether the use of the inactive voter list was a direct violation of the Voting Rights Act.

You know, when we talk about disenfranchisement and enfranchisement of voters, I always think back to how many people in this country's history have lost their lives fighting for the right to vote. I think about three freedom riders in Philadelphia, and Mississippi back in 1963, who lost their lives fighting for the rights of others to vote. I think about those four little girls in that Alabama church, whose murderer has just been brought to justice this week, and how that whole struggle, the civil rights struggle, was about ensuring the voting rights of all Americans.

So I would ask the Committee to proceed with caution about infringing on the voting rights of any American, and the Voting Rights Act has worked pretty well for us, for the last 36 years, and I would hate to see us diminish that in any way, Senator.

Senator LIEBERMAN. Let me ask you a few more questions briefly; one is to get your reaction to the idea of provisional voting, which I may not have described quite accurately or clearly when I asked Senator Bond about it, but this is the idea that is available in some States, where if you come to the polls, you believe you are registered, but for some reason your right to vote is questioned; they allow you to cast a provisional vote, in which you affirm that

you are who you say you are, and you are eligible to vote, and then you go ahead and vote, but your votes are separated until the registrar can investigate after the election and only count it after that investigation is today. What would you think about that as a way to resolve some of the problems that voters had in St. Louis on Election Day last year?

Mr. CLAY. That would have been a great solution for St. Louis City and probably other locales throughout the country. When a voter's eligibility comes into question, that may be the way to go, Senator, to hold that vote in abeyance until you can clarify, sometime in the near future, whether that voter is qualified or not to cast that ballot. That may be the proper approach. I like that suggestion.

Senator LIEBERMAN. I appreciated what you said earlier about your disappointment with the way the voting system was described in St. Louis; and from your own experience, you were not raised or involved in St. Louis politics to conclude that you had to cheat to get elected. You are still obviously very young, but you have been in it awhile. Based on your own experience, how do you balance what we are dealing with here, which is the clear desire that we all share not to have fraudulent voting, but then setting that against the other clear desire, which is at the heart of our democracy, as you have just eloquently spoken to it, of the right of every American to vote. So how do we put those two together?

Mr. CLAY. Sure. The way you balance it is you have zero tolerance for voting fraud or any type of fraudulent activity surrounding voting, zero tolerance for that, but you ensure that all Americans have the proper access to voting. You do not set up or allow the establishment of arbitrary and capricious impediments and obstacles to people voting, and that is what caught my ire on Election Day.

What Senator Bond failed to mention also was that I was a plaintiff in that suit, and I was not disenfranchised, but I do not have to be disenfranchised, because I witnessed thousands of St. Louisans being disenfranchised. It is my right, my constitutional right, to go for judicial redress, which I did, and we prevailed at the circuit court level. He talked about how polls were left open and radio messages. Well, I got a call at 8:30 p.m. that night, after the St. Louis polls were forced to close, and it was from Springfield, Missouri, which is predominantly a Republican area, and a friend of mine told me that they are still voting down here in Springfield. So it was quite a dramatic Election Day in Missouri, and there were problems throughout the State.

Senator LIEBERMAN. Thanks, Congressman. Thanks for taking the time and thanks for the substance of your testimony.

Chairman THOMPSON. Thank you. Senator Bennett.

Senator BENNETT. Congressman, I am tempted to get into the details of the lawsuit, but I think maybe we better not. I am not sure that it would be productive. I do listen to Senator Lieberman, saying there were only 100 votes cast after 8 p.m., which suggests to me that the lawsuit saying that there are huge lines and thousands of people being disenfranchised does not add up, because if there were thousands of people, there would have been thousands of votes cast.

But let's get to the heart of what you are saying. You have given us a stinging indictment of the St. Louis voter election board. What do you think their motive was?

Mr. CLAY. I do not even care to speculate about motive. What I do know today is that yesterday, our newly-elected Governor Holden replaced the entire election board. He put on what I think are four fine people, two Republicans, two Democrats. So he has asked them to go in and fully reform their procedures at that board, and I welcome that change. As far as motive of the previous board, you have a board set up that is appointed by the Governor.

Senator BENNETT. So the previous board was appointed by the Governor.

Mr. CLAY. Yes, two Republicans, two Democrats. The staff is split evenly, 28 Republicans, 28 Democrats. You have two directors of elections, one Democrat, one Republican. So it is supposed to operate in a nonpartisan fashion, and, I guess, ideally that is the way it is supposed to function. In practicality, it does not.

Senator BENNETT. Yes. OK. You gave us, as I say, a stinging indictment of what they did in the 2000 election, and I want to go to the heart of that. Is it sheer incompetence on their part? Was there a deliberate attempt to disenfranchise African-American voters, on their part? If so, was there some point along the way when someone could have seen that they were going in that direction? You have listed all of their sins, but we need to go behind that and say did the previous governor, deliberately appoint people who would try to disenfranchise African-Americans? Was there a conspiracy here? Was it just sheer stupidity? Was it lack of devotion to duty? They were all out playing golf when they should have been purging lists? Why did we have what you have described?

Mr. CLAY. It was partly what you described. Part of it was sheer stupidity. Part of it was gross incompetence. Part of it may have been by design——

Senator BENNETT. OK. Let——

Mr. CLAY. Wait. Let me finish.

Senator BENNETT. Sure.

Mr. CLAY. What I base my statements on were my past experiences with that board. Having gone through 10 other elections with them, I knew the system. I knew how they set up these impediments and obstructions, so I knew what was coming. Having seen how they operated in the 1996 Presidential election, I knew what the problems were. As a matter of fact, we even sent about 100 workers down to vote about a week before Election Day, so that they would not have to vote on Election Day, and they encountered problems voting. So we knew what was coming on Election Day, because several of those workers were on the inactive voter lists and they had to jump through all of these hoops in order to vote.

We pressed the issue and ensured that they were eventually able to vote, but we had a week's headstart, and so we knew what was coming on Election Day.

Senator BENNETT. Well, let's go back to your statement that some of it was by design. Incompetence, ignorance, and so on, yes, a new broom sweeps clean and you get people who will be dedicated to their duty. It is a fairly serious charge to say that some of it is by design. We want to know who. Again, I go back to the

question of motive. Was there a deliberate design to see to it that African-Americans were disenfranchised in St. Louis, and if so, whose design was behind that deliberate decision?

Mr. CLAY. Senator, I could not prove that here in this room, but what I can tell you is that with the board being evenly divided, you have to look at the personalities and the players. On one side, you have a Republican director of elections who actually was running the show in a Democratic city. On the other side, you have a very ill-of-health Democratic director of elections who was very rarely at work on a regular basis. You had an assistant director that was well-connected to two other elected officials. So you have to look at the personalities. You have to look at the players in this, and then you draw your own conclusion.

I cannot sit here and tell you I have evidence to suggest that this was by design, and then that this was a scheme to disenfranchise African-Americans. No, I cannot tell you that, Senator.

Senator BENNETT. One last question: Assuming that the new board is going to be diligent in its duties, and you are going to clean all of this up and do it right, would you object to photo ID?

Mr. CLAY. Would I object to photo ID? I would not make that the single requirement of voting, because what you have to understand in economically-disadvantaged communities, some people do not have photo ID. What is required by State law now are copies of utility bills—mostly any type of ID, because when most of our statutes were written, at the time, it did not necessarily require photos on the IDs; so maybe a combination of both.

Senator BENNETT. In many States—I do not know if this is true in Missouri—recognizing that many people do not, for a variety of reasons, have driver's licenses, the DMV does issue identification cards that can provide photo ID for those who do not have a driver's license, and thus make it uniformly available. I am a little nervous about utility bills. The dog may have been able to get its name on a utility bill and come in, and a photo ID would see to it that dogs do not vote.

So I would just suggest that maybe you talk to the folks in Missouri about making photo ID available to everybody. As I say, we do have Federal statutes saying you have to show photo ID to buy cigarettes, and there are a lot of folks in the disadvantaged communities who buy cigarettes and who find some way to deal with that challenge.

Thank you very much for your testimony.

Mr. CLAY. Thank you for your suggestion.

Chairman THOMPSON. Thank you very much, Congressman, for being with us.

Mr. CLAY. Thank you, Mr. Chairman. I appreciate the opportunity.

Chairman THOMPSON. We will proceed to our next panel. The witnesses are Dr. Carolyn Jefferson-Jenkins, President of the League of Women Voters; Ralph Neas, President of People for the American Way and People for the American Way Foundation; Deborah Phillips, Chairman of the Voting Integrity Project; and Dr. Larry Sabato, Director of the Center for Governmental Studies at the University of Virginia.

Thank you very much for being with us.

Dr. Jefferson-Jenkins, please proceed with your testimony. Your written remarks will be entered into the record in their entirety.

TESTIMONY OF CAROLYN JEFFERSON-JENKINS, Ph.D.,[1] PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Ms. JEFFERSON-JENKINS. Thank you, Mr. Chairman. Good morning, Mr. Chairman, Senator Lieberman and Members of the Committee. I am Carolyn Jefferson-Jenkins, President of the League of Women Voters of the United States. As we all know, last year's Presidential election called the Nation's attention to the urgent need for improvements in the methods, practices, and technology through which our elections are administered. Voter registration is a particularly important part of this process.

Voter registration is the gateway to participation in our electoral system, and the procedural means for preserving a citizen's right to vote. For all citizens, the voter registration process must be accessible and non-discriminatory. It has not always been so, and problems remain. Until the enactment of the Voting Rights Act in 1965 and the National Voter Registration Act in 1993, bureaucratic obstacles to voter registration were commonplace. Literacy tests, poll taxes, selectively-applied identification requirements, threats, intimidation and violence successfully disenfranchised African-Americans and others through most of the 20th Century.

From the 1970's to the 1980's, restrictive registration practices ranged from requiring notarization of voter registration applications and significantly limiting the times and places for registration to selectively purging voters' names from the rolls and dropping voters from their rolls for failing to vote in one election. The need for voter registration reform was debated for 5 years in Congress. In 1993, the National Voter Registration Act, or Motor Voter law, was enacted, establishing uniform, non-discriminatory standards for voter registration.

Motor Voter took effect in most States in 1995. The law provides for convenient and routine access to registration through driver's license agencies, public assistance agencies, and agencies that serve people with disabilities, and through mail-in registration. It requires States to keep their lists up-to-date, but it prohibits dropping voters' names from the rolls simply for not voting. The act establishes uniform, non-discriminatory standards for voter confirmation programs.

With safeguards against discrimination, voters may be dropped from the rolls by reason of death, change of residence and a failure to meet voting qualifications under State law. To ensure that registered voters retain the right to vote in Federal elections, the Motor Voter law provides a failsafe provision. Registered voters who have moved within their registrar's jurisdiction and congressional district, but who have not updated their registration, may do so and vote at the new or the old polling place on Election Day, and they can do that through affirmation or confirmation.

The National Voter Registration Act has been very successful. According to the Federal Election Commission, nearly 43 percent of

[1] The prepared statement of Ms. Jefferson-Jenkins with an attachment appears in the Appendix on page 137.

all voter registration transactions from 1997 and 1998 were through driver's license agencies; 44 percent of these were changes of name or address. Mail-in registration programs accounted for nearly one-quarter of all voter registration transactions during that period. The problems with the National Voter Registration Act that we have heard about are not problems with the law, but problems with the implementation and the enforcement of the law.

Statewide computerized voter registration programs in every State would significantly improve the management of voter registration lists and help identify and eliminate duplicate registrations and other problem areas. A Member of this Committee, Senator Cleland, who is not here this morning, was then-Secretary of State in Georgia, and in a statement for a 1995 House Oversight Committee hearing, he wrote, "Under our National Voter Registration Act implementation plan, we have produced an improved fraud prevention and detection program for Georgia. With the advent of a statewide voter registration program, Georgia has been able to put in place mechanisms to monitor many areas where fraud could be possible."

Unfortunately, according to a 1999 survey, only 22 States reported having a centralized State registration list. Even fewer have the type of active program described by then-Secretary of State Cleland. Contrary to the unsubstantiated claims of the law's opponents, Motor Voter does not cause vote fraud, nor is it to blame for the ills and difficulties of election administration. Indeed, statewide computerized list maintenance systems can assist in preventing vote fraud if implemented properly.

Other Motor Voter implementation issues include reports of Motor Voter registrants and fail-safe voters turned away on Election Day because they are not on the list provided at the polls. The inability of polling place officials in many locations to check the status of the voters on the official list must be addressed. Solutions such as the low-tech use of provisional ballots and the high-tech use of laptop computers that provide access to the official lists at polling places need to be encouraged.

With regard to enforcement, the repeated failure of some driver's license agencies to transmit voter registration applications in a timely manner must be investigated and corrected.

The Federal Government can no longer afford to leave the financial burden of administering Federal elections to State and local jurisdictions. In most States, local jurisdictions alone bear this burden. The disparity in wealth and public revenues from county to county are bound to be reflected in a disparity of resources available for election administration procedures and voting technologies from one county to the next.

This is not only a question of equity among levels of government, but of the necessity for ensuring that all of our citizens are able to register, vote and have their votes counted in Federal elections with a minimum of administrative error. The League of Women Voters supports S. 379, a balanced, bipartisan bill introduced by Senators Schumer and Brownback. The Schumer-Brownback legislation provides the needed Federal funding, as well as guidance for its use.

Today, this country has the technology and the financial means to ensure that our diverse and growing population enjoys the most accurate, accessible, and non-discriminatory voting system in the world, one that every American could have confidence in and be proud of. This Congress has the means and the opportunity to pass legislation that would provide the financial assistance and guidance necessary to achieve that goal.

On behalf of the League of Women Voters, I want to thank you for your attention, and with your permission, I would like to submit for the record former Secretary of State Cleland's 1995 statement and the executive summary of the FEC's 1999 report on the impact of the Motor Voter law.[1]

Chairman THOMPSON. Without objection.

Thank you very much. Mr. Neas.

TESTIMONY OF RALPH G. NEAS,[2] PRESIDENT, PEOPLE FOR THE AMERICAN WAY AND PEOPLE FOR THE AMERICAN WAY FOUNDATION

Mr. NEAS. Good morning, Mr. Chairman and Members of the Committee. My name is Ralph G. Neas, President of People For the American Way and People For the American Way Foundation, citizens organizations with 500,000 members and supporters dedicated to protecting constitutional and civil rights, improving public education and promoting civic participation. I very much appreciate the opportunity to testify before you today and commend you for taking the initiative in having this hearing.

Restrictive voter registration laws and practices were introduced in our country in the late 19th and early 20th centuries, in order to keep certain groups of citizens, particularly new immigrants, African-Americans and other minorities, from exercising their right to vote. Court decisions and enactment of the Voting Rights Act of 1965, perhaps the most effective and most important law ever passed, eliminated some of the obvious barriers to voter registration. I am proud to say that I had a chance to be chief counsel to Senator Edward W. Brooke, who played a lead role as a State attorney general, and then as a U.S. Senator, with the Voting Rights Act. But a complex maze of local laws and practices continue to make it difficult for many citizens to exercise their right to vote.

The historic and effective National Voter Registration Act (NVRA), properly known as Motor Voter, took a major step in the right direction. Implementation of the law was slow in some areas, because some States refused or delayed carrying it out. This led to successful legal action by the Department of Justice, People For the American Way Foundation, and many others, to defend the law. Despite the slow start in some areas, however, Motor Voter has been enormously successful. Project Vote recently estimated the law has led to more than 70 million new voter registrations, and has been implemented, as the Congress intended, in a way that has continued to protect the integrity of the electoral process.

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[1] The information submitted by Ms. Jefferson-Jenkins (includes the executive summary of the FEC's 1999 report on the impact of the Motor Voter law and former Secretary of State Cleland's 1995 statement) appears in the Appendix on pages 146 and 149 respectively.

[2] The prepared statement of Mr. Neas appears in the Appendix on page 152.

The NVRA, which includes criminal penalties for voter fraud, specifically requires States to conduct a uniform and non-discriminatory program for removing ineligible voters from the voter rolls. The FEC reported to Congress that over 9 million names were deleted from voter registration lists during the 1997–1998 cycle, and that over 14 million other names were subject to removal after 2000 if they failed to respond to notices or to vote in that election. The FEC's report is based on surveys from the 43 States which are subject to the law and the District of Columbia.

While the report contains important recommendations from the States for improving implementation of voter registration list maintenance, what it does not contain is evidence of a problem with voter fraud. Unfortunately, if the 2000 elections proved anything, it is that we have the opposite problem. In States like Florida, registered voters were improperly purged from voter rolls and disenfranchised from participating in our democratic process.

I believe strongly that the Motor Voter procedures and requirements of other Federal civil rights laws were violated. Having spent a lot of time in Florida in November, and having participated with Kweisi Mfume of the NAACP in a 5-hour hearing, I must tell you, I said to Mr. Mfume that what I was hearing reminded me so much of what I had experienced while chief counsel to Senator Edward W. Brooke during the hearings on the Voting Rights Act. Thousands of citizens were incorrectly identified as felons in Florida; countless others who had been placed on an inactive status were wrongly denied the opportunity to vote when they showed up at the polls and found their names missing from the rolls; and others were denied the opportunity to vote because of unnecessary voter identification requirements, including being required to present photo identification, even though State law provided alternative identification procedures.

The media has reported, and groups like the NAACP have documented, similar problems in other States. I have listed a number of the States, and they are in my written statement, Mr. Chairman. For purposes of time, I think I will skip them in my oral presentation. As requested, I focused on problems with registration, but I must note that, in a number of States, voters also encountered intimidation, disinformation and other tactics designed to keep people away from the polls. And, outdated, inaccurate and broken voting machines inexcusably prevented tens of thousands of people nationwide from casting a vote that counted.

Our Nation has made a lot of progress with respect to voter registration and participation, but events in November clearly indicate that we still have a long way to go. Here are some recommendations: First, maintaining and enforcing our existing laws, like the National Voter Registration Act and the Voting Rights Act, is absolutely critical. The idea of erecting new or old barriers to voting in this situation is certainly unfathomable. We, as a country, simply cannot move backwards to the days of discouraging participation by all citizens. The 2000 elections proved there is so much that urgently needs to be done to move forward, to ensure uniform, nondiscriminatory, accurate and effective implementation of list maintenance procedures.

Congress can play a crucial role in that effort by holding hearings like this one, resisting misguided efforts to weaken our laws, and assisting States and localities in complying with these laws. In particular, some of the problems experienced in Florida and elsewhere could have been avoided with better-trained-and-equipped election officials, voter registrars, and workers. People for the American Way therefore supports the Dodd-Conyers and Schumer-Brownback bills.

Officials should prevent and remedy the wrongful purging of voters and ensure, as the National Voter Registration Act does, that all purging procedures are uniform and non-discriminatory. Lists of inactive voters should be maintained at polling places and be just as accessible to poll workers as active lists. Voters should be affirmatively notified of their rights at polling places by posted notice or otherwise, including the rights to assistance, to correct their ballots if they believe they have made an error, and to cast a challenge ballot if there is a dispute as to the registration.

Election officials should ensure that no registered voter is turned away because of list maintenance problems. Procedures should be developed to eliminate unfair delays in processing voter registration applications, so that everyone who fills out registration forms on time should vote in the next election. Some have suggested that despite the problems experienced in the last election, there is no real interest among legislators in pursuing election reform. We fervently hope that this is not the case, and I am heartened, Senator, Mr. Chairman, by your comments at the beginning of the hearing, and by a number of the other Senators during this hearing, because this hearing is certainly an important demonstration to the contrary to what many have been saying.

We urge the Congress, in a bipartisan fashion, to follow up this hearing with action to help guarantee all Americans the right to cast a vote that truly counts in all Federal elections. Just one point: We certainly would add to this, Senator Lieberman, support for same-day registration. I think it has worked wonderfully well in Minnesota, New York, New Hampshire, Idaho, and Wisconsin. There, of course, is no registration in North Dakota. There are plenty of splendid examples that we could use here in Congress to document, the need for the kind of legislation that you have proposed and supported.

Thank you very much, everyone.

Chairman THOMPSON. Thank you very much. Ms. Phillips.

TESTIMONY OF DEBORAH M. PHILLIPS,[1] CHAIRMAN, THE VOTING INTEGRITY PROJECT

Ms. PHILLIPS. Thank you. I am grateful for the opportunity to appear before you today, to talk about an important subject, guaranteeing and protecting the voting franchise of qualified American citizens. The Voting Integrity Project is a national, nonpartisan voting rights organization. Our right to vote is the glue that keeps our government together. I am here today to talk about the network of laws that are intended to ensure ease of registration and

[1] The prepared statement of Ms. Phillips with attachments appears in the Appendix on page 157.

access, but have serious, unintended, and sometimes ironic consequences. I will also offer solutions.

The National Voter Registration Act has produced an alarming level of deadwood and fictitious names on America's voter rolls. Such cases are now widely documented in State after State, and catalogued by me in previous testimony before the Senate and House. Such names create a source pool and invitation for fraudulent voting. Since a stolen vote dilutes the strength of a legitimate voter's ballot, vote fraud is a voter rights issue.

But in election 2000, a new problem emerged. The largest category of voter complaints received by the Voting Integrity Project related to the direct disenfranchisement of qualified voters who, for a variety of reasons, were not on the voter rolls. Many who had registered by mail or through third parties never made it on. Some were removed incorrectly because of faulty data matches and lack of due diligence by election officials prior to purging names. This, too, is a serious voting rights issue. NVRA, or Motor Voter, as it has become known, extended the registration process beyond the control of the local office of elections.

Today, virtually anyone or anything can register to vote through the mails without having to show any proof of qualification, identity or residence. The verification process does not even begin until a name is placed on the voter rolls. The current list maintenance procedures are expensive and labor-intensive. NVRA represents a vast, unfunded Federal mandate on the States.

To understand the process and appreciate how cumbersome and vulnerable it is, you need look no further than the charts attached to my testimony, taken from the handbook of the Federal Elections Commission's Office of Election Administration. The first illustrates the catchment of voter registrations that includes the Department of Motor Vehicles and other government agencies, the availability of a universal mail-in application via the Internet, and third-party, sometimes paid, collectors of registration.

NVRA prohibits removing names solely for failure to vote or change of address within a jurisdiction. As you can see in the second chart, the process for verification and list maintenance is cumbersome and uncertain. NVRA recommends use of the U.S. Postal Service national change of address list to identify invalid registration, yet that will only verify on the basis of residence. It does not reach to identity, citizenship or other qualifications. For that, an election office must obtain death notices, criminal conviction notices, mental incapacity notices, Social Security records, and citizenship records.

Such records may not be available and can be problematic, since they may be kept by widely varying formats and schedules. NVRA does permit, but does not mandate, two possible security mechanisms. The first is that States may require voters who have registered via the mail-in process to vote the first time in person. However, because of failsafe procedures, such ID requirements can be easily thwarted.

The second available security check is the acknowledgment notice sent out by the election office which, if returned as undeliverable, can trigger a confirmation procedure. However, the first notice, under NVRA, must be forwardable. Invalid registrations may

easily go undetected. NVRA requires only that States make a reasonable effort to identify and remove such names. It does not specify procedures for doing so. In many cases, such names are flagged as inactive, but under NVRA rules, remain on the voter rolls for two Federal elections before removal, and if such name is voted in that period, it is reactivated.

Even though NVRA requires such removals to occur at least 90 days before a Federal election, most State registrations do not close until 30 days before elections, creating a 60-day window within which new registrations can be lodged, and leaving little time for due diligence. Many States do not have centralized voter registration. Registration is maintained on a local basis. Even those States that do maintain some form of statewide voter roll may not perform routine matching procedures among component jurisdictions. Certainly, there is no mechanism to match records of one State against another.

Many voters assume that when they move, their old registration is canceled. This may not be the case even within a State, and certainly not across State borders. Thus, we believe there is an undocumented prevalence of voters who are registered in multiple jurisdictions and multiple States. With the increasing use of absentee ballots, such names can easily be voted.

Last, it is important to understand that the cost of current list maintenance procedures is beyond many local budgets. Confirmation mailings must be forwardable under the rules of NVRA, thus they will not automatically yield information for list maintenance purposes. NCOA list matches must be performed through a limited number of commercial vendors, with minimum charges that become very expensive when there is a relatively small volume of records, such as a rural county.

The alternative is to perform additional first-class mailings with return address requested. Given the level of mobility of today's society, local and State voter rolls are subject to an unprecedented level of churn. That is why these records are building up to the point where, in many States, registered voters far outnumber voting age populations. For those determined to use invalid registrations for fraudulent voting, it is not at all difficult to identify such names. Sometimes it is as simple as requesting the inactive voters list.

Although documented and fully-prosecuted cases of vote fraud are still unusual, that probably has more to do with the fact that only when margins are very close is the issue even raised, and candidate election contests alleging fraud usually do not have sufficient time or resources to build an evidentiary record sufficient for success. Prosecutors do not like election fraud cases because they take precious resources from strained budgets needed for more serious crimes.

So what is the solution? VIP believes that it may be time to consider creating a lifetime voter registration with stringent verification procedures. But under the current system, this is not possible. However, if all 50 States adopted central computerized voter registration systems with uniform record-keeping formats, it would be possible to create a onetime registration that would follow the voter through life, regardless of where they live.

In such a system, once registered, you would remain registered for life. Registrations could be suspended for a period of time or permanently, but would remain within the database. Even death would not remove the record necessarily, only deactivate it so that no one else could use that name for registration purposes. Such a system would eliminate problems of deadwood, duplicate and fraudulent registrations, and would create a framework for instant verification at the polling place via secure online networks, thus guaranteeing franchise.

Utilizing such secure data networks would make it possible for a voter to go to any official polling place and pull down the local ballot and vote. The technology for such a system is available, and I believe this can be done without creating another layer of intrusion into privacy or lead to government abuse. The process of building such a system can begin now with your leadership.

Thank you.

Chairman THOMPSON. Thank you very much. Dr. Sabato.

TESTIMONY OF LARRY J. SABATO, Ph.D., [1] DIRECTOR, THE CENTER FOR GOVERNMENTAL STUDIES, UNIVERSITY OF VIRGINIA

Mr. SABATO. Mr. Chairman, thank you very much for having me here today. I head up the Center for Governmental Studies at the University of Virginia. We have been conducting a national symposium series since the November election, and I want to say, even though my remarks are focused on voter fraud, my center is producing a report with the help of a number of former Presidential candidates, from Michael Dukakis on the left to Steve Forbes on the right, and Eugene McCarthy, God only knows where, and others who are election experts, suggestions that will strengthen the system and do something about some the problems that Senator Lieberman experienced in November and was discussing earlier, and I absolutely support that, as well. We ought to be able to do that, as well.

But I guess I disagree with a couple of the other panelists, in that I do believe, having researched voter fraud many years, that it is real. It exists. You can always argue about the extent to which it exists, but it is real. As far as Motor Voter goes, I support many of the provisions of the law. I do not go as far as Deborah does, although I would have to note, if it has been so successful, why has voter turnout declined from 55.2 percent, Presidential election of 1992—Motor Voter passed in 1993—to approximately 50 percent in both 1996 and 2000.

I guess you could argue that it would be even worse were Motor Voter not there, but, that is thin gruel, with a 50-percent turnout. Anyway, that is another subject. I would like to start out by discussing fraud and corruption, which has always intrigued me and which I have written a great deal about, on the sleazy side of life.

Fraud and corruption did not start with the 2000 Presidential election. The evidence of corruption spans the entire history of our Republic. In fact, listening to Senator Bond this morning, I pulled out a book that I wrote with Glenn Simpson of the *Wall Street*

[1] The prepared statement of Mr. Sabato appears in the Appendix on page 162.

Journal, called "Dirty Little Secrets," which has a long chapter about voter fraud, another one about street money, which is probably an even greater scam than voter fraud in American politics. But this was the 1844 election in New York City, and they had at the time a voter registered pool of 41,000.

The turnout on that Election Day was 55,000, or 135 percent more than they had registered. One observer at the time said: "The dead filled in for the sick, and the city's dogs and cats must have been imbued with irresistible civic spirit." So the more things change, the more they remain the same in democracies all around the world, and certainly our own, as well.

As I am looking at voter fraud and the registration system and the voting process in the United States, it seems that we have to balance two conflicting values, two equally worthy objectives. First, the goal of full and informed participation in the electorate, and you cannot have full participation unless it is informed; and as you all know because you run for office, the level of civic education in this country is abysmal.

The second value and goal is the integrity of the system. Now, everybody is in favor of both, full and informed participation and integrity. But to the extent that we keep expanding the participation rate and making it easier and easier for people to register and vote, we almost certainly increase the chances for voter fraud unless we are very, very careful. So in a sense, unfortunately, as is often true in life, these two great goals represent a trade-off.

To move completely in the direction of one value as opposed to the other is foolhardy. We have to achieve a balance between these two important democratic values; and currently, I would argue we do not have a very good balance. As election 2000 demonstrated, the problems are numerous. Some are suggesting, as my friend Ralph does, that there is not any real evidence of voter fraud. But I would point to a study by the *Miami Herald.* They documented, for example, the votes of a 90-year-old woman and a 21-year-old man last November among 2,000 illegal ballots cast by Florida residents in 25 of Florida's 67 counties. They did not review all 67 counties, just 25 of them.

Those residents swore they were eligible to vote, but, in fact, they were not. Some of them were not. Now, some of them were not lying. Some of them simply got confused. They thought they were eligible and they were not. Of course, as Senator Lieberman knows better than anybody, it was a Presidential race decided by 537 ballots in Florida, and this is 2,000 illegal ballots in just 25 of Florida's 67 counties. These voters cast ballots even though their names were not on the precinct voter registration list, because all they had to do was to sign an affirmation swearing they were eligible to vote. Even though they were supposed to, the poll workers never checked to see if these 2,000 people were actually registered, in part because they were overwhelmed by the turnout.

In addition to these 2,000, there were about 1,200 instances estimated of convicted Florida felons who had been legally stripped of their right to vote, but nevertheless managed to stay on the voting rolls and cast a ballot in the last election. There is also some indication of at least a few people in Florida who maintained two residencies, cast ballots in two different States, one by absentee

and the other in person. Similarly, in Wisconsin, which was another very closely contested State last November in the Presidential race, the *Milwaukee Journal Sentinel* newspaper found that at least 361 felons voted illegally last November 7, breaking the State law that disqualifies felons from voting until they are off probation and parole.

Of course, it does not stop with Florida and Wisconsin, either in 2000 or in earlier years. As I have documented in this book, in our voter fraud study, we have seen extensive absentee ballot fraud in Alabama, hundreds of phony registrations in California, nearly 1,000 illegal votes in New Jersey, including some by people who were unregistered and others who were dead. I prefer to call them life-challenged voters. By the way, one political consultant who has been used by a number of members of the Senate, very well-known, defended this in an off-the-record conversation with me, explaining that many of these people had missed a number of elections in their lifetimes and they were simply making up for the elections that they missed. I suppose that is one argument.

Significant absentee ballot fraud in Philadelphia; votes stolen from the elderly and the infirm in Texas, and the list goes on and on. My strong suspicion, based on scores of investigations and also unexplored tips from political observers and interviewees over the years, is that some degree of voter fraud can be found almost everywhere, although some States have cleaner traditions than others, like Oregon, for example, but serious outbreaks can and do occur in every region of the country.

Whether fraud is Democratic or Republican, or located in the North or South or East or the West, the effect on American democracy is similar. While electoral hanky-panky may affect the outcome in only a small proportion of elections, mainly in very tight races, one fraudulent ballot is one too many for the integrity of the system and the confidence that people have in the system in this very cynical age. I teach young people in the classroom every day. They are incredibly cynical about the system. They believe, I think incorrectly, that the system is bought and paid for; that most elections are stolen. That is wrong, but we encourage that belief when we allow practices such as vote fraud to continue.

No system is foolproof. I think at the very least we could all agree, I hope, that a photo identification card of any sort should be produced by each voter at the polls, and I agree with Senator Lieberman that an affirmation statement is a good alternative if no photo card exists. Enough information has to be given on the affirmation statement so that the registrar can check, obviously.

I think voters should be asked at the time of registration to give a number unique to them, whether it is a Social Security number or driver's license number, that can be prerecorded on the voter list provided to each precinct's workers. Every voter should also have to sign his name on the voting rolls at the polls, so that the signature, at least in close elections, could be compared to the one on the registration form to see if they match up. By the way, the computer technology already exists for instantaneous scrolling, which some DMVs use, side-by-side, comparing the poll signature to the registration signature.

Also, all potential voters ought to be advised at the polls, whether orally by an election official or by means of a printed statement, of the eligibility requirements for voting and the penalties for fraudulent voting. A similar warning should be prominently featured on all absentee and early voting mail-in ballots. These four overlapping safeguards are not too burdensome for voters and poll workers, but they would go a long way toward discouraging fraud at many precinct stations on Election Day.

One other suggestion: No early-voting, mail-in and absentee ballots should ever be separated from their cover sheet or counted until the voter signature has been carefully checked against the registration file signatures. Finally, Mr. Chairman, let me say that if these regulations—even if they are adopted universally and followed to the letter, they will be insufficient if registrars and election offices are not staffed and funded adequately, and that would be a wonderful use for Federal money, if you are going to provide some kind of incentive to the States to improve their voting systems.

Also, the statutes have to punish fraud severely. Major felonies are required, not minor misdemeanors. Law-enforcement authorities, as Deborah suggested, do not make voter fraud a priority and they do not press for substantial legal penalties in most cases against those found violating the fraud statutes, and they ought to.

Finally, the news media have a role here, too. They ought to begin to look for evidence of voter fraud, a probable prerequisite to their finding voter fraud. A good first step would be for every news organization to establish and publicize a campaign corruption hotline. So, one imperative unites all these cases, in my view. While registration and voting should be as easy as possible, the process should also be as fraudproof as possible.

We have to maximize the full and informed participation of the electorate, while preserving the integrity of the system. One can generally observe that our zealous focus on the full, but not necessarily informed, participation of the electorate, may, in fact, challenge the integrity of the democratic process. Increased informed participation must be our goal. For this reason, my Center for Governmental Studies at the University of Virginia has launched the Youth Leadership Initiative. This program has helped thousands of schools and over 70,000 young people throughout America to improve their civic education.

It shows middle- and high-school students across America the value of informed participation. Many of you on this Committee and in the Senate have supported us through Federal funding in the past. We appreciate it deeply and we encourage you to continue your support for the Youth Leadership Initiative and other programs like it, that drive young people into the political process and encourage them to look positively at that process.

Finally, I believe strongly that a focus on civic education must be a part of any serious effort to combat voter fraud and to revive confidence in our democracy.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much. Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman.

Mr. Neas, let me take you back to your chief counsel days, and ask you to just set the legal context. One of the things that has interested me as I have gone into the documents in preparing for these hearings, and it may be of surprise to most Americans, perhaps even a lot of members of Congress, is that in the exercise of the franchise which has been administered and, in so many ways, defined by State law and local administration, there is nonetheless, both through constitutional amendment, through statute, most notably, and recently the two that we have been referring to, the Voting Rights Act of 1965 and then the National Voter Registration Act, Motor Voter, in 1993, there is quite a body of precedent here, is there not for the Congress, for the Federal Government, to set the ground rules for voting throughout our country?

Mr. NEAS. Absolutely, Senator. I did not know it while I was working with Senator Brooke from 1973 to 1979, but when Senator Brooke was the State Attorney General of Massachusetts in 1965–66, just before he became a Senator, he helped coordinate the State attorneys general all over the country to file an amicus in the *Katzenbach* case, which, of course, is the case that upheld the validity of the Voting Rights Act of 1965. It has been some time since I taught this at Georgetown and the University of Chicago law school, but my recollection is that the Supreme Court stated in language somewhat like this that it was such an extraordinary national problem, that it required an extraordinary remedy, both with respect to Section 2 and Section 5 of the Voting Rights Act.

I believe Pam Karlan, a Stanford University law professor, has put together, perhaps for the Committee or individual Members of the Committee, an outstanding preliminary legal brief on behalf of the constitutionality of these kinds of efforts and perhaps some legislation that people are looking at right now. Given what I knew as a law student and as a law professor, during my days with Senator Brooke, during the 1975 Voting Rights Act extension, and then coordinating the national effort as executive director of the Leadership Conference on Civil Rights on behalf of the 1982 Voting Rights Act extension, and, of course, last year in Florida, I never cease to be amazed that while we have made so much progress in this country, extraordinary discrimination existed and unfortunately still exists. It is not always, of course, purposeful discrimination. I think this is a very important point.

The whole battle in 1982 was to make sure that we had an effect standard as well as an intent standard, because so much of what happens really is a consequence of actions that are not necessarily intended to be discriminatory. But I am glad you asked that question, because as I think I said during my testimony, the Voting Rights Act was the most important and effective law ever passed, in my judgment, and was an extraordinary situation that demanded that an extraordinary remedy.

Senator LIEBERMAN. Thanks. Let's just talk briefly about a few examples. Am I right that the Voting Registration Act now actually created some ground rules for when voter's names can or cannot be purged from lists, locally?

Mr. NEAS. I believe that is true, but I might defer to my colleagues.

Senator LIEBERMAN. Was that not your testimony, Dr. Jefferson-Jenkins?

Ms. JEFFERSON-JENKINS. There is some legislation, and at this moment, Senator, I cannot put my hands on it, but we will get back to you.

Senator LIEBERMAN. That is OK. I actually believe it is law. Let me ask, in terms of this sort of tension between two goals that we share, I presume in listening—actually, as you sit before me, this seems to be a little more attending along the spectrum, Ms. Phillips and Dr. Sabato, toward concern about fraud. Dr. Jefferson-Jenkins and Mr. Neas seem to be more concerned about disenfranchisement. I do not mean that either of you, any of you, is not concerned about the other.

How would you draw the line, Dr. Jefferson-Jenkins? In other words, which is the larger concern and where along this spectrum would you draw the line, and put it another way, can we have both? Can we have both a high-integrity voting system and one that does not create barriers to either registration or participation?

Ms. JEFFERSON-JENKINS. Senator, I would agree that my colleagues and I are all talking about integrity of the process; and for the League of Women Voters, where we draw the line is voter fraud is an organized effort to steal an election. What we are talking about today and what we are finding as our 50 State Leagues are investigating what is going on, is that we are talking about implementation and administration flaws, not organized efforts to steal an election. One of the reasons why we are in such strong support of statewide computerized lists, and in support of Schumer-Brownback is that individuals who have the right to vote and are eligible to vote should be able to vote, and it should not be a function of local and State laws that discriminate against them and compromise the integrity of both of the voting rights acts that have been mentioned here today.

So if you look at fraud from that perspective, what we are seeing is implementation and administrative issues, but we also believe that if there is fraud, it should be prosecuted, and there are safeguards to do that. There are checks and balances in NVRA and there are opportunities to prosecute to the fullest extent of the law, if fraud, is identified. I would caution this Committee, however, that many of the allegations are not evidence, and that we need to be very careful not to confuse the two.

Senator LIEBERMAN. Mr. Neas, I would ask you—I know you want to respond, and in inviting you to do so, let me ask you to answer this question, also, which is based on your knowledge, going back to your work with Senator Brooke on the Voting Rights Act, do you have any doubt that if there were the votes here in Congress to require, for instance, national provisional voter policies; that is, as I described them earlier, national same-day registration, Election Day registration, that we could do that?

Mr. NEAS. Constitutionally, absolutely. I think there is considerable legal authority to support that kind of legislation and support its constitutionality. I do want to clarify the record a little bit, especially with respect to some of my friend Larry Sabato's comments. I do not think we are that far apart. I think, given what the purpose of the hearing was, we certainly did focus primarily on the

right to vote and disenfranchisement, which I think are enormously important issues facing us right now, not just in Florida, but in a number of States.

But as Carolyn Jefferson-Jenkins just said, of course voter fraud has to be addressed. It has been a bipartisan problem throughout our history. I do believe the Motor Voter bill and the Voting Rights Act, and literally hundreds of State and local laws do address fraud. There are laws and we should enforce them. And, obviously, we should look at every possible means of making sure that there is not fraud.

Larry Sabato also makes the point about money. We definitely need it, especially in these weeks of debate about how we are going to use the money of the Federal Government. I hope this would become part of the debate over the next 5 or 6 weeks or more. In voter education, as much as I focused on the disenfranchisement issues in Florida, it was not just violations of the Voting Rights Act, disenfranchisement issues or just bungling administratively by State and local officials. We were part of the voter registration and voter turnout effort, and it was an extraordinary success. I think it was about a 50 percent increase, but there is no question that there were a lot of people who were not knowledgeable about their rights or about how to vote. There has to be extensive voter education and civic education, initiatives that we want to be a part of, to make sure that we have an informed electorate, and that a lot of those problems that were due to not knowing the law or not knowing how to vote are eliminated next time around.

So I think we can probably get a bipartisan consensus, not only at this table, but elsewhere, to work together on that.

Senator LIEBERMAN. I have about a minute left in my questioning time. Let me ask all four of you this question and ask you for a quick answer, or you can defer if you think it is not fair to ask for a quick answer. I think we have all agreed that we obviously do not want to tolerate voter fraud and we do not want to disenfranchise voters in the various ways which we have described today, through registration, etc.

My question is which is the larger problem you think our country faces today, the disenfranchisement through registration problems, voting system problems, or the fraud problem?

Mr. NEAS. In my judgment, this is—I am sorry, Carolyn.

Ms. JEFFERSON-JENKINS. No. Go ahead.

Mr. NEAS. In my judgment, this is not a hard question. I think, by factor of 1,000–1, it is more important to address the voter disenfranchisement issues and to ensure every American's fundamental and constitutional right to vote, which is not to, in any way, dismiss the importance of addressing voter fraud issues. But I think, without question, it is the voter disenfranchisement issue.

Ms. JEFFERSON-JENKINS. It is a complex issue to prioritize, but from the League perspective, it would be the implementation and administration issues of what is going on in the election reform area.

Senator LIEBERMAN. Ms. Phillips.

Ms. PHILLIPS. I think that NVRA sets up a natural tension between those two goals. You do not want voter fraud and you do want full enfranchisement. I do not think you can achieve both si-

multaneously under NVRA. That is why I have moved to the position that I have moved to, that we need to get everyone registered for life.

Senator LIEBERMAN. We do not have time today, but I think I am going to ask you in writing to define what the stringent requirements are that you would apply to the lifetime registration, and also the means by which we would make sure, to the best of our ability, that they were equally applied.

Ms. PHILLIPS. If I could just respond to that very quickly, the stringent requirements are not employed today, and that is one of the problems with requiring a photo ID at the polls. It is easily defeated, so unless you ensure that the people you are registering are qualified and exist and are U.S. citizens, and residents of the jurisdictions in which they are registering, it is really sort of closing the barn door after the horse has gotten out, to require identification at the polls.

Senator LIEBERMAN. You are not willing right now to say whether disenfranchisement or voter fraud is the more pressing problem?

Ms. PHILLIPS. I see them both as part of the same problem, which is the dirty voter-roll problem.

Senator LIEBERMAN. Understood. Professor Sabato.

Mr. SABATO. Senator, as you saw firsthand in November, our system is a mess. I mean, it really is, and not just Florida. There are so many problems in so many States, and I see it as a piece of the whole, all of it, and we need more money, certainly, to do a better job at the State and Federal level, but we also need well-crafted rules to make sure that the money is spent well, and that the elections are run well.

Senator LIEBERMAN. Thank you. Thanks, Mr. Chairman.

Chairman THOMPSON. Thank you very much. Senator Bennett.

Senator BENNETT. Thank you. I have enjoyed this hearing, Mr. Chairman, and I have enjoyed this panel, and I have learned a lot. My own sense of things, I guess I come down on Senator Lieberman's question pretty much with Ms. Phillips; that if you solve the administrative question intelligently with technology that is available, you make it possible to solve both the disenfranchise issue and the voter fraud issue.

Ms. PHILLIPS. Exactly.

Senator BENNETT. But let me go back, Dr. Jefferson-Jenkins; you made a comment with which I agree, but I am going to now throw back at you. You were here when I questioned Congressman Clay. Your comment was many of the allegations are not evidence, and Congressman Clay, after his indictment of the St. Louis voter election board, then said, as we got into it, that he had no evidence; he had his own suspicions, but he had no evidence that there was, in fact, a conspiracy in St. Louis to try to prevent people from voting.

We will all agree that there is incompetence. We will all agree that people are off playing golf when they should be purging lists. We would all agree of all of those kinds of things. Let me ask you the question, and Mr. Neas, ask you, as well. Do you believe that there was a conscious conspiracy in certain areas, as obviously has historically been the case? I mean, you go back prior to the National Voting Rights Act in the 1960's. Clearly, there was con-

spiracy—more than a conspiracy. There were clearly established State policy, that we are going to prevent these people from voting.

I think we have come away from that legally now, so that there is now no legal opportunity for a State or local group to say we are going to prevent a certain group from voting. But the way the rules are applied, we can create a conspiracy, and either one of you have the feeling that there was a deliberate conspiracy on the part of local officials in various jurisdictions to disfranchise people?

Again, your statement, many of the allegations are not evidence. Do you have any evidence? First, do you believe there is such a conspiracy, and second, do you have any evidence?

Ms. JEFFERSON-JENKINS. Well, I would like, Senator, to speak to my statement, and that statement was crafted to address the anecdotal kinds of examples we have been given, and my caution to the Committee was that we not use those as the sole basis for decisions that are made. In terms of the comments by Congressman Clay, at this stage, I cannot speak for his comments or his experience. As we look for moving forward in this process——

Senator BENNETT. I am not asking you to speak for that. You have made comments about the 2000 election. Forget St. Louis.

Ms. JEFFERSON-JENKINS. OK.

Senator BENNETT. Do you have, (a) the belief that there was a conspiracy anywhere—you have studied this. You do not need to listen to Congressman Clay. You have studied this. Do you believe there was a conspiracy anywhere for deliberate disenfranchisement of particular groups of voters, and, (b) do you have any evidence? You can believe there is, as he believes, but he had no evidence, and that is a perfectly legitimate intellectual position to be in. So I ask you those two questions, nationally, from your research.

Ms. JEFFERSON-JENKINS. We are currently—the Leagues are currently collecting that data in their localities and in their States to determine if there is a pattern or a trend that would support any allegations that have been made, and we are still in the process of collecting that information. Once we have that information, we will make it available to whatever sources want it.

It is so—I do not want to say disparate—but there is like a mosaic throughout this country of different examples, of different systems, of different implementations; and the one advantage that we have at the League is that we have Leagues in every State, and we are able to capture that data and collect it and comprise it, and look for trends and themes. That is what we are doing right now. We do not have the final information at this point in time, but we will have it collected.

Mr. NEAS. Senator, I do not know very much at all about the St. Louis situation, except for what I have heard today. I am somewhat more familiar with the Florida situation, having participated in that hearing, I believe I described, with Kweisi Mfume; and we do have 19,000 members in Florida. We were inundated on November 8 with complaints, not just on Voting Rights Act grounds, but on other grounds, and I flew down immediately to Florida on November 8, and we spent a lot of time down there.

Senator BENNETT. We are familiar with Florida.

Mr. NEAS. I wanted to share with you that I have some knowledge of that situation in Florida. I know that you are familiar with

it, and the Members of the Committee. From what I have observed, listened to, we certainly thought we had enough information to file a suit with the NAACP and the Lawyers' Committee for Civil Rights Under Law, that there were violations of the Voting Rights Act. There have been many more hearings since then by the U.S. Civil Rights Commission; and I believe their preliminary report says there has been serious evidence of violations of the Voting Rights Act.

Was there a conspiracy? I do not think we have any kind of information to conclusively state that there was any conspiracy. I do believe, as I said in my testimony, there were violations of the Voting Rights Act. There certainly have been published accounts, especially with respect to purging, that perhaps the Governor and Katherine Harris were in violation of court orders with respect to how they handled that purging situation; the private company that came in with so many more hundreds and thousands of names of people who were not felons. But, again, those, I think, are issues that are going to be addressed in the legal process, pursuant to lawsuits that have been filed by us and by others.

So, at this moment, I do not think I can look you in the eye and say one way or the other. But I do believe that there have been violations of law. I just do not know the extent yet. But I think that is something we will find out, hopefully in the near future.

Senator BENNETT. Thank you.

Do either of the other two of you want to comment on my question?

Ms. PHILLIPS. Well, I would like to comment on the disfranchisement that occurred in Florida because of the poor matches. My understanding is that occurred because there was a change in data format in one of the lists supplied to the vendor. That is precisely why I think we need to have a uniformity of public data formatting in this country that will make it possible to conduct these pristine voter matches.

I do not think it was a conspiracy on anyone's part to disenfranchise someone, but it goes to the heart of why it is so difficult to keep clean voter rolls in this country.

Senator BENNETT. Thank you. Dr. Sabato.

Mr. SABATO. Senator, I would just say you cannot rule out the possibility that, in isolated places, there was a conspiracy to produce a certain result or push the election one way or another. My own experience with the systems across the United States is that most of it is just pure bumbling, but there are also very able people in the system. Sometimes they are simply overwhelmed, and the 2000 election was a perfect example, where despite the low turnouts in lots of places, there were other places like Florida, maybe St. Louis, where you had a tremendous turnout that was somewhat unexpected, and they were overwhelmed. That is a lack of money, lack of personnel, but also a lack of rules, well-defined rules that were crafted ahead of the election.

Senator BENNETT. My time is about gone, but one last comment. Dr. Jefferson-Jenkins, you made the comment, with which I agree, that as far as vote fraud is concerned, there is always a conspiracy. This is a deliberate attempt to steal the election. In the context of what we are talking about here, the question that we have to deal

with is whether or not we are going to create a system where it is easy to do that, or should we look for a system where it is hard to do that?

I think that should be part, Mr. Chairman, of our ultimate decision here; that in our efforts to achieve the goal we all want to achieve, and there is a great deal of unanimity in this whole debate, which is that every American who is entitled to vote should be able to vote, and without hassle. It is not just able to vote, but it is able to vote without hassle. In our efforts to get to that legitimate kind of goal, do we do it in such a way that makes it easy for those who want to steal an election, to do so?

I go back to the example I cited in my opening statement, of Lyndon Johnson and the circumstance in Texas when he first ran for the Senate. Certainly, unless some of the Jim Crow aspects were still there, but assume that they were not. Certainly, every citizen of Texas who wanted to vote, could vote, because they were tremendously lax, and Brown and Root and others were manufacturing votes on the other side, to see to it that the election came out the way they wanted.

We do not want objections to people voting, and we, at the same time, want to see to it that the way we do it, to see that everybody gets to vote, does not just throw open the doors, so that those criminals—and it is a criminal act—those criminals who decide they want to steal an election can work the system so easily that it becomes routine, rather than the exception.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much, Senator. I think you highlight the dichotomy we are dealing with here. We could solve these problems very easily; if we wanted to make sure there was no fraud, we just would not let anybody vote. Or if we wanted to make sure there was no disfranchisement, we would accept everybody that came in the door and every piece of paper that came through the mail. But we are not going to do either one of those things, clearly, and we are striving for a balance.

It looks to me like, in order to determine where to go, we need to understand where we have been; and it seems to me, sitting here listening, that on both sides of these issues we have a history that we have to deal with. We have a history in some parts of our country, I am sad to say, and some places in the South, of disfranchisement. On the other hand, we have a history in some larger cities not in the South, of substantial voter fraud.

We have made, I think, some headway on the disfranchisement problem. Congress has passed legislation. I think things are a lot better than they used to be. On the fraud side, I am not sure how much we can do, but it does not appear to me that we have done very much to address that problem. In fact, in trying to solve the disenfranchisement problem, we have created, in some opinion, a worse potential fraud problem.

So we have to ask ourselves, as I think you referred to, not only is it not enough to say that there are laws on the books against voter fraud, but we have to ask ourselves whether or not we need to try to have, as a part of our system, making it more difficult to engage in it, because believe me, from somebody who has tried a

couple of these cases, it is almost impossible to prove voter fraud when you get right down to it, and it is a deliberate act.

On the other hand, on the disfranchisement, it is a more complex issue. We have attempted through legislation to solve that problem, but it is a more complex issue, it seems to me like. First of all, you have situations where there is deliberate disfranchisement. You have other situations where there is just incompetency on the local election board, problems in the administration of it. We have to ask ourselves, even though we see that time and time again, to what extent can the Federal Government handle the administration of local elections all over the country, and in a Presidential election?

Then you have another component, and that is voter mistakes, something nobody has mentioned today. I do not know whether that has been quantified or can be or not, but some people just makes mistakes. When you say they are showing up, and they are in good-faith, the local election officials are in good faith, but they look and something comes in, and it is not signed or not signed properly—so what do you do about that?

I think we need to acknowledge there is some civic responsibility to try to do our best, figure out whether or not there are laws on the books about deliberate misconduct. We have to ask ourselves whether or not we can make it somewhat more difficult for voter fraud and for disfranchisement, and then ask ourselves whether or not we need to think about funding some improvement.

On making it more difficult, there seems to be some difference of opinion with regard to Motor Voter. We are clearly not going to go back from that. I mean, we have got that and we need to ask ourselves how we can improve it. Again, I mean, you can solve the disenfranchisement problem by not asking any questions of anybody, anybody that sends anything in. I understand that third parties can come and pick up batches of registrations and go out, and people think they are registered. And I think there was a situation with one of the Florida colleges, maybe, where that happened; they did not turn the batch in. It creates all kinds of problems.

Ms. Phillips, you have mentioned a nationwide system. Is there anything else short of that or in addition to that, that would allow for Motor Voter participation and registration in that way, but to give people more confidence that it is working the way it was designed to work?

Ms. PHILLIPS. That is a really good question, Senator, and I think that there are things that can be done. First of all, I think more resources on the State level, directed toward the cleaning of the rolls; and I really want to underscore the need for uniform formatting of public records and access and cooperation among agencies with those records, because that is a big problem for election directors.

If they have the access and they have the resources, they can conduct a fairly good purge. Then it comes down to the problem we have in Florida, of making sure that your local directors perform the due diligence required, because when do a match of multiple records against the voter rolls, all that produces is a number of questionable voters. You then have to go beyond that and ensure that you are not removing legitimate voters who are merely meeting a certain primary test, in a match.

The other thing that I think would aid this situation tremendously, as Mr. Sabato suggested, is voter education. There is just a dearth of programs out there. Usually by the time election directors get around to——

Chairman THOMPSON. Excuse me. But has anybody done any studies as to how many just honest mistakes that voters made?

Ms. PHILLIPS. Exactly. No.

Chairman THOMPSON. Excuse me. We will come back to you, Ms. Phillips.

Ms. PHILLIPS. No, that is all right.

Mr. SABATO. No. I was just going to give you one example in our favorite State of Florida, from November 2000, again, in just 8 Florida counties, 56,000 Floridians spoiled their ballots by voting for more than one Presidential candidate. Most of them did not have the butterfly ballot; 13,700 voters in just those 8 counties voted for 4 or more Presidential candidates; 4,300 voted for 7 or more Presidential candidates. You have to try to vote for 7 Presidential candidates.

Chairman THOMPSON. I believe I have read where nationwide, historically, every election, thousands of ballots are thrown out.

Mr. SABATO. That is absolutely correct, and Senator Lieberman may particularly enjoy this. Again, Florida, 537 the difference; 1,367 Floridians in just those 8 counties voted for every Presidential candidate except George W. Bush.

Senator LIEBERMAN. I have no comment. [Laughter.]

Chairman THOMPSON. They were on the right track.

Senator BENNETT. Clear intent of the voter.

Chairman THOMPSON. I may have cut you off, Ms. Phillips. Do you have anything else?

Ms. PHILLIPS. That is quite all right. Voter education is a really important element and deserves more resources. We had reports from Palm Beach County, for example, that clearly indicated that in those precincts where there were sufficient poll workers to advise the voters of how to use that funky little ballot, there were less problems. I would say virtually half of the voter reports that come in to us boil down to the voters simply not understanding the technology, or just basic procedures or what their rights are. Once explained, the problem goes away.

But there is a larger area, if I can just take 1 minute to explain, that has received no attention whatsoever, and it goes to the issue of technology. That is that all of the technology options available to us today in voting equipment are proprietary systems, and that keeps the prices of this equipment artificially high and defeats competition, frankly.

So we would like to see, in this whole debate, some discussion of moving to open architecture systems that would support State-centralized voter registration records and ultimately a national network.

Chairman THOMPSON. Thank you. Any further comments? I am going to call on Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Mr. Chairman. I have a prepared opening statement which I would appreciate be made part of the record.[1]

Chairman THOMPSON. It will be made part of the record.

Senator LEVIN. First, on a later panel, Dr. Alvarez is going to make the point that the error rate is significantly—or the rate of spoiled, uncounted and unmarked ballots is apparently significantly higher with technology of any kind than it was with paper ballots. I think what that means is that technology may have some benefits, but it also has a real downside, just simply in terms of counting ballots and voting. It is an interesting number. The figures that we have are, for instance, there were 3 percent in Georgia, 3 percent-plus ballots were either over-voted or under-voted; 3 percent in Florida. These are margins that exceed the margin of defeat or victory in many States, and it seems to me we have a major responsibility to see to it that simply does not happen again.

Now, how we achieve that is a more complicated question, but the stakes here are huge and the technology is not necessarily the answer, by the way. I do not think we can go backward to hand-counting ballots, but we have to, I think, understand what the price is that we have so far paid for technology—we have had experiences in, I think, all of our States. We had some major experiences with punch card mishaps in the city of Detroit back in the 1970's, which, by the way, may have cost my brother an election for Governor. So I have some personal familiarity with punch cards, and fairly painful familiarity with it.

I have a number of questions about the system that we have put in place in Michigan. It is called the Michigan Qualified Voter File. It has been cited again by Dr. Alvarez, as the best-practices example. What this is, it is a centralized computer database for all registered voters, and it links election officials throughout the State to a fully automated, interactive, statewide voter registration database.

We have it in Michigan. We also have plenty of problems in Michigan; for instance, with students who found that when they got a driver's license, they unregistered themselves somewhere. The law in Michigan is you have to vote—you cannot be licensed in one place with your automobile and vote in another place, one or the other. The education of our voters to that technicality has not been great.

So I will give you one example: A student here who had registered to vote in East Lansing in 1998, he went to vote in East Lansing. By the way, that congressional race in East Lansing was decided by 100 votes, 100 votes in a congressional race, and there was a lot of student interest in that congressional race. So this student goes to—he registered in 1998, in East Lansing, but when he went to vote, he was not on the registration list. Why? In September 2000, he renewed his driver's license. When he renewed his driver's license at a place where his family lived or where he had his home base, that automatically wiped out his registration at

[1] The prepared opening statement of Senator Levin for May 3 appears in the Appendix on page 115.

Lansing; and we do not know how many hundreds or thousands of students, by the way, this happened to. But we had a major problem with this centralized, automated, interactive database.

So even that technology, which is a best-practices technology, by the way, is not an answer. I am wondering if any of you have any comments so far—interrupt me. Yes?

Ms. PHILLIPS. Well, I would just like to comment on that. That is just a function of how the program is set up, and actually it is a good thing to have someone deregistered to prevent their being registered to vote in two different locations.

Senator LEVIN. Anyone else want to comment so far, because I would like to get into the two locations question, to see just how that is translated into voter fraud.

I was not able to get here because I was at the Armed Services Committee, but I missed Senator Bond and Congressman Clay earlier this morning. The one question that I was going to ask of both of them, actually, was this: Senator Bond's testimony, his written testimony, was that there were 24,000 people dual-registered in St. Louis or Missouri, generally, I think his testimony was 24,000.

And then he said: I do not know how many voted more than once, but the voter rolls allowed them to do so. Now, I presume it is a crime to do so, but nonetheless, if you are perpetrating a fraud, I guess that fact may not deter you. Senator Bond's staff, according to his written testimony, reviewed 11,826 of the multiple-registered names; and my question is do any of you know how many of those—I would have asked him this question if I could have gotten here—how many of those 11,826 multiple-registered names voted twice? If we do not know, why don't we know? Is it because you cannot find out in Missouri? Is that a matter of privacy? In my home State, you can find out if somebody voted or not. Obviously, you cannot find out who they voted for, thank God, but you can find out whether they voted.

Missouri has been apparently the center of some interest in this last——

Chairman THOMPSON. Excuse me just a minute, Senator. I am told that Dr. Jefferson-Jenkins really needs to leave, and I apologize to you, but unless you have some quick——

Senator LEVIN. I would ask her that question. Do you know how many of those 11,000 voters——

Ms. JEFFERSON-JENKINS. I do not know. So that was an easy answer, and I want to thank the Senators for allowing my testimony today and allowing the League of Women Voters' perspective, and if we can provide you any additional information, please do not hesitate to let us know.

Chairman THOMPSON. Thanks for being with us.

Senator LIEBERMAN. Thank you. Thanks for being with us.

Senator LEVIN. Thank you. I will ask the other panelists then; with something as visible as that, focused on, and obviously contentious and emotional as that issue is, do we have any idea how many of those 11,000 that Senator Bond's staff looked at, or the 24,000 that were registered in more than one place voted? Is there any evidence that any of them voted in more than one place, first of all? Is there any evidence, period? Do we know? And, if not, why don't we know, with all the interest in that particular campaign?

Ms. PHILLIPS. It is my understanding that election is being investigated. So I do not have the answer, but we may eventually have the answer through an investigation.

Senator LEVIN. Is it the press, the media down there? I mean, if Senator Bond's staff can look at 11,800, I presume the newspapers down there can look at them. Have any of you seen any reports?

Dr. Sabato.

Mr. SABATO. Senator, I do not know whether you can even check. I would assume so. That has got to be a public record, I would just have to assume. It is in almost all States. So I do not know in that case. I can tell you, in other cases I have examined, there usually end up being a few hundred double-voting.

Senator LEVIN. A few hundred in what size?

Mr. SABATO. In a State. Generally, they are people who voted by absentee and then may have forgotten, frankly, that they voted by absentee several weeks earlier, and show up at the polls on Election Day. Sometimes, the records are not clear enough; they did not do the background work ahead of Election Day. So a few hundred in a State——

Ms. PHILLIPS. If I could add something to that; it is probably less likely that someone would deliberately vote their own name twice than it is for someone to deliberately identify voters who are less likely to vote, because you can look at the voting history in a voter roll and see who has not voted for the last three, four elections, then use that list to perpetrate fraud. That is what we think happens. If you extended that out to, for example, non-U.S. citizens who wind up on the voting rolls inadvertently, when they get their driver's license, they accidentally fill out the Motor Voter form.

We have never found a lot of evidence showing that they have voted illegally, but we believe that others, identifying those names, knowing that they would not be likely to vote, could vote using those names. So it is that sort of mechanic that we think is more often in play.

Mr. NEAS. Senator, I certainly do not know the answer to your question, and I do think it would be relatively easy to find out, but if Larry is correct, there are a couple of hundred statewide, and you are talking about people who did an absentee ballot and then voted. Of course, they are in the same location. So my guess is that if it is 200 of those kind of circumstances mostly, it would be very few who were in two different locations and voted in two different locations.

Senator LEVIN. My last question is this: Back to the college students; should we allow a college student to vote where they go to college, rather than where their home is, for instance, their driver's license? They come from, let's say, one State and go to school in another State. Should we permit them to vote where they go to school?

Ms. PHILLIPS. I think they need to make a choice.

Senator LEVIN. Between a driver's license address and the——

Ms. PHILLIPS. Well, of course. You cannot have them voting in two jurisdictions, in a Presidential election particularly. That does not work, but they should be able to choose which is their residence.

Senator LEVIN. Would you allow them to vote in either location of their choice? Would you allow them to select between the two?

Ms. PHILLIPS. I think selection is the reasonable answer to that, and what we have noticed on State statutes is that residency is a huge gray area. It has not been clearly defined in election law in many jurisdictions, and it leads to a lot of cases where people believe they have a right to vote and they are prevented from doing so or vice versa.

Senator LEVIN. Other comments?

Mr. SABATO. Well, I live in a university community, the lovely town of Charlottesville, Virginia. It is actually a city. I had better watch myself. I can tell you the local jurisdiction there, even though it is all Democratic, opposes students registering and voting there, because they do not pay property taxes, and yet the numbers can overwhelm the residents. So I know that opposition exists in many university communities.

Senator LEVIN. Thank you. Thank you very much.

Senator LIEBERMAN. Mr. Chairman, I cannot resist—I know we are running late—a real brief anecdote about absentee ballots and then voting, and that being in my very first election, in 1970, I was challenging the Democratic State Senator in my district in a primary, and it became clear to us a day or two before the election that a particular senior citizen housing project had voted almost entirely by absentee ballot. Since we knew that we had not solicited those absentee ballots, we assumed that they were for my opponent, and I spoke to the immediate former mayor, God bless him, still alive, ailing now, Richard C. Lee of New Haven; and he had built that senior housing project, and he went in on Election Day. He asked me to provide him with three or four vans. This was all legal.

Senator LEVIN. Boy, we were getting nervous. [Laughter.]

Senator LIEBERMAN. "A mistake," he said to the folks there, "A mistake must have been made, come with me and let's vote," but the point is that in Connecticut law, they could not be counted twice, because apparently when they voted if, on the record, it was shown they had absentee—that nullified their absentee ballot. That is the point of this story, and the rest is history, because I won by very few votes, thanks to the mayor.

Chairman THOMPSON. Thank you very much. Thanks very much for being with us. This is very helpful.

Let's proceed to our final panel. The witnesses are Dr. Michael Alvarez, Associate Professor of Political Science at the California Institute of Technology; Dan Perrin, Executive Director of the Committee for Honest Politics; Gary McIntosh, State Elections Director for the State of Washington; and John Willis, Secretary of State for Maryland. Dr. Alvarez, I will wait till you are seated. Let's try to stick to our 5-minute rule, if we can.

Dr. Alvarez, thank you for being with us. Please proceed with your testimony. Your written remarks will be entered into the record in their entirety, all witnesses' remarks will be.

TESTIMONY OF R. MICHAEL ALVAREZ, Ph.D., [1] ASSOCIATE PROFESSOR OF POLITICAL SCIENCE, CALIFORNIA INSTITUTE OF TECHNOLOGY

Mr. ALVAREZ. All right. Thank you, Mr. Chairman, and thank you, Senator Lieberman, and the rest of the Members for giving me the opportunity to participate in this today. I find it particularly exciting that you have allowed some West Coast participation in these debates, and if you pardon my idiom, we are doing some pretty cool things out in California these days, and I hope to talk a little bit about that today.

I am primarily here because I am a member of the Caltech and MIT voting technology project, and we are doing some quite interesting things; and currently we are in what we consider the first phase of our study, which is really an empirical examination of voting systems, writ large, including registration and ballot counting systems, to try and understand the extent of the probably and try and really document what the problem is.

We are looking very closely at machine performance, and by machine performance, I mean accuracy, which has already been discussed today a little bit, cost and also accessibility factors. We are looking at voter registration systems, and I will speak to that in a few minutes. We are looking at absentee, early voting and vote-by-mail systems. We are looking at the issue, the important issue, of standards and testing of all systems.

We are taking a very close look, also, at the election industry itself, and it is a very interesting industry and has some peculiarities to it that are worth discussion at some other point, and we are also looking at what we call human factors, essentially the interaction between human beings and these new technologies.

We plan to issue our report in the middle of July. I have been asked to talk a little bit about the machine accuracy study that has already been referenced. We put this out earlier this year, the first edition of it. There has been a subsequent revision, which is available on our web page, and has also been provided to the Committee. We wanted to get this out because this is obviously timely information and it was actually used by the Florida task force in their recommendations for what reform should be undertaken in Florida regarding voting machines. What we are looking at here is what is called rolloff, or the residual vote. It is the difference between the number of ballots that were cast and the number of ballots that are counted in Presidential elections going back to 1988 at the county level, across the United States.

Those of you who do have a copy of the report, the easiest way to look at the analysis is reported in Table 2,[2] and what we find there are essentially two clusters of technologies. There are paper ballots, lever machines and optical scans, which have relatively low rolloff rates, around two percent or less. And then there are punch cards, no surprise, but electronic machines, which is surprising, which have significantly higher rates of residual rolloff, usually around 3 percent.

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[1] The prepared statement of Mr. Alvarez with attachments appears in the Appendix on page 166.

[2] Table 2 referred to appears in the Appendix on page 182.

The electronic machines, the touchscreen systems, the result here does surprise us, and we have begun to unpack this a little bit, and in the current report in Table 3,[1] the interesting thing that we find is that as time has progressed, these machines have developed as voter experience with these machines has grown, more important, perhaps, as election administrators' use of these machines has increased, the residual vote rates for the electronic machines has gone down.

So we are concerned about the use of these technologies, but we are hopeful that improvements will continue. Now, one other thing I did want to point out, which is not discussed in that particular report, but we are looking at, are I think what has been termed low-cost or low-tech solutions. There are lots of things that can be done that do not involve new technology to increase the accuracy rates in our elections.

One important thing that can be done is precinct-based counting, and that again is what the Florida task force has recommended to the Florida legislature, and I believe is what is going to be implemented in Florida, which is a system of precinct-based optical scan machines where the optical scan machines can be programmed to examine the voter's ballot after it has been cast, to see if there are any errors in it, overvotes, for example, and that is a good thing to implement in precincts throughout the country.

Senator LIEBERMAN. And then let the voter know?

Mr. ALVAREZ. And let the voter know that they have cast an erroneous ballot and give them the opportunity to correctly cast a ballot. Some other things that we have looked at are polling place workers. Obviously, putting more people in the polling place, especially paid polling place workers, can help significantly. Also, it turns out that some of the studies we have done in North Dakota recently indicate that just simply allowing the polling places to be open for more hours can help accuracy rates, so that the peak flows can spread out over time of voting. That seems to facilitate more accurate voting.

So there are lots of low-tech things we have been looking at, and we are quite hopeful that those can be implemented. Regarding registration, when we first started this project, we were looking primarily at voting systems, but we quickly found out the registration systems were quite problematic in the United States. They are quite complex. We are asking registrars at county levels and Secretary of State's offices to deal with huge quantities of information.

The numbers are, in my opinion, kind of staggering. In 1998 and 1999, the FEC reports there were 35 million registrations, 18 million of them were new; 6 percent of them were duplicates; and 44 percent of them were address changes. This is simply a complex system which allows for lots of mistakes to occur. There are mistakes, we think, in each step of the process. There are mistakes that occur when information is provided to voters about whether they can register and what their registration status is.

In particular, I went to the Pasadena post office just yesterday before I left town, and happened to pick up the voter registration form, which I have here; and it says right at the very top it must

[1] Table 3 referred to appears in the Appendix on page 183.

be signed and postmarked at least 29 days before the next election. Well, that turns out to be wrong. In California, it is now 15 days, and it has been that way for about 6 months in California, and we have gone through a couple of election cycles, especially in southern California. This is a mistake. It is something that can be and should be fixed.

There are also problems with list maintenance, problems with the Election Day use of lists. In addition to the questions of fraud and accessibility, there are some other criteria that I do think we ought to lay on the table. Registration systems obviously should be accurate and complete. They should be timely. They should be current. They should be accessible and fraudproof, but they also have to be responsive to local conditions. They have to be flexible. They have to acknowledge the fact that what might work in Los Angeles County, may not work in Laramie County, Wyoming.

In the materials that I have provided to the Committee, we have identified some of what we call best practices, one of which has already been discussed, the use of electronic databases that are linked across State and local election offices; and the example there is the Michigan Qualified Voter File. Another best-practice example comes from my State of California, where they have facilitated an online registration system. This involves a mail step. There is an actual signature that is required, but it is a wonderful way of providing data and it has been widely-used in California.

In terms of list maintenance and list use in the polling places, Orange County, Florida implemented a very interesting system where county workers had laptop machines with Internet connections, and they were able to instantaneously authenticate voters in the polling places, and we think that is an excellent use of technology. There is also a glimpse of the future, which is the Defense Department implemented a very interesting study this particular election, where they allowed for voter registration and voting over the Internet. So there are some interesting ways in which technology can work.

Thank you.

Chairman THOMPSON. Thank you very much. Mr. Perrin.

TESTIMONY OF DANIEL B. PERRIN,[1] EXECUTIVE DIRECTOR, COMMITTEE FOR HONEST POLITICS

Mr. PERRIN. Thank you, Senator, Mr. Chairman, and distinguished Members of the Committee. Thank you for the opportunity to present these remarks. I want to go back to the issue of encouraging as many Americans as possible to vote. Our committee was active in Florida. We come down more on the side, I think, of the disenfranchisement issue. We made the argument that some votes should not be more equal than other votes, and in that process, we believed that the barriers to voting are probably more substantial than the fraud issue.

In that regard, the barrier that I am going to discuss today is really more about the quality of public information concerning poll opening and closing times; in this case, in Florida. We were very

[1] The prepared statement of Mr. Perrin with attachments appears in the Appendix on page 191.

intrigued by the notion of the early call in Florida and the effect that it had on the panhandle vote, which, as you know, is in the Central Time Zone. We then began looking at the evidence that was public. We came across a couple of studies that showed 3 or 4 percent decline in voting in the panhandle, which, as you know, is a predominantly Republican area. One study said 7,500 to 10,000 votes. In our own evaluation, we probably think it was close to 20,000 total votes, based on looking at the average number of votes per hour per polling place.

In an attempt to evaluate the strength of our hypothesis about the early call, we hired some field directors and went out to people that we thought would probably have the best sense of what happened at the polls on the panhandle, which turned out to be the bailiffs and the poll clerks and the poll inspectors, and we did take a number of affidavits. We did scores more of interviews, and I will just summarize two of the affidavits that we have. This is from Precinct Number 23 in Dade County: "I have been a poll worker since the 1970's. Voting was steady all day until 6 p.m. Between 6 and 7 p.m., it was very different from past elections. It was very empty. The poll workers thought it was odd. It was like, 'the lights went out.' We joked with the deputy on duty because there was no one in line for the deputy to be placed behind when the polls closed."

Another clerk of elections in Ocaloosa County said: "Between 6:15 and 6:20 p.m., I looked around and said, 'Where is everybody?' My poll workers were just as perplexed as I was. I do not think we had more than five people from 6:15 until 7 p.m. We had averaged 80 voters per hour until the last hour."

Another part of this statement says that 8 years ago in the Presidential election, there were so many people in line that the last voter did not vote until nearly 10:30 p.m.: "I went outside at the end of the day to tell people to hurry along and found there was no one in the parking lot."

So this clearly, in our mind, set up a dichotomy between the fact that the networks made their early call at 10 minutes till 8 p.m. Eastern, or 10 minutes to go before the polls closed in the Central Time Zone, and it did not square with what we were hearing from people on the ground. So we went back and looked at the network tapes. What we found was that between 6 p.m. Central and 7 p.m. Central Time, when the polls were still open in the panhandle, every network stated that the polls in Florida had actually closed.

We are not talking about an insubstantial number of polling places, although one can argue that any number of polling places would clearly be a concern, even if it was one. In this case, we are talking about 361 polling places. One local network television reporter told me that she was in the control room on election night, and shortly after 6 p.m., there were a number of very angry calls, complaining about this to the network.

CBS, in particular, made repeated references to the fact that, in their mind, at any rate, that the polls had closed. So, Mr. Chairman, it is our view that the national news network owe it as a duty to not mis-state on Election Day the fundamentals of the electoral procedure itself. Certainly, this includes not telling voters that the polls are closed when, in fact, the polls are open.

I have attached to my written testimony, two documents which I would direct the Committee's attention to: The first one is from the Secretary of State's office in Florida, which simply points out that the polls in the Central Time Zone do not close until 8 p.m. Eastern Time, and that this was released to the local and national media one full week before the election.

In addition to that, there is a possible floor amendment language to make it—prohibit any licensee of the Federal Communications Act from falsely stating that polls are closed when, in fact, they are open. In order to give the Committee a sense of the degree of what we are talking about, we have put together a short tape, which we would like to play for you now.

Chairman THOMPSON. Let's wait until the question round, and you can do that on my time.

Mr. PERRIN. Yes, sir.

Chairman THOMPSON. Mr. McIntosh.

TESTIMONY OF GARY McINTOSH,[1] STATE ELECTIONS DIRECTOR, STATE OF WASHINGTON

Mr. MCINTOSH. Thank you, Mr. Chairman. My name is Gary McIntosh, and I currently serve as the director of elections in the Secretary of State's office in Olympia, Washington. I am also the immediate past president of the National Association of State Elections Directors, and I would like to begin by thanking the Committee for the invitation to appear here today. I think from looking at the panelists, I may be the only person appearing before you today who has actually conducted an election and actually has had to administer a statewide voter registration system of some kind. So I do appreciate including our perspective in your hearing today.

In particular, I want to focus on the methods used to register voters through our Motor Voter program, and share with you some statistical information regarding our program, and finally talk with you a little bit about security provisions and share with you some perspectives as to recommendations that I think you may want to consider. Our State was an early advocate of the National Voter Registration Act. Our former Republican Secretary of State, Ralph Munro, I know testified, I think, about three times before Congress in support of the act.

Our State was one of the first in the country to establish a program that allowed eligible citizens a near-automatic method of registering to vote when they applied for or renewed their driver's license. We established our program in January 1992; in fact, a year before the act was enacted by Congress. Our program takes advantage of the fact that almost all the information that we need to register someone to vote is actually already contained in the driver's licensing system; that is, the name, address and age.

What we simply do is use that information to flag a record if a person desires to register to vote. We create a new record, a voter registration record, utilizing that information, and then forward that information on to the county. To complete the transaction, the applicant just merely signs the voter registration form, attesting to their qualifications to be a registered voter.

[1] The prepared statement of Mr. McIntosh appears in the Appendix on page 199.

In terms of the impact that Motor Voter has had on our voter registration file, I am not going to repeat what I have submitted to you in my written testimony, but suffice it to say that we, despite having now gone through two driver's licensing cycles and two election cycles, we are still registering about 500 new registrants a day through just the Motor Voter program. We are still registering about 1,000 a day through the registration by mail aspect of that program, so we are still getting a lot of transactions.

We have done about 2.3 million transactions total since we started the program back in 1992. I would also like to offer a few comments concerning security and voter registration list maintenance. First off, I feel that Motor Voter does bring—especially the Motor Voter aspect of NVRA—some added features to our voter registration process in terms of security. I think one of the most important advances is the link between the driver's license and voter registration records.

By connecting these two systems, our office and local election officials have several new cross-checks and auditing tools to protect the integrity of the registration process. Again, a reminder that under Motor Voter, it is the only form of voter registration that we have where the applicant's picture is taken, and we have actually utilized that in cases where we have had questions regarding a person's eligibility or identity.

Second, I would like to point out that our State does not have a statewide voter registration database. I think our job would be a lot easier and more efficient and accurate if we did. We, according to State statute, do require our county election officials to participate with our office in an annual list maintenance program, which is designed to detect those instances where a voter may be registered more than once in the State; and we are hoping to expand that program to twice a year. Of course, as with all of us at the State and local level on this issue, costs are an important factor in our ability to expand our program.

The third comment I would like to make is that voters in our State do use mail-in ballots extensively. Over half the ballots cast in our last Presidential election in the State of Washington, about 54 percent, were cast by mail. Mail-in ballots not only help in turnout, but they are also a big factor in keeping our voter registration records accurate, because we can use information from the post office in terms of keeping our records clean.

Fourth, as I mentioned in my written testimony, our legislature has recently enacted into law a new provision under the leadership of our current Republican Secretary of State, Sam Reed, which will require licensing examiners to remind voter registration applicants that they need to be 18 years of age and U.S. citizens in order to register to vote, and we believe that this is going to help in terms of preventing the inadvertent registering of ineligible applicants.

I also want to just quickly point out, too, that we are a State that does provide provisional ballots. We do not turn away people from the polling place in our State. If you show up to vote in our State and you are not on the list, you are allowed to vote what we call a special ballot on a provisional ballot. We do the research and record searches and so forth on that particular individual registra-

tion after the election is over with. We have found that to be a tremendous help in our State, as well.

There are some ways that, I think, the Federal Government can help us out. We certainly would like a break in our postal rates, which I think we have mentioned a couple of times to you before. There is a reference in the NVRA about getting first class service at a lower rate, and we think it is essential that take place; and, also, I would encourage Congress that if and when they do decide to make money available to State and local governments, that local election officials be given maximum flexibility as to its use.

As we have discussed here today, there is not only a need for new technology for counting ballots, there is also a need for up-to-date voter registration systems that will provide the accuracy and security that our citizens rightfully expect.

Again, thanks for the opportunity to testify, and I look forward to answering your questions.

Senator LIEBERMAN [presiding]. Thanks very much, Mr. McIntosh. Thanks to all of you for your patience. The first two panels went on a bit longer, I would say, than we expected, but you have been very helpful and I appreciate your coming, particularly those who came from far. We also welcome you, Mr. Secretary, even though you did not come from so far, and I look forward to your testimony now.

TESTIMONY OF HON. JOHN T. WILLIS,[1] SECRETARY OF STATE, STATE OF MARYLAND

Mr. WILLIS. Thank you very much. I hope Senator Thompson, the Chairman, will come back.

Senator LIEBERMAN. He will be back soon.

Mr. WILLIS. My grandfather used to run the general store in Kyles Ford, Tennessee, 100 years ago, and I am sure we might even be related at some point. My wife grew up in Westport, went to high school in Westport; and you and I have some law school colleagues and friends

Senator LIEBERMAN. We should have you back before this Committee when we have more time to talk.

Mr. WILLIS. Hopefully, we can do that. I want to commend the Committee for not only trying to endeavor to set a tone, which I think the Committee, in both the Chairman's remarks and your remarks at the beginning of this session, were appropriate. I hope that tone will continue throughout the years, as the Congress deliberates this issue; and also, I think the framework, as it has emerged here, the tensions that both the panelists have presented, as well as the Senators in their questions, have presented, is a healthy framework. It is a good dichotomy that you have drawn, and I think it would be useful for the debate.

As I prepared for this hearing, and after listening to the panelists, many of whom I know from other contexts, I was really struggling with how to be constructive to your process and deliberation. We have prepared a written statement, to which would also draw the Committee's attention, because the State of Maryland just went

[1] The prepared statement of Mr. Willis with attachments appears in the Appendix on page 203.

through this entire process. One advantage of being at the State level is we started our process in December, were able to complete that report in about 70 days or so, get it done, introduce legislation and get it passed in 6–8 weeks in the State of Maryland. It will be signed on May 15, be implemented June 1, and we are going to be undertaking reform.

Senator LIEBERMAN. My reaction is envy. Congratulations.

Mr. WILLIS. The advantage, as Senator Sarbanes, old friend of mine, said to me one time about Washington versus Annapolis, was the ability to act a little more quickly. As this Committee has well articulated, as well as the other speakers, the administration of elections and the participation of citizens, are topics that have had substantial research. And every one of the Senators has a keen understanding. You are election professionals. I tell people I am coming down to talk to Congress about the election reform issues, and they know my involvement. They know I have written books. They know I teach at the University of Baltimore, and I said this is an audience that understands this issue.

If you have not been yourself in a close election, many of your colleagues or friends in this profession have been subject to close elections and to recounts. One story that did not get related today is what the Senate had to do in 1975 in the State of New Hampshire, when they had recounts. The winner on Election Day lost by 10 votes on recounts. All the ballots from New Hampshire were shipped to the Senate and had to be counted by the Senate. The Senate could not make up its mind and sent it back to New Hampshire.

These are, as I think Senator Bennett and Senator Thompson said, not old issues that we are dealing with, and surprisingly many of the same machineries were there. I think what I want to urge you to do, and what I want to focus on in my oral remarks, is that I think it is important, critical, essential, that the U.S. Senate and the Congress *do something!* It is very important that some positive action come out. I think it was Senator Durbin from Illinois who felt that among the populace, there was a certain angst, unsettlement and unease about what happened.

I feel that, too, in my public travels. I am no longer the direct election administrator. We have an independent board that does that now. But I am on the Board of Canvassers. I write the ballot questions. I certify the elections. I am involved in the process, obviously, as a practicing political person. But if we do not do something, we are going to further erode public confidence, and the participation levels, which is the bottom line, will suffer if we do not do something.

What I think you can do, you can use States as models. The other message I would like to deliver today is that while you are deliberating and you are framing it—and, Senator Thompson, while you were out, I commended both you and Senator Lieberman for setting the framework and the tone. I think you have done an excellent job this morning and I hope it will continue throughout the rest of this session of Congress, because I think it is the appropriate tone and framework.

But what I want to tell you is States are doing things; States are going ahead. Local governments that have the ability to go ahead

are going to go ahead. Now, I described quickly what Maryland did, but I want to restate it for you. Even before the election was judicially determined, our governor set up a special committee, which I chaired, to look into the voting systems in Maryland.

We held our public hearings, just as you are starting now, took about 2 months to do that, and we came up with several recommendations. We got them in to the Mayrland General Assembly. They were passed in 6–8 weeks. They will be implemented. They will be on the ground, and we are going to go to implementing some of the recommendations that have been suggested here, from the League of Women Voters to some of Caltech suggestions. We will be implementing in Maryland provisional ballots. We will be implementing—we actually started in 1998, moving toward a centralized database for voter registration.

We will be allowing voters—we had a huge battle. I brought the Motor Vehicles Department and the State Board of Elections into my office. We had hours' worth of meetings, and we reached an agreement between those two entities that we are simply going to transfer electronically information, so we are not losing voters which was the biggest problem in Maryland. When we look at elections, and there is a tendency to do that, everybody looks at it from their own perspective, their own jurisdiction, their own precinct. But we need to take a bigger view. In Maryland, we were somewhat stunned by what happened around the country. We do a good job of counting votes. Two million voters; only 10,553 did not vote for President; 0.518 percent overall; at the polling place, it was only .450 percent. I mean, these numbers that are getting thrown around in other States are just foreign to what our experience is in Maryland.

Now, what we have noticed is that technology, the second point, in addition to the fact that States are moving forward, technology can help. We have changed our systems in the last 10 years; 19 out of our 24 jurisdictions have improved their technology. We have reduced our no-vote rate, which was already low—we are among the best in the country—we cut it over half by new technology.

Senator LIEBERMAN. What are they using?

Mr. WILLIS. The majority of the counties are using optical scan; Baltimore City went to a DRE, and in contrast to Caltech's studies, and I am interested to see their data, our results were the opposite. They moved from lever to DRE, cut their no-vote rate in half; technology did work in Baltimore City, a very urban area where I vote. You can prevent overvotes. We had one county that has punch cards. It is our wealthiest county, Montgomery County. They had 2,565 overvotes in Montgomery County because they use a data vote punch card central count system. The entire rest of the State of Maryland, had only a couple hundred overvotes. You can eliminate overvotes with technology. Technology can make a difference.

My vision is for Maryland to contribute to improved voting system and equipment, and the governor for the first time put State money into voting systems. In Maryland, it has been historically a local responsibility. The governor for the first time said we are going to put State money in. Our new law now says a 50–50 share between the State and local governments for voting systems and equipment. What I would like to urge, and I told the governor I

was going to say this, was that the Federal Government join us and that it really be almost a third, third, third; and what I think would be an appropriate level of funding from the Congress is one dollar per person of voting age. That is really less than some of the proposals that have currently been made in Congress. I think that is a concrete proposal that can happen.

The issues—I think there is a lot we can do, and as my written testimony indicated, it is the constitutional questions and the citizen participation questions that, Mr. Chairman, both you and Senator Lieberman outlined, that are at the root of this issue in which we need to continue to make progress in this country.

Senator I wanted to tell you, my grandfather ran the general store in Kyles Ford, Tennessee, which not very many people know where it is, and my father was raised in southwest Virginia. I can just recognize from your demeanor a little bit of what are some of my historical roots.

Chairman THOMPSON [presiding]. I knew you were unusually perceptive and intelligent, and now I know the basis of it

Senator LIEBERMAN. That was that very distinguished demeanor you were speaking of.

Mr. WILLIS. That is correct.

Chairman THOMPSON. You certainly show that attention and leadership is a large part of the solution here, and lack of it has probably been a large part of the problem in other parts of the country. I was going to commend you even before you said that.

Mr. WILLIS. Thank you, sir.

Chairman THOMPSON. Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman. This was an excellent panel. As too often happens around here, I wish the room was full and all the media was here right now, but we are being televised, so I am sure some folks have heard. I thank you all for your testimony. I want to ask Mr. McIntosh and Secretary Willis, because you both are administering and overseeing; just to clarify, from your point of view, and I think you pretty much said this, Mr. McIntosh, that the so-called Motor Voter law has been a success, which is that you testified specifically that it has substantially, and continues to substantially register voters, but you have found no substantial increase in fraud as a result of Motor Voter?

Mr. MCINTOSH. No, we have not, not really at all. It is interesting that I can only think of perhaps in the entire history of our doing this, we have had one or two instances of fraud. In both of those cases, we were able to again utilize the records and the pictures and the photos and the IDs from the driver's licensing file as an aid in attempting to get to the substance of that particular situation, and which we would not have been able to do otherwise. So the answer is that we have not had much experience at all with fraud.

Senator LIEBERMAN. Secretary Willis.

Mr. WILLIS. Historically, and if Senator Bennett was here, we could go back to examples in Baltimore from the American Know-Nothing days in the 1850's, which predate Utah, but we had our share back then. But recently we have had allegations, but not a lot of substance. We found, and I think that there is much more error on the implementation and administration phase, as the

president of the League of Women Voters testified, than there is on the actual duplication or voter fraud.

This issue came up during our recently-concluded legislative session, and it was raised in our Commerce and Government Matters Committee, as well, at the State level; and what I said to them is, "Let's keep improving our technology." One is our statewide database for voter registration should be online. Second, we passed a law in Maryland that said if you move within the State, you are simply going to be transferred. You are not going to be dropped and added.

We only have 24 jurisdictions, which is an advantage for us. We have large counties. They can all access that same database, and so we are not going to be dropping people from the rolls. The other thing with the voter identification, and we had several bills in our legislature pending that did not pass. They are on hold. My vision is, and it was interesting to hear, both from Deborah Phillips' perspective all the way to the League of Women Voters, that technology can get to this identification issue; and if every polling place can have a PowerBook or access to a statewide database, you can pull up that signature; you can compare it, and if you want to go the other step, you can actually have it compared electronically.

We ought to be using the technology that is available in other sectors of our economy for our election infrastructure. We can get to that identification issue without creating all kinds of other problems.

Senator LIEBERMAN. I thank you for that. It does seem to me, having listened this morning, that one of the best things we can do, if not the only thing, to reduce voter registration problems would be to have every State computerize their voting lists and have it centralized.

Mr. WILLIS. One point on this is we have shared with other States—we have shared with the District of Columbia. Linda Lamone, our election director, recently or several years ago, compared D.C. with Montgomery and Prince George's County. Most of it was purely innocent duplications between people moving and whatever. The Secretary of the Commonwealth in Pennsylvania, they are starting their State reform process in Pennsylvania. They have 67 counties, and I told Secretary Pitzingrilli, a Republican who with Governor Ridge, is doing a great job up here with his committee—that we will share our database with theirs, because we share a lot of border with Pennsylvania; and I think that some of those suggestions you have heard this morning can go to address that problem.

Senator LIEBERMAN. Thanks.

Dr. Alvarez, I was interested, although the percentage is only one percentage more, but now that could be significant—the higher problem rate with what I would call the touchscreens, and I know there are more expressions of that approach. For instance, I have been reading about Brazil and Peru; I think perhaps President Carter and President Ford have been to Peru and were impressed by the small error rates. So if you had your druthers, based on your research—if you were the king, what is the system you would try to—the technological voting system that you would try to implement in every State in the country?

Mr. ALVAREZ. Right now, we are advocating precinct-based optical scanning as the best available technology at this point.

Senator LIEBERMAN. These are the ones where you fill out the ballot.

Mr. ALVAREZ. Yes, it is like you are taking the SATs. You fill in a circle or you complete a line, because in those kind of systems, most people find it relatively easy to use the paper ballots.

Senator LIEBERMAN. You can organize them or work the machines so that they tell you how you voted, in case there is a mistake.

Mr. ALVAREZ. Exactly, and you might have an opportunity then to correct your mistake; and they also obviously provide a paper trail for auditing in the future. The electronic machines are very varied in their interfaces, and many of them, at this point in time, do not allow for that same type of auditability after the election because they do not generate a paper trail of every single ballot that has been cast.

Senator LIEBERMAN. How about on the voter registration question? What would be your counsel? Am I right that the best thing we could do is centralize, have computerized lists in every State at a central place?

Mr. ALVAREZ. Exactly. I would strongly urge you to recommend that every State develop a statewide voter registration database; that be computerized, and that linkages be made between the statewide database and the local election official offices, so that there can be instantaneous updating of those databases.

I would also urge that you recommend or somehow facilitate the ability of States to tell voters, to let voters know, what their current registration status is. That is one of the loopholes right now. It is very difficult for many voters to find out if they are currently registered to vote and where they might be registered to vote, and get that information electronically in the polling place, so that, as we just heard, you can have polling place verification electronically. That eliminates, I think, a lot of the potential fraud problems, and I think it also facilitates access, so that if someone, for example, shows up at the wrong polling place, right now, in many locations, the local election officials in the polling place do not know where to send that person to vote.

So, again, if they had access to the State electronic database, they could determine if that person is registered and they could tell them where they can go to vote.

Senator LIEBERMAN. Secretary Willis and Mr. McIntosh, am I right that you both said that you have provisional voting in your State?

Mr. WILLIS. We just started. We just enacted ours.

Senator LIEBERMAN. You just did. You have got it?

Mr. MCINTOSH. We have had it for over 30 years.

Senator LIEBERMAN. So far, it has worked well?

Mr. MCINTOSH. Yes, it does work well. I would be remiss if I did not comment on behalf of the local election officials, that provisional ballots can be a real pain in the neck, in terms of giving the results out quickly, because with the substantial number of them that you have, they do require a lot of research and a lot of physical handling, and so they can bog down the process quite a bit, but

I think they are absolutely essential, in terms of your Election Day activity, of just getting through your polling place problems.

Senator LIEBERMAN. So the basic arrangement is that any voter whose registration status is questioned, and he or she is convinced they are a voter, they make an affirmation, sign a document of some kind, and then go ahead and vote, and that vote is separated and then later investigated?

Mr. MCINTOSH. That is correct. It is put in a separate envelope, a security envelope, along with the information regarding what the question might be.

Senator LIEBERMAN. Nobody is turned away?

Mr. MCINTOSH. Nobody is turned away, and people are allowed to vote. We basically have this in two instances where this primarily comes up; one is the person is not on the list at all, or second, they are registered to vote in a district or they are not allowed to vote on a question that they feel that they should be allowed to vote on. It might be a school district measure or something like that. So whatever that situation happens to be, we do let them vote the way they want to vote, and then process the ballot later.

Senator LIEBERMAN. Mr. Secretary.

Mr. WILLIS. In the formulation of our bill, we looked at all the other States that had provisional ballots, and the system that you have just described and Gary McIntosh described is what we adopted; so that we are not turning voters away and we are determining administratively the next day or the day after. That was our biggest complaint in the last election, because when people were going to motor vehicles departments, thinking that they had either changed their address or did not intend to change their voting address, but were just simply dealing with motor vehicles—they may have two homes. We have people who live at a home in Ocean City; they have one in the mountains, whatever—and they were suddenly dropped from the rolls. It happened to a voter right in front of me on Election Day. We had to send that voter down to the central office way downtown. That made them late for work. So we decided provisional ballots would, in fact, be a convenience to the voter, as well as protect the security of making sure that voter was registered, because you can determine that administratively. Across party lines in the State, that had very little controversy as it went through our State legislature.

Senator LIEBERMAN. Have the numbers been large, in Washington State, for instance, of the use of the provisional vote?

Mr. MCINTOSH. Well, our numbers have been going down, Senator, because we do not have very many people going to the polling place anymore. Most of our people are voting by mail, so we have reduced the number of people that we process through our polling locations. So our numbers, in fact, are decreasing.

Senator LIEBERMAN. One quick factual question for the two of you. I have heard references a few times in this to North Dakota, which has no registration. What is going on out in North Dakota? You just walk in to vote? Do you know?

Mr. MCINTOSH. Essentially, they do keep a registration file from election to election, as I understand it, so it is just that there is no ongoing process whereby people sign up to vote.

Senator LIEBERMAN. So, essentially, it is a kind of Election Day registration, effectively?

Mr. MCINTOSH. Yes.

Mr. WILLIS. You show and indicate—some indication of residency, and you are allowed to vote in North Dakota. I would say I think there is a certain mythology about urban voters—I live in Baltimore City, near Johns Hopkins University. People in my neighborhood know people in my neighborhood. It is a question, I think, of size and scale more than it is of exact location, because there are tight-knit communities everywhere in this country.

Senator LIEBERMAN. Good point. Thanks very much. You have been a really helpful panel.

Chairman THOMPSON. Thank you.

Mr. McIntosh, are most people satisfied that going to more of a mail system is a good thing in your State?

Mr. MCINTOSH. Well, our numbers sure indicate that. The registered voters sure love it. In 1996, we had about 35 percent of our ballots cast by mail, and as I mentioned earlier, about 54 percent were cast by mail in this last Presidential election. So the voters seem to favor this type of voting.

Chairman THOMPSON. It takes a little longer to get your election results.

Mr. MCINTOSH. Well, it does, and when you look at a State like ours, there are three factors in that. One is the large number of people voting by mail. The second factor is the fact, as I mentioned earlier, the fact that we have provisional ballots. The third factor is that we have a very late primary, and so we have a very compressed time frame by which we can get all of these ballots processed and get our results out, and that creates a problem, as well.

Chairman THOMPSON. You mentioned your experience with the Motor Voter and people coming in and showing their ID and so forth, and that has worked. Have you had similar problems to other States in the mail-ins, with regard to Motor Voter?

Mr. MCINTOSH. We have not had much in the way of voter fraud in our State at all, and that may be due to our political culture or history or whatever. That is not something we have had a lot of.

I would say that what fraud we have had, where we actually have had some successful prosecutions, has been more related to initiative petition signature gathering, where people are paid to gather signatures for initiative petitions. This creates an incentive for them to dummy up——

Chairman THOMPSON. Paid by the name, maybe?

Mr. MCINTOSH [continuing]. To dummy up some voter registration forms, and then fraudulently put the signature on the initiative petition, so that they can get enough signatures and get more money, essentially. So we have had some instances of that, although normally when we have seen that, it has been fairly well-detected; the initiative petition signatures, for example, we have found to all be in the same handwriting. We found one sheet that all 20 names on the petition sheet were all in alphabetical order. So, obviously, these names they had just gotten out of a phone book somewhere.

Chairman THOMPSON. Kind of like a bank robber I prosecuted one time, and found the money in sequentially numbered bills, and he still got acquitted. [Laughter.]

Mr. MCINTOSH. Our individual was not as lucky.

Chairman THOMPSON. It was in Columbia, Tennessee, by the way.

Mr. Perrin, let me see if I understand the situation correctly. The polls in the Central Time Zone were open until 8 o'clock?

Mr. PERRIN. Eastern.

Chairman THOMPSON. Seven p.m. Central.

Mr. PERRIN. Yes.

Chairman THOMPSON. The media announced that they had closed at 6 p.m. Central?

Mr. PERRIN. That is correct.

Chairman THOMPSON. Is that what happened?

Mr. PERRIN. Yes.

Chairman THOMPSON. You had something to show us, I think.

Mr. PERRIN. Yes, sir. Thank you. What you are going to see are excerpts of broadcasts between the hour of 6 p.m. Central, and 7 p.m. Central.

Senator LIEBERMAN. This will be particularly emotional for me to watch. [Laughter.]

Mr. PERRIN. I am sorry, Senator.

Senator LIEBERMAN. I will try to contain myself. I have relived this night so often.

Mr. PERRIN. Really, it is a much more clear-cut case than we are dealing with——

Senator LIEBERMAN. Although I think this was the point at which we had won. This was the high point. [Laughter.]

Mr. PERRIN. Well, Senator, I think there is a part of this tape you will particularly enjoy.

[Videotape played in the hearing room.]

Mr. PERRIN. I did not mean to pile on there. It really is extraordinarily clear, at least from our perspective, from the poll workers, what happened there; and I would just urge the Committee not to take the media at their word. I think they have lost substantial credibility, and there needs to be a prohibition, because I simply do not believe that they will refrain from, in the heat of the moment, doing it again.

Chairman THOMPSON. All right. Well, there have been hearings in detail on that issue over on the House side, and that is for another day, as to what, if anything, can or should be done about that. Perhaps what we are doing here today is the most that we can or should do about it, and that is have some accountability. I mean, we ought to have it. The news media ought to have it. When they look like they get it so badly wrong, and probably discouraging a large number of people from going to the polls, they need to be called on it; and I think it has already had a salutary effect on the media. I may be wrong.

Mr. PERRIN. I have heard a lot of discussion about the early call. I have not heard a lot of discussion or self-criticism by the media about the fact that they were so wrong and that it affected so many polling places. I am not sure that the media can hold themselves to the standard of: We will police ourselves.

Chairman THOMPSON. Sitting here and listening to this, calling an election is one thing. A voter ought to be on notice that is a projection and may or may not affect—telling somebody their voting place is closed is something else again, and I am not sure there has been much attention or sufficient attention drawn to that.

Mr. PERRIN. I thank you, Mr. Chairman and Mr. Lieberman, for the opportunity to present it today.

Chairman THOMPSON. I want to thank this entire panel. It has been a very good panel.

Thank you, Senator Lieberman, for these hearings. Hopefully, we will contribute to the body of knowledge and some additional understanding about this problem, what we can do about it.

Senator LIEBERMAN. Thanks, Mr. Chairman. I look forward to next week. Thank you all very much.

Chairman THOMPSON. Thank you very much.

We are adjourned.

[Whereupon, at 2 p.m., the Committee was adjourned.]

FEDERAL ELECTION PRACTICES AND PROCEDURES

WEDNESDAY, MAY 9, 2001

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:17 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Fred Thompson, Chairman of the Committee, presiding.

Present: Senators Thompson, Lieberman, Levin, and Carper.

OPENING STATEMENT OF CHAIRMAN THOMPSON

Chairman THOMPSON. The Committee will come to order, please.

Today, we will have our second hearing on election reform at the request of Senator Lieberman. During the first hearing, we discussed issues involved in getting people to the polls. We focused primarily on registration and the competing interests of increasing voter participation on the one hand and protecting the integrity of our campaigns on the other.

We learned last week that voter registration systems in this country have problems, that they are vulnerable to fraud and mistake, and that steps need to be taken to clean and better maintain the voter rolls.

Centralized databases, more aggressive scrubbing of the voter lists, and safeguards such as requiring identification at the polls might help.

There also appeared to be a consensus on ideas such as provisional ballots which would help ensure the right to vote for some and also help to deter fraud.

Today, we will hear about problems with absentee ballots, military ballots, and problems encountered at the polls, and we will delve further into the question of where the less accurate machines are actually located.

One witness with us today is Dr. Stephen Knack. You may recall last week that there were some comments made that perhaps it is no coincidence that some of the more inferior machines that are used in this country have been placed in low-income and minority areas. I cited a study by Dr. Knack that found that the more affluent counties are statistically more likely to have punchcard systems. To back that up, John Willis, the Secretary of State of Maryland, testified that Montgomery County, the richest county in the State, is the only one that still uses punchcards in that State.

We have other witnesses who will outline problems people encountered voting in the last election and will also offer some solu-

tions for problems such as absentee ballot fraud and the failure to properly count military ballots.

There are many who are eager to have Congress spend money on elections, and particularly on new machinery. I think we are learning that there are several problems to be addressed, many of which can raise questions about the integrity of our elections. I hope that as we continue to highlight other problems with our electoral system that we will encourage people to be deliberate on how and where we spend those funds.

Incidentally, since our last hearing, the Florida legislature moved in a bipartisan fashion to eliminate punchcard ballots in that State, to establish uniform recount rules, and to set up a statewide registration database. I applaud them for taking an affirmative step that will help ensure public confidence in their elections.

Senator Lieberman.

OPENING STATEMENT OF SENATOR LIEBERMAN

Senator LIEBERMAN. Thanks, Mr. Chairman.

First, let me apologize to you, the witnesses, and everyone in the room that I am tardy today. I was on the floor on this vote, and I was brought into some urgent consultations on the education bill that is now before the Senate.

Mr. Chairman, let me again express my appreciation to you for agreeing to hold these 2 days of hearings to explore the worrisome problems that we have with America's electoral system.

I thought last Thursday's hearing underscoring the problems of voter registration produced some very constructive suggestions. In fact, we already have had such an extraordinary effect that just a day after that hearing, as you said, Florida adopted many of the reforms that were discussed last week.

I did notice, including particularly the centralized voter registration database and provisional voting which seems like such a simple idea to deal with a common and most irritating problem, that you wonder why we have not all done it before, which is to say if you come to the voting place and for some reason you think you are registered and your name is not on the list, instead of sending you home or back to work, provisional voting says that you affirm that you are who you say you are, that you sincerely believe that you have a right to vote, you cast the vote. Provisionally, it is separated, and then afterward, the Registrar of Voters investigates to see whether your vote should ultimately be counted.

I do understand, Mr. Chairman, that Palm Beach County is selling its punchcard machines on eBay, and I want to announce here publicly that I do not intend to be making a bid on those machines.

Anyway, I am confident that today's hearing will prove equally helpful in furthering the national conversation on this critically important issue.

Today, we are focused on votes that are cast and whether they are counted. It has been estimated that nationwide, of all the ballots cast last year, 2.5 million were not counted. It is a stunning, embarrassing figure. So that, what happened in Florida because of the virtual tie that occurred there, it illuminated, I think, for the country a much broader national problem that we have to tend to.

I hope today's hearing serves to remind us that Americans not only have a right to expect that their votes will be counted. They have an equal right to expect that their votes will be counted. The constitutional promise of one person, one vote, is not just a statement of principle. It is a legal right that every American has, and the first step in making that right a reality is providing all citizens with voting equipment they can count on, voting equipment that will count their votes.

Improved voting machines alone will not necessarily fulfill the constitutional promise of one person, one vote. For instance, we have seen some statistics that I find very disturbing that show that people of color nationwide are at least twice as likely to have their votes discounted as white Americans.

In Georgia, the Secretary of State found specifically that African-American precincts lost votes at a rate of up to 3½ times white areas with the same voting machines. So this is not what America is supposed to be about, and I think we have got to all in a very open-minded way work together to find a means to reduce these discrepancies which become inequalities before the next election.

As some of our witnesses will tell us today, the problems of our voting system cover a broad territory. Just to name a few, poll worker training and recruitment needs to be improved. Ballot designs need to be clearer. Voter instruction and education, accommodations for disabled and elderly and translation for non-English language voters need to be better.

Until now, these problems have largely been the burden of local election officials who typically run elections as only one of their many duties and often manage to do it on very small budgets. One estimate I have seen puts it at 3 percent of the average country budget. But these types of systemic problems, I think become national problems and, therefore, are our responsibility, too.

Finally, we cannot stop even at the polls. We must make sure that those voters who cannot make it to a voting booth, the elderly or the infirm also have their votes received and counted, and, of course, our service men and service women deserve exactly the same treatment. Those who would give their lives so that we can all be free, including the freedom to vote, must be able to exercise their franchise without hindrance or hardship.

So, as Members of Congress, each one of us swore to uphold and defend the Constitution. That constitutional promise of one person and one vote is our promise to fulfill. The American people expect it. More to the point, they deserve it, and it is our job to ensure that they get it. I hope we will do so through election reform legislation adopted by Congress this year.

Again, Mr. Chairman, I think these two hearings will help to provide the factual and legal basis for exactly such action.

I thank you.

Chairman THOMPSON. Thank you very much.

I notice we have some young people with us here today. Are you from one school? Where are you from?

AUDIENCE. San Diego, California.

Senator LIEBERMAN. San Diego.

Chairman THOMPSON. All right. Well, we are glad to have you with us today.

Senator LIEBERMAN. The voting machines appeared to work very well out there last year.

Chairman THOMPSON. Somehow I am not surprised that you noticed.

Do not be voting for a few more years. OK?

Our first panel, we have Arturo Vargas, executive director of the National Association of Latino Elected and Appointed Officials; Hilary O. Shelton, director of the Washington Bureau for the NAACP; Dr. Stephen Knack, senior research economist at The World Bank; and Hans A. von Spakovsky, member of the Fulton County Board of Registration and Elections. Thank you, gentlemen.

Mr. Vargas, please proceed with your testimony. Your written remarks will be entered into the record in their entirety.

TESTIMONY OF ARTURO VARGAS,[1] EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF LATINO ELECTED AND APPOINTED OFFICIALS, EDUCATIONAL FUND

Mr. VARGAS. Thank you, Chairman Thompson and Ranking Member, Senator Lieberman. Thank you for the invitation to appear before you today on election practices and procedures.

I am Arturo Vargas, executive director of the NALEO Educational Fund, the leading national organization that empowers Latinos to participate fully in the American political process. We achieve this by helping folks become citizens, doing voter education, encouraging people to go out to the polls on Election Day, providing training to people who want to run for office, and providing training opportunities for people who serve in elected and appointed office. Our constituency includes more than 5,400 Latinos in elected and appointed offices nationwide.

In examining the issue of election procedures and practices, I would like to offer the Members of the Committee our experiences in promoting Latino involvement in the electoral process. I would like to start by discussing the issue of voting assistance being provided in languages other than English, which leads me to the importance of Section 203 of the Voting Rights Act and the positive impact that it has had on minority electoral participation.

The right to vote is fundamental. Yet, there are many U.S. citizens of language minority backgrounds who are not fully proficient in English and cannot effectively participate in the electoral process due to language barriers. Some of these Americans were born here and never had the opportunity to become fully proficient in English. Others are naturalized citizens who because of their advanced stage were not required to demonstrate a knowledge of English in order to qualify for U.S. citizenship.

Being unable to read or comprehend in English, voter registration materials, referenda, or ballots can limit many of these voters, and, Senators, even myself born and raised here and schooled in English, sometimes I find it difficult to understand what the referenda and ballot materials say. Imagine the barriers for folks who are learning English as their second language trying to make sense of that language.

[1] The prepared statement of Mr. Vargas appears in the Appendix on page 212.

Congress, recognizing the link between language barriers and low voter turnout, enacted Section 203 of the Voting Rights Act in 1975. This provision requires certain jurisdictions that meet certain population thresholds, not every jurisdiction and every country for every language minority voter, but certain jurisdictions that have a certain number of individuals who do not speak a particular language and where the Census data also show that there are high rates of illiteracy for those certain jurisdictions that they must provide assistance to language minority voters in those areas.

Congress emphasized that many minority citizens were not exercising their fundamental right to vote due to high rates of literacy in English and unequal educational opportunities. Congress reauthorized and strengthened Section 203 in 1992.

Many of our newest citizens are eager to participate in the political process, and what we have seen over the past 6 to 8 years is that naturalized U.S. citizens, in fact, are turning out, registering to vote and turning out to vote in rates higher than native-born citizens. We think this is a good way to strengthen our democracy, and many of them are the engine that is driving our democracy today.

Language assistance at the voting booth helps our Nation's newcomers exercise their rights to vote that they have worked so hard to attain. Consequently, we urge that any changes to Federal election law and regulations complement and strengthen the provisions provided to language minority citizens in Section 203 of the Voting Rights Act.

Some folks falsely claim that the language provisions are too costly. This is simply not the case. Again, it is only certain jurisdictions under certain conditions that must provide non-English language assistance.

The Voting Rights Act has served as a powerful tool to eliminate barriers that have prevented Latinos and other ethnic groups from voting. The increases in Latino voters and elected officials have given previously excluded Americans an active voice in every elected body in the Nation, save, perhaps the U.S. Senate, and we still are looking for the participation of a Latino or Latina to be among your colleagues.

At least one attempt has been made in each of the last five Congresses to roll back the language assistance provisions of the Voting Rights Act. This would effectively disenfranchise thousands of American citizens of Latino and Asian-Pacific descent and others. We must ensure that opponents of the Voting Rights Act do not use electoral reform as a pretense to delude those protections.

We are also aware that many proponents of election reform advocate a host of changes to election procedures and voting technology. As you assess these proposals, we would like to provide two recommendations for you to keep in mind. First, there is an urgent need for reliable and relevant research and the impact of these proposals on citizen participation in elections. This research needs to specifically consider the experiences and needs of Latinos and other minority voters.

Much of the discussion surrounding the need for reform practices has been about the problem of punchcard ballot systems. Policymakers have raised questions about whether Latinos and other mi-

nority voters are disenfranchised by their use. While we have seen some research indicating that Latinos are more likely to live in counties that use punchcard equipment, this may be largely attributable to the fact that L.A. County uses this system, and L.A. County is home to about 1 out of 8 Latinos in the Nation.

It is unclear whether these error rates that we have seen are a result of factors such as poor equipment maintenance, lack of a mechanism allowing voters to ascertain whether their ballots are punched accurately, poor chad removal systems, or low voter understanding about the use of punchcard systems. Thus, it is important for us to get a better understanding of whether technological improvements in and of themselves result in more accessible and accurate voting systems.

We recommend that any efforts to reform voting procedures, standards, or technology must be accompanied by a comprehensive program to train and recruit poll workers and to educate voters about the practical mechanics of voting.

One of our earliest efforts were to provide a toll-free bilingual hotline so that voters could report incidents of voter intimidation or harassment. However, we found that most of the questions we received were basic questions about voting, where to vote, how to vote, how do I find my polling place, etc.

As the Latino population has increased throughout the country in States that are for the first time dealing with large numbers of Latino immigrants and Latino citizens, we believe the importance of voting, of ensuring at the voting booth there are adequate numbers of bilingual poll workers is extremely important, and we encourage jurisdictions to work with community-based organizations and educational institutions to promote recruitment of poll workers.

We believe that public-private partnerships with community-based organizations, schools, and others could help recruit the number of bilingual poll workers needed in our counties and cities across the country today.

More than anything else, Senators, we believe that what we need is leadership on behalf of the Senate and the President in this respect. We ask that the Senate and the President take a leadership role. The dramatic changes in the growth and distribution of the Latino population revealed by the new Census data presents a prime opportunity for Congress and the President to set the tone for this critical discussion. Our leaders must show the Latino community and the Nation as a whole that the aim of electoral reform is to help revitalize our democracy and ensure that it remains vigorous and responsive to all of our distinctive voices. Thank you.

Chairman THOMPSON. Thank you very much. Mr. Shelton.

TESTIMONY OF HILARY O. SHELTON,[1] DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. SHELTON. Good morning, Mr. Chairman, Senator Lieberman, and distinguished Members of the Committee. Thank you for the opportunity to come before you this morning on behalf of the

[1] The prepared statement of Mr. Shelton appears in the Appendix on page 218.

NAACP. Our 1,700 branches in 50 States, the District of Columbia, Germany, Japan, Italy, and Korea. I am here in lieu of our president and CEO, Kweisi Mfume who is at this time over on the House side testifying before the House Judiciary Committee on discrimination in the Federal workplace. He sends his regrets as well as his appreciation for your activism in this case. The NAACP is deeply appreciative of the Senate Governmental Affairs Committee for convening this hearing to look into the issue of voting irregularities with respect to last year's Presidential election.

While the situation in Florida obviously received the most national media attention, the NAACP believes that Florida is, in fact, a microcosm of the entire country. We are convinced throughout the United States, millions of American citizens were, for one reason or another, not able to cast their vote or have their vote counted.

Furthermore, the NAACP strongly believes that many of the voting irregularities occurred disproportionately in communities of color. So it was ethnic minority Americans who were, in disparate numbers, excluded from having their voices heard. There was, as best as we have been able to determine, substantial, unresolved allegations across the country of massive voter disenfranchisement in African-American, Hispanic-American, Haitian-American, and Jewish-American communities. The election appeared to have been conducted in such a manner that many of those same communities now believe unequivocally that it was unfair, illegal, immoral, and certainly undemocratic.

Because the right to vote is the most sacred franchise in a democracy, we must challenge all Americans to focus again on a thorny issue of equal opportunity under law and whether or not a protection was afforded to duly registered voters who went to the polls on Election Day, November 2000.

Every survey that we have found that was conducted at the election, regardless of where it was in the United States, has shown that the greater the percentage of black voters in a precinct, the greater was the likelihood that a significant number of the ballots of those voters were never counted.

The national response to this has been a flurry of legislative initiatives announced and undertaken by conscientious Members of the House and Senate on both sides of the aisle. If anything, the bipartisan nature alone of the response thus far has been encouraging. However, the real test will be to see what, if anything, of substance emerges and is signed into law under the rubric of voting and electoral reform.

In response to the problems that we have identified, the NAACP has developed a set of well-thought-out ideas and recommendations designed to avoid similar Election Day debacles in the future. Before I discuss what the NAACP feels needs to be done to correct the myriad of problems that face our Nation on Election Day 2000, I would like to begin talking about what happened prior to and during the election.

The weekend prior to the election, the NAACP began receiving calls alerting us of the fact that a person or persons was making electronic phone calls into predominantly black households claiming to represent the NAACP in support of Republican candidate,

George W. Bush. These calls were apparently taking place in key battleground States of Michigan and Florida. Beginning on Election Day and still to this day, the NAACP national staff as well as some of our local branches across the Nation began to receive calls from people who felt that their rights to vote had been violated.

Subsequent to the election, NAACP national staff as well as several State conferences and local branches held hearings throughout the country to investigate allegations of voter fraud, voter intimidation, as well as technical and procedural barriers that resulted in a significant number of votes not being cast or counted.

As a result of the flood of complaints we received, the NAACP held a series of hearings throughout the Nation to look into the problems faced by many Americans who wanted to vote, but were not able to do for one reason or another.

We have also continued to receive complaints through phone calls, letters, faxes, testimonials, and affidavits. Let me list a few of the more egregious trends as well as some of the particularly disturbing accounts that we have heard. If the Committee or any Member would like additional material, I welcome the opportunity to share with them some of the volumes of trends and anecdotes, as well as transcripts from our hearings that our national headquarters has collected.

One particularly disturbing trend was the blatant voter intimidation that appeared to occur throughout the Nation. In Georgia, State troopers pulled over a college student who was driving people to the polls. He was told that unless everyone in the van was related to him or unless he had a chauffeur's license, he must immediately cease and desist in driving people to the polls.

In several States, including Florida and Missouri, we have received affidavits from African-Americans who were forced to show identification while their white neighbors were allowed access with no problems.

NAACP members reported that off-duty police officers and prison guards wearing arm bands and armed with guns were posted outside several polling stations in New York under the guise of "identifying troubled spots."

In Missouri, an African-American businessman in suburban Kansas City reported a Christian Coalition voting guide on a table next to a voting machine. Upon complaining to one of the election officials, he was told, "God wants you to vote for George Bush. God wants Bush to win. Democrat Al Gore kills babies."

Another very troubling trend that we have identified was the utilization of undertrained poll workers as well as inoperable or malfunctioning voting machines. Again, these trends appear to be more prominent in communities of color across the Nation.

The president of the NAACP Arkansas College Chapter reported at hearing that students she had registered were having problems with poll workers not finding their names on rolls, being turned away by poll workers who indicated that their votes would not be counted, that their votes would be thrown in the trash, and being told that the poll workers simply did not feel like looking for any of the individuals' names on the list.

In predominantly black Fulton County, Georgia, 1 in 16 votes for President was invalidated. In nearby Cobb and Gwinnet Counties,

mainly white counties, only 1 in 200 ballots had been destroyed because of irregularities.

In Illinois, more than 50 Cook County precincts reported that on average 1 in 6 ballots went uncounted, while almost every vote was counted in Chicago's outer suburbs. We believe that it is part of our obligation as a non-partisan civil rights organization to insist that all voters be allowed to cast an unfettered ballot and be free from intimidation and harassment as promised in the Voting Rights Act of 1965. The NAACP has, therefore, developed a set of policies and procedures that we are asking every State as well as the Federal Government to adopt prior to the next election.

Like most things that challenge our gift of freedom, we must work hard to ensure that our democratic system retains its integrity. Furthermore, it is important that we act now, so as to quickly start to restore the confidence in the electoral process that was lost for so many of our people throughout the Nation, especially in the African-American and Latino communities.

Specifically, the NAACP is calling on the Federal Government as well as each of the 50 States to promptly enact laws, policies, and procedures that secure the following: One, ensure non-discriminatory equal access to electoral processes for all voters, including members of the U.S. Armed Forces; two, modernize voting and counting procedures throughout each State, including the utilization of provisional ballots; three, provide necessary and adequate funding and resources to modernize and upgrade all statewide equipment; four, retrain all poll workers and election officials across the State; five, launch an aggressive voter education initiative for new and existing voters; six, expand poll workers' training and recruitment programs utilizing the best practices from throughout our Nation; seven, put into place systems to maintain and easily access correct and up-to-date voter rolls using the latest technology; eight, enhance the integrity and timeliness of the absentee ballot; nine, ensure that every State and municipality are in full compliance with the voting accessibility for the Elderly and Handicapped Act, the Voting Rights Act of 1965, and the National Voter Registration Act of 1993; ten, identify and eliminate practices which might be perceived as intimidating to certain sectors of the population; eleven, establish clear standards for bilingual ballots and interpreters for the language minorities and the disabled; and, twelve, reexamine and simplify and standardize voter reenfranchisement policies throughout the country, State by State. The NAACP realizes that these 12 proposals taken at once may be perceived by some as a tall order, but only by adopting a comprehensive package of voting reforms will we be able to say that we have done all we can do to make sure that our democracy is working.

I realize that some of the recommendations that I have laid out for you today go beyond the scope of this particular Committee. I would, therefore, urge you in the strongest terms possible to work with your counterparts on other committees as well as your colleagues in the House to enact an omnibus bill that does address all of the points that I have raised.

As such, I would like to bring to the Committee's attention S. 565, the Equal Protection of Voting Rights Act of 2001, which was introduced by Senator Christopher Dodd. Congressman John Con-

yers introduced the House companion as H.R. 1170. This legislation takes a comprehensive approach to the problems identified by the NAACP and other civil rights organizations in the November election.

The entire NAACP organization is determined to follow through on the issue, and we will do everything we can to make sure we do not have the kind of debacle we had in the November 2000 election.

While many Americans may decry the fact that some people's rights were trampled on last November, the NAACP is especially outraged and insulted by what happened. These are rights that people marched for and, in some cases, died for only 35 years ago.

Our friends and our members today or not too long ago know that it was legal to do these things, and, today, it is not legal, but, in fact, it still happens.

Again, I would like to thank the Chairman and Members of the Committee for holding this hearing and for your continued interest and activism in this area. I welcome any questions or comments you might have.

Chairman THOMPSON. Thank you. Dr. Knack.

TESTIMONY OF STEPHEN KNACK,[1] SENIOR RESEARCH ECONOMIST, THE WORLD BANK

Mr. KNACK. Good morning, Mr. Chairman and Senator Lieberman. I appreciate the opportunity to appear today to testify on voting and election administration issues.

Prior to recently moving to The World Bank, I spent 10 years at the University of Maryland and American University studying voting participation issues, including the effects of the Motor Voter bill.

I am here today to report on a study on voting technology co-authored with Professor Martha Kropf of the University of Missouri at Kansas City.

Following the last Presidential election, a widespread perception emerged that punchcard voting equipment was more prevalent in counties heavily populated by minorities and poorer persons. This perception was based mostly on patterns observed in Florida and in the Chicago and Atlanta areas which were the subject of a front-page story in *The Washington Post.*

As a social scientist, I am always skeptical of generalizations made on the basis of just a few examples. In this case, I was particularly skeptical because the States I knew best did not fit the alleged pattern.

In Tennessee, it is mostly the large cities that have the modern electronic voting machines, including my hometown of Memphis where nearly half of the State's African-Americans live.

I now live in Maryland, where Baltimore, with the State's largest concentration of poor and minorities, has electronic voting equipment, but, as Senator Thompson noted, rich white people in Potomac and Chevy Chase still vote using a form of punchcard equipment. So I decided to study this issue using data from the entire

[1] The prepared statement of Mr. Knack with attachments appears in the Appendix on page 224.

country rather than citing a few selected examples on one side or the other.

We do this by combining county-level Census Bureau demographic data with information from Election Data Services on voting equipment used by the counties in the 1998 election. Our results found little support for the belief that resource constraints cause poorer counties with large minority populations to retain antiquated or inferior voting equipment.

Among our specific findings, first, nationally racial differences in punchcard use are negligible, 32 percent of whites, 31.5 percent of African-Americans lived in counties using punchcard equipment.

Controlling for county size and other variables, counties with larger percentages of African-Americans actually have a significantly lower probability of using punchcard voting equipment.

Second, as Mr. Vargas mentioned, we found that Hispanics are more likely to live in punchcard counties than blacks or whites, but this disparity is attributable entirely to the use of punchcard voting in Los Angeles County. In most States, whites are actually more likely than Hispanics to live in punchcard counties.

Third, based on Presidential voting patterns in 1996, Democratic and Republican voters were equally likely to live in punchcard counties for the U.S. overall.

Fourth, African-Americans are more likely than whites to live in counties using electronic voting or lever machines, the two types of equipment in which over-voting is impossible if the equipment is programmed correctly.

Fifth, of those who live in counties using optical scan systems, 31 percent of blacks, but only 27 percent of whites and only 23 percent of Hispanics have access to the precinct-based scanners that can be programmed to allow voters to check their ballots for overvotes.

Because we elect Presidents by the electoral vote and not the popular vote, it is also important to make these comparisons on a State-by-State basis. It turns out that in the majority of States where some counties use punchcards and others do not, it is the whites, non-poor, and Republican voters who are more likely to reside in punchcard counties than African-Americans, the poor, and Democratic voters. Unfortunately, for Vice President Gore and Senator Lieberman, Florida happened to be one of the exceptions to this pattern.

Finally, we found that public resources don't seem to matter much. Counties with punchcard systems actually tend to have higher incomes, higher tax revenues, and larger populations than do counties with more modern voting equipment. In counties using electronic voting systems, the most expensive type, per-capita income and property tax revenues are actually lower than in counties using punchcards or any other voting technology.

Florida, in fact, is one of the best examples of these patterns. In Florida, it is the largest and richest counties that have retained punchcard equipment up to now.

So our study shows that providing financial assistance to replace punchcard technology would not be subsidizing the poorest counties. In most States, including Florida, it would subsidize the richer counties.

I would like briefly to mention a couple of other research findings. Another study we have done of survey data shows that three-quarters of 1 percent of all voters at the polls report deliberately not voting in the Presidential contest. This is important because often we hear the terms "errors" or "uncounted votes" applied to all ballots for which no Presidential vote is recorded, but it turns out that nationwide more than one-third of these invalid votes reflect deliberate under-voting.

Senator Lieberman mentioned in his opening remarks that there were 2.5 million ballots not counted nationwide, but our study finds that probably close to 1 million of these were actually deliberate.

Of course, we should do everything reasonable to make sure the preferences of the other 1.5 million are accurately recorded, but there are many misconceptions regarding how best to accomplish this.

A recent CalTech/MIT study has found electronic systems often promoted as the high-tech solution to chad problems appear to generate the same rate of invalid Presidential votes as punchcard equipment. So replacing punchcard technology with expensive electronic systems might not reduce the number of invalidated Presidential votes. In fact, it would probably increase it in the short run because we do not understand yet why electronic systems are generating high rates of invalid votes.

On the other hand, just about everybody is now well acquainted with the problems of punchcard technology, and we can take corrective measures. Apparently, there were very few problems with chad in the Palm Beach County mayoral elections held in March. Voters appeared to take extra care in inserting the card into the machines correctly, to punch their selections forcefully, and tear off any hanging chad before turning in their ballot.

We should also recognize that reducing the rate of invalid votes, depending on how it is accomplished, will not necessarily increase the total number of votes recorded. Lever machines are among the best at minimizing invalid votes, but they are also usually associated with long lines because there are not enough of them and they often break down. Longer lines mean more people giving up and going home without voting.

Similarly, when voters use precinct-based scanners to check their ballots for over-votes, they can slow things down enormously in densely populated areas. This is why many election officials do not even program their precinct scanners to check for over-votes.

To ensure that you do not have long lines that discourage people from voting, you might have to spend a lot more money on new machines than has been estimated. The bottom line is that we should not pretend that there is a simple technological solution to these problems for which we only need to spend a little more money.

Thank you.

Chairman THOMPSON. Thank you. Mr. von Spakovsky.

TESTIMONY OF HANS A. VON SPAKOVSKY,[1] MEMBER, FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS, FULTON COUNTY, GEORGIA

Mr. VON SPAKOVSKY. That is a pretty good pronunciation.

Chairman THOMPSON. How did I do?

Mr. VON SPAKOVSKY. You did very well.

Chairman THOMPSON. Really? I tried to slur it a little bit so that you cannot tell really what——

Mr. VON SPAKOVSKY. I am Hans von Spakovsky. I am a member of the Election Board of Fulton County, Georgia.

I am going to talk mostly about absentee balloting in my testimony.

In an effort intended to reverse a long-term decline in voter turnout and to increase voting convenience, some States have adopted no-fault absentee balloting statutes as well as early voting. However, removing the voting process from the polling site is not good public policy for a number of reasons.

First of all, when combined with some of the side effects of Motor Voter, absentee ballots make the job of vote thieves easier. Unfortunately, the United States has a long history of voter fraud from an election in New York City in 1844 in which 135 percent of the eligible voters turned out, to more recent cases involving fraudulent absentee ballots in 1993 in Philadelphia, in 1994 in Green County, Alabama, a county commission race in Dodge County, Georgia in 1996, and the Miami mayors race in 1997 in a case involving 5,000 fraudulent absentee ballots.

While allowing registration at government offices, for instance, which Motor Voter provided, is a good idea, some of its other provisions have opened security holes in our voting process. For example, Motor Voter made it illegal for States to check someone's identification before allowing them to register to vote, and it mandated mail-in registration. When you combine that with absentee voting, an individual can register and cast an absentee ballot without any election official ever seeing them. That makes multiple registration and multiple votes very easy.

I can guarantee you, Senator, that if you picked up five mail-in registration forms, completed them under five different names, mailed them in, you would get registered and you would have the ability to cast five votes, and the chances of you getting caught are slim to none.

Second, no-fault absentee ballot laws do not increase voter turnout, as some people think, and they may lead to greater declines in turnout. There was a study released last year that showed that early voting and no-fault absentee voting States did not see related increases in turnout and actually performed worse in terms of having lesser increases in years where there was a slight upturn in turnout, such as 1992 and 1994, than States which did not adopt either of these procedures.

I would urge skepticism of you if you are urged to legislate to make it easier to obtain absentee ballots on the claim that this will increase turnout. Motor Voter was passed on the claim that eliminating registration requirements would increase turnout. What has

[1] The prepared statement of Mr. von Spakovsky appears in the Appendix on page 278.

happened is that registration has increased, but turnout has continued its general decline.

Third, absentee ballots make vote-buying and voter intimidation easier to commit, and they make poll watching impossible. The secret ballot prevents coercion, and it helps prevent vote tampering. It was instituted in the United States in the late 1800's to prevent these very problems which were then prevalent in American elections. Absentee ballots are voted in unmonitored settings where there is no election official and no independent election observer present to ensure that there is no illegal coercion or intimidation.

The ability of poll watchers to monitor polling sites is also an important guarantee of the integrity and security of our election process. That kind of transparency must be maintained.

No-fault absentee ballot laws make it easier for campaign organizations to engage in tactics such as requesting absentee ballots in the names of low-income housing residents and senior citizens and either intimidating them into casting votes or completing their ballots for them. Absentee ballots also make vote buying easier because buyers can make sure that votes stay bought, something not possible in the traditional voting location.

We make a necessary exception for military personnel or the physically disabled who cannot go to a traditional polling site. However, because of their inherent security risks, absentee ballots should remain an exception and not the rule.

When voters cast absentee ballots in large numbers, the cost of political campaigns, which are already prohibitive to many citizens, are also significantly increased. As all of you know, the bulk of the money spent by campaigns is in the last few days before election on advertising and Get Out the Vote efforts. When significant numbers of voters cast absentee ballots, any candidate who does not spend that kind of money on those efforts throughout the entire balloting period will be at an inherent disadvantage. No-fault absentee balloting and early voting increase the cost barrier to the average citizen to be involved in the election process.

The right to cast a vote in a fair and secure election is our most precious right. Every American citizen who is eligible to vote should be able to do so with a minimum of administrative procedures and statutory requirements. None of the measures that can and should be taken to amend Motor Voter and tighten State election laws would infringe on the right of citizens to vote.

I have made a series of recommendations for changes in State and Federal statutes, and that is attached to my written testimony.

That is all of my testimony, Mr. Chairman, but I would like to ask your indulgence for one more minute to address some allegations about Fulton County that were made by one of our other panelists, Mr. Shelton, if I may.

Chairman THOMPSON. You will get that opportunity. We will get to that in our questioning.

Mr. VON SPAKOVSKY. Thank you.

Chairman THOMPSON. Thank you very much.

Senator Lieberman, would you like to begin?

Senator LIEBERMAN. Thanks very much, Mr. Chairman. Thanks to the four witnesses for some excellent testimony.

Let me just see if I can focus this on a few questions. The question before us, I had the number of 2.5 million. Whether it is 1.5 million, it is still a lot of voters as Dr. Knack's study suggests, a lot of voters who actually went to the polls and did not have their votes counted. We have had a series of different suggestions about why or why not that happened, and I think I want to get a little bit later to what we in the Federal Government or the States can do about it.

But let me just focus in and ask you from your work. Mr. Shelton, I will begin with you. How do you explain that? What do you think are the causes of those millions of voters not having their votes counted? If you had to cite the most significant ones, what are they?

Mr. SHELTON. I think a number of things. I think the voting systems themselves, antiquated systems in communities. I think lack of education, the utilization of those voting systems. I think in some cases, untrained poll workers to be able to provide some assistance.

We had so many people testify that even if they made mistakes with their cards, as they were filling out their voting cards, they were not allowed to make any changes and were told to either discard them or just simply present them. Things along those lines created major problems.

I might add that we are seeing some solutions to these problems that are showing some ray of light. One of the examples shown to us was in Detroit, Michigan. Detroit is a city that is predominantly African-American. It has a very heavy poor population, but, for the first time, utilized optical scan systems.

It was 4 years ago that they had an over 7 percent error rate in the Presidential election. In this last election, they brought that down to right around 1 percent.

Senator LIEBERMAN. That is great. How were they voting last time?

Mr. SHELTON. The last time, they used punchcards primarily, but, this time, they used optical scan; that is, the scratching grid.

Senator LIEBERMAN. Right.

Mr. SHELTON. You put it into an optical scanner. It leaves an auditable trail by leaving the paper ballot behind. If there is a problem in it, it kicks it back out and tells you so that you can make the adjustments.

Senator LIEBERMAN. If you voted more than once for a given office, the ballot will come back out at you.

Mr. SHELTON. Anything that would discount the ballot, it would kick it back out and would set off an alarm so you could go back and fix it.

But the things that made it most effective were the training of the electorate itself; that is, everyone that was registered to vote was given the opportunity to be trained in precincts throughout the State. There was a systematic approach to training voters and also training poll workers to utilize this system.

Senator LIEBERMAN. Who sponsored those training programs?

Mr. SHELTON. They were sponsored by the Detroit Board of Elections Commission, and the head of the commission, as a matter of fact, who testified not too long ago on the House side. So it proved

to be very effective; in other words, the combination of efficient, effective equipment, training, and education.

One of their rules is they sent out a sample ballot in advance so that people can also become familiar with how the ballot is going to be set up, and, actually, their precinct standards are that ballot must also reflect the structure of the ballot they are actually going to be coming in to utilize on Election Day.

Senator LIEBERMAN. Those are very helpful examples.

While I am speaking with you, Mr. Shelton, how do you explain the higher rates of uncounting of ballots cast, if I can put it that way, among people of color?

I cited the Secretary of State of Georgia study, and there was a study in *USA Today* a while ago that had similar points made.

Mr. SHELTON. I think confusing ballots are part of the problem. I think poll workers that are not trained to assist people that are coming to the polls and being able to fill those ballots out adequately and in a way that they will actually be counted.

I think on the other end of the spectrum, we have ballots that were not counted because they were simply lost; that is, we experienced some things in Florida where entire ballot boxes disappeared and we are still waiting for them to show up. So you have from one end of the spectrum to the other, Senator.

Senator LIEBERMAN. You just tweaked my interest there, but I am not going to pursue that line of inquiry about those boxes showing up.

Mr. SHELTON. We have some ballot box numbers that we are still looking for.

Senator LIEBERMAN. OK.

Mr. Vargas, how would you answer that question? I suppose particularly from the perspective of the growing Latino-American community. What do you think are the most significant problems? Do you agree basically with what Mr. Shelton said, or are there other problems here?

Mr. VARGAS. I would echo many of the examples that Mr. Shelton gave, but I would underscore the need for well-trained and bilingual poll workers.

We ask a lot in our country of poll workers. We ask them to work 14-hour days, to engage in a very long and tedious task, and, yet, we do not compensate them for that. We ask them to do that as volunteers, and then we wring our hands when we cannot find enough people who are willing to sit, sometimes in cold garages or a cold auditorium, and sit there for 14 hours trying to run elections. Then we want them to be well trained. We want them to be expert in voting procedures. We want them to be bilingual. We want them to be articulate. We want them to be helpful. But then we do not want to compensate them for that. So it is very unattractive for anybody to want to engage in that kind of work.

I think we have to value our voting systems to the point that we value the work that we ask of poll workers, and we need to encourage more Americans to undertake that valuable task to make sure our democracy works.

We work closely with the L.A. City and L.A. County registrars to encourage high school students and college students. Oftentimes, we are able to negotiate them to get credit from the government

classes in order to engage in this task, but sometimes it is a hard sell to tell students, "OK. In order for you to do this, you have to sit here for 14 hours and sometimes skip your lunch in order to make this happen." We need to value the work that they do.

Senator LIEBERMAN. It is obviously an unusual job because it happens once a year, maybe——

Mr. VARGAS. Actually—no, sir—it happens all the time. There are elections held virtually every single month in jurisdictions all over the country.

Los Angeles, for example, had its municipal elections in March.

Senator LIEBERMAN. A while ago.

Mr. VARGAS. And we are going to have a run-off in June. There are elections in San Antonio in May.

Senator LIEBERMAN. I agree. What I am saying is to be a poll worker, it is not a full-time job. So you are bringing people in to do it on an occasional basis, maybe more than that, one time for a day. The question is how do you get a cadre of people in sufficient numbers who are adequately trained, and maybe the Detroit example—and I know there are other programs like that around the country—of training is a good one.

I want to bring you back to the Voting Rights Act because, as we react to what we learned in the 2000 election and Congress considers being involved here, one of the questions being raised is what can Congress do. It is our tradition, though these are national elections, that they be run and administered locally, but there is statute, as you point out in your testimony, Mr. Vargas, that it is pretty clear. Congress has previously—and Presidents have supported this—reached a judgment that there is a fundamental national interest and constitutional principle on the line that the law has prescribed quite in some detail what local election officials should be doing to protect those constitutional rights.

You mentioned that in regard to language accessibility. How do you interpret those sections of the Voting Rights Act? Do they require, for instance, poll workers who are adequately trained and are bilingual, and at what point, just for the record—how many people who are bilingual and may need language assistance at the poll trigger the requirement that something special be done for them?

We have heard stories in the last election that Asian voters, for instance, in some parts of New York either had ballots which were done in Chinese in one case that were reversed. They did not actually describe either ticket, and others, there was just not adequate language translations going on.

So what under existing laws is the requirement, and what more might we, or should we, do?

Mr. VARGAS. Well, as I recall, the Voting Rights specifically states that in those jurisdictions where they have 10,000 or more individuals of a single-language minority group, or 5 percent of the eligible voters overall, and where there are certain rates of illiteracy in English combined. So you need to have a certain number of folks of a particular language group, 10,000 or more or 5 percent of the overall eligible voting population, coupled with high rates of illiteracy in English in that jurisdiction. Where those criteria are met, then local election institutions are required to provide lan-

guage assistance. It does not specify that it be bilingual poll workers and so forth. It just specifies that those individuals should be able to exercise their right to vote with sufficient assistance. Some folks provide the actual ballot in non-English languages. Sometimes they provide guides that translate the ballot. Sometimes they actually do provide individuals at the polling booth who are bilingual.

Senator LIEBERMAN. So I presume that there is a lot of unevenness in the reaction of various voting jurisdictions to that requirement under the Voting Rights Act.

Mr. VARGAS. Exactly. It is very uneven, depending on what resources are available, and this, I think, is one area where the Congress could help local jurisdictions ensure that all U.S. citizens are able to exercise their right to vote in an unfettered way, as Mr. Shelton said, by providing the resources to develop the kinds of infrastructure to allow all Americans to vote.

Senator LIEBERMAN. Dr. Knack, my time is ending, but I found your testimony quite interesting, particularly regarding the connection between income in voting districts and the use of the punchcard system or not.

In your studies, do you agree that the punchcard system among the choices we have for voting is less accurate, and, therefore, regardless of the income of the given district, as a national goal, we ought to be trying to reduce and ultimately eliminate the use of the punchcard system?

Mr. KNACK. I think as a long-term goal, that is right. I do not think there is any particular reason to be in any big rush to get rid of it over the next 2 years or even 3 or 4 years.

As I mentioned, I think at this point, people are aware of all the defects and can take corrective measures. Where it is still in use in the 2004 election, I would guess that the invalid vote rate in those areas turns out to be lower than in areas using other kinds of equipment.

Senator LIEBERMAN. If you were the chief election official and wanted to run an election in a particular county, where you wanted the most votes possible that were cast to be counted, what system would you go for?

Mr. KNACK. I do not think there is enough good evidence on that because, if I wanted to minimize the rate of invalid ballots, meaning of those who show up at the polls, what percentage of them show no recorded vote for the Presidential contest, then either lever machines or precinct count optical scan systems would probably be the best, judging by the data.

Senator LIEBERMAN. The so-called old lever machines?

Mr. KNACK. That is right. They show a very low rate of invalid ballots, but the problem with these systems, as I mentioned, can be that unless you are willing to spend huge amounts of money to have a lot of these machines there, you can end up with long lines.

Senator LIEBERMAN. Long lines, yes.

We have those lever machines still in Connecticut, and this is not about last year, but I cannot help but say it. It did strike me when the news about the over-votes came out that, if some of those counties in Florida had not been so advanced and stuck with the old

lever machines, I might not have had the privilege of being at this hearing today.

Mr. KNACK. It is very possible.

Senator LIEBERMAN. Thank you.

With your indulgence, Mr. Chairman.

Mr. Shelton, do you want to respond at all—I will give you the choice—to the notion that the punchcard system does not fall disproportionately on lower income or voters of color generally?

Mr. SHELTON. No. What we found is that regardless of the numbers that are being shared with us, we are finding that African-American voters are most often in areas that utilize punchcards, and we are finding that those are oftentimes creating mistakes and problems from having their votes counted.

Let me put it very simply. For instance, we are going to hear more about this. Even Fulton County, when you have 1 out of 16 African-American voters having their votes thrown out and the other local counties being like 1 out of 200, that shows that we have major problems with punchcards, and I guess you could make arguments for other systems as well, but the point being that, for some reason, very high numbers are thrown out and punchcards seem to be the culprit in most of those cases.

Senator LIEBERMAN. Thank you. Thanks to all the witnesses.

Chairman THOMPSON. All right. Thank you.

Following up on that—Mr. von Spakovsky, I know you wanted to respond to that, and the statement that I think you wanted to respond to is Mr. Shelton's statement in his prepared remarks that the NAACP has received reports that some States, particularly Georgia, Illinois, and Florida, routinely disenfranchise thousands of voters, primarily in low-income and ethnic minority communities.

In predominantly black Fulton County, Georgia, 1 in 16 votes for President was invalidated, and nearby Cobb County and Gwinnet County, both mainly white, only 1 in 200 had been destroyed because of irregularities.

Then it went on to say, interestingly, in Illinois more than 50 Cook County precincts reported that on an average, 1 in 6 ballots went uncounted, while almost every vote was counted in Chicago's outer suburbs.

What is your statement on Fulton County?

Mr. VON SPAKOVSKY. Let me point out a couple of things. First of all, Fulton County does have a high rate of under-votes, but I should point out that we are the largest county in the State, and it is not 100 percent African-American. It is probably about 45 percent white, about 55 percent black. So that rate you are talking about applies not just throughout the City of Atlanta and other areas of the county, but in some of the very wealthy suburban parts of the county which are predominantly white. So that rate applies everywhere.

There seems to be some implication here that this somehow racially intentional. Let me point out that the board that I serve on, of its five members, three are African-American; of our board of commissioners, seven members, four are African-American. The reason for the difference is that Cobb County and Gwinnet County switched. They used to use punchcards just like Fulton County. They had high under-vote rates, just like we did. Last year, their

board of commissioners voted to spend the money to switch to precinct scan, optical scan systems, and their under-vote rate dropped down dramatically.

I am proud to say that prior to the November election, our board of elections submitted a request to our board of commissioners to get rid of the punchcard equipment we have and to give us the money to purchase precinct opti-scan systems. Frankly, it looked like they were going to vote to do it in the 2001 budget until all the news started hitting at the end of December and beginning of January, right before they voted, on all the bills being dropped in Congress and the fact that there might be Federal money coming down the pike.

Then, when our Secretary of State, her news hit that she was going to ask the State legislature for money, and all of a sudden the county commissioners, just like any elected official down at the county level when they see the potential of Federal or State money coming down, suddenly said, "Well, wait a minute. We are not going to vote in our county budget for the money to do this."

I would be happy to give Mr. Shelton the names and phone numbers of our Democratic commissioners on our board of commissioners, to please call them and ask them to vote to spend the money to buy this equipment.

Chairman THOMPSON. They obviously have not been watching the speed with which Congress responds.

Mr. VON SPAKOVSKY. Well, we are trying to make them change their mind.

The precinct scan system can make a dramatic difference. I would cite an example. Polk County, Florida, in 1996 had an election controversy that was almost like a forerunner of what happened in November, and they were using a central opti-scan system. They had 6,000 under-votes because of the scanners not reading the ballots. It was such a problematic election that, as soon as the election was over, they switched to a precinct scan system, and the next election, they dropped to having only about 800 under-votes.

Chairman THOMPSON. This whole area troubles me greatly in terms of trying to figure out what the nature of the problem is, and it seems that one of the things that you can say about it is that we have had problems with elections in this country, maybe any democracy, ever since we have had elections. We have had people intimidated at the polls, and we have had people buying votes. We have had people engaging in voter fraud. That is not to minimize it, but that is a problem when you have got a big country and thousands of voting precincts and such important things at stake at election.

This last election, I am trying to get to the heart of the problem.

Mr. Shelton, I think, very candidly and properly responded to Senator Lieberman's question, what is the nature of the problem. He mentioned several things, voting machines and poll workers, voter education, worker training, using latest technology and so forth, and I think we are learning a lot more about that, what we can do in that regard.

There is an underlying message here that there is at least a series of local conspiracies to keep black and poor people from voting.

If that is true, the Justice Department ought to be out there en masse. I know you filed a complaint before the end of the year. I do not know what, if anything, has been done. I think some of them have been disproven. I think some of them are still open. But that is the answer to that. That is violations of the law, and we have laws against that, State and Federal laws, and that ought to be pursued.

We had witnesses here last week talking about voter fraud. We could have filled the room with witnesses talking about what they have heard about voter fraud. You could fill the room with witnesses talking about intimidating at the polls. So where does that leave us in trying to come to an accommodation? It has broad social implications here.

I think we are dealing in an area that is volatile. It is serious. When you talk about routinely disenfranchising thousands of voters, that even voters using machines, that certain groups have their votes thrown out, what are we saying here, that there is a nationwide conspiracy of if they are conspiring?

Cook County—I do not understand what the point is. I do not think the allegation is that the folks in Cook County are conspiring to deliberately disenfranchise African-American voters. I do not think that you could make that case just on the face of it unless you can come in with individual instances.

I do not think it is fair to the States and the people running the elections involved, which are bipartisan and biracial in most cases, if we are not willing to label it what it is and not willing to try to get the Justice Department down there to look at it.

On the other hand, if that is the case, some people need to be in jail. If it is not the case, we ought to be very careful about how we describe the nature of the problem.

As I say, I think you are going to have all kinds of improprieties. There is no question that there were some in this last election. There is no question that some voters were intimidated in this last election. I think it probably happens all the time, unfortunately, but we can talk about all of these things that we can do in terms of bettering the system, but if what we are really saying is that we have localities, both north and south—and Michigan, you mentioned in your statement—in Illinois, in Georgia, in Florida, if we have places in more than these where in some way either the elections boards or the poll watchers are deliberately disenfranchising anybody, we have got a much more serious problem in this country than anybody ever realized. I would have thought that the Justice Department would be on this like a chicken on a june bug if there was prima facie cases of this. If we do, we need to face up to it.

On the other hand, if we have a certain amount of that, but we have a large amount of untrained poll workers, lack of education initiative, lack of using proper technology—what you seem to be saying—you did not jump to the conspiracy theory. You responded in terms of constructive things that we can do, but there is a subliminal, not very subtle implication throughout all of this. I am not using you as an individual, but everybody, all of us, that, yes, we have these little problems, we need some voting machines, but what is really going on with these massive conspiracies or small conspiracies all over the country? There is no way to address it

other than to get prosecutors down there in individual cases. I hope that is what is going on.

What is going on as far as the Justice Department is concerned? I know you filed a complaint. Do you know?

Mr. SHELTON. We are waiting to hear. Perhaps that is another issue for a hearing before this Committee is to find out what the Justice Department has done thus far and following through on the many complaints that have been filed by the NAACP and other civil rights organizations as well as along this area. We would like to know as well.

Certainly, the Voting Rights Section of the Justice Department can do a great job on individual cases, but when you have the volume of cases that we have here, I guess one of the questions that could probably very well come before this Committee and certainly the Judiciary Committee of the Senate is how are we funding the Voting Rights Section of the Justice Department, do they have the capacity for a quick response when complaints come out prior to an election, during the Election Day, and just after the election.

I think you are seeing that we overwhelm the Justice Department, and I would love to see an increase in the budget, as a matter of fact, for the Voting Rights Section, but if you look at this particular budget being handed down by this particular President, we do not see such a line item.

Chairman THOMPSON. Some of these accusations are State law violations, also.

Mr. SHELTON. Yes, they are, but, of course, the Federal Government has oversight.

Chairman THOMPSON. There are States that are scattered around the country. So, certainly, there is some responsibility there, too.

Mr. SHELTON. Sure.

Chairman THOMPSON. Dr. Knack, I do not know if you addressed this at all in your statement. I do not know if you got into this, but do you see any patterns in terms of discounted or invalidated votes? Do you see any income or racial patterns there? Did you come across that at all, one way or another, in your studies?

Mr. KNACK. We are working on a study now on this. Again, it is a nationwide county-level analysis. We are finding that in counties with more African-Americans that there are more invalidated Presidential ballots, even when you control for education and other variables to the best of our ability to do so.

Obviously, education levels is not the full story. You cannot really measure quality of education and other things that you like to control for.

This ethnicity effect seems to be stronger in areas with certain kinds of voting equipment. The greater rate of invalid Presidential votes in counties with more African-Americans, that relationship is stronger in counties that use punchcard equipment and optical scan equipment and paper ballots than it is in counties using the new DRE equipment or the old lever machine equipment.

Chairman THOMPSON. Oh, I see. So, even though there is not a disproportion in terms of the use of equipment with regard to race, that is pretty much it, but where there are punchcard ballots in minority communities, the rate is higher?

Mr. KNACK. That is right. So you cannot attribute differences in the rate of invalid ballots across races to differences in the equipment used, but a given kind of equipment for whatever reasons, differences in educational quality or who knows what, can cause a high rate of invalid ballots for one group than another for a given type of voting equipment.

Chairman THOMPSON. All right. Thank you very much.

Is Senator Carper still with us?

Senator LIEBERMAN. He is not.

Chairman THOMPSON. Did you have anything further?

Senator LIEBERMAN. Very briefly, Mr. Chairman.

Mr. von Spakovsky, perhaps Mr. Shelton will help you in this, but the sad fact is that thus far, I would say that you should return to Fulton County and tell your fellow commissioners that it is not at all clear yet that help will be on the way from the Federal Government regarding either the law or funding.

I hope that can be changed. I hope that these hearings can help to make sure that we do not leave what we learned last year, and I am not talking about Florida alone or about the outcome of the election, but about some of the things that you all have testified to here, without trying to do something to make it better. It is that fundamental.

This is one of those elements of our public life that, for the most part, remains invisible unless there is an extraordinarily close election as there was last year, and when there is, when we see something revealed, that surprised me about the national implications, how many people were either turned away from the polling place because of registration list problems and one home disappointed or voted and did not have their votes counted.

I do appreciate the tone of responses here. As you said, Mr. Chairman, there may be conspiracies in some places. It may be the way the machines are set up, the failure to educate and train the poll workers, the lack of clarity in the ballot, perhaps the lack of adequate training to handle bilingual voters. It may have the effect, even without a conspiracy, of having a disproportionately negative effect on the ability of some groups in our society to vote, but, just overall, the fact that so many people cast their vote and did not have it counted last year is something we ought to do something about.

I hope that we can continue to focus on that, something as simple as poll worker training. In part, you hope that other States—Florida had a particular imperative to act, but what they did was quite significant last week, and I think it will have a very positive effect. Hopefully, as this continues to receive some attention, other States will act as well, and then, hopefully, before long, we can do the same.

I honestly do see this as an extension of the Voting Rights Act. If somebody casts their vote and it is not counted, that is a denial of the right to vote, and I hope that we can find a way with the help of the testimony that you have given today to do just that.

So I thank the four of you for being here.

Thank you, Mr. Chairman.

Chairman THOMPSON. Likewise, I thank you very much. I appreciate your being here with us today. It was very helpful.

We will now proceed to our second panel. The witnesses are: Sharon Priest, Secretary of State for the State of Arkansas; R. Doug Lewis, executive director of The Election Center; Conny McCormack, registrar-recorder and county clerk of Los Angeles County, California; and Samuel Wright, co-chair of the Uniformed Services Voting Rights Committee for the Reserve Officers Association.

Thank you very much for being here with us today.

Ms. Priest, please proceed with your testimony. All of your written remarks will be entered into the record in their entirety.

Thank you.

TESTIMONY OF HON. SHARON PRIEST,[1] SECRETARY OF STATE, STATE OF ARKANSAS, ON BEHALF OF THE NATIONAL ASSOCIATION OF SECRETARIES OF STATE

Ms. PRIEST. Thank you, Mr. Chairman and Senator Lieberman. I appreciate the opportunity to be here to represent the National Association of Secretaries of State, and we appreciate your willingness to hear from us, the Nation's Secretaries, on the work that we do surrounding elections in this country.

You already have my written testimony. So I am just going to summarize what I have there.

First of all, I think it is very important that we remember that elections are the core of our democracy, and if our elections, if our core is bad, then it casts doubt on everything else that we do. I think given the voter turnout and participation, that is something we all should be very aware of.

I think it is also worthy to note that many States have existing election laws that are good, and part of the problem is that those laws are not carried out. If there are violations, they are not always prosecuted. I think that is a very important part. I think election law violations ought to be prosecuted. We do not want to send little old ladies to jail, but there are instances where violations really need to be dealt with and dealt with seriousness.

The Secretaries in February adopted a resolution that you have a copy of in my testimony, and we will be coming forward with more specifics in July. So we will, hopefully, be able to give you additional information.

We have talked a lot about voting equipment, and I think you will all agree that part of the issue is voting equipment was not designed to be voter-friendly. Voting equipment was designed to give us the results as quickly as possible, and as a result, we see a lot of voters either making mistakes or not understanding how to operate the equipment.

Senator Lieberman, you alluded to Secretary Cathy Cox's testimony before the Presidential Commission on opti-scan, and, in fact, they found that in opti-scan equipment, there was 5 percent under-vote in 21 counties. One county has a 15 percent under-vote, which is remarkable.

[1] The prepared statement of Ms. Priest with an attachment appears in the Appendix on page 284.

In Georgia, they also found that on the same equipment, minorities had more under-vote than over-vote, the same equipment, the same county.

So I think the jury is still out on what is the best equipment, and although I think everybody would like to say give us new equipment, that will solve all our problems, I think that is unrealistic, and I think there is a lot more that goes into elections. There is people, the process, and the technology that make up the whole elections process.

I also think, to avoid civil rights violations, mandatory poll worker training is necessary, and you have heard previous testimony that talked about the difficulty of finding poll workers, the difficulty of training poll workers, and the difficult job that poll workers do.

I always say that we tend to hold poll workers prisoner for 14 hours on Election Day, and we have an aging poll worker workforce. Recruitment is very important, but training is, I think, very important in terms of civil rights violations because I do not think poll workers are aware that if they violate somebody's civil rights, they are personally liable for that. There is no shelter from Federal, State, or local government, and we do not want to frighten poll workers to death and say, gosh, they are afraid that they are going to do something improper and be personally liable, but they have to be made aware so that, when there are issues that come up, people are not turned away from the polls because of personal prejudices.

Recruitment is something that is very important. I do not think we have to hold poll workers prisoners if we can recruit enough people.

Some States actually do pay poll workers. In Arkansas, we pay them the minimum wage, which is not a whole lot, but if we can recruit additional poll workers, we can work in shifts. We can have some people coming in, in the morning, some in the afternoon.

I am endeavoring to get involved the 2- and 4-year colleges, as well as the private and public sectors to help us with poll workers.

Most of our communities, most of our corporate sectors, are good corporate citizens and will provide us people who will work for a festival, for example, but they have never been approached and asked if they would provide poll workers, and I think that is something that we need to do.

Voter education is a very important piece of this as well. It is very important that voters know that just because they register or apply, actually apply to register to vote under NVRA at the Department of Motor Vehicles, unless they receive their voter registration card, they are not registered. They need to know that they have to follow up on that. It is not automatic.

Hilary Shelton talked about students. In many cases, students need to be made aware that they have to choose their residence. So, if they are going to school in Arkansas and they are from Chicago, they show their primary access as Chicago, that their application form is going to be forwarded to Chicago and they will be unable to vote in Arkansas. Some States have residency statutes dealing with that, but I think, again, it is a voter education issue.

Voters need to know about candidates. They need to know about issues. They also need to know about how to operate the equipment.

We had a lot of first-time voters in this last election, and, basically, they were never told about how to use the equipment. They walked into the precinct. Somebody said sign here, vote over there, and they were confronted with something they had never seen before. So I think being able to educate the voter on all of those issues is going to help make sure that fewer mistakes are made.

I think the other thing is flexibility and funding. I think that it is unrealistic and, in fact, I would be very concerned if you were to throw money at States without any strings attached. I think that all of us who are elected have a fiduciary obligation to ensure that we are good stewards of taxpayer dollars, but I think there is flexibility in terms of how that funding is sent to the States and also on spending guidelines.

Some States may need it for equipment. Some may need it for voter education. Some may need it to help supplement poll worker training. So there are a lot of areas, I think, that funding can be used.

I do not want you to think that the Secretaries think this is solely a Federal obligation or a Federal burden. We in our resolution said State and local governments need to step up to the plate as well, and we want to partner with you. We do not want you to shoulder the entire burden.

Democracy, as you know, does not come cheap. We pay a heavy price for democracy in this country, and that is why we know that you cannot run government like a business. So I think that while we are looking at the ability to return taxpayer dollars to the people of this country, I think we would all appreciate that, but I think our democracy is so important that has to be a key in there and we need to look at spending some of that money to ensure the fairness of our democracy.

Our democracy depends on our abilities to work together without partisan battles for the best interest of our country.

Thank you.

Chairman THOMPSON. Thank you very much. Mr. Lewis.

TESTIMONY OF R. DOUG LEWIS,[1] EXECUTIVE DIRECTOR, THE ELECTION CENTER

Mr. LEWIS. Thank you for having me here. It is always a pleasure to be with these fine panelists. I have been with them pretty much anywhere and everywhere in the country together. So we are all singing the same tunes constantly, it seems like, and we have sat on virtually every commission created to discuss this issue. So, in 5 or 6 minutes, it really gets tough to tell you all that we have now discussed for hundreds and hundreds of hours, but let me say to you that I am hopeful that with all of the conversation that has gone on, with everything that you have heard, with everything that you have seen, that you move cautiously and judiciously. This is a very complex process. It is a process in which all of the estimations of the imminent death of democracy are probably not right. It is

[1] The prepared statement of Mr. Lewis appears in the Appendix on page 286.

a process in which all the estimates of how much fraud has gone on are probably not right, and all the allegations of denial of civil rights is probably not right.

The truth is that in 98.5 percent of our elections in America, things went very well. We have problems. There are systemic problems that did not start with the election of 2000, that have existed, that continue to exist, and part of those are going to continue until we have enough funds and enough training of enough people and enough elements of this process that we can fix those.

Certainly, when it gets down to the way we administer democracy, we get a far better form of democracy than we deserve or than we pay for because, roughly, only one-quarter of our elections officials have at least as equally well funded an operation as any other part of government.

Senator Lieberman, I think you said as high as 3 percent of the counties budget is spent on elections. I would be surprised in most cases in America if it amounted to one-half of 1 percent of a county budget. That is how it has been ignored, and 75 percent of our jurisdictions run on thin air. We are talking about elections officials that we pay $16,000 or $17,000 a year to for a full-time job, and they still make it work despite the fact that their county commissions and their city and town councils do not appropriate the money to make it work.

So, when we get to voting equipment, which everybody is focused on in this election and everyone seems to think that is a magic solution and a magic answer to this, and the truth is it has always been about policies and procedures—and people and laws—and the way you do those and the way you administer those.

Certainly, we cannot allow a situation to exist in which any element of our society feels that it is denied equal access to participation. If you do not believe that the process is fair, you cannot believe in the government that results from it. We know that.

We do not look at this as being one of those deals where we try to make sure that certain elements of society do not get to vote. That is not the case. It is simply not the case.

We try to qualify all the voters. We try to include all the voters. But there are also misunderstandings about how the process works, and particularly in terms of inexperienced voters. If you go vote for the first time and you are told that you should go vote or somebody has encouraged you to go vote and you get up and you go try to actually do that, if you have not registered, in most States you are not going to get to vote. That is just the simple fact.

So we have an education process to do with the voters, and particularly with inexperienced voters. All of the studies that we were talking about before in terms of whether it disproportionately affects African-Americans or what the reasons are for that, the truth is that if you are inexperienced, no matter what your color is, no matter what your background is, you are going to make mistakes in the process. We have not taken enough of that into consideration when we started planning and making the process work for those folks.

We have all presumed as a society, as policy-makers, as administrators that people knew how to do this process. Well, it certainly

has been proven that they do not always know how to do this process.

Is there a role for the Federal Government in this? Absolutely. The notion that the Federal Government ought to stay completely out of it is not correct. Yet, at the same time, I am encouraging you folks to go slowly about intruding on it to the degree that we try to run it from the Federal level. It works best by being administered at the State and local level, and, certainly, we believe that the Federal voluntary voting system standards are absolutely critical to the improvement of American elections and the continued health of American elections and that is administered by the Office of Election Administration currently within the Federal Election Commission.

We certainly believe that the operational standards that go with those, to show the best practices, need to be developed, but we have been saying that for 7 years and Congress has never put this into statutory authority and never given anybody responsibility to do it.

We also believe that the Office of Election Administration ought to be researching on voting systems in which types of voting systems counties have and where voters make more errors on them in terms of that and tracking over-votes and under-votes so that we know what a national norm is and then how to figure out ways to correct some of those problems.

We believe that the Office of Election Administration's publications are absolutely critical to the continued well-being of this process. They publish, what most of you all probably do not even know, a series called an Innovation Series. As running a national nonprofit, I am envious of that series because it really can go to all of the jurisdictions in America, and it is very helpful in terms of the way to administer that. But that, again, is something Congress can do and make sure happens.

Certainly, we need a new elections class of mail so that when we mail to voters, the biggest expense other than voting equipment and other than personnel is our mailing costs in elections. It certainly ought to be worth something to the Federal Government to establish an elections class of mail so that we can deliver first-class mail at about half the current first-class rates.

Clearly, education and statewide databases are needed. We need to look at voter education, but let me say this. We are not going to build voter schools. This is not going to be the Field of Dreams. We are not going to build voter schools and have them come. They are not going to automatically show up.

What we are going to have to do is show new voters how to vote in this process in probably 2 minutes or less inside the polling place and to make sure that they do not disqualify their ballots when they do so. We are going to have to use different things other than just printed information. We are probably going to have to do that visually and auditorially, and we are going to have to do a little studying to figure out how people learn how to do things in very short doses and very short time spans.

Then, let me wrap up with we must have provisional ballots. I have done a survey at The Elections Center to find out how many of our States do not do this. I have 39 responses so far. Out of the 39 responses, 19 of the States do not offer provisional ballots. So

we have a problem here that needs to be looked at, but when we solve that problem, we need to look at it with a couple of answers here.

There are some States where the provisional ballot would be more cumbersome than what they do; that is, Election Day registration. The second set of States that are more cumbersome are going to be those that allow you to vote by a voter affidavit. You just swear that you are a resident and you, therefore, do not have to have it ever proven. So those States do not want to make that change to where they have to go to provisional ballots.

Finally, let me say to you please have faith in the elections administrators of America. They want to do the right thing. They want to make this process work for everyone. These are our citizens. They live next to us. They are our neighbors. We want them in this process, and the assumption that we are somehow designing the system to keep them out of this process is a faulty assumption.

These people want to make the right choices and want to do the right things, and a national coalition of those folks, 37 of them representing all of the elections administrators in America, are going to offer to you and to the public in late June or early July a national plan of how to fix a lot of these problems, through the Election Center's National Task Force on Election Reform.

Thank you.

Chairman THOMPSON. Thank you very much. Mr. Lewis, all of that practice has served you well, I must say.

Ms. McCormack.

TESTIMONY OF CONNY B. McCORMACK,[1] REGISTRAR-RECORDER/COUNTY CLERK OF LOS ANGELES COUNTY, CALIFORNIA

Ms. MCCORMACK. Hon. Senators, I really appreciate the opportunity to come today and talk to you about the very important issue of electoral reform in this country which to me as a 20-year election administrator is certainly in my heart.

I am the registrar of voters in Los Angeles County, California, which is the largest election jurisdiction in the United States. We have 4.1 million registered voters, and last November, we cast 2.7 million ballots, which was more ballots cast in our county alone and counted in our county alone than in 41 of the individual States in the United States.

We even have 540,000 absentee ballots we had to individually deal with, and that was more ballots cast than in eight States.

I began my career as the registrar of voters in Dallas, Texas, 20 years ago and moved on after a few years there to San Diego, and now I have been in Los Angeles for 5 years. So I have presided over literally thousands of elections and many recounts as well that I hope to have an opportunity to tell you a little bit about.

In last year's election in Los Angeles County, we had to staff 4,963 precincts with 25,131 election poll workers. We had to process over a half-a-million absentee ballots, and we had to write software that would accommodate all of the ballots-counting accu-

[1] The prepared statement of Ms. McCormack with attachments appears in the Appendix on page 290.

rately, which includes merging absentee ballots in with Election Day ballots.

For 33 years in Los Angeles County, we have been on the punchcard voting system. It is time to change. Last year, before the November election, I asked my board of supervisors for the funding to institute a pilot project for the electronic voting, the DRE system, and I am glad to say that they did give me a half-a-million dollars to begin a pilot program.

We had a pilot program where, during the early voting period in the 2 weeks before the election, we set up nine locations around Los Angeles County. I have seven offices in the county because I am also the recorder of deeds and the county clerk, and we set up in our offices plus two city clerks so that anyone of our 4.1 million voters could go to any one of these locations in the 2 weeks before the election, including the Saturday and Sunday before the Election Day, and cast a ballot on the new electronic equipment.

This was especially popular to people who had English as a second language. We have a very diverse community in Los Angeles, and by Federal Voting Rights Act requirements and local ordinance, we print our ballot in seven languages, but, with a punchcard with seven languages, it is very cumbersome for a person to go in with a translation and try to vote. But on the new touchscreen equipment, the very first thing they did when they touched the screen was choose the language. We had hundreds of voters come in and vote in Tagalog, Japanese, Chinese, Spanish, and in other languages, and they were literally in tears saying how easy it was to read their propositions in their native language.

Propositions in California—it is a long ballot—are hard enough to understand in English. So this was a very popular feature.

Also, this new equipment allowed us for the first time to have blind and visually impaired voters vote without assistance. I actually used the equipment and voted on it blindfolded. It was incredibly easy. You use an audio headset and a raised keypad, and we had hundreds of voters come in accompanied only by their Seeing Eye dogs and cast ballots privately and independently for the first time in their lives. It was a tremendous experience. We had a wonderful response from it, and we partnered with the Braille Institute and the Center for the Partially Sighted and they sent out for us 8,000 brochures to all of their members encouraging people. At their own expense, they sent out this mailing since we have no money in elections. They brought in people to try the new system.

It was a big success. We had 21,963 of our voters cast ballots on the new system, and 99 percent of the surveys that they filled out said that they loved it and it was a lot easier than the punchcard system.

Later, I hope you will ask me some questions in following up to Mr. Knack and also the CalTech study as to what we saw with over-votes and under-votes in the same demography of our county compared with the punchcard system because, I think, it is more enlightening than what we are reading in some of the preliminary—and I urge this—studies from CalTech because now I am working with them so they can understand a little bit more about some of the variables that they are finding.

As I mentioned, these features are very important that we have this in a diverse community, but with punchcard balloting, we simply are limited and cannot do this type of special feature voting.

I would like to make some observations and recommendations. As I will echo some of what Doug said, the conduct of elections in this country involve candidates for Federal office as well as candidates for local office, and, yet, counties bear the sole responsibility for paying for all of these elections.

When we have cities on our ballot, we have water districts on our ballot, they are all assessed a proportionate share of the cost. The election cost in Los Angeles County for the November election, for our county alone just to administer one election, was $20.4 million. The Federal Government took up space on that ballot, and they were the only entity that gave us zero pennies to conduct the election.

We had water districts that do not have a nickel, and they had to pay us to conduct their part of the election. I do not think that is appropriate. I think that we should at least be able to assess a fair share to every governmental entity that shares the ballot in the election.

My board of supervisors that I report to is fully supportive of completely converting our punchcard voting system, but in a county our size with 5,000 voting precincts, the cost to do that would be $100 million for the equipment alone.

I have asked my board to have a $3-million infusion of funds this fiscal year to expand my early voting project, and I have to tell you, $3 million out of my county's budget of $15 billion dollars and my own personal departmental budget of $72 million sounds very small, but it is in total jeopardy of even getting $3 million because right now our county has a deficit in the health budget of $184 million. If I am sitting on my board of supervisors and I have a $184-million hole in the budget, it is hard to decide whether or not they can afford to give me $3 million. As of right now, they have not given it to me, which means I will not be able to continue the touch-screen project at all in 2002 because we cannot just go at the same level we had it the last time. We know we are going to have more people come out and want to use it.

Similarly, our State is in complete financial turmoil and crisis right now. There is a bill in the State legislature that would appropriate up to $300 million to help with voting equipment, and without the electricity crisis costing an additional $54 million a day, I think we might have gotten it. It was the right year to ask for it. It was the wrong year. The lights are out, as you are probably reading about. I called home, and we do not have any electricity. So, again, it has been relegated.

Unless we get some Federal funding to assist in this process, the voting reform and financing of new equipment is always going to remain illusive, the number 11 on every local government's top-10 list of priorities. It will just never surface, and we need to invest in the infrastructure of our democracy.

One means to do that, as we have said, is a 50 percent reduction in postal rates. This would really save my budget when I mail out half-a-million first class absentee ballots. It costs hundreds and hundreds of thousands of dollars. In addition, in California, we

mail every voter, every one of our 4.1 million voters, a sample ballot, and those costs are very, very high.

We need to have some sort of a subsidy of the postal. That would be, I think, something fairly easy for the Congress to do. Another possible source of funding could be a checkoff box on the IRS tax forms. We need to look at creative ways to find not just a one-time source of money to buy equipment, but sustainable funding because problems in elections start because we do not have any money and ratchet all the way down in not having enough money to pay for poll worker training.

Our Federal Government spends over $30 million a year supporting democracy-building in foreign countries. We spend not a dime here. It is time we spent a little money in our own country to do some democracy-building.

We had the Census last year, and the Federal Government put $100 million in an advertising campaign. It was a great campaign. It made people aware of the importance of the Census, and it had the effect, especially in Los Angeles County, of having a higher rate of Census completion than we have ever had before.

Arturo Vargas here today and I know each other, and we all worked with the organizations. It was very successful, and I sat on the Census Committee. We need that type of investment in voter outreach in this country. If we can spent $100 million on the Census, why cannot we spend some Federal dollars on letting people know about the processes of election.

We hear all about campaigning and the money that is spent there, but just so people can understand what the process is, how you actually vote, put some PSAs on the TV, show people how to punch the hole or touch the screen or color in the optical scan ballot. Why was that so revolutionary to spend a little bit of money advertising? We cannot do it in 2 minutes at the poll. We cannot do it.

We ought to look at other foreign countries and be a little bit embarrassed. If you may remember, in Mexico they used to spend no money on their elections, and it was a problem. After their 1988 Presidential election, before the 1994 Presidential election—and I was able to go to observe that election—they infused a huge amount of their national dollars and required poll worker training for a week. You had to have a college degree to be a poll worker. This cost a fortune in their government, but it was paid for. I went down there and I saw polling place officials who knew what they were doing, had incredible supplies. Here we are and our standard for poll workers in the United States is if you prick them and they bleed, they are hired. I mean, that is truly the standard of getting a poll worker in our county, and 30 or 40 percent of them quit without telling us about it. We are left with people who do not know what they are doing at the polling places, and that ratchets all the problems that you have heard about and the anecdotal issues.

We need to have testing of our poll workers. We need to pay them a decent wage, and we need to say this is important. If it is important, we should fund it. It is that simple.

I see that I am over my time, and the rest of my testimony, I am sure you can ask me questions about, but I wanted to reiterate

that one size does not fit all in elections. We really cannot say that an optical scan system or this type of system or another type of system will work in every jurisdiction. It simply does not. We need to have the authority, the ability to look at innovation, to realize that in Alpine County in California, with 700 registered voters, it does not need the same voting system that I need in Los Angeles County with 4 million registered voters and seven languages, which we anticipate may be 10 after the next Census.

Thank you very much, and I look forward to your questions.

Chairman THOMPSON. Thank you very much. Mr. Wright.

TESTIMONY OF SAMUEL F. WRIGHT,[1] CO-CHAIR, UNIFORMED SERVICES VOTING RIGHTS COMMITTEE, RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

Mr. WRIGHT. Thank you, Mr. Chairman and Senator Lieberman.

The controversy in November 2000 about the uncounted absentee ballots in Florida has put this issue that I have been trying to raise for 20 years on the national radar screen, but the problem did not start in the year 2000 and is not limited to Florida.

There has been a lot of discussion among the prior witnesses about the cost of democracy. I respectfully suggest that the greatest cost of democracy is not represented in dollars, and the men and women that serve in our Armed Forces are the people that are called upon to pay that cost.

As I mentioned, it is not a new problem. I found some hearings conducted in 1952, a year after I was born, by the Subcommittee on Elections of the House Administration Committee about disenfranchisement of military personnel in the Korean War. So it is the same problem now that it was then.

There has been some progress in recent years. Arkansas passed a great legislation just a few weeks ago on our issue. Senator Thompson mentioned the Florida bill passed just a few days ago. It includes several provisions that we were pushing for. So at least we have put the military voting issue on the agenda when all of these other broader problems are discussed.

I know the voters we are talking about numerically, I am sure, are very small percentages compared to the other issues that have been discussed, but I respectfully suggest because of their sacrifices for our country that they are entitled to special consideration from the Federal Government as well as the States.

As you can appreciate, there are three time-consuming steps in absentee voting, especially if you are outside the United States. The request for an absentee ballot must go from the voter to the election official, and then the unmarked ballot must go from the election official to the voter. Finally, the marked ballot has to go from the voter back to the election official. Each of these steps can take weeks, and it is subject to being lost if you have to depend on the Postal Service.

I have had this problem myself. I am a Captain in the Naval Reserve. I am not on active duty now, but I have done a lot of on and off active duty, most recently, from October 1999 to March 2000 in Tampa and Bahrain, but mostly in Tampa. I sent in a Federal post-

[1] The prepared statement of Mr. Wright appears in the Appendix on page 310.

card application form to vote in Virginia's Presidential primary on February 29, 2000. I mailed it from Tampa, Florida, from the post office at MacDill Air Force Base. It was postmarked 1 February. It was 11 days later that it came back marked "returned to sender, attempted, not known." I sent it to the Registrar of Voters of Arlington County, Virginia, using the address contained in the Voting Assistance Guide.

It turned out, it never left Tampa. Somehow my return address was confused for the address where I wanted it to be sent. That happens 1 or 2 percent of the time with all mail, but why did it take 11 days and why did it get this little note showing, attempted, not known? The Postal Service could not answer that question. As long as we are depending on snail mail, we are going to have these problems.

I favor as a long-range solution a properly designed system of electronic voting through designated computers at U.S. military bases at home and abroad and also at U.S. embassies and consulates.

We talk about the military, but there are also 2.5 million voting-age American civilians outside of the United States, and they are eligible to vote by absentee ballot at least for Federal offices and that has been true under Federal law since 1975.

We need Federal legislation. As I mentioned, there were hearings in 1952. In those hearings, it contains a letter to Congress from President Truman who called upon the States to solve this problem. He also called on Congress to enact temporary legislation for the 1952 Presidential election. He wrote any such legislation by Congress should be temporary since it should be possible to make all the necessary changes in State laws before the congressional elections of 1954. Well, it has not happened that way. Here we are, almost half a century later. The States have had their chance. They have not solved this problem.

The Congress has the power to raise and support Armies, to provide and maintain a Navy. Other legislation, the Veterans Reemployment Rights law, now known as the Uniformed Services Reemployment Rights Act, has been applicable to the States as employers since 1973. The States objected to that, and the constitutionality was upheld. So I think under the War Powers clauses of Article I that Congress does have the authority and responsibility to solve this problem at least for members of the Uniformed Services.

In 1940, when Congress first enacted a reemployment rights statute as part of the first peacetime conscription statute, Representative R. Ewing Thomason of Texas forcefully asserted that this is Uncle Sam's law, this is Uncle Sam who is drafting these men, and he ought to be fair enough to see that the law is enforced. What is true of the statutory right to reemployment in one's preservice civilian job, I respectfully suggest should be even more true of the constitutional right to vote.

I would invite the Committee's attention to the first paragraph of President Truman's 1952 letter to Congress. "About 2,500,000 men and women in the Armed Forces are of voting age at the present time," that being 1952. "Many of those in uniform are serving overseas or in parts of the country distant from their homes.

They are unable to return to their States either to register or to vote. Yet, these men and women who are serving their country and in many cases risking their lives deserve, above all others, to exercise the right to vote in this election year. At a time when these young people are defending our country and its free institutions, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve." I suggest those words are at least as true today as they were in 1952, and they are addressed in the 107th Congress.

In my written statement, I have attached what I think are some of the specific provisions that should be included in Federal law. They are included in the proposed Military Overseas Voter Empowerment Act, H.R. 1377, and Senator Allard has introduced very similar legislation in the Senate, guaranteeing that a member of the Armed Forces does not lose a right to vote because of absence from a place pursuant to military orders, even if he or she has changed their mind about where to live after leaving the military. That provision has passed the Senate, each of the last 4 years, as part of the Senate version of the NDAA, the National Defense Authorization Act. It has not yet gotten through the House because of States' rights objections, but I hope it will pass both houses this year and be signed into law by the President.

The proposed Federal legislation would also provide for late voter registration for people recently separated from the military. As long as you are on active duty, you do not have to be registered in the traditional sense. You use the Federal postcard application, but when you leave active duty, then you must register in the traditional sense. You may be returning to a community from which you have been away for several years or you may be moving to a new community after you leave active duty, but in either case, you must register to vote. If you do not leave active duty until shortly before or even after the voter registration deadline, you are going to be disenfranchised.

More than 20,000 service members leave active duty every month, including that last month before Election Day, and I think maybe the most important provision in the proposed Federal legislation this year is electronic voting, at least as a demonstration project for the 2002 congressional elections, and we hope that it will work well. I think the technology exists to provide for a private and secure electronic vote for people in the Armed Forces, their voting-age family members, and any U.S. citizen outside the United States.

Thank you.

Chairman THOMPSON. Thank you very much. Senator Lieberman.

Senator LIEBERMAN. Thanks, Mr. Chairman. Thanks to this panel for very interesting, very helpful testimony.

I thought, Madam Secretary, that you made a very interesting point which is that maybe the machines that we are using now were designed more for speed of calculation or ease of calculation than ease of voting. I wonder if that message is getting over now to those who design and make machines. Do you think that is different for the latest forms, the optical scanners and the DREs?

Ms. PRIEST. I think it is somewhat different, but, for example, we used DREs as a test in early voting in our largest county, Pulaski

County, and there were a great deal of problems with them. Senior voters were a little bit intimidated by approaching a computer, and they had not seen it before. I know that Doug Lewis thinks that this is not a Field of Dreams, but I think we have to do more than just dealing with showing them something on Election Day.

I think election officials must go out to drug stores, Wal-Mart, public health clinics, civic clubs, and show people how equipment works. You just do not bring something in and throw it out there and expect people to automatically know. So I think it is changing.

Senator LIEBERMAN. Yes.

Ms. PRIEST. But this real sense that we have to have instantaneous information——

Senator LIEBERMAN. Yes.

Ms. PRIEST [continuing]. Is really a difficult issue to overcome.

Senator LIEBERMAN. Yes. That is a very interesting perspective, and I agree because it puts the emphasis in the wrong place. The right place, obviously, is to have a system that counts people's votes and makes it easier for them to vote.

I thought all of you were helpful in your specific suggestions. I think you said that the Secretaries are getting together a little bit later this year and will make a set of recommendations. I look forward to those.

Let me ask you about some of the ideas that are on. One idea that came out of the Florida situation and it seems to have fallen off—I am curious about your thinking—is that we ought to have at least a uniform voting system per State so that everybody in a given State votes the same way, whatever, levers, paper ballots, punchcards. What do you think?

Ms. PRIEST. Personally, Senator, I think that we ought to have a statewide uniform system, even though in Bush versus Gore, the equal protection issue came out sort as a one trip, 1 day, one train. In actual fact, I think it is an argument that will be used by State legislators, for example, who cross county lines. So I do think that it would be very helpful for States to have a uniform ballot.

Senator LIEBERMAN. Ms. McCormack, as you said, more people voted in Los Angeles County than in 41 other States. That is quite remarkable. Everybody in the county has the punchcard, I take it. Every voter in Los Angeles County votes with a punchcard.

Ms. MCCORMACK. For the first time in November 2000, they did have the option. Any one of the voters could have gone and used the touch-screen, but only during the early voting. It started 2 weeks in advance up until the weekend before.

Senator LIEBERMAN. Yes. You did mention that. Was it widely used?

Ms. MCCORMACK. It was the first time and only at nine locations, and it was not heavily advertised. We tried to get advertising, but Riverside County, our neighboring county, had put in all touch-screen and they got all the publicity. I was calling up all of the editors at the *L.A. Times* saying, "You know, I think this paper is published in Los Angeles, and you are writing an awful lot of stories about Riverside." They then ran one story after that.

We had 21,963 people do it, and the experience in Las Vegas and in Dallas, Texas, that have tried the electronic voting 4 years ago and then the next cycle after that, it is exponential growth. Las

Vegas is actually voting a third of their voters early now on the touch-screen. I think that in 2002, if I get my $3 million, which is in jeopardy at the moment, we wanted to have 50 sites available at shopping centers, and that we would have hundreds of thousands of people try it.

Senator LIEBERMAN. Yes. That is great.

Ms. MCCORMACK. So we are phasing it in, but to go to all of our whole 5,000 precincts is $100 million which, of course, we do not have.

A statewide voting system, it sounds like a good idea. I think some States are more homogeneous than others. Certainly, our State is not homogeneous, and as I mentioned, some of our counties are very small and others are very large. So I am not sure that is necessarily a solution.

Senator LIEBERMAN. Why have you decided to leave the punchcards? Maybe it is self-evident. If you could just give a brief answer.

Ms. MCCORMACK. Well, it really is not self-evident. I have a report, and it is attached to my testimony that explains why optical scan systems just do not work in a county of our size. They are very good for 95 percent of the country for under a half-a-million voters in a jurisdiction that does not have a lot of languages on the ballot. It is very cumbersome and very expensive to get a optical scan.

Senator LIEBERMAN. That was a very important point you made that the touch-screen of the DRE really allows you to communicate with voters in different languages very easily.

Ms. MCCORMACK. Yes, very easily.

Senator LIEBERMAN. It is easy for them, too.

Ms. MCCORMACK. It was very easy because you could walk into any one of these nine locations. You qualified on the voter file to make sure that you are one of the voters. Then you are issued a card that is programmed to pull up your ballot style. We had 263 different combinations. We have 17 congressional districts. We have lots of assembly and water districts, with 263 different combinations, in seven languages, and it had to be tallied down to the precinct level. So multiply 5,000 times 263 times 7. Each one of those machines had 9 million combinations in it. So, as soon as you put it in there, it could call up 1 of 9 million. There is just no other system out there, and until these were certified—and this is new equipment——

Senator LIEBERMAN. It is impressive.

Ms. MCCORMACK. It was very impressive and very easy. I had an 85-year-old voter who said she had never used an ATM in her life, and she did not want any instructions. She wanted to see if she could do it, and she loved it. She had no problem with it.

Senator LIEBERMAN. But you definitely decided that it is time to leave the punchcards, that they do not give you the kind of range and accuracy that you want.

Ms. MCCORMACK. They do not give us the range and the accuracy, and the study that CalTech—and I am working now with them because their preliminary study really needs to be adjusted and I think it will be before they come out with a final because they really are not looking—they were looking at a lot of different

types of touch-screens from back in the 1980's and early 1990's that really were not very user-friendly and easily could have under-voted on them.

I, frankly, tried to use one of them, and I could not even figure out how to use it.

The ones that are out there now are incredibly user-friendly. You cannot over-vote on it, so that eliminates that.

The number of under-votes we had in our touch-screen was a half-a-percent compared to 2.2 percent on punchcards that people are familiar with, but if you just think about putting a ballot, punchcard ballot into a piece of equipment and trying to find this, you have some stylus breakage. You have some people who do not understand. You have hanging chad issues. You have people who skip a race inadvertently.

I have to believe that if 2.2 percent of the people in L.A. County skipped the Presidential race, as I think Mr. Knack said, there is a natural under-vote of maybe about .7 of a percent, which we saw .5 of a percent in the touch-screen. That means if you subtract those out, the other people probably did want to vote in the Presidential race, and between the over-votes of people who on punchcards, the half-a-percent who voted for two, which I am sure was inadvertent somehow, thought they were punching something else after they made an error and did not get another card, that is 29,000 people in our county alone that if we were on touch-screen would have had their votes counted for President.

Senator LIEBERMAN. That is significant.

Ms. MCCORMACK. I think it is a lot.

Senator LIEBERMAN. I gather that from groups or advocates for disabled Americans that the DREs are also, generally speaking, helpful to them, too, in helping them vote.

Mr. LEWIS. Yes.

Senator LIEBERMAN. Madam Secretary, obviously, we all got educated about the so-called butterfly ballots, and it raises this question that I never had thought of before because we use the levers in Connecticut, which in themselves force you to stand there for a minute and kind of get oriented, but what is typically done and then what should be done by election officials to try to provide a ballot that is clear for the voters, that is as clear and unconfusing as possible? Are ballots tested in any way? What should we do?

Ms. PRIEST. Generally speaking, I do not think ballots are tested. I think one of the things that used to be done more frequency than is done now is sample ballots. For example, when I first got into politics, that was something that we did. We did a drop on the weekend before the election of a sample ballot. Newspapers do not seem to be printing sample ballots as they used to, and candidates do not seem to be using them as a tool anymore.

So, with the different configurations, it is very difficult to put out one ballot that everybody is going to be able to identify with. So I think local newspapers can help. I think counties can help if they put out sample ballots for their constituents.

I know it is expensive, but, as I said, democracy, it is either worth it or it is not. I think it is.

Senator LIEBERMAN. Amen. I agree.

Mr. Wright, I appreciate your testimony and this long quest you have been on. I think your idea of electronic voting by overseas voters is an excellent idea.

I gather that there was a pilot project, very small, that the Department of Defense carried out in last year's election, maybe less than a hundred voters.

Mr. WRIGHT. Yes, sir.

Senator LIEBERMAN. What do you know about how it worked?

Mr. WRIGHT. Well, at least for the 88 voters that participated, every single one of their ballots was counted.

Senator LIEBERMAN. Well, that is a good percentage.

Mr. WRIGHT. I think the system maybe was a little too complicated. It had this long procedure that you had to sign up in advance of the election. I would like to see an electronic voting system that you could do it in one sitting. You could sit down and communicate with your election official back in your homestate and then complete an electronic equivalent of the Federal postcard application form. If there is a mistake, they tell you what the mistake is right there in real time, instead of weeks later in the mail. Then, once you got it correct, you have the ballot there on the screen. You mark your votes, and it could have a system built in to prevent over-votes or under-votes or at least to direct the voter's attention, "Hey, you forgot to vote for particular offices. Is that really what you intended?" Then you push send and you do the electronic equivalent of the affidavit on the back of the ballot return envelope. If there is a mistake, they tell you right then and you can correct it. Whereas, when you depend on the mail, people are going to be disenfranchised by even a small error.

Senator LIEBERMAN. Good for you. Well, keep pushing, and maybe we can help you. What you are asking ought not to be too difficult or complicated when you think about how many single-seeded transactions involving great sums of money are carried out every day, millions of times around the world.

Mr. WRIGHT. The military uses a system like this to transmit top-secret communications.

Senator LIEBERMAN. Yes, exactly.

Mr. WRIGHT. So, with encryption, there can be safeguards to ensure that the system is private and secure.

Senator LIEBERMAN. Thanks. My time is up. I know we may have a vote soon. So I want to yield back to the Chairman.

I thank all of you. Just a final request. Please do send us your specific ideas about what an ideal piece of Federal legislation, judicious as Mr. Lewis counseled us to make it, would contain.

Thank you.

Chairman THOMPSON. Thank you.

I want to follow up on that, but, first, I cannot help but note we are going to have a hearing here next week on the Postal Service. While cut rates for voters would be a good idea, the only people in worse financial shape than some of these localities is the Postal Service. They are losing money and raising rates themselves. We are kind of stymied every direction we turn in, it seems like.

It seems to me that the situation is this basically. We have elections in this country. We are on the ballot. You have Federal elections, State elections, local elections initiatives and so forth. Every-

body pays something except the Federal Government for those elections, and we hand that off to the States to run it.

Now we have these problems, and localities and States are saying, in some cases, we need more help, and the Federal Government's response is probably going to be, "Well, OK, but we want to tell you how to use the money," and you run right into federalism issues and so forth.

One of the things that we do—seem to be able to do up here better than anybody else—is research and development. I was specially interested, Mr. Lewis, in your idea of perhaps developing a national norm. It seems like most of the legislation that has been proposed as to setting up a commission to look at all the things that we should consider, in other words, the same things that we are doing with all these hearings, to see maybe if we are going to try to impose or suggest or induce towards certain rules or standards that we know what we ought to be pushing toward. Even those who get over the federalism hurdle are concerned that what makes us think that we know what the solution is.

In looking at this, I would like a short answer, if I may, if you will, from each of you. Do we all agree that the Federal Government ought to participate more, at a minimum, some kind of matching funding, block grant-type thing for voter reform? That would be the minimum, I guess, moving toward the possibilities of money to be used for specific purposes. To what extent should we go down that road, and if we get to the point of trying to induce toward specific things, what is the most important thing?

We mentioned a lot of things. Most of them sound like strictly State and local responsibilities and obligations, some of them, maybe not as much, but if we are going to pass a bill and we are going to past something of just setting up another commission and we are going to buy into the idea that we really do pretty much know and can at least agree on certain things that all States ought to be moving toward, what are those things? Do you have a top one, or if you need to, maybe one or two?

First of all, what about the federalism issue? Should the Federal Government even be involved in this, past maybe a little funding?

Ms. PRIEST. Senator Thompson, I think the Federal Government ought to be involved in it because you have a great stake in this, as we do at the local and State level.

I think continuing to fund the Office of Election Administration, making sure—as you said, the Federal Government is very good at R&D. OEA can do a lot to help State and local in terms of voluntary practices, management practices, updating the Federal voting system standards which have not been done since 1990.

I do not think at any time we should say we have solved this problem, we have thrown half-a-billion dollars at it, we have solved this problem, and think that we can go away and forget about it. Elections are an ongoing thing, and we have got to continually work to tweak the system to make sure as times change that the elections systems change with it. But I think the Federal Government has a very important role to play through OEA in terms of voluntary practices.

Chairman THOMPSON. So your idea would be there is a lot of things we can do from an educational standpoint to show the Nation the kinds of things that work that they might consider doing.

I might say parenthetically that Maryland and Florida apparently have shown what States can do when people get together within the State on a bipartisan basis and sit down and figure it out and make a commitment to do it. So, again, how much do we need to do?

Mr. Lewis, I will ask you the same question.

Mr. LEWIS. You know, there is always this argument, Senator. You all have served in government long enough to know that the locales hate the States and the States hate the Federal Government, and none of us want anybody to ever control our actions or to interfere with our administration of whatever our fiefdom is. Yet, at the same time, we come to you with our hands out and say give us all the money we can stand and put into our process, but please do not tell us anything at all to do with what we do. That is the standard age-old argument and process.

The problem is that in 225 years of running elections, the Federal Government has not put in one dime, and the problem is in about one-quarter of our States, they have contributed to it, but in three-quarters, they have not. So what we have is that we have run Federal elections and we have run State elections out of local coffers. Yet, somewhere in here, there has got to be an equity factor that says that you all ought to be paying your fair share somewhere in this process. Yet, at the same time, if accepting Federal dollars begins to mean that you have to now change dramatically the way you administer the process and that you now have to spend more of your time complying with verifications that you did certain things and that half of the dollars go away in terms of administrative accuracy checking and information checking, then it gets to be almost more of a burden than it is worth.

Chairman THOMPSON. Then you would have some States accepting the Federal standard and some States not——

Mr. LEWIS. Exactly.

Chairman THOMPSON [continuing]. And a new disparity would be created.

Ms. PRIEST. Yes.

The process is important enough for each level of government to have its responsibility of funding the operations of this, and Lord knows—listen, at the local level, bless those people's hearts. They have tried to fund it, but, in many cases, our local governments do not have enough funds for all the competing goods that go on. We, in the elections community, are always the last part of that because they look at this as not understanding what it is that those staffs do and they do not understand where the money goes.

Chairman THOMPSON. Keeping in mind what you said about if you make the requirements too onerous, people are not going to respond to that, if you had it within your power and you get over that hurdle and the federalism issue to several million dollars and perhaps billions of dollars to spend this on the Federal level, would you spend it, and what would be your priorities? If we are not paying for anything, should we just send a check, or should we send

it with some strings, and if so, what is the most important string to you?

Mr. LEWIS. We want you to be like parents. We want you to send all that you have, and we will find a way to spend it. Then we will tell you how we spent it, which may not match up to exactly how we spent it.

The truth is that, certainly, when we are talking about voting systems in America, voting systems are horrendously expensive for locals to do on their own. I mean, $100 million. I will bet you by the time that Conny McCormack is done, it will be a whole lot more than $100 million by the time she is done actually getting a new system in and getting it implemented. The $100 million is only the beginning because then you have all of the maintenance costs that go with it.

Chairman THOMPSON. Should we suggest what kind of system should be used?

Mr. LEWIS. No. I do not think so.

Chairman THOMPSON. What if they want a more sophisticated punchcard system? Should we be sending Federal money for that?

Mr. LEWIS. I think, obviously, we have not done enough research over a long period of time to find out which systems truly favor voters.

Chairman THOMPSON. That is what these bills address.

Mr. LEWIS. I understand.

Chairman THOMPSON. So maybe we are on the right track.

Mr. LEWIS. But in terms of having one system nationwide, no, I do not think that is the answer.

Chairman THOMPSON. Ms. McCormack.

Ms. MCCORMACK. Well, first of all, I would like to say that there are a lot of Federal laws on the books that require a lot of expenditures for those counties that are complying with them.

For example, the Voting Rights Act and the language requirements in our county and the oral assistance of the polls, the recruitment program we have, the translation program, of the $20 million I spent on my election last November, more than $2 million was on compliance with the language requirements alone of the Voting Rights Act.

Chairman THOMPSON. Unfunded mandates.

Ms. MCCORMACK. Completely unfunded. Every single election, my board of supervisors has to come up with that $2 million.

ADA compliance. A lot of counties just say I am not going to comply, we do the best we can, we have no money.

Voting rights, NVRA with the Motor Voter and all the issues and costs that has incurred in putting together inactive voter lists that we have to keep for 5 years—I would be very happy to see some money coming against the laws we have already put in place. Forget new funding. It would be nice to see some funding for all the laws that we already have.

In terms of what you are saying, how can you assure that you would get some consistency, I think the American public has the right. This is my personal opinion, whether it is in the task force report which I sit on or not. The American public has a right to expect some consistency in the election process, and they are not getting it.

I think that the Federal Government certainly has a role to say maybe they would encourage through incentives of who gets the grants. Maybe you would have a better shot at the grants if you have provisional balloting in your State and a recount process. It astounds me that there are States that a voter or candidate cannot get a recount if they want it. It is at the discretion of some canvassing board or something.

In our State of California, anybody can get a recount, and believe me, we have them every election. There is some recount that goes on. They have to pay for it. The person asking for it has to pay for it, unless it is overturned, and we have had one that was a tie vote that was overturned.

I would like to see some funding coming against the mandates we have now. I do not personally have a problem with Federal funding having an audit requirement and having some accountability. I think that it is naive for us in these positions to think that people are going to hand us money without some accountability. I have no problem with that, personally. We have to account for everything else we do. Why not Federal funding?

Chairman THOMPSON. It is kind of interesting, isn't it, that we place strict limitations on how much money a Federal candidate can raise and what increments he can raise it in, and, yet, on Election Day, when the votes are going to be counted for that office, he is totally subject to a State or local process there with no Federal involvement at all?

Mr. Wright.

Ms. MCCORMACK. It could be a lot better process if we had a little bit more money.

Mr. WRIGHT. Yes, sir. I am a member of the Federalist Society, and I believe in States' rights, but I also think that the Founders clearly contemplated that national defense would be at the core responsibility of the——

Chairman THOMPSON. We can rule him out for a judgeship, I guess.

Senator LIEBERMAN. I was just going to say, I have some friends who would like to talk to you that are interested in going on the Federal bench.

Mr. WRIGHT. I am not a candidate for the Federal bench.

The Founders contemplated that national defense would be at the core of the testimony of the responsibility of the Federal Government.

Senator LIEBERMAN. That is right.

Mr. WRIGHT. I think there is a role for Congress in this area.

I mentioned the 1952 hearings and the half-century of inaction in the States, but, maybe more fundamentally, I think if we are going to have electronic voting, which I think is the answer, it is probably going to have to be by Federal legislation because the Department of Defense could implement one system. It cannot implement 50 systems or 55 systems. So, even if tomorrow morning, all 50 States said you are right, this is terrible that service members are being disenfranchised and you are right that electronic voting is the answer, but Connecticut comes up with one system and Tennessee with another and Michigan still another, then how is the Department of Defense going to administer a system like that?

Chairman THOMPSON. Thank you very much. I am over my time. Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman.

OPENING STATEMENT OF SENATOR LEVIN [1]

I wish I had been here for all the panels, but let me just ask this panel the question. Is there an emerging consensus as to what the "best system" would be if we were starting from scratch right now? Would 75 percent of election officials across the country say this is the way to go?

Ms. PRIEST. Senator, I would like to tell you the answer to that was yes, but I am afraid that the jury is still out. There is a lot of research that has to be done on equipment to determine what is the best, and even then, what is the best for Arkansas may not be the best for California.

Senator LEVIN. So 75 percent of the election officials, in your judgment, across the country would not say right now, putting aside cost, starting from scratch, this is the best system in your judgment. Mr. Lewis.

Mr. LEWIS. No.

Senator LEVIN. Do you agree with that?

Mr. LEWIS. In fact, the problem is that it is so complex. From the one standpoint, I think most of us admit that the DRE systems are very good when it comes to disability and language minority and certainly are very fast and useful. Yet, you cannot count absentee ballots on DRE systems.

You have to get over that fundamental policy fear that you do not have a paper ballot to go back to, which a whole lot of policymakers within given States cannot wean themselves from the paper involved in the process. I think none of us are going to be up here defending punchcards, but, certainly, in terms of optical scan versus touch-screen technology being the two principal systems—the one thing we do know is that precinct-based systems are far better than central-count systems in terms of making sure the voters do not make as many errors.

Senator LEVIN. OK. Ms. McCormack, would you agree?

Ms. MCCORMACK. Well, as I said in my testimony, one size does not fit all, and where the optical scan system may be very good for 95 percent of the country, if someone forced me to do it, I would quit because I would not preside over an election in Los Angeles County on an op-scan system because, with seven languages and the size of that ballot, the cost of that ballot, we could buy the DREs in a few elections.

San Francisco converted from punchcard. They used that up to 1996. Well, they used it up to 1999, converted in 2000. They have many languages, and they did not realize——

Senator LIEBERMAN. To the optical scanner?

Ms. MCCORMACK. To the optical scan. Now after one election, they are thinking of literally checking the entire investment, which was millions of dollars, and going to a DRE because they spent for their county—and I am 10 times bigger—$700,000 on ballot card costs per one election.

[1] The prepared statement of Senator Levin for May 9 appears in the Appendix on page 116.

We were using punchcards. Most of us that use punchcard are big counties, and we use them for one reason. I have to order about 4 million by the time I get all of my absentees for a half-a-million dollars. I do not want to spent $7 million on ballot cards. I would need another building to store them in. That is what happened in San Francisco, and they did not think about all of the logistics, and they were caught up in a system that did not work for them.

It works for most counties. It is in my accompanying documentation as to why one size does not fit all, but I do not think that is necessarily the major issue for the Federal Government is to worry about which system. I think innovation is important, and I think that we are seeing a lot of innovation in this field in the last few years with the DREs. I think it would stifle that innovation if there was some sort of a requirement to have a uniform system.

Senator LEVIN. Mr. Wright, let me ask you about some military voting issues.

Mr. WRIGHT. Yes, sir.

Senator LEVIN. On the Armed Services Committee, we have real concerns about the military folks who are not really given an opportunity to vote or whose votes are not counted because of confusion and mixup, or there is no postmark, and all the other problems that we ran into. So we are trying to figure out how to improve that system. As a matter of fact, we have a request to the GAO to carry out a comprehensive review of the implementation of the current law, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and Senators Warner, Cleland, Hutchinson, and I think others have joined in that request to the GAO.

But in the meantime, you have apparently carried out this test or the test has been carried out——

Mr. WRIGHT. I did not carry it out.

Senator LEVIN [continuing]. Which you are familiar with, which I think Senator Lieberman was asking you about. Was that test carried out in many jurisdictions? You said there were 88? How many voters?

Mr. WRIGHT. There were only 88 voters.

Senator LEVIN. Do you know how many jurisdictions?

Mr. WRIGHT. I think it was one whole State.

Mr. LEWIS. There were four States.

Mr. WRIGHT. There were four States, but one State they did for the whole State.

Mr. LEWIS. South Carolina.

Mr. WRIGHT. Not all absentee voters.

Mr. LEWIS. South Carolina.

Mr. WRIGHT. It was South Carolina, and then there were certain counties in Florida and Utah and—I forget which.

Mr. LEWIS. Texas.

Mr. WRIGHT. In Texas, right. Those were the four States.

They started out with saying it was going to be 500 voters in five States. Somewhere along the line, Missouri dropped out. I am not sure why. It ended up being 88 voters, but at least for those 88, those people cast votes that were, in fact, counted. Whereas, the people that voted by mail, a substantial percentage were not counted for various reasons.

Senator LEVIN. All right. When you have different voting systems not only in different States, but you have dozens of voting systems within the States themselves, how does that electronic system that you are talking about—that national electronic voting system—interface with that huge variety of voting systems?

Mr. WRIGHT. I do not think there is really a conflict there because the voting systems these other people have talked about primarily are for people voting on Election Day or people voting in what they call early voting, where they are still there in person to cast the vote, albeit maybe a few weeks before the election.

When I voted by absentee ballot more recently in February 2000 in Arlington County, even though we vote with an electronic system and on Election Day in Arlington County, they sent me a punchcard and a half a paper clip.

Senator LEVIN. Mr. Lewis, in terms of the interface——

Mr. LEWIS. The interface, as I understand it—now, I did not see the actual test, but as I understand it, they relied on their own ballot design and then transmitted. They basically got the ballot from the local jurisdiction and then reprogrammed it to fit into the system so that they could then transmit the information back to be counted in that system.

Senator LEVIN. So they would have to design their own system to meet every single local jurisdiction in every State?

Mr. LEWIS. As more of us move to electronic systems, they will be able to talk with each other and be able to do this. The electronic portion of this means that ballot design and being able to retrieve that from anywhere in the country is easier.

Senator LEVIN. Is there any way that the current overseas ballots system can be improved without going to the electronic system? Can any of you comment on that?

Ms. MCCORMACK. I would like to comment on that.

First of all, I would like to mention I don't know about this experiment except what I have read and what Doug Lewis has read, but the difficulty is if it is just going to be a Federal ballot, that would not be so difficult, but we had 263 ballot styles just in L.A. alone. I know when we did Desert Storm, 10 years ago or whatever, we had to get all of those ballot styles in a Federal system. That was very interesting. Somehow we managed to do it.

Right now, when people are overseas, and we have thousands of people overseas from Los Angeles who vote from overseas and we got many applications this year on E-mail, we accept an E-mail application. So we had thousands of people who at least cut off some of the front end on the process. Right now, the Federal law needs to be changed, I think, because it requires 30 days in advance for the person to have applied for a Federal write-in ballot, and if they wait until 10 days or 20 days out, it is too late. You had to have already had an application in the process.

It would seem logical——

Senator LEVIN. Received more than 30 days?

Ms. MCCORMACK. Yes, previous to the——

Senator LEVIN. Or postmarked more than 30 days?

Ms. MCCORMACK. Received.

So it does not really seem to make a lot of sense when our own State, in 7 days you can apply for an absentee, and why would you

want to penalize these people who are the least. So that seems like it would be a simple law change that you could make, just to take away that 30 days. You do not have to have applied in advance. You can apply for the Federal write-in up to the last minute as long as we can get the ballot to you somehow, and we fax people ballots in California. We cannot take voted ballots by fax, but we faxed a lot of ballots overseas. We even now are E-mailing ballots to people overseas. So their whole ballot, we pick which one is their 263 and E-mail it over there.

So the technology is changing. We ought to start using the capability of the technology we have that we did not have before. As part of this process, I do think it is possible.

Senator LEVIN. Did you keep the postmark requirement?

Ms. MCCORMACK. We do not have a postmark requirement in California. You have to have the ballot in by Election Day. Most of the States, you have to have it in by Election Day because we do not have the front-end problem like they do in Florida because our primary is in March. So there is plenty of time for people to know who is going to be on the ballot.

Senator LEVIN. Thank you. Thank you, Mr. Chairman.

Chairman THOMPSON. Senator, along those lines, I think some of this might have been from Mr. Wright, but I think some of it was from the staff research of the various problems that arise with the current system, that there are considerable variations among the States as to exactly how absentee voting is conducted. On a single ship, there may be sailors from all 50 States with just one voting assistance officer to help all of them.

On the postmark, the DOD's postal manual requires that all absentee ballots be given a postmark. As many absentee ballots sent through the military mail systems do not require postage stamps, they are not postmarked unless the sender requests it.

Further, forward-deployed mail is not always timely postmarked. There are instances when time constraints and the military situation do not allow for proper postmarking or cancellation. This mail is oftentimes postmarked later in route. As a result, overseas ballots postmarked in transit are often rejected. Is that another one of the problems?

The voting assistance officer assigned to educate members and families are often doing collateral duty and does not have time to understand and explain the overly complex absentee voting procedures.

Mr. WRIGHT. This is the book that a voting assistance officer uses. It is published every 2 years by the Defense Department, not just military, but also State Department. It has a chapter for each State.

All States do accept the Federal postcard application form, but there are big variations about how you fill it out. So the voting assistance officer may be from Tennessee and may be familiar with that procedure, but if he gives advice based on the Tennessee law, it may be wrong for somebody who is trying to vote in Michigan.

There is more than 5,000 local election officials that administer absentee voting for Federal elections. I think as part of an electronic voting system that each State should be required to designate a statewide point of contact, at least for electronic voting. I

realize there are tens of thousands of ballot combinations in a State the size of California, but it seems to me the Secretary of State in Sacramento ought to be able to figure out based on your permanent home address the particular combination of State reps and State senators and U.S. Representatives, etc., that applies to you and get you a ballot electronically and then count your ballot. I do not see that it is going to be feasible to get 5,000 local officials, some of whom do not even have telephones, much less computers, onto an electronic system.

Chairman THOMPSON. Thank you very much.

I want to thank this panel very much. As public officials and as private citizens, you are really doing a public service. It is encouraging to know that we have people like you working in these areas, and perhaps we can make our own contribution to that.

Senator LIEBERMAN. Thanks. Mr. Chairman, let me thank you again for convening these two hearings. I thank the witnesses on this panel and the previous panel. I have learned a lot today and last week, and I hope we can take what we have learned, continue to be in communication with you, and turn it into some legislation and law that will help us make the promise of the franchise, which is fundamental to being an American, more real than it is for people today and easier to exercise. So thanks very much.

Chairman THOMPSON. Thank you very much. We are adjourned.

[Whereupon, at 12:48 p.m., the Committee was adjourned.]

APPENDIX

PREPARED OPENING STATEMENT OF SENATOR LEVIN

May 3, 2001

The Florida recount in the 2000 Presidential election was, in a way, like turning over a rock and finding things you'd rather not see—in this case, the serious inadequacies and problems in our election system. But as is often the case, it takes a crisis like the Florida recount to force us to action—to address the inadequacies to which we had grown accustomed and with which we had become comfortable. The right to vote is too precious a privilege and too fundamental to the conduct of democracy to let these inadequacies go unaddressed, and I congratulate Senator Lieberman on calling these hearings and keeping this issue in our sights. As time elapses, it becomes easier for us to just put the rock back, but hopefully hearings like this one and Thursday's won't let us do that.

The crisis in Florida reverberated throughout the Nation. There were reports of significant numbers being turned away from the polling places when they tried to vote, being told they weren't registered when they had registered, and having election officials stepping in to prevent them from voting rather than figuring out how to enable them to vote. Many people across the country realized for the first time the complexities and inaccuracies and the real-life failings of our voting system in which we have had such faith, unjustified though it may have been. The close election revealed the significance of the problems, and these hearings address the two big ones: Updating and distributing accurate registration information and ensuring the accuracy of the votes cast and how the votes are counted.

One problem identified by many with respect to registration is the operation of the motor voter law—allowing citizens to register to vote when they apply for or renew their driver's license. There is a problem, apparently, in some States, in accurately transferring the information from the Bureau of Motor Vehicles to the Board of Elections. My home State of Michigan has done a good job of establishing a centralized computer database for all registered voters called the Qualified Voter File or QVF. The Michigan system is nationally recognized, because it links election officials throughout the State to a fully automated, interactive statewide voter registration database. One witness today, Dr. Michael Alvarez, from the Caltech/MIT Voting Technology Project, notes in his written testimony that Michigan's QVF is an example of "best practices" in the Nation.

But even with this premier computer system, we had problems in Michigan. A recent change in Michigan law requires that if a person changes his voter registration address, his driver's license address is automatically changed, and if the person changes his driver's license address, he is given the opportunity to conform his voter registration to that same address. If the person declines to change his voter registration address to conform to his driver's license address, he is automatically dropped from the voter registration rolls with his old address. In last year's election that law had the effect of discouraging many college students from voting in Michigan's 8th district where they attend school, because they would have had to change the address of their driver's licenses to that of their school address where they intended to register to vote, and they didn't want to have to do that. Many college students prefer to keep a permanent address (or their parent's address) as the one address they use for their driver's licenses, and they don't want to have to change their driver's licenses each year that they move during college in order to be able to be registered to vote where they go to school.

One Michigan State University student who was turned away by precinct workers on election day, had his driver's license address in the QVF as Grand Blanc, his home residence, and not as East Lansing, his college residence and where he had registered. He was not permitted to vote in East Lansing, because his driver's li-

cense address didn't match the address where he registered to vote. In Michigan, if a person believes that he should be on the precinct roll but his name is not there, that person has the right to file an affidavit which swears that he or she does actually live in that precinct and has registered to vote there. As it turned out, in many precincts, the election workers didn't know about the right to file an affidavit, and consequently many students apparently didn't vote. So, in the 8th district, where the election for Congress was decided by an 88 vote margin, the voting registration problem may have affected the outcome of the election.

There are a number of possible solutions to some of these election problems: Increased voter education, new technology for voting machines, increased election worker training, standardization of voting machines, and a variety of other ideas. There are a number of election reform bills that have been introduced, and there are several academic studies underway looking at various aspects of elections. One of today's witnesses makes a point with respect to proposed solutions that coincides with my own experience, and that is that as we've applied allegedly improved technology to the voting process, we've seen new problems. For example, I don't remember seeing anything like an over count when we used to mark and count ballots by hand. That problem appears to come as a result of some of the new technologies election boards are using. These hearings will allow us to hear from election experts who will hopefully shed some light on problems like these.

In order to make every vote count, Federal election reforms at the Federal level are necessary. At the same time, we must respect the rights of the States. We want to protect the rights of States to be as innovative and progressive as Michigan has been in its so-called motor voter registration, for example. We may want to set a floor for performance that no State should go below; at the same time we want to allow States to be creative and responsive to their own populations. The voting system that works best in rural Michigan may not be the best voting system for an urban area such as Detroit, so we need to allow the States some flexibility.

Ensuring that all citizens can vote and that every vote counts is surely one of our highest national priorities. What happened in Florida during the Presidential election of 2000 never should have happened, and the passage of time should not diminish the need to find solutions to the serious election problems we faced in the last election. These hearings should help us to move towards a solution, and I look forward to the testimony.

PREPARED STATEMENT OF SENATOR CARL LEVIN

May 9, 2001

We have a situation in too many localities in this country where despite the best efforts of the voting public, they cannot make their vote count. We hear over and over again how in this country, every voter should count—that is our goal and our expectation. But the reality doesn't meet that expectation. According to the Committee for the Study of the American electorate, in the 2000 Presidential election, 2½ million votes out of 101 million didn't count. They were cast, but they didn't count. And what we're wrestling with is "why," why those 2½ million Americans who went to the polls, didn't have their votes count. Is the culprit the voter registration systems? The inadequacy of the election officials? The complexity of the voting machines? Intimidation? Foreign language barriers? The inattention of the voter?

The culprit is probably one, some or all of these depending upon the particular polling place, and some of these are more pervasive than others. Our job, because of the enormous importance of elections and the right to vote and to have each vote count, our job is to figure out why 2½ million votes didn't count and what we can do about it.

And, while we often look to technology to cure our ills, it appears we must be cautious about technology in the area of election reform. Last week a member of one of our panels, Dr. Michael Alvarez, of the Caltech/MIT Voting Technology Project, delivered some surprising testimony. From his data, he told us that he has found that manually counted paper ballots have the lowest average incidence of spoiled, uncounted and unmarked ballots, followed by lever machines and optically scanned ballots. He also found that punch card methods and systems using direct recording electronic devices (DREs) had significantly higher average rates of spoiled, uncounted and unmarked ballots than any of the other systems. This seems counter intuitive: That the computer screens actually had a higher rate of unmarked votes than some of the other technology that we consider more primitive such as the lever machine or the optical scan machines.

One problem here is that we just don't have the data to determine what works and what doesn't. A group called the Constitution Project, a bipartisan nonprofit organization that is looking closely at the issue of election reform, reports that "there is an astonishing lack of information about the performance of voting equipment." Dr. Alvarez has done some interesting work here, but more needs to be done.

Florida's debacle has served as our national wake-up call. And hopefully we won't just hit the snooze button and roll over, but we will persist in asking questions and getting information so we can make the 2½ million votes that didn't count in the last election, count in the next. Prior to Florida, many Americans didn't realize that the counting of the votes could be such a messy business. Now that we do know, we should use the lessons from the past election to ensure that the system fully works in the next election.

PREPARED STATEMENT OF SENATOR CLELAND

May 3, 2001

Mr. Chairman, thank you and your Committee for affording me this opportunity to discuss the vitally important subjects of electoral reform and voter registration. I can think of few more important topics than insuring the integrity of the voting process and securing the rights of American citizens to have their voices heard and their votes counted. Our representative democracy is grounded on the principle of popular sovereignty. Thomas Paine put it best: "The right of voting for representatives is the primary right by which other rights are protected."

As Georgia's Secretary of State for 13 years, I am familiar with the challenges of registering million of voters. In 1995, I implemented the National Voter Registration Act ("Motor Voter") in Georgia, which added almost one million new voters to the rolls. The statewide voter registration computer system needed to implement the program was designed and constructed in approximately 8 months.

Georgia certainly has experienced problems in the area of registration, as does every State, but I think we are ahead of many because: (1) We have a consolidated statewide database, which many States do not have, (2) we collect Social Security Numbers and use these to help weed out duplicate and fraudulent registrations, felons and the deceased, and (3) we have been careful about relying on data from third party vendors in managing our lists.

Georgia's Secretary of State, Cathy Cox, has published a detailed report on the 2000 election in Georgia. The report, *A Wake-Up Call For Reform and Change,* identifies the sources of complaints for individuals who had problems registering to vote in the State and outlines possible solutions for reform. Secretary Cox's report states that on the 2000 General Election Date, 4,648,210 voters were eligible to cast ballots in Georgia.

The sources of new voter registration in Georgia for the 2000 elections originated from the following sources:

Sources of New Voter Registration in Georgia

Registration location	Total number	Percentage of total
Department of Public Safety	381,938	61.22
Mail Direct to Secretary of State	66,323	10.63
County Registrars Office	54,918	8.08
Libraries	52,928	8.48
DFACS Offices	49,364	7.91
WIC Offices	17,078	2.74
Other Offices	1,288	0.21
Calendar Year 2000 Total	623,837	100.00

Source: Georgia Secretary of State

In Georgia, voter registration additions, deletions and modifications are entered at the county level by local registrars into the State computer system. Secretary of State Cathy Cox's office received numerous complaints from individuals who believed that they had properly registered to vote, but whose names did not appear on the voter roll. A majority of these complaints came from metro Atlanta residents. The most complaints were associated with those who registered at the Department of Public Safety where the accuracy of the registration process depends entirely on

the driver's license examiner. Another source of complaints were individuals who registered at independent voter drives.

Secretary Cox identifies better education of registrants at Department of Public Safety Office, and developing an Internet-based voter registration verification system as possible solutions to registration problems. As you may know, I have previously introduced S. 479, the Make Every Vote Count Act, which would provide block grants to States to upgrade their voting systems. Because many registration errors are caused by inadequate training of registration officials or education of voters in how to properly register, S. 479 would allow up to one-third of the grant funds to be used for training and education.

In addition, I am concerned about the problems that military voters have experienced in attempting to register to vote. I have included some language in my proposal to improve ballot access for our military personnel. Section 3 of my bill is derived, verbatim, from Title VI of Senator Daschle's bill, S. 17. These provisions require that, for purposes of voting, no military member be deemed to have had a change of domicile or residence solely because he or she had to be absent in compliance with military orders. Furthermore, they provide that States and localities must permit absentee voting by uniformed service members in State and local elections, as is currently required only for Federal elections. These provisions are intended as preliminary steps to redress problems in military voting, pending completion of a *General Accounting Office* study of such problems which I requested along with Senators Warner, Levin, and Hutchinson.

PREPARED STATEMENT OF SENATOR CLELAND

May 9, 2001

Mr. Chairman: I want to thank you and Senator Lieberman for your continuing leadership on the issue of election reform. We can all agree that last year's election was one of the most unusual political events this country has ever seen. As a former Secretary of State and chief elections official in Georgia, I believe it was also a wake up call for reforming our electoral process.

Now that we have completed the campaign finance debate, it is time for election reform debate and action. In February, the National Association of Secretaries of States adopted an election reform resolution. One of their recommendations was that Congress should provide funding to the States to assist the State and local efforts for reform. Several bills have been introduced in the Senate this year, including my own proposal, which would address the issue of election reform. And this Committee, Commerce, and the Rules Committees have also begun hearings on this priority issue. However, States like Florida, Maryland, and Georgia have already developed election reform plans and need Federal assistance to help their efforts.

As I have said before: Time is the enemy with respect to the provision of sufficient Federal funds to really make a difference in sharply reducing the number of Americans who are literally being disenfranchised by our voting machinery. So, I would urge my colleagues to head the wise words on election reform which appeared in the *Atlanta Journal-Constitution* on March 28: "Congress should not squander this opportunity for meaningful change that will allow people to vote with ease and with confidence that their votes will be counted." (Article follows this statement.)

As a young man I had the opportunity to be one of the first in our country to use the then-brand new punchcard voting machines when they were introduced in my home county of DeKalb in 1964. Then I faced the even more daunting challenge of voting by absentee ballot while serving in Vietnam in 1968. And for 13 years, I had the privilege of being my State's chief election official as Georgia's Secretary of State. So when I saw the problems experienced in our neighboring State of Florida during the 2000 Presidential Election, with both citizens and election officials struggling with chads, I had a great deal of empathy and sympathy.

But I would hasten to add that I don't think Florida was, or is, at all unique in facing serious problems in ensuring that every citizen's vote will be correctly tabulated. From my own experience in Georgia, and from the testimony of my very able successor, Georgia Secretary of State Cathy Cox, to the Commerce Committee a few weeks ago, I know that my State would fare no better, and quite possibly much worse, if subjected to the same set of circumstances where the vote margin was so small as to turn on what to do about incomplete counting of ballots.

A recent study by Dr. Charles Bullock of the University of Georgia, further analyzed the report on the 2000 Georgia elections by Secretary Cox. The findings in this study found that:

- the rate of undervotes was significantly higher in counties using punch cards or optical scanning equipment than in counties using lever machines;
- in the optical scan counties, the error rate was worse for the counties that did not use a type of optical scanning equipment that kicks-out ballots containing errors;
- and undervoting was significantly higher in counties that had a large increase in registrants between the time of the primary and the general election.

I am pleased to report that Georgia was the first State in the Nation to require a uniform electronic voting system to be in place by July 2004.

Although the choice of voting systems and of means for assuring the voting rights of service members and disabled citizens is also primarily a matter for State and local decision-making, I believe in these cases consensus exists that an infusion of Federal funds can make a decisive difference, and make it in the near term. The *Washington Post* reported on April 5 that the number of Detroit voters whose ballots were invalidated dropped by almost two-thirds after the city switched from punch-card to optical-scan machines that warn of errors and allow for an immediate re-vote. (Article follows this statement).

Thus, I see the legislation I am proposing—which provides for an immediate, large and one-time infusion of Federal funding to deal with widely recognized problems with our voting equipment—is complementary and not in competition with the other bills I just alluded to earlier. My bill, S. 479, the *Make Every Vote Count Act,* seeks to quickly and effectively improve our electoral system by increasing the likelihood that all citizens' votes will be properly counted but to do so in a way which fully respects the primary role of State and local governments in the conduct of elections. It accomplishes this by providing Federal funds to modernize voting systems, promote uniformity in voting equipment *within States,* and require greater standardization in assuring the voting rights of military personnel abroad. In addition, it allows up to one-third of the funds to be used for training of elections officials and voter education.

Again, I want to thank the Chairman and Ranking Member for their efforts to address this critical need for reform. This issue will not be resolved in one hearing, but I think we have made some great strides in this Committee for further action. I am confident that a Committee with two former Secretaries of State is a great place to get started.

The Atlanta Journal-Constitution

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OPINION WEDNESDAY • March 28, 2001

Constitution: Voting reform requires federal help

Staff
Wednesday, March 28, 2001

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Mistakes are inevitable in a national election process that gives 50 states and 4,000 counties free rein but no federal money to operate their voting systems. When the mistakes grow so pervasive that thousands of votes and a presidential election are left in doubt, the country has to rethink the way it casts ballots.

Though Georgia has already set 2004 as its goal for a uniform system of voting, many other states have yet to act on the lessons learned from the Florida debacle. The U.S. Congress ought to be committed to offering financial incentives to states to upgrade and modernize their voting systems. But the formation of separate study committees on the matter by both Democrats and Republicans makes it unlikely that the nation will see comprehensive voting reform any time soon.

An example of the contrary party stances could be seen in the testimony this week of Georgia's Democratic Secretary of State Cathy Cox and state Rep. Robert Irvin (R-Atlanta) at the National Commission on Federal Election Reform meeting in Atlanta. While Cox talked about finding ways to make it easier for more Georgians to vote, Irvin focused on fraudulent voting and suggested that voter registration be done in person and that photo identification be required at voting places.

Still, the best hope for bridging those disparate views rests with the commission, which is co-chaired by former Presidents Jimmy Carter and Gerald Ford. While Carter was optimistic that some reforms would result, he cautioned, "Whether that will be the least common denominator or whether there will be some substance to it still remains to be seen."

Election reform ought to be a priority of the Bush administration. Even voters who feel the best man won the White House cannot be content with the system that got him there. A failure by Washington to overhaul that system and fund new election equipment will further erode voter confidence and ensure more disputed elections and fraud allegations.

With voters nationwide in support of reform, Congress should not squander this opportunity for meaningful change that will allow people to vote with ease and with confidence that their votes will be counted. It is well within the national interest that every state have the most reliable and easy-to-use voting methods available. Because as Florida demonstrated, even problems in one state can tip the balance of an election.

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Technology Slashes Detroit Voting Error

'Second Chance' Scanners Allow Correction

By Ellen Nakashima and Dan Keating
Washington Post Staff Writers
Thursday, April 5, 2001; Page A15

The number of Detroit voters whose ballots were invalidated dropped by almost two-thirds after the city switched from punch-card to optical-scan machines that warn of errors and allow an immediate revote, according to a congressional study to be released today.

The report, produced by the staff of Rep. Henry A. Waxman (D-Calif.), is the first to document how a switch in technology affects voting results. The study is also significant because it involves a city with the nation's highest poverty rate, suggesting that changing technology can make a dramatic difference, especially in an area where voting machines are often outdated and voters tend to have less experience casting ballots.

"This report shows very nicely what happened in this community where you might expect the barriers to voting to keep the error rate high," said Charles Stewart, a political science professor at Massachusetts Institute of Technology. "By a simple change in technology, you can reduce the error rate."

In 1996, when the city was using punch-card machines, 3.1 percent of its ballots were spoiled, more than a full percentage point higher than the national average. In 2000, the error rate fell to 1.1 percent, thanks largely to the use of optical-scan machines with "second chance" technology, Waxman's study found.

From the Newspapers
- **Miami Herald:** Review Shows Ballots Say Bush
- **USA Today:** Recount Shows Bush Prevailed in Florida

From The Post
- Deadlock: The Inside Story of America's Closest Election
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With the newer system, a special tabulating machine optically "scans" or reads the ballot as soon as the voter is finished, giving any voter who made a mistake -- for example, by voting twice in a race -- a chance to correct the error.

About 20 percent of counties and more than a third of the population nationally use punch-card systems, and about 40 percent of counties and 28 percent of the population use the optical-scan system, although not all those systems are outfitted with second-chance technology.

The use of optical-scan voting is growing as jurisdictions adopt newer technology. A Florida election reform task force recommended moving the entire state to optical ballots with second-chance technology, but election officials in the largest counties have said optical ballots are impractical in their jurisdictions.

For Detroit, said city clerk Jackie Currie, "It's an answer from heaven." Currie said she embarked on a search for a better type of voting system after a local prosecuting attorney's race in 1992 yielded 20,000 spoiled ballots out of more 300,000 votes cast.

In a trip to Milwaukee, she saw the optical-scan machines in use. "I just fell in love with it," she said. "I said, 'We've got to have this in the city of Detroit.' "

In 1997, the city spent $3.5 million to purchase 700 Optech 3-P Eagle machines, made by ES&S of Omaha, she said. They were placed in polling stations in Detroit's 659 precincts. The city also embarked on a $100,000 voter education campaign in which election officials gave demonstrations on how to use the machine in community centers, churches, government buildings and at festivals.

Some 32 percent of Detroit's nearly 1 million people live below the poverty line, the highest poverty rate of cities with more than 200,000 people. African Americans make up 76 percent of the population.

Previous reporting by The Washington Post found that minority precincts using outdated punch-card machines without second-chance technology had the highest rates of failed votes -- often as many as 1 in 6 ballots -- and that counties using second-chance technology had many fewer failed ballots.

"There's a tendency for the communities with the largest number of African Americans live to be the most economically strapped," said Hilary Shelton, director of the Washington bureau of the NAACP, who hailed the study's results. "Most election machines that were utilized in black communities throughout the country were quite old and quite antiquated and need to be replaced."

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Statement
Senator Christopher "Kit" Bond
May 3, 2001
Senate Committee on Government Affairs

Safeguarding the Vote -- Reforms are needed

Mr. Chairman. Ranking member Senator Lieberman. My colleague from Missouri, as well as my other colleagues .... let me begin by thanking you for allowing me to testify today.

No one wants their state to become the poster child for a problem. No one wants their home town to become a laughstock. So it is with much dismay that I come before you today, to describe what has gone on in St. Louis, what is going on, and what reforms I believe are vital.

Over the past months many Americans saw for the first time how actual vote counting is done -- or not done. We have been given a real-life civics lesson that was as unexpected as it was frustrating. And now those of us in positions of responsibility need to fix what needs fixing, reform what needs reforming, and prosecute where actual wrong-doing has occured.

Voting is the most important duty and responsibility of a citizen of our republic. It should not be diluted by fraud, false filings in

lawsuits, judges who don't follow the law, and politicians who try to profit from the confusion.

At the same time, voters should not be unduly confused by complicated ballots and voter rosters, or confounded by inadequate phone lines or voting booths.

Mr. Chairman, I want to make one simple point as I begin. Vote fraud is not about partisanship. It is not about democrats vs. republicans. It is not about the North Side of St. Louis vs. The South Side.

It is about justice. For vote fraud is a criminal, not political act. Illegal votes dilute the value of votes cast legally. When people try and stuff the ballot box, what they are really doing is trying to steal political power from those who follow election laws. There can be no graver example of disenfranchisement.

As the Missouri Court of Appeals recently wrote:

> "(E)qual vigilance is required to ensure that only those entitled to vote are allowed to cast a ballot. Otherwise, the rights of those lawfully entitled to vote are inevitably diluted."

And listen to what St. Louis democrats had to say these past few months:

State Rep Quincy Troupe: "There is no doubt in any black elected official's mind that the whole process has discouraged honest elections in the city of St. Louis for some time. We know that we have people who cheat in every election. The only way you can win a close election in this town, you have to beat the cheat."

St. Louis's outgoing Mayor Clarence Harmon: " I think there is ample, longstanding evidence of voter fraud in our community."

11th Ward Alderman Matt Villa: " Who knows who did it. But it is apparent they are trying to cheat and steal this election."

What we have been seeing in St. Louis these past months has been nothing short of astonishing -- to the degree that we have become a national laughing-stock.

Dead people and dogs registered by mail. Fake people registering. Addresses which are vacant lots. Voter rolls with more names than there are people of voting age.

A City Judge violated state law by providing extended voter hours for only selected polling places, and individuals voting with

absolutely no record of any registration.

But we have also discovered in our ongoing review another major problem in St. Louis --- the voter rolls are so clogged up with incorrect or fraudulant data that legal voters are shortchanged.

St. Louis City *actually has more voters listed on its voter rolls than the voting age population of the city*. This means an over than 100% registration rate ... which is amazing, but not surprising if the dead are reregistering.

Equally amazing, we also discovered that in the City of St. Louis one out of every 10 registered voters is also registered somewhere else in the state!

In fact, over 24,000 people are dual registered in St. Louis City as well as somewhere else in Missouri. Now I don't know how many voted more than once -- but the voter rolls would have allowed them to do so.

To date my staff has reveiwed 11,826 of these multiple registered names

- Found 8789 voters who were still registered in the City, even after moving out and registering at their new address.

- Found 335 voters who were actually ***registered twice in the City*** itself.

- Found 198 voters who were ***registered three different places*** in the state. And two of these 198 voters were actually ***registered three times in St. Louis City***.

- And then found 3 voters who were ***registered at four different places*** in the state.

Thus it is painfully clear that our voter registration system is broken. And desperately needs repairing.

But as I have said before Mr. Chairman, voter rolls are a symptom of a larger problem. We have also seen just about every illegal registration scheme imaginable:

-- Fake addressses
-- Dead people registering
-- People registering from vacant lots
-- Fraudulant dual registrations
-- Dogs registering

That's right -- even dogs are able to register in St. Louis.

A City Grand Jury is now investigating 3800 voter registration cards dumped on the election Board on the last day to register before the March 6th primary: press reports note that at least 1000 were bogus registrations for people already registered, and of course we have all heard about the cases of dead public officials being reregistered.

And now a Federal Grand Jury investigation is underway as the FBI recently issued a subpeona to the St. Louis City Election Board for all records pertaining to any person who registered to vote between October 1, 2000 and March 6, 2001. It also requested all records of anyone who cast absentee ballots or regular ballots during that period, as well as anyone who was turned away from the polls and barred from voting.

Mr. Chairman, it is obvious that there has been brazen fraud with these bogus voter registrations. With dead people reregistering, fake names, and phony addresses, it is clear the system is being abused.

And because nearly all of these fraudulant registrations were the mail-in forms, I would urge the Committee to look at making real reforms in this area. At a minimum state's need to be given the authority to require on the mail registration form a place for notorization or other form of authentication. Under current federal

law states are actually *prohibited* from including this safeguard. This is one obvious place where the federal law is a clear impediment to anti-fraud efforts.

In addition, election boards need time to review these cards -- as they are the most likely to be brought in on the last days of registration. Given what we have just seen the past months, a same day registration scheme would be an absolute invitation to fraud.

As the Missouri Court of Appeals wrote when they shut down the improper efforts to keep only certain polling places open:

> "...(C)ommendable zeal to protect voting rights must be tempered by the corresponding duty to protect the integrity of the voting process....(E)qual vigilance is required to ensure that only those entitled to vote are allowed to cast a ballot. Otherwise, the rights of those lawfully entitled to vote are inevitably diluted."

As I noted earlier, I believe it is our duty to fix what needs to be fixed, reform what needs to be reformed, and prosecute where there has been wrong-doing. Criminal investigations are ongoing, I hope that anyone responsible for cheating will be caught and punished.

But we must get a handle on the voter rolls. People who register and follow the rules shouldn't be frustrated by inadequate polling places and phone lines or confused by out-of-date lists. At the same time, we must require voter lists to be scrubbed and reviewed in a much more timely manner -- so the cheaters cannot use confusion as their friend.

I certainly don't want St. Louis to have the lasting reputation described by my old friend Quincy Troupe:

> "The only way you can win a close election in this town, you have to beat the cheat.".

Statement by
Congressman William Lacy Clay (MO-1st)
To
The Senate Committee on Governmental Affairs
May 3, 2001

Mr. Chairman . . . Senator Lieberman and Distinguished members of the Committee . . . Thank you for allowing me this opportunity to detail the election problems that occurred in the City of St. Louis during the November 2000 Presidential Elections and to add my voice to those calling for meaningful and comprehensive election reform.

Last November's general election in the city of St. Louis exposed a voting system that is riddled with serious election procedural mistakes; major deficiencies in poll worker training; obsolete and inadequate equipment; and gross errors in maintaining accurate voter rolls that resulted in the disenfranchisement of thousands of qualified voters in my district.

These factors led to an election conducted amid widespread voter chaos at polling places throughout the city -- the result of a record voter turnout and the arbitrary and capricious removal -- by the St. Louis Board of Elections -- of over 50,000 qualified voters from the city's active voter rolls.

When these voters – most of whom were African American -- arrived at the polls to cast their votes, they were told by election officials they were not on the active voter list and that they would not be allowed to vote at their normal voting precinct.

Due to inadequate communication between polling precincts and the Central Election office, election workers were unable to verify the eligibility of these voters.

Additionally, poll workers had not received training for dealing with these situations, so they ultimately directed all of the affected voters to go to the Central Election Board office downtown to verify their status.

The resulting confusion at the Central Election office led to a near riot as thousands of eligible voters attempted to cast their vote, some to no avail.

To make matters worse, while the Election Board was clearly unprepared for the massive voter turnout, they were also slow to react to the growing voter confusion they created as the day progressed.

And equally troubling was the Election Board officials' resistance to reasonable remedies designed to ensure that every qualified voter be afforded the opportunity to cast his or her vote without obstruction.

Clearly, such a situation cannot and must not be tolerated. Such conditions not only create confusion among voters; they also threaten the integrity of the Electoral process itself.

It is imperative that federal, state and local officials join in a common effort to reform how we conduct our elections. The nation should never again be subjected to the voting travesty of the last presidential election. The system is broken and it is time that we admit it and work towards common sense solutions.

First, we must take legislative action to provide the necessary funds for modern, state-of-the-art uniform voting equipment, paying particular attention to lower income communities that have long been burdened with outdated and obsolete voting equipment.

And to the maximum extent possible, we must mandate uniform ballot designs and eliminate the current 40-year old punchcard system.

We must also require that local election officials develop comprehensive training standards for their workers and hold them accountable for implementing such training.

Lastly, and most importantly, we must mandate election procedure reform to ensure that qualified voters are not arbitrarily or inadvertently removed from active voter rolls.

This was a major failure in the City of St. Louis and I suspect this situation is widespread across the country.

Voters should not continue to suffer disenfranchisement because election officials are unwilling or unable to safeguard their fundamental right to vote.

If we fail to act now, we will not only inflict further damage to the democratic process . . . we will also fail in our sworn duty to protect and defend the fundamental rights of every citizen.

Thank you.

President
Carolyn Jefferson-Jenkins, Ph.D.
Colorado Springs, Colorado

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Laramie, Wyoming

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Executive Director
Nancy E. Tate

Testimony
of
Carolyn Jefferson-Jenkins, Ph.D., President
League of Women Voters of the United States
before the
Senate Governmental Affairs Committee
on
Voter Registration and the Need for Election Administration Reform
May 3, 2001

Mr. Chairman, Senator Lieberman and members of the committee. I am Carolyn Jefferson-Jenkins, President of the League of Women Voters of the United States.

The League of Women Voters is a nonpartisan citizen organization with more than 125,000 members and supporters in all 50 states, the District of Columbia and the Virgin Islands. For more than 80 years, Leagues across the country have worked to educate the electorate, register voters and make government at all levels more accessible and responsive to citizens.

I am pleased to be here today to express the League's support for election administration reform and to address the critical importance of voter registration and the preservation of voting rights in this process.

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Last year's presidential election called the nation's attention to the urgent need for improvements in the methods, practices and technology through which our elections are administered. Voter registration is a particularly important part of this process.

Voter registration is the gateway to participation in our electoral system and the procedural means for preserving a citizen's right to vote. For all citizens, the voter registration process must be accessible and nondiscriminatory. It has not always been so. And problems remain.

By 1920, in-person voter registration requirements had been adopted in most of the states. While there were legitimate concerns about vote fraud in the adoption of voter registration in many areas, voter registration provided an irresistible opportunity for those in power at the state and local level to control the electorate through bureaucratic means.

State and local laws and practices severely restricted times and places for registration and required lengthy residency requirements and registration deadlines. Cumbersome and selectively applied identification requirements and other restrictive procedures were used to disenfranchise citizens who were feared by the prevailing political elite. African Americans, immigrants, low-income citizens of all races, people with disabilities and college students attending school away from home all have been excluded from the ballot through voter registration practices.

Until the enactment of the Voting Rights Act in 1965 and the National Voter Registration Act in 1993, bureaucratic obstacles to voter registration were commonplace. Literacy tests, poll taxes, selectively applied identification requirements, threats, intimidation and violence successfully disenfranchised African Americans and others through most of the twentieth century.

The Voting Rights Act prohibits race-based discrimination in elections. The Act also provides language assistance for citizens who otherwise would not be able to participate. Yet we still hear of local jurisdictions that lack the knowledge or resources to fully comply with the language assistance requirements of the law and of others that lack the administrative models and training to maintain the voter rolls in a nondiscriminatory manner.

From the 1970s through the 1980s, it was apparent to the League, as it was to others, that different voter registration practices and standards within states and from state to state had the effect of discouraging participation overall. During this period, there was a confusing array of state and local standards and practices. Voter registration and participation rates were dropping.

While a few states adopted mail-in and active motor voter programs, many continued to employ very restrictive voter registration practices. These practices ranged from requiring notarization of voter registration applications and significantly limiting the times and places for registration to selectively purging voters' names from the rolls and dropping voters from the rolls solely for failing to vote in one election. The need for voter registration reform was debated for five years in Congress.

In 1993, the National Voter Registration Act, or motor voter law, was enacted, establishing uniform, nondiscriminatory standards for voter registration. Motor voter took effect, in most states, in 1995. The law provides for convenient and routine access to registration through driver's license agencies, public assistance agencies, agencies that serve people with disabilities and through mail-in registration. It requires states to keep their lists up to date, but it prohibits dropping voters' names from the rolls simply for not voting.

The Act establishes uniform, nondiscriminatory standards for voter confirmation programs. With safeguards against discrimination, voters may be dropped from the rolls by reason of death, change of residence and a failure to meet voting qualifications under state law. To ensure that registered voters retain the right to vote in federal elections, the motor voter law provides a "failsafe" provision. Registered voters who have moved within their registrar's jurisdiction and congressional district, but who have not updated their registration, may do so and vote at their new or old polling place on election day by affirmation or confirmation.

The National Voter Registration Act has been very successful. In 1999, the Federal Election Commission's report to Congress on the impact of the law indicated that over 70 percent of the voting age population was registered to vote, the highest level since 1970. Nearly 43 percent of all voter registration transactions for 1997 and 1998 were through driver's license agencies. Forty-four percent of these were changes of name or address. Mail-in registration programs accounted for nearly one quarter of all voter registration transactions during that period.

The problems with the National Voter Registration Act that we have heard about are not problems with the law, but problems with implementation and enforcement of the law. Statewide computerized voter registration programs in every state would significantly improve the management of voter registration lists and help identify and eliminate duplicate registrations and other problem areas.

A member of this committee, Senator Cleland, then Secretary of State of Georgia, in a statement for a 1995 House Oversight Committee hearing, wrote that "Under our NVRA implementation plan, we have produced an improved fraud prevention and detection program for Georgia. With the advent of a statewide voter registration program, Georgia has been able to put in place mechanisms to monitor many areas where fraud could be possible."

Unfortunately, according to a 1999 survey, only 22 states reported having a centralized state registration list. Even fewer have the type of active program described by then-Secretary of State Cleland. The Federal Election Commission's 1999 report lists the failure of states to voluntarily develop and implement a statewide computerized voter registration program as one of the most significant problems reported by state election officials.

Contrary to the unsubstantiated claims of the law's opponents, motor voter is not the cause of vote fraud in this country; nor is it to blame for the ills and difficulties of election administration. Indeed, statewide computerized list maintenance systems can assist in preventing vote fraud, if implemented properly. Once again, from the Federal Election Commission's report, "States reported several successes and fewer problems in maintaining accurate voter registration lists during 1997-1998, compared to 1995-1996. (For example, States with statewide voter registration databases reported how helpful they were in maintaining accurate voter registries)..."

Other motor voter implementation issues include reports of motor voter registrants and "fail-safe" voters turned away on election day because they are not on the lists provided at the polls. Voters have been turned away after being told that there is nothing the polling place official can do. Voters have left when polling place officials could not reach the registrar's office because the phone lines were busy over a long period.

The inability of polling place officials in many locations to check the status of the voters on the official list must be addressed. Solutions, such as the low-tech use of provisional ballots or the high-tech use of laptop computers that provide access to the official list at polling places, need to be encouraged. Legally registered voters, including fail-safe voters, should never be turned away at the polls. Those who have properly applied to register should not be denied the opportunity to vote through administrative error or a failure to implement the law.

With regard to enforcement, the repeated failure of some driver's license agencies to transmit voter registration applications in a timely manner must be investigated and corrected.

The federal government can no longer afford to leave the financial burden of administering federal elections to state and local jurisdictions. In most states, local jurisdictions alone bear this burden. The disparities in wealth and public revenues from county to county are bound to be reflected in a disparity of resources available for election administration procedures and voting technologies from one county to the next. This is not only a question of equity among levels of government, but of the necessity for ensuring that all of our citizens are able to register, vote and have their votes counted in federal elections with a minimum of administrative error.

Today, this country has the technology and the financial means to ensure that our diverse and growing population enjoys the most accurate, accessible and nondiscriminatory

voting system in the world - one that every American could have confidence in and be proud of. This Congress has the means and the opportunity to pass legislation that would provide the financial assistance and guidance necessary to achieve that goal.

The League of Women Voters supports S. 379, a balanced, bipartisan bill introduced by Senators Schumer and Brownback. This measure explicitly protects the Voting Rights Act and the National Voter Registration Act. It establishes a limited, one-year bipartisan commission to study and make recommendations on election administration issues in federal elections.

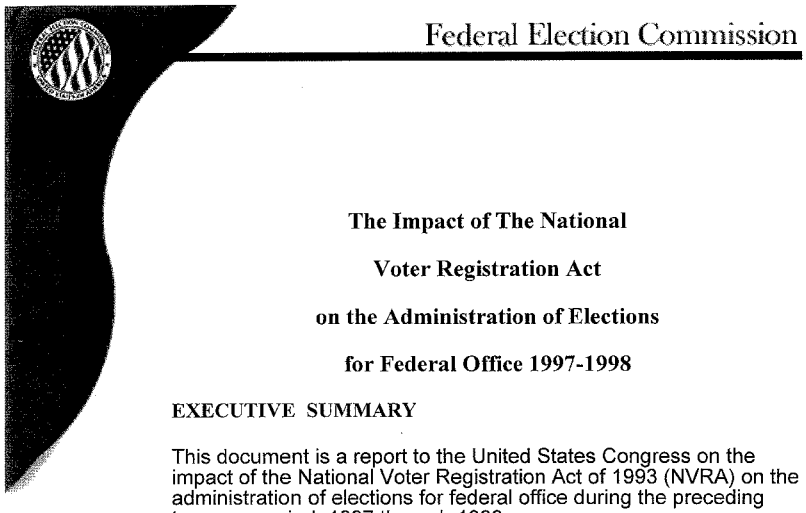
The Schumer-Brownback bill also establishes a separate $500 million per year, five-year grants program to state and local jurisdictions. The grants program would be administered by the Department of Justice and guided by "best practices" performance standards established by the study commission. In addition, the legislation provides for long neglected polling place access for the blind and visually impaired and others with disabilities.

In conclusion, the League of Women Voters believes that Congress and the President must act now. The problems facing the administration of federal elections are immediate and serious. Federal financial assistance to state and local governments is a necessary part of any meaningful election administration reform proposal. The Voting Rights Act, the National Voter Registration Act and laws protecting access for people with disabilities must not be undermined. Provisions supporting effective implementation of

voting rights and voter registration laws should be included in any reform measure. And finally, the interests of the voter and the health of our democracy should be the central concern of election administration reform.

On behalf of the League, I want to thank you for your attention. We look forward to working with you on this vital issue.

* * *



Federal Election Commission

The Impact of The National

Voter Registration Act

on the Administration of Elections

for Federal Office 1997-1998

EXECUTIVE SUMMARY

This document is a report to the United States Congress on the impact of the National Voter Registration Act of 1993 (NVRA) on the administration of elections for federal office during the preceding two-year period, 1997 through 1998.

This third report is based on survey results from 43 States and the District of Columbia. Six (6) States are not included because they are exempt from the provisions of the Act. Nevada figures are not included because that State failed to respond to the 1999 FEC survey questionnaire.

General

States reported a total of 140,946,508 registered voters nationwide for 1998, amounting to 70.15% of the Voting Age Population (VAP). This is the highest percentage of voter registration in a Congressional election since 1970. The report also notes that the number of Americans actually voting in 1998 declined by over 2.38 percentage points from 1994.

According to the highlights of the report, which covers the second two years in which the new law was in effect, during 1997 and 1998:

> There were, in total, 35,372,213 registration applications or transactions processed nationwide.
>
> Nearly half, or 17,613,211represented new registrations (i.e., registrations that were new to the local jurisdiction and registrations across jurisdictional lines).
>
> There was a 6.46% rate of duplicates.

The remaining 43.74% of the total transactions, or about 15,473,031 were changes of name and address.

A total of 9,063,326 names were deleted from the registration lists under the new lists verification procedures of the law, while another 14,640,557 registrants were declared "inactive" and will be removed after 2000 if they fail to respond by or vote in that election.

In summary, the report finds that active voter registration in States covered by the NVRA rose in 1998 by 3.72 percentage points -- or some 7,100,000 people -- over 1994, the previous comparable election.

Highlights of this Report

Mail Registration

The mail registration provisions of the NVRA caused relatively few problems for the States and accounted for nearly one quarter of all voter registration applications from 1997 through 1998. States reported few problems with mail registration beyond the routine ones of incomplete, illegible, or ineligible applications.

Motor Voter

As was the case in our last report, the motor vehicle provisions of the NVRA posed little problem for the majority of States. Motor vehicle agencies again yielded the highest volume of registration applications among the various agencies mandated by the NVRA, accounting for 42.9% (15,175,653) of the total number of voter registration applications in the United States during 1997 and 1998.

Agency Registration

Voter registration activity by agencies mandated in Section 7 of the NVRA accounted for 8.22% (2,909,569) of voter registration applications during this reporting period. Public assistance agencies accounted for 4.37% (1,546,671) of this figure, State designated agencies tallied 3.09% (1,092,526) of the total, disability services agencies brought in an additional .70% (247,764) registration applications, and armed services recruitment offices accounted for the remaining .06% (22,608).

List Maintenance

Numerous States indicated that they had made adjustments to their procedures after 1996 in order to better their list maintenance programs. States reported several successes and fewer problems in maintaining accurate voter registration lists during 1997-1998,

compared to 1995-1996. (For example, States with statewide voter registration databases reported how helpful they were in maintaining accurate voter registries.) Of the problems reported concerning list maintenance, most involved difficulties related to postal service and the high cost (time and money) of administering the program. Most of the recommendations reported by the States were in the nature of technical or administrative changes that could be implemented without changing federal law. A few States made recommendations that would require Congressional action.

Fail-safe Provisions

A number of States reported making changes to their procedures after 1996 in order to improve the administration of fail-safe voting. Several reported successes experienced in the last election cycle, while a very small number reported problems with different aspects of the process. A couple of States made recommendations to address problems they had in their own State.

Recommendations

The most significant problems reported by the States continue to group into three broad categories. Accordingly, the FEC reiterates the three core recommendations offered in the last report for improving the implementation of the NVRA:

> that States which do not require all or part of the applicant's social security number voluntarily (1) amend their election codes to require only the last four digits from all new voter registration applicants, and (2) endeavor to obtain that same item of information from all current registered voters;
>
> that States which have not yet done so voluntarily (1) develop and implement a statewide computerized voter registration database; (2) ensure that all local registration offices are computerized; and (3) link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor vehicle offices, public assistance offices, etc.); and
>
> that the U.S. Postal Service (1) create a new class of mail for "official election material" that encompasses all mail items requisite to the NVRA and provide the most favorable reduced rates affordable for the first class treatment of such mailings; and (2) provide space in their postal lobbies free of charge to State and local election officials for voter registration material.

The rationale for each of these recommendations is provided in Section 6 of the report.

(The full report may be obtained by calling the FEC's Office of Election Administration at 1-800-424-9530, Option #4)

Secretary of State
214 State Capitol
Atlanta
30334

Max Cleland
SECRETARY OF STATE
(404) 656-2881

July 25, 1995

The National Voter Registration Act of 1993 (NVRA) has been very effective in Georgia in opening up the registration process to all citizens and removing the barriers that hampered registration efforts for so long. People are amazed and pleased that the government is taking steps to make life easier for them rather than creating a bureaucratic maze to obtain essential government services. Georgia is one of the top three states in the nation in NVRA implementation efforts, and this is a significant advance compared to previous years when Georgia typically was at the other end of the list. In all of 1994, only 85,000 residents registered to vote in Georgia. So far this year we have registered 248,467 new voters and changed and/or updated names and addresses for some 75,000 more Georgians.

Local governments are saving time and money with this new system because it is bringing all of the county voter registration activities into the computer age. Currently we have all 159 counties with the equipment installed by the state and on-line with the central statewide database in Atlanta. This centralized database is proving to be a powerful information management tool.

Under our NVRA implementation plan, we have produced an improved fraud prevention and detection program for Georgia. With the advent of a statewide voter registration program, Georgia has been able to put in place mechanisms to monitor many areas where fraud could be possible. Under our previous laws, unless one died, was convicted of a felony, or was found mentally incompetent in the county of one's residence, the voter registration officials rarely, if ever, discovered it.

Consequently, many names remained on the voters lists long after they should have been removed. The names are now submitted to the state and are routed to the appropriate county for action.

This system also has other benefits, such as preventing persons from registering more than once and identifying potential problem areas for investigation. Furthermore, this consolidation of information has cleaned up the voter files throughout the state by identifying duplicate voter records that had previously gone undetected between counties. This duplication was rarely fraudulent; it was usually caused by lack of communication between counties. Additionally, this new system has cleaned up duplicate records caused by voters who have married and changed their last name without informing the registration officials of the previous registration.

Those opposed to NVRA often criticize the identification procedures in the new system. While it is true that national identification is not required under NVRA, over 90 percent of registrations in Georgia come through our Department of Public Safety, our public assistance offices, and our libraries. Each of these agencies require proof of identity to obtain their services; therefore, the likelihood of fraudulent registration through those agencies is quite low. As a matter of fact, the procedures under the NVRA are a substantial improvement over the old registration laws in Georgia.

The recent article in *Reader's Digest* on voter fraud highlighted several egregious examples of fraud in other states in the election process and then leaped to the conclusion that NVRA should be repealed. That conclusion is fallacious; none of the examples of voter fraud cited were in any way related to NVRA.

The fraud we find in Georgia today is contained in two main areas -- absentee balloting and voter assistance. The vast majority of the absentee balloting fraud cases we investigate are not based upon fictitious voters casting ballots but upon candidates and campaign workers taking advantage of persons who are elderly, illiterate, or poor.

We struggle with the reluctance and lack of cooperation of prosecutors to prosecute election fraud cases. The cases are often seen as mere technical violations of the election code or are difficult to prove due to the circumstances of the cases. In the mind of many prosecutors, who consider their offices understaffed and besieged by more cases than they can handle, an election fraud case pales in significance before a murder, rape, robbery, or burglary case.

Most of the fraud problem noted in the *Reader's Digest* article was not voter fraud, but election official fraud. Repealing the NVRA or passing more laws will not cure fraud by dishonest government officials. Of the examples of fraud mentioned, Georgia laws, if followed, would have prevented or detected every one. The cure is not more laws, but the enforcement of the election laws on the books.

While election officials must obey and follow election laws and ensure compliance with election laws, they cannot enforce them. They must be enforced by prosecutors. Election officials can only report crimes, they cannot prosecute. The call should be for more effective enforcement, not new laws.

Our democracy is founded on a basic trust in the citizenry. NVRA builds upon that foundation and welcomes more voters into the process. We have made it more convenient for citizens to register to vote; however, we have not *encouraged* voter fraud. Under NVRA here in Georgia, our centralized, computer database of voter information is being used to cross-check social security numbers, deaths, felony convictions and residence.

The result of NVRA will be record high levels of legal and valid voter registration which brings every segment of our population into the political process as an active participant. This influx of participants is good for America and good for democracy.

TESTIMONY OF RALPH G. NEAS BEFORE SENATE GOVERNMENTAL AFFAIRS COMMITTEE ON ELECTION REFORM
MAY 3, 2001

Good morning Mr. Chairman and members of the Committee, and thank you for inviting me to testify here today. My name is Ralph G. Neas, President of People For the American Way, a 300,000-member citizens' organization dedicated to protecting constitutional and civil rights, improving public education, and promoting civic participation. I also serve as President of People For the American Way Foundation. From 1981 to 1995, I was executive director of the Leadership Conference on Civil Rights. All three of these organizations and the millions of Americans they represent are vitally concerned with the subject of these hearings: protecting the right of all Americans to cast a vote that counts in every election.

As requested by the Committee, I will focus today primarily on issues relating to voter registration. In particular, I will discuss the historical and continuing need for federal as well as state and local action to ensure meaningful access to the right to vote; the serious problems our nation experienced in last year's election, including problems witnessed first-hand by People For Foundation; and recommendations for future action, including by this Congress.

Importance of Federal Action to Protect the Right to Vote

As this Congress found in enacting the National Voter Registration Act in 1993, restrictive voter registration laws and practices were introduced in our country in the late nineteenth and early twentieth centuries in order to keep certain groups of citizens --- particularly new immigrants, African Americans and other minorities — from exercising their right to vote. Such tactics as literacy tests, poll taxes, selective purges, residency requirements, and annual re-registration mandates discouraged or prevented voter participation. In fact, between 1896 and 1924, national voter turnout in Presidential elections dropped from 79% to just 49%. In the South, the black vote dropped from 44% to essentially zero. Even after World War II, in 1947, only 12.5% of African Americans were registered to vote. See H.R. No. 103-9 (1993) at 106.

Court decisions and enactment of the Voting Rights Act of 1965 eliminated some of the obvious barriers to voter registration. But a complex maze of local laws and practices, sometimes effectively as restrictive as some that were made illegal, continued to make it difficult for many citizens to exercise their right to vote. Even as late as the 1990s, People For Foundation encountered many of these barriers in its efforts to promote voter registration and citizen participation among minorities, students, and the poor. Restrictions that varied – sometimes even from one precinct to the next – on where a voter could register, what hours the office was open, who could become a deputy

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registrar, and the rules for college students continued to create significant problems, including in federal elections.

It was against this background that Congress enacted the National Voter Registration Act, popularly known as "motor voter," in 1993. As the Senate Rules Committee found, that law became necessary because it is the duty of the federal as well as state and local governments to promote the exercise of the right to vote, and because "discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter registration by various groups, including racial minorities." S. Rep. No. 103-6 (1993) at 2. NVRA took a major step in the right direction by calling for voter registration at motor vehicle, welfare, and other agencies; registration by mail; and limitations on discriminatory and unfair purging of registered voters. Implementation of the law was slow in some areas, because some states refused or delayed carrying it out. For example, Pennsylvania, Michigan, Virginia and several other states refused to implement NVRA altogether. This led to successful legal action by the Department of Justice, People For Foundation, and others to defend the law.

Despite the slow start in some areas, however, NVRA has been enormously successful. Project Vote recently estimated that NVRA has led to more than 70 million new voter registrations. And NVRA has been implemented, as the Congress intended, in a way that has continued to protect the integrity of the electoral process. As NVRA approaches its 8th anniversary this May 20, we should all be proud of what it has helped accomplish.

The 2000 Election: Progress and Problems

In the national election last November, we continued to see progress in enhancing voter registration and participation, particularly among minorities and other underrepresented groups. At the same time, serious problems became evident that make clear the need for continued action at the federal, state, and local levels, particularly with respect to minority voters. I can best illustrate that by describing People For Foundation's experience last year in trying to promote voter registration and participation focused on two groups of Americans that traditionally have not been able to fully participate in the democratic process: youth and African Americans.

Last year People For Foundation worked on a project called Ivote2.com, an Internet-based voter registration and participation project aimed at younger voters. Ivote2.com targets young adult audiences with an advertising and public awareness campaign – TV, radio, outdoor advertising, and print – that leads them to a website where they can register to vote and learn about issues and voting. The website and the campaign were all designed by young men and women. We also established a partnership with the United States Student Association to produce and distribute an organizing manual focused on college students and to help coordinate registration drives. Through these efforts, more than 43,000 young people registered to vote last year, and we hope to step up our efforts in the future.

People For Foundation worked nationally on voter registration efforts focused on African Americans through our African American Ministers Leadership Council. Working with local ministers in 20 cities across 10 states, the Council trained more than 1,000 African American ministers on nonpartisan voter registration and participation and distributed more than 5,000 copies of its civic participation training manual. We particularly targeted Florida, which is the fourth most populous state for African Americans. We helped create a nonpartisan effort called Arrive With Five, which encouraged voters to bring at least five other voters to the polls in November. Civic leaders and activists organized "Freedom Tours" around the state and met with clergy, community leaders, and local media to encourage registration and participation efforts. The program distributed pledge cards and other materials that listed an 800 number connected to an office in Miami that voters could call for voter information, to secure a ride to the polls, and become involved in the effort. More than 100,000 pledge cards were distributed, and the number of African Americans who voted in the state went up by more than 393,000.

Unfortunately, serious problems developed in Florida, many of which reflected problems around the country. On election day, the Miami office we set up to help people vote turned into Complaint Central. We received numerous calls from African American citizens who had registered to vote, went to the polls, but were not permitted to cast a ballot, sometimes waiting 3 hours or more without success. As a result of these and other reports, I went to Florida on the day after the election, accompanied by our legal director and other staff. The weekend after the election, I helped preside at a public hearing convened by the NAACP where many voters testified about the barriers that prevented them from voting. In January, People For Foundation joined the NAACP, the Lawyers' Committee for Civil Rights, and several other civil rights groups in filing a federal court complaint on behalf of the thousands of black voters in Florida whose right to vote in November was unlawfully denied. That case is now pending in federal district court.

While some of the violations in NAACP v. Harris concern problems like the punch-card balloting system, several relate directly to voter registration issues, and are symptomatic of problems reported elsewhere around the country. Our investigation has revealed irresponsible and illegal action by government officials in Florida that deprived thousands of the right to vote. Specifically, I want to mention three such serious problems.

First, many black voters in Florida registered to vote in September or early October, in plenty of time to be able to vote in November, but found that election officials failed to process their applications in time. As a result, they were denied the right to vote. For example, Sherry Edwards registered to vote in September when she was obtaining her driver's license at the Department of Motor Vehicles, as provided by NVRA. She went to the polls on November 7, but was denied the right to vote because she was not listed on the voter rolls.

Second, thousands of minority voters were improperly purged from the voting rolls in Florida. For example, Willie Steen has been a properly registered voter living in Hillsborough County, Florida since he was honorably discharged from the military in 1993. He went to the polls to vote for the first time in November. When he arrived, however, he was told that he could not vote because he had a felony conviction, even though he has never been arrested or convicted of any crime.

Third, many minority voters in Florida were victimized by a "silent" purge. Our investigation revealed that certain registered voters, particularly some who had changed addresses, were placed on an "inactive" list. They were still registered to vote, but their names were not on the list at any polling place. This was true even of voters who had provided notice to government agencies of their change of address. As a result of busy telephone lines on election day and the lack of better equipment, particularly in minority areas, the status of such voters was not verified and they were denied the right to vote. For example, Rondrick Rose moved from one address to another within Hillsborough county almost a year before the election, and notified both the post office and DMV. When he went to his new polling place on election day, he was not listed on the register, even though he was registered to vote. He was told to wait, and did wait for over two hours, while a poll worker tried to get through to the Supervisor of Elections office. Despite waiting for more than two hours, he was never able to vote.

We think it is clear that the conduct of Florida election officials in these and many other cases violated NVRA and deprived thousands of the right to vote. Reports from other states like Virginia and New York have echoed these problems. For example, voters in Virginia reported that names had been improperly removed from the registration rolls, polling places were moved without notice, and registration at DMV offices did not function properly. In New York City, there were reports of numerous unprocessed Motor Voter registration forms and polling places opening late due to broken machines. Our nation has clearly made a lot of progress with respect to voter registration and participation. But events in November clearly indicate that we still have a long way to go.

Recommendations for the future

Based on this experience, let me suggest several recommendations. First, maintaining and enforcing our existing laws, like the NVRA and the Voting Rights Act, is absolutely critical. Congress can play a crucial role in that effort by holding hearings like this one, resisting misguided efforts to weaken our laws, and assisting states and localities in complying with these laws.

In particular, some of the problems experienced in Florida and elsewhere could have been avoided with better trained and equipped election officials, voter registrars, and poll workers. If Florida poll workers had understood that contested voters can cast a "challenged" ballot to be reviewed later, and if they had acted on that knowledge, many of the improperly purged and silently purged voters would have been able to vote. If election officials had kept copies of "inactive" voters lists at the polls or been able to verify voters' status with headquarters without relying on jammed phone lines, many of

those problems could have been avoided. PFAW therefore supports the Dodd-Conyers and Schumer-Brownback bills. Among their other provisions, these proposals would provide grants to states and localities to improve practices relating to education of poll workers and voters as well as election technology and administration.

Both in our Florida suit and elsewhere, we have recommended other specific steps that should be taken to remedy the types of problems we saw last November. Officials should prevent and remedy the wrongful purging of voters and ensure, as NVRA states, that all purging procedures are uniform and non-discriminatory. Lists of "inactive" voters should be maintained at polling places and be just as accessible to poll workers as active lists. Voters should be affirmatively notified of their rights at polling places, by posted notice or otherwise, including their rights to assistance, to correct their ballots if they believe they have made an error, and to cast a "challenged" ballot if there is a dispute as to their registration. Election officials should ensure that no registered voter is turned away because of list maintenance problems. And procedures should be developed to eliminate unfair delays in processing voter registration applications so that everyone who fills out registration forms on time can vote in the next election.

Some have suggested that despite the problems experienced in the last election, there is no real interest among legislators in pursuing election reform. We fervently hope that this is not the case. This hearing is an important demonstration to the contrary. We agree with the New York Times this week that it is "past time" for the federal government and many state governments to take action on election reform. We urge the Congress to follow up this hearing with action to help guarantee to all Americans the right to cast a vote that truly counts in all federal elections. Thank you very much.

Testimony of Deborah M. Phillips
Chairman, The Voting Integrity Project

Before the
United States Senate Committee on Governmental Affairs
May 3, 2001 * Washington, D.C.

I am grateful for the opportunity to appear before you today to talk about an important subject — guaranteeing and protecting the voting franchise of qualified American citizens. The Voting Integrity Project is a national non-partisan voting rights organization. Our right to vote is the glue that keeps our government together. I am here today to talk about the network of laws that are intended to ensure ease of registration and access, but have serious unintended, and sometimes ironic, consequences. I will also offer a solution.

The National Voter Registration Act of 1993 (NVRA), has produced an alarming level of deadwood and fictitious names on America's voter rolls. Such cases are now widely documented in state after state, and catalogued by me in previous testimony before the Senate and House. Such names create a source pool and invitation for fraudulent voting. Since a stolen vote dilutes the strength of a legitimate voter's ballot, vote fraud is a voter rights issue.

But in Election 2000, a new problem emerged. The largest category of voter complaints received by the Voting Integrity Project (VIP) related to the direct disenfranchisement of qualified voters who, for a variety of reasons, were not on the voter rolls. Many, who had registered by mail or through third parties, never made it on. Some were removed incorrectly because of faulty data matches and lack of due diligence by election officials prior to purging names. This, too, is a serious voting rights issue.

NVRA, or Motor Voter, as it has become known, extended the registration process beyond the control of the local office of elections. Today, virtually anyone or anything can register to vote, through the mails, without having to show any proof of qualification, identity or residence. The verification process employed by Supervisors of Election doesn't even begin until a name is placed on the voter rolls. And the current list maintenance procedures are expensive and labor intensive. NVRA represents a vast unfunded federal mandate on the States.

To understand the process and appreciate how cumbersome and vulnerable it is, you need look no further than the charts attached to my testimony taken from the handbook of the Federal Election Commission's Office of Election Administration (FEC/OEA).[1] The first illustrates the catchment of voter registrations that includes the Department of Motor Vehicles and other

[1] FEC Guide to Implementing the NVRA, January 1, 1994, Chart on Voter Registration Intake Options Under the NVRA, pg. 1-9; Chart on Voter Registration List Maintenance Options Under the NVRA, pg. 5-1.

government agencies, the availability of a universal mail-in application via the Internet, and third-party (sometimes paid) collectors of registrations.

NVRA prohibits removing names solely for failure to vote or change of address within a jurisdiction. As you can see in the second FEC/OEA chart, the process for verification and list/maintenance is cumbersome and uncertain. NVRA recommends use of the U.S. Postal Service National Change of Address List (NCOA) to identify invalid registrations. Yet, that will only verify on the basis of residence. It does not reach to identity, citizenship or other qualifications. For that, an election office must obtain death notices, criminal conviction notices, mental incapacity notices, social security records and citizenship records. Such records may not be available and can be problematic, since they may be kept by widely varying formats and schedules. NVRA does permit (but does not mandate) two possible security mechanisms. The first is that States may require voters who have registered via the mail-in process to vote the first time in person.[2] However, because of fail-safe procedures, such id requirements are easily thwarted.

The second available security check is the acknowledgment notice sent out by the election office which, if returned as undeliverable, can trigger a confirmation procedure.

Invalid registrations may easily go undetected. NVRA requires only that States make a "reasonable effort" to identify and remove such names. It does specify procedures for doing so. In many cases, such names are flagged as "inactive" but, under NVRA rules, remain on the voter rolls for two federal elections before removal. And if such a name is voted in that period, it is re-activated. Even though NVRA requires such removals to occur at least 90 days before a federal election, most state registrations do not close until 30 days before elections, creating a 60-day window within which new registrations can be lodged, and leaving little time for due diligence.

Many states do not have centralized voter registration. Registration is maintained on a local basis. Even those states that do maintain some form of statewide voter roll may not perform routine matching procedures among the component jurisdictions. Certainly, there is no mechanism to match records of one state against another. Many voters assume that when they move, their old registration is canceled. This may not be the case even within a state, and certainly not across state borders. Thus, we believe there is an undocumented prevalence of voters who are registered in multiple jurisdictions and multiple states. With the increasing use of absentee ballots, such names can easily be voted.

Lastly, it is important to understand the cost of current list maintenance procedures is beyond many local budgets. Confirmation mailings must be "forwardable" under the rules of NVRA, thus they will not automatically yield information for list maintenance purposes. NCOA list matches must be performed through a limited number of commercial vendors, with minimum

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[2] This does not extend to voters covered by the Uniformed and Overseas Citizens Absentee Voting Act or the Voting Accessibility for the Elderly and Handicapped Act.

charges that become very expensive when there is a relatively small volume of records, such as a rural county. The alternative is to perform additional first-class mailings (with return address requested). Given the level of mobility of today's society, local and state voter rolls are subject to an unprecedented level of "churn."

That is why these records are building up to the point where, in many states, registered voters far outnumber voting age populations. For those determined to use invalid registrations for fraudulent voting, it is not at all difficult to identify such names. Sometimes it is as simple as requesting the "Inactive Voters" list.

Although documented and fully prosecuted cases of vote fraud are still unusual, that probably has more to do with the fact that only when margins are very close is the issue even raised. And candidate election contests alleging fraud usually do not have sufficient time or resources to build an evidentiary record sufficient for success. Prosecutors do not like election fraud cases because they take precious resources from strained budgets needed for more serious crimes.

So what is the solution? VIP believes that it may be time to consider creating a "life-time" voter registration with stringent verification procedures. But under the current system, this is not possible. However, if all 50 states adopted central computerized voter registration systems, with uniform record keeping formats, it would be possible to create one-time registrations that would follow the voter through life regardless of where they lived. In such a system, once registered, you would remain registered for life. Registrations could be suspended for a period of time or permanently, but would remain within the database. Even death would not remove the record — only de-activate it, so that no one else could use that name for registration purposes.

Such a system would eliminate problems of deadwood, duplicate and fraudulent registrations. And would create a framework for instant verification at the polling place via on-line networks, thus guaranteeing franchise. Utilizing secure data networks, such a system could make it possible for a voter to go any official polling place and pull down their local ballot and vote.

The technology for such a system is available, and I believe this can be done without creating another layer of intrusion into privacy or lead to government abuse. The process of building such a system can begin now, with your leadership. Thank you.

* * *

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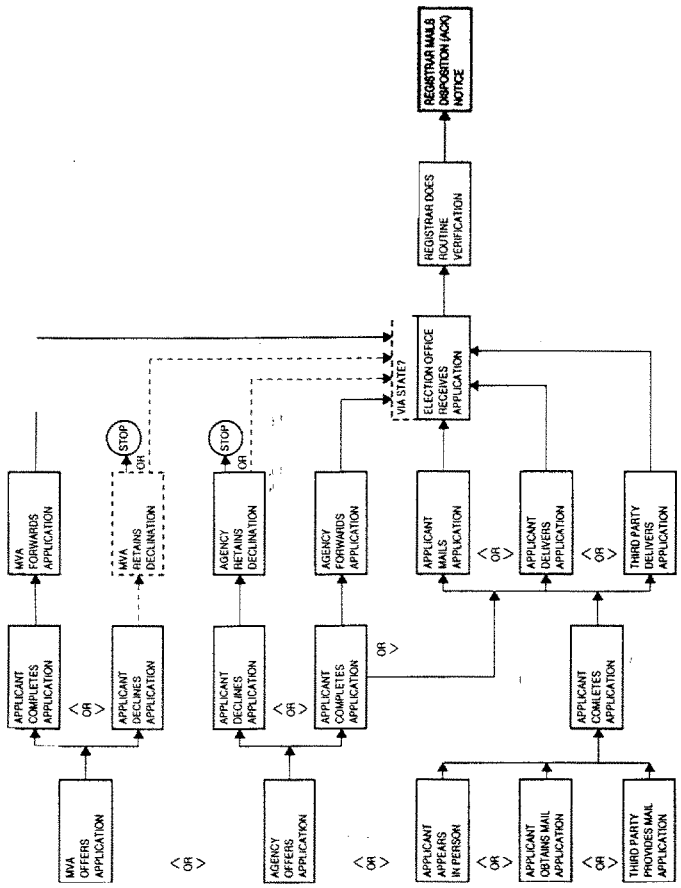
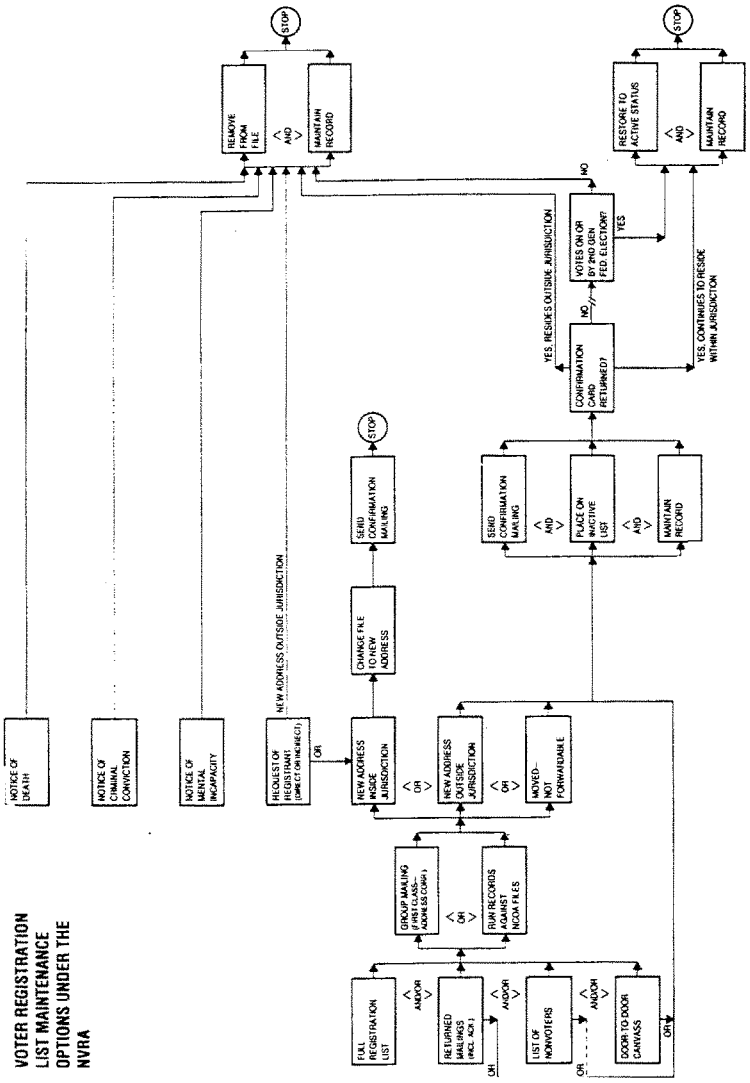


VOTER REGISTRATION INTAKE OPTIONS UNDER THE NVRA


VOTER REGISTRATION LIST MAINTENANCE OPTIONS UNDER THE NVRA
NOTICE OF DEATH
NOTICE OF CRIMINAL CONVICTION
NOTICE OF MENTAL INCAPACITY
REQUEST OF REGISTRANT (DIRECT OR INDIRECT)
NEW ADDRESS OUTSIDE JURISDICTION
OR
NEW ADDRESS INSIDE JURISDICTION
NEW ADDRESS OUTSIDE JURISDICTION
MOVED-NOT FORWARDABLE
CHANGE FILE TO NEW ADDRESS
SEND CONFIRMATION MAILING
STOP
GROUP MAILING (FIRST CLASS-ADDRESS CORR.)
RUN RECORDS AGAINST INCAR FILES
FULL REGISTRATION LIST
RETURNED MAILINGS (INCL. ADJ.)
LIST OF NONVOTERS
DOOR TO DOOR CANVASS
AND/OR
SEND CONFIRMATION MAILING
PLACE ON INACTIVE LIST
MAINTAIN RECORD
CONFIRMATION CARD RETURNED?
YES, RESIDES OUTSIDE JURISDICTION
YES, CONTINUES TO RESIDE WITHIN JURISDICTION
NO
VOTES ON OR BY 2ND GEN FED. ELECTION?
YES
REMOVE FROM FILE
RESTORE TO ACTIVE STATUS
AND

5 – 1

Testimony
U.S. Senate Committee on Governmental Affairs
Dr. Larry J. Sabato
Director, University of Virginia Center for Governmental Studies
May 3, 2001

Mr. Chairman, Members of the Committee, thank you for this opportunity to speak with you today about the intertwined issues of voter registration and vote fraud in the United States.

Of course, this is a subject that has received considerable attention during the months since the ballots were cast in the 2000 Presidential election.

Let me begin my remarks by stating what all of us familiar with politics already know. Fraud and corruption in the American electoral system did not start with the 2000 Presidential election. In fact, evidence of corruption spans the entire history of our Republic.

What could be unique at this point in our nation's history is the degree to which we, as a nation, can embark on a serious discussion of how to reform the system to limit the extent of electoral fraud and corruption.

The November 2000 election can serve as the catalyst for such a debate. By all means, we should toss out antiquated voting machines that poorly count properly cast ballots. But we ought simultaneously to spend sufficient resources to reduce vote fraud in several states.

When we look at the registration system and voting process in the U. S., we have to balance two conflicting values, two equally worthy objectives:

1. The goal of full and informed participation of the electorate.
2. The integrity of the system.

To the extent that we keep expanding the participation rate and make it easier and easier for people to register and vote, we almost certainly increase the chances for voter fraud. So, in a sense, it is a trade off. To move completely in the direction of one value as opposed to the other is foolhardy. We must achieve a balance between these two important democratic values. Currently we do not have a good balance.

As Election 2000 demonstrated, the problems are numerous. I draw your attention to several of the most egregious instances of fraud that were encountered last year, and in other recent elections.

Last November, as reported by *The Miami Herald*, the votes of a 90-year-old woman and 21-year-old man were among more than 2,000 illegal ballots cast by Florida residents who swore they were eligible to vote, but in fact were not. The woman voted absentee and in person, while the man voted despite a felony drug conviction. These 2,000 illegal ballots were discovered in just 25 of Florida's 67 counties – this in a presidential race won by only 537 ballots in Florida.

These voters cast ballots even though their names were not on precinct voter registration lists, because all they had to do was sign an affirmation swearing they were eligible to vote.

Even though they were supposed to, poll workers never checked to see if these 2,000 people were actually registered. In addition to these 2,000, there were 1,200 instances of convicted Florida felons who had been legally stripped of their right to vote, but nevertheless managed to stay on the voting rolls and cast their ballot in the last election. There is also some indication that at least a few people who maintain two residencies cast ballots in two different states, one by absentee and the other in person.

Similarly, in Wisconsin, the *Milwaukee Journal Sentinel* found that at least 361 felons voted illegally last November 7th, breaking the state law that disqualifies felons from voting until they are off probation and parole. Like Florida, Wisconsin was the site of a very close Bush-Gore contest.

But it doesn't stop with Florida and Wisconsin, and as I suggested, fraud didn't just appear during the 2000 Presidential election.

Just a glance at the past decade shows many examples of electoral fraud. You don't even have to look very closely to find, as I did in my book Dirty Little Secrets: The Persistence of Corruption in American Politics:

Extensive absentee ballot fraud in Alabama.

Hundreds of phony registrations in California.

Nearly 1,000 illegal votes in New Jersey including some by people who were unregistered and others who were dead.

Significant absentee ballot fraud in Philadelphia.

Votes stolen from the elderly and infirm in Texas

And the list goes on and on.

Voter fraud is not limited only to these examples. My strong suspicion – based on scores of investigated and unexplored tips from political observers and interviewees over the years – is that some degree of vote fraud can be found almost everywhere, and serious outbreaks can and do occur in every region of the country.

Whether fraud is Democratic or Republican, or located in the North or the South or the West, the effect on American democracy is similar. While electoral hanky-panky affects the outcome in only a small proportion of elections (mainly in very tight races), one fraudulent ballot is one too many for the integrity of the system and the confidence that the people have in the system.

The need for reform is urgent and clear. Voter turnout in the United States is traditionally too low, and cynicism among citizens too high, to permit the malodorous malady of election fraud to continue unchecked – or to spread.

No system is absolutely foolproof, but at the very least it seems to me that we could all agree that a photo identification card (of any sort) should be produced by each voter at the polls.

Second, voters should be asked at the time of registration to give a number unique to them – a social security number, a driver's license number – that can be prerecorded on the voter list provided each precinct's workers.

Third, every voter should have to sign his name on the voting rolls at the polls so that the signature can be compared to the one on the registration form to see if they match up. This comparison would probably be made only in the event the results of a close election were challenged, although again, the computer technology already exists for instantaneously scrolling, side by side, the poll signature and the registration signature.

Fourth, all potential voters ought to be advised at the polls, whether orally by an elections official or by means of a printed statement of the eligibility requirements for voting and the penalties for fraudulent voting. A similar warning should be prominently featured on all absentee and early-voting/mail-in ballots. These four overlapping safeguards are not too burdensome for voters and poll workers, but they would go a long way toward discouraging fraud at the precinct stations on Election Day.

Fifth, no early-voting/mail-in and absentee ballot should ever be separated from its cover sheet and counted until the voter's signature has been carefully checked against the registration file signatures. Every envelope containing the marked absentee or early-voting/mail-in ballot should also be signed by an adult witness whose address should also be listed.

Finally, Mr. Chairman let me say that these regulations, even if adopted universally and followed to the letter, will be insufficient if:

(1) registrars and elections offices are not staffed and funded adequately;
(2) the statutes do not punish fraud severely – major felonies are required, not minor misdemeanors;
(3) law enforcement authorities do not make voter fraud a priority and press for substantial legal penalties against those found violating the fraud statutes; and
(4) the news media do not begin to look for evidence of voter fraud – a probable prerequisite to their finding it. A good first step would be for every news organization to establish and publicize a "campaign corruption hotline."

The examples I listed earlier, and others throughout the nation make it obvious that the solutions required for voter fraud must necessarily be adapted to each locality's culture and practice. But one imperative unites all the cases: While registration and voting should be as easy as possible, the process should also be as fraud-proof as possible.

As I noted earlier, we must maximize the full and informed participation of the electorate while still preserving the integrity of our system. One can generally observe that our zealous focus on the full, but not necessarily informed, participation of the electorate may in fact challenge the integrity of our democratic process. Increasing informed participation must be our primary goal. For this reason, my Center for Governmental Studies at the University of Virginia has launched the Youth Leadership Initiative. This program helps schools to improve civic education, and it shows middle and high school students across America the value of informed participation. Many of you on this committee have supported this program in the past. I applaud you for doing so and encourage you to continue to support the Youth Leadership Initiative and other programs like it that drive young people into our political process.

Informed participation combats fraud both by increasing salience and scrutiny, and by diminishing the proportional impact of fraudulent votes. Clearly, we must do all we can to improve the implementation of our registration and voting procedures. I believe the measures I have discussed today would move us in the right direction. However, I believe strongly that a focus on civic education must also be a part of any serious effort to revive confidence in our democracy.

Thank you Mr. Chairman.

Voter Registration

R. Michael Alvarez
California Institute of Technology[1]
Caltech/MIT Voting Technology Project

April 30, 2001

1. Introduction

A simple story best motivates many of the problems with existing systems of voter registration and how problems in the current registration system impact on the ability of Americans to participate in the political process by voting.

On April 17, 2001, I went to vote in the Pasadena Unified School District's general election runoff, involving candidates for two school board seats. I stood in line behind a man, in his mid 30's. This man approached the polling place workers, who asking for his name. After checking in their voter registration paper list, they said they could not find his name in that list. He said he had recently moved from West Los Angeles, and gave the address of the house he had just purchased. The polling place workers than thought that perhaps he was in the incorrect polling place, and suggested that he go to the local public library or elementary school to see if he was registered there (neither of these polling places was actually open for this election). But, after consulting their map of the registration precinct, they agreed that the address he provided was within the precinct. At that point, the person who I took to be the polling place chief inspector said simply that he could not vote.

Standing next in line, I said that I thought that he was eligible to cast a provisional ballot.[2] The polling place chief said that he could not. I reiterated my belief that he was eligible to vote provisionally. She disagreed and said he could not vote. He then left the polling place.[3]

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[2] States differ in their laws regarding the possibility and practice of provisional balloting. In California, voters not on the registration rolls are eligible to cast a provisional ballot, whereby they provide their name and address. If a subsequent check with the current voter registration database indicates that the voter is indeed registered and should have been allowed to participate, then his or her vote can be included in the final tally. If the check indicates that the voter is not registered, then the ballot is not included in the final tally.

[3] Once I got to a telephone, I called the Pasadena City Clerk's office about this problem and they claimed they would go to the polling place to check on this complaint. I also contacted the Los Angeles County Registrar-Recorder's office, because I believed these polling place workers are also used by the County in County-run elections. Officials at the City Clerk and County offices all agreed that under my version of the story, this man should have been allowed to cast a provisional ballot.

What might have been the problem?

1. He might not have actually been registered at his new address.
2. He might have recently tried to register at his new address using a third-party registration system, but the third-party did not forward the registration form to the Los Angeles County Registrar-Recorder (or did not forward it before the 10-day deadline).
3. He might have recently registered, using a third-party or governmental system, but his status as a newly registered voter was not included in the paper voter list sent to the polling place.
4. He might have made a mistake in his voter registration form, like not completing the form correctly or providing some incorrect information, that invalidated the registration attempt.
5. His registration information might have been lost, misplaced, or was incorrectly entered by Los Angeles County personnel.
6. His registration information might have been lost in the mail.

No matter what the cause, it is distressing to see citizens denied their right to vote at the polling place.

Voter registration systems in the United States vary greatly across the states, thus it is difficult to make general statements about voter registration practices across the states. But there are three important facts about voter registration systems that underscore the importance of voter registration systems in the United States.

1. Voter registration in the United States has been identified as one of the important impediments of voter turnout.
2. Voter registration practices impact election outcomes.
3. Voter registration is a complex system in every state.

I discuss these important facts in the next section.

2. Voter Registration in the United States

There are three basic types of voter registration systems: the periodic list, the continuous register, and the civil registry. The periodic list is a voter list that is constructed from scratch before every election, and is used only for the purposes of a single election. The continuous register, on the other hand, is a voter list that is constantly maintained and updated by elections officials; the continuous register is a voter list that evolves over time and is used in every successive election. The third type of voter registration system is the civil registry. This is a voter list that integrates information about all citizens, ranging from geographic location to other types of information that the government might collect about citizens; under the civil registry system voters typically are automatically registered to vote, and changes in residence are usually reflected in voting registration status without any necessary action by the citizen.

In the United States, the voting registration system most closely approximates the continuous register. Many other democratic nations, including most of the nations in Europe and Latin America, use some form of civil registry for voter registration. Conventional wisdom about civil registry systems is that they are relatively efficient and

inexpensive, as costs of keeping the voter list up-to-date are shared across government agencies.[4] The major drawback with the civil registry system is the potential loss of privacy, as citizens might be concerned about the sharing of information about themselves between government agencies.

Formal voter registration laws in the United States have been in existence for most of the history of the country. Massachusetts was the first state to require citizen registration before an election, putting a voter registration system in place in 1800. It was not until Reconstruction, however, that most states turned to formal voter registration systems. After the Civil War, most of the urban industrial states in the Midwest and Northeast imposed voter registration requirements in response to the flood of immigrants and the rise of political machines in many of the major urban areas. Scholarly research has argued that voter registration requirements were imposed to reduce or eliminate voter fraud and the growing power of political machines.[5]

Academic research has demonstrated that voter registration requirements impede voter participation, especially among certain demographic groups.[6] Rosenstone and Hansen (1993) summarized their research regarding one important registration requirement, the closing date of voter registration in the particular state:

> The longer before and election people must act to ensure their eligibility to vote, the more likely they will fail to do so. Compared to citizens who live in states that allow registration right up to election day, citizens who live in states with thirty-day closing dates are 3.0 percent less likely to vote, and citizens who live in states with sixty-day closing dates are 5.6 percent less likely to vote. Early closing dates, by requiring people to register long before campaigns have reached their climax and mobilization efforts have entered high gear, depress voter participation in American elections.
>
> Early closing dates have their greatest impact on the people who are least likely to vote anyway: Given that they lack the resources to overcome the costs of turning out, it is

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[4] An excellent discussion of the relative merits of the three voter registration systems is in The ACE Project's "Administration and Cost of Election", Version 0.1, January 2000.

[5] Joseph P. Harris, *Registration of Voters in the United States*, (Washington, D.C.: Brookings Institution, 1929); Kevin P. Phillips and Paul H. Blackman, *Electoral Reform and Voter Participation*, (Washington, D.C.: American Enterprise Institute, 1975); Richard Hofstadter, *The Age of Reform*, (New York: Random House, 1955); William J. Crotty, *Political Reform and the American Experiment*, (New York: Thomas Y. Crowell Co., 1977); Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote*, (New York: Pantheon Books, 1988); Steven J. Rosenstone and John Mark Hansen, *Mobilization, Participation and Democracy in America*, (New York: Macmillan Publishing Company, 1993); Alexander Keyssar, *The Right to Vote*, (New York: Basic Books, 2001).

[6] Steven J. Rosenstone and Raymond E. Wolfinger, "The Effect of Registration Laws on Voter Turnout," *American Political Science Review* 72 (March 1978).

> surely no surprise that they also lack the resources to offset the additional burdens of registration. Sixty-day closing dates reduce the turnout of the poorest Americans by 6 percent by depress the turnout of the wealthiest Americans by only 3 percent. They diminish the turnout of the grade-school educated by 6 percent but lessen the turnout of the college educated by only 4 percent. Early closing dates, finally, inhibit African-Americans, Mexican-Americans, and Puerto Ricans slightly more than other citizens.[7]

Thus, voter registration requirements are important because they fundamentally impact voter turnout and therefore election outcomes.

In fact, data from the 1998 election provided by the Federal Election Commission, show the ways in which voter registration requirements do impact the demographic attributes of the American electorate.[8] 44% of 18-24 year old voting age citizens were registered and 19% turned out to vote; 78% of 65 or older voting age citizens were registered and 61% of them turned out to vote. 69% of white voting age citizens, 64% of black voting age citizens, 55% of Hispanic voting age citizens, and 49% of Asian/Pacific Islander voting age citizens were registered in 1998; 47%, 42%, 33%, and 32% of each racial or ethnic group turned out to vote in the 1998 election, respectively.

But, voter registration is a very complex system for election officials to maintain and innovate. According to the Federal Election Commission, during 1997 and 1998 there were 35,372,213 registration applications or transactions processed nationwide. Of these, almost half (17,613,211) represented new registrations --- new registrations in the local jurisdiction or registration across jurisdictions. 6.46% of the new registrations were duplicate registrations, and 43.7% were changes of name and address. During this same period of time, 9,063,326 names were deleted from voter lists under the procedures allowed by the National Voter Registration Act of 1993 (NVRA), and another 14,640,557 names on voter lists were declared inactive and will be removed unless they have responded to inquiries or have voted in the 2000 election.[9]

Clearly, in terms of the sheer numbers of new registration requests, voter registration is a complicated process for voters and elections officials. Processing new registration requests, checking for their validity, adding or deleting names from the voter lists, and providing voter registration information to polling place workers in time for each election, represent critical and complex tasks for elections officials. Developing criteria for optimal registration system performance and proposals for innovation are in the next two sections of this memorandum.

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[7] Rosenstone and Hansen (1993), page 208. The effects of closing date on registration and turnout are from a statistical model presented on pages 130-133 of their book.

[8] We provide national voter registration and turnout data in the Appendix; this data is from the FEC.

[9] Federal Election Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1997-1998.*

3. An Analytical Approach to Registration Systems

A. Criteria for Voter Registration Systems

Regarding voter registration systems, they generally should seek to fulfill the following criteria:

First, a registration system should be accurate and complete. It should provide accurate information about whether a voter is registered or not, as well as accurate information about the voter's address and any other relevant information for authentication and appropriate ballot form provision. All voters who have registered should be included in the registration databases, and voters should not be excluded by administrative mistakes or problems. Registered voters should not be incorrectly removed from the registration database, and all alterations of registration status must be conducted accurately.

Second, a registration system should be timely. Voters registering for the first time should be quickly included into the registration database, and voters re-registering after a residential move should be quickly included in the registration database in their new location as well as quickly delisted from the registration database in their former location. This implies that a registration system should receive the registration request in a timely manner no matter whether the request is provided through the local or state election offices, other governmental offices, or by third parties. A registration system must quickly authenticate and validate the registration request. And last, a registration system must quickly update the voter registration database.

Third, a registration system should be current. In many jurisdictions, there is only a very short time period between the date that the voter registration closes and the date of the next election. A registration system should, by election day, include information about all registered voters.

Fourth, a registration system should be accessible. All eligible voters should have equal opportunity to register, so registration systems should be widely available, easily accessible to eligible voters despite physical or other handicaps, language differences, geographic location, or any social or economic differences between eligible voters. From the voter's perspective, registration systems should be approachable, easy to understand, and simple to operate.

Fifth, a registration should be fraud-proof. A voter registration system should make it impossible for voter registration fraud to occur. There should be no opportunity for multiple voter registrations within or across voting jurisdictions to occur, for non-eligible individuals to register to vote, nor for any other type of fraudulent voter registrations to occur.

Sixth, a registration system should be responsive to local conditions. A voter registration system must be flexible, as an appropriate registration system for one state

may not be appropriate in another state; the same holds true for registration systems within states, across local voting jurisdictions. Registration systems must of course be designed within the context of the available resources for registering voters, and must be consistent with local and state laws regarding voter registration.

Thus, the goal should be registration systems that seek to maximize these five criteria. An idea voter registration should be accurate and complete, timely, current, accessible, fraud-proof, and responsive to local conditions and requirements. Clearly, these criteria do overlap in some ways, and may be difficult to achieve. But any voter registration system that is seen as deficient in one or more of these dimensions should be critically evaluated and redesigned to better meet these general criteria.

4. Proposals for Registration System Reform

There are many different proposals improvements to the voter registration process in the United States. Many of these proposals are low-cost, high-return strategies that can be easily and quickly implemented in many voter jurisdictions. Some of these innovations are being developed and implemented in states and local voting jurisdictions (we provide some examples in our best-practice section below). These proposals are not in any particular order.

A. ***Voter Registration Database Integration with Other Databases, Especially Those of Public Agencies Relevant Under the National Voter Registration Act of 1993.***
B. ***Integrated Computer Systems for Voter Registration, Election Administration and Vote Counting.***
C. ***Strict Scrutiny over Third-Party Voter Registration Practices.***
D. ***Computerization of Voter Registration Information and Processes State and Local Election Offices.***
E. ***Pre-election Availability of Voter Registration Information to Voters.***
F. ***Electronic Access and Authentication of Voter Registration at Polling Places.***
G. ***Computerized Voter Registration Fraud Detection Systems.***

5. Best-Practice Examples

What follows are four examples of best-practices and important innovations we have examined. We are continuing to examine voter registration systems and innovations, and will provide more examples in future revisions of this research report.

A. The Michigan Qualified Voter File.

The Michigan Qualified Voter File (QVF) provides electronic linkage of elections officials throughout the State of Michigan to an automated and integrated statewide voter registration database (http://www.sos.state.mi.us/election/qvf/index.html). Several other states have successfully been implementing similar systems, (for example Kentucky, Maryland and Oklahoma) and as we learn more about these other state systems we will likely include them as additional examples of best-practice examples.

B. California "on-line" Voter Registration.

California's "on-line" voter registration process allow for easy distribution of the voter registration forms. The system does not allow for truly "on-line" voter registration, as a paper-based signature is still required. When an eligible voter goes to the California "on-line" voter registration page (http://sosdev3.ss.ca.gov/votereg/OnlineVoterReg), they are presented with a form that can be filled out and submitted to a central server. After filling in the form and a secondary on-line affidavit, the information submitted by the voter is printed and mailed to them on a return postage-paid card; the voter signs the card and sends the card to their county elections office. From July 2, 2000 through October 2, 2000, 38,331 forms were submitted through this system; after the November 2000 elections (November 8, 2000) 7,013 forms have been submitted through April 25, 2001.[10]

C. Orange County, Florida: 2000 Presidential Election

County workers with laptop computers assisted with voter authentication in the polling places; the laptops had voter registration databases on cd-rom.

D. Federal Voting Assistance Program, 2000 Voting Over the Internet Pilot Program

The FVAP's 2000 VOI program developed an on-line voter registration process, which involved a high degree of computer security as it relied upon the Defense Department's public key infrastructure. Details of the FVAP system are to be released to the public shortly.

Appendix: Voter Registration and Turnout, 1980-1998

Year	VAP	Registered	%Registered of VAP	Turnout	% Turnout of VAP	% Turnout of Registered
1998	200929000	141850558	0.71	79117022	0.39	0.56
1996	196511000	146211960	0.74	96456345	0.49	0.66
1994	193650000	130292822	0.67	75105860	0.39	0.58
1992	189529000	133821178	0.71	104405155	0.55	0.78
1990	185812000	121105630	0.65	67859189	0.37	0.56
1988	182778000	126379638	0.69	91594693	0.50	0.72
1986	178566000	118399984	0.66	64991128	0.36	0.55
1984	174466000	124150614	0.71	92652680	0.53	0.75
1982	169938000	110671225	0.65	67615576	0.40	0.61
1980	164597000	113043734	0.69	86515221	0.53	0.77

[10] Dierdre Avent and John Mott Smith, personal communication, April 25, 2001.

Residual Votes Attributable to Technology

An Assessment of the Reliability of Existing Voting Equipment

The Caltech/MIT Voting Technology Project[1]

Version 2: March 30, 2001[2]

American elections are conducted using a hodge-podge of different voting technologies: paper ballots, lever machines, punch cards, optically scanned ballots, and electronic machines. And the technologies we use change frequently. Over the last two decades, counties have moved away from paper ballots and lever machines and toward optically scanned ballots and electronic machines. The changes have not occurred from a concerted initiative, but from local experimentation. Some local governments have even opted to go back to the older methods of paper and levers.

The lack of uniform voting technologies in the US is in many ways frustrating and confusing. But to engineers and social scientists, this is an opportunity. The wide range of different voting machinery employed in the US allows us to gauge the reliability of existing voting technologies. In this report, we examine the relative reliability of different machines by examining how changes in technologies within localities over time explain changes in the incidence of ballots that are spoiled, uncounted, or unmarked – or in the lingo of the day the incidence of "over" and "under votes." If existing technology does not affect the ability or willingness of voters to register preferences, then incidence of over and under votes will be unrelated to what sort of machine is used in a county.

We have collected data on election returns and machine types from approximately two-thirds of the 3,155 counties in the United States over four presidential elections, 1988, 1992, 1996, and 2000. The substantial variation in machine types, the large number of

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[1] The Caltech/MIT Voting Technology Project is a joint venture of the two institutions. Faculty involved are Michael Alvarez (Caltech), Stephen Ansolabehere (MIT), Erik Antonsson (Caltech), Jehoshua Bruck (Caltech), Steven Graves (MIT), Nicholas Negroponte (MIT), Thomas Palfrey (Caltech), Ron Rivest (MIT), Ted Selker (MIT), Alex Slocum (MIT), and Charles Stewart (MIT). The principal author of this report is Stephen Ansolabehere; communications about this report can be directed to him at sda@mit.edu. We are grateful to the Carnegie Corporation for its generous sponsorship of this project.

[2] This version updates our initial report in three ways. First, we have expanded the data set considerably: increasing the number of valid cases from roughly 5500 to 8000. We have added complete data for several states, such as Kentucky, Massachusetts, and Vermont, and nearly complete coverage of the available data from the 2000 election. Second, we present more detail about the data, such as yearly averages, and examine possible technology curves and other hypothesized relationships. Third, we incorporate more speculation about the performance of DREs. The next version of the report will integrate data from 1980 and from the 1980, 1990, and 2000 censuses, which will allow us to examine possible interactions between machine performance and demographic characteristics of county populations.

observations, and our focus on presidential elections allows us to hold constant many factors that might also affect election returns.

The central finding of this investigation is that manually counted paper ballots have the lowest average incidence of spoiled, uncounted, and unmarked ballots, followed closely by lever machines and optically scanned ballots. Punchcard methods and systems using direct recording electronic devices (DREs) had significantly higher average rates of spoiled, uncounted, and unmarked ballots than any of the other systems. The difference in reliabilities between the best and worst systems is approximately 1.5 percent of all ballots cast.

We view these results as benchmarks for performance. It is our hope that the information here is helpful to manufacturers as they improve equipment designs and to election administrators who may wish to adopt new equipment. Our results apply to broad classes of equipment; the performance of specific types of equipment may vary. Where possible we test for possible differences (such as different types of punch cards).

We do not attempt to isolate, in this report, the reasons for differential reliability rates, though we offer some observations on this matter in the conclusions. Our aim is measurement of the first order effects of machine types on the incidence of votes counted.

Machine Types and their Usage

We contrast the performance of five main classes of technologies used in the US today. The technologies differ according to the way votes are cast and counted.

The oldest technology is the paper ballot. To cast a vote, a person makes a mark next to the name of the preferred candidates or referendum options and, then, puts the ballot in a box.[3] Paper ballots are counted manually. Paper ballots enjoyed a near universal status in the US in the 19th Century; they remain widely used today in rural areas.

At the end of the 19th Century, mechanical lever machines were introduced in New York state, and by 1930 every major metropolitan area had adopted lever machinery. The lever machine consists of a steel booth that the voter steps into. A card in the booth lists the names of the candidates, parties, or referenda options, and below each option is a switch. Voters flick the switch of their preferred options for each office or referendum. When they wish to make no further changes, they pull a large lever, which registers their votes on a counter located on the back of the machine. At the end of the voting day, the

[3] How we mark ballots has changed over time. In the middle of the 20th Century, many states required that the voter cross out the options not chosen. See for example, The Book of the States, 1948.

election precinct workers record the tallies from each of the machines. Lever machines automate both the casting of votes and the counting of votes through mechanical devices.

Punch card machines automated the counting process using the computer technology of the 1960s. Upon entering the polling place the voter is given a paper ballot in the form of a long piece of heavy stock paper. The paper has columns of small, perforated rectangles (or chads). There are two variants of the punch card – one, the DataVote, lists the names of the candidates on the card; the other (VotoMatic) does not. In the booth (for VotoMatics), the voter inserts the card into a slot and opens a booklet that lists the candidates for a given office. The voter uses a metal punch to punch out the rectangle beside the candidate of choice. The voter then turns the page, which lists the options for the next office and shifts the card to the next column of rectangles. When finished, the voter removes the card and puts it in the ballot box. At the end of the day, the election workers put the cards into a sorter that counts the number of perforations next to each candidate.

Optically scanned ballots, also known as "marksense" or "bubble" ballots, offer another method for automating the counting of paper ballots. The form of the optically scanned ballot is familiar to anyone who has taken a standardized test. The voter is given a paper ballot that lists the names of the candidates and the options for referenda, and next to each choice is small circle or an arrow with a gap between the fletching and the point. The voter darkens in the bubble next to the preferred option for each office or referendum, or draws a straight line connecting the two parts of the arrow. The ballot is placed in a box, and, at the end of the day, counted using an optical scanner. Some versions of this technology allow the voter to scan the ballot at the polling place to make sure that he or she voted as intended.

Direct recording electronic devices, DREs for short, are electronic versions of the lever machines. In fact, the first widely used electronic machine (the Shouptronic 1242) was modeled on the lever machine and developed by one of the main lever machine manufacturers. The distinguishing feature of a DRE is that an electronic machine records the voter's intentions, rather than a piece of paper or mechanical device. To the extent that there is a paper trail it is generated by the machine, not the voter. Electronic machines vary along a couple of dimensions, having to do with the interface. First, there are many devices used to register the vote: the interfaces are either push button (e.g., the Shouptronic) or touch screen (e.g., Sequoia Pacific's Edge or Unilect's Patriot) or key pads (see the Brazillian machine). Second, the ballot design is either full-faced or paginated. With full-faced ballots, common among push button equipment, the voter sees the entire ballot at once. With paginated systems, common among touch screen devices, the voter views a page for each office or question on the ballot. A voting session goes roughly as follows. Upon entering the polling place, the voter is given a card that is inserted into the machine to activate the individual voting session. When finished the voter touches the name on the screen to register his or her preference and, typically, the voter may review the entire session (or ballot) to check the vote. Like lever machines it is not possible to vote twice for the same office (i.e., over vote). Each electronic machine tallies the votes locally and the tallies, usually on a disc, are sent to a central location.

Each type of technology involves many variations based on specifications of manufacturers, ballot formats, and implementation. Our focus is on the five main types of machines, as we hope to learn which mode of voting looks most promising. In almost all states county election officials decide which machinery to use, so counties are, almost everywhere, the appropriate unit of analysis. Some counties do not have uniform voting technologies. In these situations, municipalities and, sometimes, individual precincts use different methods. These counties are called Mixed Systems. They occur most commonly in Massachusetts, Michigan, Maine, New Hampshire, and Vermont, where town governments usually administer elections.

We examine the variation in usage across counties and over time. Our data on voting equipment come from the Election Data Services and from state, county, and municipal election officials. We appreciate the helpfulness of election administrators and the EDS in our data collection efforts.

The data do not distinguish centrally counted and precinct counting of ballots sufficiently well that we could estimate with confidence the difference in performance between central and precinct counting. Some states provide information about which administrative units count the ballots for some machine types. Precinct and central counting of optically scanned ballots became quite controversial in the Florida 2000 election.

Even without this additional level of detail, the pattern of equipment usage across the United States looks like a crazy quilt. Americans vote with a tremendous array of types of equipment. Table 1 displays the wide variation in machines used in the 1980 and 2000 elections. The first two columns present the average number of counties using various types of equipment in each year. The last two columns report the percent of the population covered by each type of technology in the 1980 and 2000 elections.

In the most recent election, one in five voters used the "old" technologies of paper and levers – 1.3 percent paper and 17.8 percent levers. One in three voters use punch cards – 31 percent of the VotoMatic variety and 3.5 percent of the DataVote variety. Over one in four use optically scanned ballots. One in ten use electronic devices. The remaining 8 percent use mixed systems.

Within states there is typically little uniformity. In some states, such as Arkansas, Indiana, Michigan, Pennsylvania, and Virginia, at least one county uses each type of technology available. The states with complete or near uniformity are New York and Connecticut with lever machines; Alaska, Hawaii, Rhode Island and Oklahoma with scanners; Illinois with punch cards; Delaware and Kentucky with electronics.

As impressive and dramatic have been the changes in technology over time. The third column of the table reports the percent of the 2000 electorate that would have used each machine type had the counties kept the technologies they used in 1980. The data are

pretty clear: out with the old and in with the new. Optically scanned ballots and DREs have grown from a combined 3.2 percent of the population covered to 38.2 percent of the population covered. There has been little change in the mixed and punch card systems. Paper ballots have fallen from 9.7 percent of all people in 1980 to just 1.3 percent in 2000. Lever machines, by far the dominant mode of voting in 1980, covered 43.9 percent of the electorate. Today, only 17.8 percent of people reside in counties using lever machines.

A somewhat different distribution of voting technology across counties holds, owing to the very different population sizes of counties. Punch cards and electronic devices tend to be used in more populous counties, and paper ballots tend to be used in counties with smaller populations.

Table 1

Usage of Voting Equipment in the 1980 and 2000 Elections

	Percent of Counties Using Technology		Percent of 2000 Population Covered by Technology	
	1980	2000	1980	2000
Paper Ballots	40.4	12.5	9.8	1.3
Lever Machines	36.4	14.7	43.9	17.8
Punch Card				
"VotoMatic"	17.0	17.5	30.0	30.9
"DataVote"	2.1	1.7	2.7	3.5
Optically scanned	0.8	40.2	9.8	27.5
Electronic (DRE)	0.2	8.9	2.3	10.7
Mixed	3.0	4.4	10.4	8.1

Three comments about the change in equipment are in order. First, this is an industry in flux. Between 1988 and 2000, nearly half of all counties adopted new technologies (1476 out of 3155 counties), and over the twenty-year period between 1980 and 2000, three out of five counties changed technologies. These changes have occurred without any federal investment.

Second, there is a clear trend toward electronic equipment, primarily scanners but also electronic voting machines. This trend, and the adoption of punch cards in the 1950s and 1960s, reflects growing automation of the counting of votes. Punch cards, optical scanners, and DREs use computer technology to produce a speedy and, hopefully, more reliable count. An influential 1975 report sponsored by the General Accounting Office

and subsequent reports by the Federal Elections Commission called for increased computerization of the vote counts and laid the foundation for methods of certification.[4]

Third, voting equipment usage has a strongly regional flavor. The Eastern and Southeastern United States are notable, even today, for their reliance on lever machines. Midwestern states have a penchant for paper. And the West and Southwest rely heavily on punch cards. In 1980, almost all eastern and southeastern states used levers, and levers were rare outside this region. Notable exceptions were the use of paper in West Virginia and punch cards in Ohio and Florida. In 1980, Midwestern counties used hand counted paper ballots. Illinois was a notable exception with its use of punch cards. And in 1980, almost all counties along the pacific coast and in the Southwest used punch cards. Notable exceptions to the pattern were the use of levers in New Mexico.

This historical pattern of usage evidently had a legacy. As counties have adopted newer technologies over the last twenty years, they have followed some distinctive patterns. Counties tend to adopt newer technologies that are analogous to the technology they move away from. Optical scanning has been most readily adopted in areas that previously used paper, especially in the Midwest. Where counties have moved away from lever machines, they have tended to adopt electronic machines -- for example, New Jersey, Kentucky, central Indiana and New Mexico. These tendencies are strong, but they are not iron clad. In assessing the performance of technology, we will exploit the changes in election results associated with changes in technology. This allows us to hold constant features of the states, counties, and their populations.

Residual Votes: A Yardstick for Reliability

Our measure of reliability is the fraction of total ballots cast for which no presidential preference was counted. We call this the "residual vote."

A ballot may show no presidential vote for one of three reasons. Voters may choose more than one candidate – commonly called an over vote or spoiled ballot. They may mark their ballot in a way that is uncountable. Or, they may have no preference. The latter two possibilities produce under votes or blank ballots. The residual vote is not a pure measure of voter error or of machine failure, as it reflects to some extent no preference. Consequently we prefer the term residual vote instead of error rate or uncounted vote.

The residual vote does provide an appropriate yardstick for the comparison of machine types, even though it is not purely a measure of machine error or voting mistakes. If

[4]See, Roy Saltman, Accuracy, Integrity and Security in Computerized Vote-Tallying, NBS SP 500-158, August 1988, NIST, Gaithersburg, MD. The report is available online at www.nist.gov/itl/lab/specpubs/500-158.htm.

voting equipment has no effect on the ability of voters to express their preferences, then the residual vote should be unrelated to machine types. To measure such effects, we estimate the average residual vote associated with each machine type, and we assess whether these averages differ significantly across machine type. Averaging guards against idiosyncratic results, and measures what we expect to happen in a typical case.[5]

In our data, the residual vote in the average county equaled 2.3 percent.[6] In other words, in the typical US county from 1988 to 2000 2.3 percent of ballots casts did not register a presidential preference, for whatever reason. Because county populations vary dramatically, this does not equal the fraction of people who cast an under or over vote for president in these years. This figure is somewhat smaller: 2.1 percent of people who cast ballots did not register a presidential preference. There is considerable variation around this average. Our aim in this report is to assess whether machine types explain a statistically noticeable amount of the variation around this national average residual vote.

We examine the residual vote instead of just the over vote because technology can enable or interfere with voting in many ways. Some technologies seem to be particularly prone to over voting, such as the punch card systems implemented in Florida in the 2000 election. Lever machines and DREs do not permit over voting. Some technologies may be prone to accidental under votes. Lever machines either lock out a second vote or register no vote when the person switches two levers for the same office. Also, paper ballot are sometimes hard to count owing to the many ways that people mark their ballots. Finally, some technologies might intimidate or confuse voters. Many Americans are unaccustomed to using an ATM or similar electronic devices with key pads or touch screens, and as a result DREs might produce more under voting. Also, it may be the case that we react differently to paper than to machines. We are trained in school to answer all of the questions as best as possible, especially on standardized tests similar to the format used for optically scanned voting. Improper installation or wear and tear on machines may lead to high rates of under voting. In Hawaii in 1998, 7 of the 361 optical scanners failed to operate properly.

In depth study of particular states and of contested elections may provide insight into the components of the residual vote or more specific problems related to voting equipment. A number of papers published on the Internet examine the effects of machine types on over votes and on under votes separately for the Florida 2000 election, and several

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[5] Some analyses focus on extreme cases – under and over votes in specific elections in particular counties. Indeed, much of the analysis of Florida falls into this category. Such case studies can be misleading, especially if they reflect outcomes peculiar to a locale, or a local machine failure. Another advantage of averaging is that it washes out the effects of typographical errors, which are inevitable in data, even official government reports.

[6] We exclude from the analysis all cases in which the official certified report shows more presidential votes cast than total ballots cast, that is, cases with negative residual vote rates. We have tried to resolve all of these cases. They do not appear to be due to absentee votes or other votes being excluded. Instead, they appear to be typographical errors in the data reported by the counties and secretaries of state. This affects about 2 percent of the counties in our analysis. Including these cases changes the numbers reported, but does not affect the pattern of results that we observe.

Secretaries of State and state Election Divisions or commissions present analyses of their own state.

One important caveat is in order in this analysis. There are errors that we cannot count. There is no way to measure whether voters accidentally cast ballots for the wrong candidate. We know of no statistically acceptable measures of fraud. And we know of no studies that attempt to measure the incidence and magnitude of errors in the counting of votes produced by transcription errors or programming errors. Residual votes provides the best available measure of the extent to which technology enables or interferes with the ability of voters to express their preferences.

Many other factors may explain under and over voting beside machine types. Other prominent offices on the ballot, such as senator or governor, might attract people to the polls who have no intention to vote for president. A large turnout might make it difficult for election administrators to tend to voter education at the polls. Demographic characteristics of the county's electorate might explain the incidence of people prone to make mistakes. The wealth of the county might account for expenditures on election administration. New machinery might produce elevated levels of voter confusion, simply because people make mistakes more with unfamiliar tasks.

We examine total ballots cast and ballots cast for President in the 1988, 1992, 1996, and 2000 elections. The data cover approximately 2800 counties and municipalities, though not for all years. All told, there are approximately 7800 counties and municipalities for which we have been able to identify the machines used and to collect data on total ballots and presidential ballots cast. As with the voting equipment data, our data on elections returns come from the Election Data Services and from the relevant election commissions of particular states, counties, and municipalities. The large number of observations produces high levels of precision in estimating average residual vote rates associated with each machine type. Studies of one election in one state may not have yielded sufficiently large samples to determine whether there are significant differences across voting equipment.

We examine the presidential vote in order to hold constant the choices voters face. Within each state one might also examine residual votes in Senate and governor races, with the caveat that these offices have higher "no preference" and thus higher residual votes.

We examine the data at the level of the county or municipality that reports the information. Within each of these jurisdictions, the same voting equipment is used and the administration of the election is under the same office (e.g., has the same budget, etc.). Counties and municipalities are a useful level of analysis because they allow us to hold constant where the equipment is used when we measure which equipment is used. This is of particular concern because equipment usage today is correlated with factors such as county size. We do not want to attribute any observed differences in reliability to equipment, when in fact some other factor, such as county demographics, accounts for the pattern.

To hold constant the many factors that operate at the county level, we exploit the natural experiment that occurs when locales change machinery. We measure how much change in the residual vote occurs when a county changes from one technology to another. The average of such changes for each technology type provides a fairly accurate estimate of the effect of the technology on residual voting, because the many other factors operating at the county level (such as demographic characteristics) change relatively slowly over the brief time span of this study.

To guard against other confounding factors, we also control for contemporaneous Senate and gubernatorial races on the ballot, total turnout, and year of the election.

Results

Typical Counties and Typical Voters

A simple table captures the principle results of this investigation. Table 2 presents the average residual vote rate for each type of voting equipment. The first column of numbers is the average; the second column is the margin of error associated with this estimate; the third column is the median residual vote rate; and the final column is the number of observations (counties and years) on which the estimate is based. The average is the arithmetic mean residual vote across counties. The median is the residual vote such that half of all counties have lower values and half of all counties have higher values. A lower median than mean reflects skew in the distribution of the residual vote produced by a few cases with exceptionally high rates of under and over votes. These averages do not control for other factors, but they reveal a pattern that generally holds up to statistical scrutiny.[7]

Two clusters of technologies appear in the means and medians. Paper ballots, lever machines, and optically scanned ballots have the lowest average and median residual vote rates. The average residual voting rates of these technologies are significantly lower than the average residual voting rates of punch card and electronic voting equipment. The differences among punch card methods and electronic voting equipment are not statistically significant. Punch cards and electronic machines register residual voting rates for president of approximately 3 percent of all ballots cast. Paper ballots, lever machines, and optically scanned ballots produce residual voting rates of approximately 2 percent of all ballots cast, a statistically significant difference of fully one percent. Or to put the matter differently, the residual voting rate of punch card methods and electronic devices is 50 percent higher than the residual voting rate of manually counted paper ballots, lever machines, and optically scanned ballots. This pattern suggests that simply

[7] The data in the table only include counties with positive residual vote rate. Approximately 2 percent of counties report negative numbers; these are the figures in the official certified vote. Including counties with negative residual vote rates changes the numbers slightly but does not change the results.

changing voting equipment, without any additional improvements, could lower the incidence of under and over voting substantially.

Table 2

Average Residual Vote By Machine Type
In US Counties, 1988-2000 Presidential Elections

	Residual Vote				
Machine Type	County Average	Standard Deviation	Median	Percent of All Ballots	N
Paper Ballot	1.9	2.1	1.5	1.9	1,540
Lever Machine	1.9	1.7	1.4	1.7	1,382
Punch Card					
"VotoMatic"	3.0	1.9	2.5	2.6	1,893
"DataVote"	2.9	2.7	2.0	2.4	383
Optically scanned	2.1	2.8	1.3	1.6	1,821
Electronic (DRE)	2.9	1.8	2.7	2.2	494
Mixed	2.2	1.8	1.7	1.5	283
Overall	2.3	2.2	1.8	2.1	7,796

Another take on the average reliability of equipment is the percent of all ballots cast for which no presidential vote was registered. This is displayed in the fourth column of numbers: this is the weighted average of the county residual vote, in which we weight by total ballots cast in the county. All of the figures shrink toward zero but the same general pattern holds. In fact, optical scanning seems to do particularly well by this measure. Only 1.6 percent of all ballots cast with optical scanners showed an over vote or no vote over the years 1988 to 2000. Approximately, 1.8 percent of voters cast an over vote or no vote using paper ballots or lever machines. Slightly more than 2 percent of voters cast an over vote or no vote with punch cards or electronics.

To explore the robustness of the pattern further, we isolate specific years. Table 3 presents the residual vote rates for each year of our data.[8] The bottom row of the table presents residual vote as a fraction of all ballots cast in each year. The entries in the table are the residual vote as a fraction of all ballots cast using each type of technology in each year. It should be noted that year-to-year one expects more random variation in the numbers simply by chance. Every time someone votes on a machine they have a small

[8] We also present these yearly analyses to set the record straight. A story on cnn.com reports that different people looking at the same data can reach different conclusions. The story cites a separate analysis of the EDS data which suggests that electronics did particularly well in 1996. We have contacted EDS and have confirmed that the pattern of results in Table 3 is consistent with their data. Our data for 1996 come mainly from EDS. When we analyze just the EDS data, we arrive at the same pattern of means, with electronics producing a relatively high average residual vote.

chance of making a random error. Taking averages over many cases gives us a more precise measure of the typical behavior. This is especially true for categories of equipment for which there are relatively small numbers of observations, namely DataVote and Electronics.

Even with this statistical caveat, the yearly averages bear out the same general pattern as the overall averages. In each year, except perhaps 2000, paper ballots and lever machines on the whole have lower residual vote rates than the other technologies. In 2000, paper and levers had relatively low residual vote rates, but so too did scanners and electronics.

Electronics did relatively poorly in 1988, 1992, and 1996. 2000 was the banner year for electronics, but in that year paper ballots and optically scanned ballots had even lower average residual vote rates.

Votomatic punch cards have consistently high average residual vote rates. In 1988, 1996 and again in 2000, punch cards had substantially higher rates of over and under votes than other available technologies. This is of particular concern because approximately one in three voters use punch cards. If election administrators wish to avoid catastrophic failures, they may heed the warning contained in this table and the last. It is the warning that Roy Saltman issued in his 1988 report. Stop using punch cards.

Electronic machines look similarly prone to high residual vote rates, except for 2000, which offers a glimmer of promise for this technology.

Table 3

Residual Vote as a Percent of Total Ballots Cast By Machine Type and Year
US Counties, 1988-2000 Presidential Elections

	Residual Votes as a Percent of All Ballots			
Machine Type	1988	1992	1996	2000
Paper Ballot	2.2	1.4	2.1	1.3
Lever Machine	2.0	1.5	1.7	1.7
Punch Card				
"VotoMatic"	2.9	2.2	2.6	3.0
"DataVote"	3.7	2.4	2.1	1.0
Optically scanned	2.5	2.4	1.5	1.2
Electronic (DRE)	3.5	2.5	2.9	1.6
Mixed	2.1	1.4	1.5	2.7
Overall	2.5	2.0	2.1	2.0

Effects of Technology Adoption on Residual Vote Rates

Of course many other factors might explain the observed pattern, including features of the counties and specific elections. The difference between the county and population-weighted averages suggests that county size strongly affects residual vote rates: larger counties typically have lower residual vote rates than smaller counties. We clearly need to hold constant where equipment is used in order to gauge accurately the effects of equipment types on residual vote rates. There are certainly many other factors, such as county literacy rates, education levels, election administration expenditures, other candidates on the ballot, years in which shifts in technology occur.

We hold constant turnout, shifts in technology, other statewide candidates on the ballot, and all factors at the county and state level that do not change dramatically over the period of study, such as literacy rates. To hold these other factors constant we performed a multiple regression of changes in the residual voting rate at the county level on changes in the machine used at the county level, controlling for the year of the election, whether there was a switch in technology in a specific year in a given county, and the total vote in the county. This approach removes the effects of all factors that distinguish the counties, changes in turnout levels within counties, and some features of the election in the state.

In essence, our statistical approach is that of a "natural experiment." We observe within each county how residual votes change when counties change machine technologies. Between 1988 and 2000, slightly more than half of all counties changed their voting equipment.

The effect of specific technologies on residual votes is expressed relative to a baseline technology. We chose lever machines to serve as this baseline for the contrasts, because levers were the modal machines in 1988. The observed effects contrast the change in residual vote associated with a specific technology compared to a baseline technology. By making multiple comparisons (e.g., paper to lever, scanners to lever, etc.), we measure the relative performance of existing equipment.

We omit counties with Mixed Systems, as it is unclear exactly what technologies are in use. The exceptions are Massachusetts and Vermont, where equipment is uniform within towns: we have collected the information at the town level for these states.

Table 4 reports the observed difference between lever machines and other machine types, along with the "margin of error" (i.e., a 95 percent confidence interval) associated with the observed differences. The complete regression analyses are available upon request. Positive numbers mean that the technology in question has <u>higher</u> average residual vote than lever machines and negative numbers mean that the technology in question has lower average residual vote than lever machines. The wider the margin of error, the less certainty we have about the observed difference. A margin of error in excess of the actual effect means that the observed effect could have arisen by chance.

Table 4 presents results from two separate analyses. One analysis, presented in the first two columns, contains all valid cases. A second analysis, presented in the last two columns, trims the data of extreme cases. To guard against outliers and typographical errors, we omit the cases with lowest 5 percent of residual vote and highest 5 percent of residual vote.

Table 4 bears out the same patterns as Tables 2 and 3. After introducing considerable statistical controls, we reach the same conclusions about the relative performance of different equipment types.

Two clusters of technologies appear in Table 3. Paper ballots, optically scanned ballots, and lever machines appear to perform noticeably better than punch card methods and electronic devices. Paper might even be an improvement over lever machines and scanners.

Table 4

Which is Best?
Residual Vote Attributable to Machine Type Relative to Lever Machines
US Counties, 1988-2000 Presidential Elections

	All Counties		Excluding Extremes	
Machine Contrast	Estimated Difference In % RV	Margin of Error (a)	Estimated Difference In % RV	Margin of Error
Paper Ballot v. Levers	-0.55	+/- 0.37	-0.19	+/- 0.19
Punch Card "VotoMatic" v. Levers	1.32	+/- 0.38	1.11	+/- 0.20
"DataVote" v. Levers	1.24	+/- 0.52	0.97	+/- 0.28
Optically scanned v. Levers	0.11	+/- 0.35	-0.05	+/- 0.19
Electronic (DRE) v. Levers	0.90	+/- 0.30	0.67	+/- 0.16
Number of Cases	7513		7078	

(a) This is the 95 percent confidence interval for the estimated effect; the half-width of the confidence interval equals 1.96 s/ n, where s is the estimated standard error of the estimated coefficient for each machine type.

First consider the contrast between Paper and Levers. Looking at all counties (the first two columns of the table), the estimated effect of using paper ballots rather than lever machines of is to lower the residual vote rate by approximately one-half of one percent of all ballots cast (i.e., and estimated effect of -0.55). This effect is larger than the margin of error of .37, so the effect is unlikely to have arisen by chance. Omitting extreme cases, the evident advantage of paper ballots over lever machines shrinks: the effect becomes two-tenths of one-percent of ballots cast and this is not statistically different from zero difference between levers and paper.

Second consider optical scanning. The difference in the residual vote rate between scanners and levers is trivial once we hold constant where equipment is used, how many people voted, the year, other statewide candidates on the ballot, and technological changes. In both analyses, the difference between optically scanned ballots and lever machines is quite small and statistically insignificant. Levers and paper and scanned ballots appear to offer similar rates of reliability, at least as it is measured using the residual vote.

The third contrast in the tables is of punch cards to lever machines. Punch card methods produced much higher rates of residual voting. The VotoMatic variety of punch cards produced residual vote rates more than one-percentage point higher than what we observe with lever machines. In our examination of all cases, punch cards recorded 1.3 percent of all ballots less than lever machines did. The estimated effect remains in excess of one-percentage point even after we exclude the extreme cases. The DataVote variety of punch cards looks extremely similar to the Votomatic variety. Because DataVote punch cards have the candidate's names on the card, they were widely believed to be superior to the VotoMatic cards. We find no evidence to support this belief.

A final contrast in the table is between DREs and lever machines. Electronic machines registered significantly higher residual vote rates than lever machines (and, by extension, paper ballots and optically scanned ballots), but DREs do not do as badly as punch cards. Direct Recording Electronic devices had a residual vote rate that was almost one percentage point higher than lever machines, holding constant many factors, including the county. In other words, a county that switches from Levers to DREs can expect a significant rise in residual votes of approximately one percent of total ballots cast. Excluding extreme observations, the effect is somewhat smaller, two-thirds of one percent of all ballots cast. But that is still highly significant from a statistical perspective, and we find it to be a substantively large effect.

One final note about the estimated effect of the DRE performance is in order. Because this machine does not permit over voting, the observed difference in residual vote rates is due to a very significant rise in under voting attributable to electronic devices.

We checked the robustness of our results in a variety of ways. We tried various transformations of the dependent variable, and we split the data into counties of different sizes (under 5000 votes, 5000 to 100,000 votes, and over 100,000 votes). The pattern of results is always the same.

Perhaps the most instructive check on the robustness of our analysis comes when we track changes in equipment usage over time. What happened in the counties that used levers in 1988 in the subsequent three presidential elections? Some of those counts continued to use their lever equipment over the succeeding three presidential elections. Approximately half decided to adopt other technologies and almost all of those that changed went to either electronics or scanners. How did the residual vote rates in these counties compare to 1988?

Table 5

Counties Using Levers in 1988

From 1988 to Current year (92, 96 or 2000) ...

	Change in Residual Vote As % of All Ballots	Avg. Change in County Residual Vote	Median Change in County Residual Vote	N
Kept Levers	-0.21	-0.13	-0.25	520
To Scanners	-0.62	-0.18	-0.32	137
To DREs	0.55	0.73	0.83	250

Baseline Residual vote rate is 1.8 percent in 1988 for counties with lever machines.

Standard Deviation is approximately 0.16 for each group in the first column and 0.17 for each group in the second column.

The rows of Table 5 present three different sorts of counties. The first row shows counties that used lever machines in 1988 and stayed with levers in 1992, 1996, and 2000. The second row represents counties that had lever machines in 1988, but switched to optical scanning in one of the succeeding elections. The third row represents counties that had lever machines in 1988, but switched to DREs in one of the succeeding elections.

The columns of the table present the average change in the residual vote rate from 1988 to the current year. We then average over all years. Consider, for example, a county that had levers in 1988 and 1992, but scanners in 1996 and 2000. The first row includes the observed the change in the residual vote rate from 1988 to 1992 for such a county. The second row contains the average change in the residual vote rate from 1988 to 1996 and from 1988 to 2000, the two elections in which the county used scanners.

What happened in these histories? On average, counties that kept their lever machines saw a slight improvement in their residual vote rates from 1988 to 1992, 1996, and 2000. On average, counties that switched to scanners had their residual vote rates fall by even more than the counties that stuck with levers. On average, counties that switched to DREs saw their residual vote rates increase above the residual vote rate that they had in

1988. The difference between the increment in residual vote rate for counties that changed to scanners and counties that changed to DREs is fully one percent of total ballots cast.

What Explains the High Residual Vote Rate of DREs?

We were very surprised by the relatively high residual vote rate of electronic equipment. When we began this investigation we expected the newer technologies to outperform the older technologies. Considering some of the glowing reports about electronics following the 2000 election, we expected the DREs to do well. They did not, especially compared optically scanned paper ballots.

We are not pessimistic about this technology, however. It is relatively new, and we see this as an opportunity for improvement. In this spirit we offer six possible explanations for the relatively high residual vote rates of electronic voting machines.

First, the problems may reflect existing interfaces and ballot designs. The results might stem from differences between touch screens and push buttons or between full-face and paginated ballots (paper and levers are full faced).

Second, there may be a technology curve. As the industry gains more experience with electronics they may fix specific problems.

Third, we may be still low on the voter learning curve. As voters become more familiar with the newer equipment errors may go down. As more people use electronic equipment in other walks of life, such as ATM machines for banking, residual votes may drop.

Fourth, electronics may require more administrative attention, especially at the polling place, and thus be more prone to problems under the administrative procedures used in most counties.

Fifth, electronic equipment may be harder to maintain and less reliable than a piece of paper or a mechanical device. Power surges, improper storage, and software errors may affect DREs.

Sixth, the problem may be inherent in the technology. One speculation is that people behave differently with different technologies. Electronic machines may be simply a less human friendly technology.

There is simply too little data from existing equipment usage to say with confidence what exactly accounts for the relatively high residual vote rate of DREs that we observe. We observe approximately 480 instances of electronic machine usage. When we divide the

cases according to features of the interfaces, there are too few cases to gain much leverage on the questions of interface design. Half of the observations in our data are Shouptronic 1242 machines; another one-quarter are Microvote machines. These are push button, full faced machines. One-in-six are Sequoia AVC Advantage machines. There is not enough variety in machines used or enough observations to accurately measure whether some features of the interface explain the results. Careful, systematic laboratory testing may be required to identify the importance of the interface.

Year-by-year analysis casts some doubt on the notion that there is a voter learning curve. The residual vote rate does not fall steadily for counties using DREs, but jumps around. This variation may owe to the small number of observations in each year. Again, to resolve questions of possible learning or technology curves more detailed analyses and information beyond what we have collected will be required.

Conclusions

Paper ballots, lever machines, and optically scanned ballots produce lower residual vote rates on the order of one to two percent of all ballots cast over punch card and electronic methods over the last four presidential elections.

Lever machines serve as a useful baseline: they were the most commonly used machines in the 1980s, the starting point of our analysis. The incidence of over and under votes with Lever machines is approximately two percent of all ballots cast. The incidence of such residual votes with punch card methods and electronic devices is forty to seventy percent higher than the incidence of residual votes with the other technologies.

We have not analyzed why these differences in residual votes arise. We believe that they reflect how people relate to the technologies, more than actual machine failures. State and federal voting machine certification tolerate very low machine failure rates: no more than 1 in 250,000 ballots for federal certification and no more than 1 in 1,000,000 ballots in some states. Certification serves as an important screen: machines that produce failure rates higher than these tolerance levels are not certified or used. We believe that human factors drive much of the "error" in voting, because the observed differences in residual voting rates that are attributable to machine types are on the order of 1 to 2 out of 100 ballots cast. Given the stringent testing standards for machinery in use, these differences are unlikely to arise from mechanical failures.

We have also not examined many details about the implementation of the machinery, such as manufacturer or precinct versus central counting of ballots or specific ballot layouts.

A final caveat to our findings is that they reflect technologies currently in use. Innovations may lead to improvements in reliability rates. In particular, electronic voting

technology is in its infancy during the period we are studying, and has the greatest room for improvement. It seems the most likely technology to benefit significantly from new innovations and increased voter familiarity.

In the wake of the 2000 election, many state and local governments are reconsidering their choices of and standards for voting equipment. Many manufacturers are seeking to develop or improve machinery. This report identifies a performance standard in practice – an average residual vote not in excess of 2 percent of total ballots cast. With this benchmark in mind, we wish to call attention to the excellent performance of the optically scanned ballots, the best average performance of the newer methods, and especially to the older methods of voting – lever machines and paper ballots.

COMMITTEE FOR HONEST POLITICS, INC.

Testimony before the United States Senate Governmental Affairs Committee

By

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Committee for Honest Politics

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Mr. Chairman and distinguished members of the Committee, thank you for the opportunity to present these remarks.

Concern about barriers to voting, such as obstacles to registration and location of voting places, certainly must also include the quality of public information about voting itself, including poll opening and closing times. In this context, much has been written about the networks' early calls on Florida before the polls closed in the Panhandle--the first such call occurring at approximately 6:50 Central Time, or 7:50 Eastern, when the polls did not close until 7:00 Central.

In part as a result of these early calls, at least two studies were performed to estimate whether there was a decline in voter participation in the Florida Panhandle. One survey, by John McLaughlin & Associates, estimated that the early call discouraged more than 4% more Republicans than Democrats to go to the polls; another study by John R. Lott, Jr. of the Yale Law School estimated the drop-off at about 3%, or a range of 7,500 to l0, 000 Republican voters for the two studies. Our own preliminary findings, issued two weeks after the election concluded that approximately 19,133 Florida voters were disenfranchised, assuming 54 voters did not vote in the last hour the polls were open at each of the 361 polling places in the Central Time Zone. Given the 2:1 vote advantage enjoyed by Bush over Gore in the Panhandle counties, the minimum effect was a loss of 12,761 votes for the Bush campaign.

In an attempt to supplement the available data, the Committee for Honest Politics surveyed and interviewed a large number of geographically dispersed West Florida poll workers to try to understand the timing and severity of the voting decline. What was discovered, from countless interviews, and more than 40 affidavits from poll workers, poll clerks, poll inspectors and bailiffs -- was that the voting decline began shortly after 6:00 Central, when ordinarily the voting traffic increases.

To illustrate this point, here are five excerpts from the affidavits:

Poll Worker, Bay County, Precinct No. 23: "I have been a poll worker since the 1970's. Voting was steady all day until 6:00 PM. Between 6:00 – 7:00 PM it was very different from past elections. It was very empty. The poll workers thought it was odd. It was like "the lights went out." We joked with the deputy on duty because there was no one in line for the deputy to be placed behind when the polls closed."

Clerk for Elections, Okaloosa County, Precinct No. 37: "We had over 1300 people turn out with an average of about 100 voters per hour until the last hour. When the doors were open, there were quite a number of people waiting in line to vote. There was a heavy flow throughout the day, with a noted increase during the noon hour and again between 4:30-6:00 PM. Soon after 6:00, I noticed that the volume dropped to almost zero. In past elections, there was usually a rush of people coming from work, trying to get to vote before the polls closed."

Clerk of Elections, Okaloosa County, Precinct No. 34: "As the Clerk, my duties included working the books, instructing people to vote, and handling the ballots, and making sure that things go smoothly and courteously. When the doors were open, there were about 50-60 people waiting in line to vote. During the rest of day, there was a constant flow of voters. We were expecting a rush after Hurlburt Field let out about 4:30. I began to get my workers to take their dinner breaks before 6:00 anticipating people coming before the polls closed. Between 6:15-6:20, I looked around and asked, "Where is everybody?" My poll workers were just as perplexed as I was. I don't think we had more than five people from 6:15 until we closed at 7:00. We had averaged 80 voters per hour until the last hour."

Deputy for Elections, Santa Rosa County, Precinct No. 34: "On Tuesday, November 7, 2000, I was on duty and worked at the precinct from 6:00 AM until 8:00 PM. We have the second largest precinct in the county with 4,678 voters. I kept track of the numbers of voters per

hour. There were many voters waiting to vote in the first hour and then there was a steady flow all day. By the last hour, there was a dramatic decline in voters. It is the deputy's job to stand behind the last voter in line at 7:00 PM. Eight years ago in the presidential election, there were so many people in line that the last voter did not vote until nearly 10:30 PM. When I went outside at the end of the day to tell people to hurry along, there was no one in the parking lot."

Poll Inspector, Escambia County, Precinct No. 8: "I have worked elections for the past three years to include local and Congressional. On Tuesday, November 7, 2000, I was on duty and worked at the precinct from 7:00 AM until 7:00 PM for the general election. We had the usual rush in the early morning, at noon and right after work. There was a significant drop in voters after 6:00. The last 40 minutes was almost empty. The poll workers were wondering if there had been a national disaster they didn't know about. It was my observation that this decline in voters between 6:00 and 7:00 was very different when compared to previous elections. The last 30 minutes was particularly empty. There is usually a line after the poll closes. In this election there was no one."

As a result of the apparent disconnect between the early call and the voter drop, the Committee reviewed the tapes of all five Networks between 6:00 P.M. and 7:00 P.M. Central Time to see if there was anything else that might account for the timing.

What the review showed clearly is that all five Networks announced to the public at the top of the hour that the polls in Florida had closed, that is at 6:00 P.M. Central Time, that the polls throughout Florida had closed -- when in fact there was still a full and obviously crucial hour of voting left to go in the Panhandle. Stated another way, when 361 polling places were open and expecting a normal end-of-the-day voter turnout, the West Florida public was told – falsely – that no voting place remained open.

With the exception of Fox, all other networks repeated the poll closing information throughout the 7 P.M. hour broadcast. The Networks both reported that the Florida polls had closed and so implied by calling the Senate race or discussing exit poll data from Florida in a way that implied or assumed the polls were closed.

The national feeds were carried uninterrupted by local Florida affiliates. One local network television reporter told me she that was in the control room on election night and angry calls from voters began flooding the television station shortly after 6:00 P.M.

CBS, for example, made at least 13 explicit statements during the hour that the Florida polls were closed, a number which increases to 18 if the statements calling Florida for Gore are included. Moreover, CBS made more than 15 additional statements implying that the polls were closed, such as statements announcing or discussing the call of the Florida Senate race or discussing the Florida exit polls results. The combined number averages out to more than one statement or reference per minute--almost three times the number of similar statements and references for the next most discussed state where the polls were closed.

In addition, CBS made frequent visual reference to a map showing which states' polls were closed and which states CBS had called. This map showed Florida's polls closed at 6:00 PM Central, and was displayed by CBS on more than 15 occasions, only a few of which coincided with the verbal reference to the polls being closed.

Mr. Chairman, the fact remains that the national news networks owe a duty to the people not to misstate on Election Day the very fundamentals of the electoral procedure itself. Certainly, that duty would include not telling voters that the polling places were closed when in fact they were open. Essentially, if a government entity had disseminated such false information on an instantaneous and national scale, such as the national news networks did, they would be guilty of one of the most pervasive Election Day civil rights violations on record.

It may be that there is no way to precisely quantify the connection between the networks' repeated statements beginning at 6:00 P.M. Central time that the polls were closed in Florida and the drop-off in voter traffic beginning at the same time.

But the Networks owe a duty in any event not to misstate poll closing times, especially when they have been asked by the state involved not to do anything to disrupt voting in that state. Specifically, Mr. Chairman, I respectfully direct the Committee's attention to the document attached as an exhibit to my prepared statement. It is a media release the Florida Secretary of State issued to all national and local media on October 30, 2000, a week prior to the election. It asks the media to respect the fact that the polls in Florida's Central Time Zone do not close until 8 P.M. Eastern Time. The Florida Secretary of States says: "The last thing we need is to have our citizens in the Central Time zone think their vote doesn't count – because it certainly does." Yet, Mr. Chairman, that is precisely the result the national news media, by false reporting, actually achieved. (Attached is a suggested floor amendment to the Federal Communications Act. This amendment would prohibit "on the day of any federal election" any person or licensee to disseminate "any false statement concerning the location or times or operation of any polling place designated by proper state authority for use by electors in such election.")

From the perspective of safeguarding our institutions of government, the greatest First Amendment right of all is the right to vote and to vote on a basis of equality with other voters. The broader right to free speech should not cloak with immunity the misuse of the public airways by licensees who would use their privileged access to deprive, through inaccurate reporting by seemingly credible news outlets, the free franchise of others less powerfully armed.

That concludes my prepared statement.

The video tape that the Committee will now watch are excerpts from the election night network news coverage which, occurred while 361 polls in the Panhandle were still open, each of which had an average of 81 voters vote each hour the polls were open. 6

I will then try to answer any questions the Committee may have.

Florida Department of State
Katherine Harris
Secretary of State

NEWS RELEASE

For Immediate Release
October 30, 2000

Contact: Clay Roberts
(850) 413-9496

Secretary of State Requests Patience in Predicting Winners of Races

Tallahassee, FL —Secretary of State Katherine Harris today requested the media to delay predictions of the outcome of elections until after 8 p.m. Eastern Standard Time. Florida has six counties in the Central Time zone and the Secretary wants all Floridians' votes to be cast prior to predictions on the winners of races.

With several races too close to call, full voter involvement is imperative for Floridians to participate in the electoral process. "The last thing we need is to have our citizens in the Central Time zone think their vote doesn't count – because it certainly does!"

Waiting until 8 p.m. Eastern Standard Time allows all Floridians the opportunity to decide the outcome of races within Florida.

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Room 1801 The Capitol Tallahassee FL 32399-0250 • (850) 488-7690 • FAX: (850) 488-1768
Internet: http://election.dos.state.fl.us • E-mail: election@mail.dos.state.fl.us

UNPRINTED AMENDMENT **No. _____.**

Intended to be proposed / proposed by Mr. _____ to S. _____ / H.R. _____,

Viz: Add at the end of the bill the following new Section:

" Sec. ___. Notwithstanding any other provision of law, the Federal Communications Act, as amended, is hereby further amended by adding at the end thereof the following prohibition: 'No person or other entity of whatever nature licensed to operate under any provision of this Act, or otherwise subject to any provision of this Act, shall, on the day of any federal election, falsely disseminate, by wire or any other electronic means using any method or device regulated by this Act, any false statement concerning the location or times or operation of any polling place designated by proper state authority for use by electors in such election. Any person or entity who violates the foregoing prohibition shall be punished by .... '.".

Testimony of

GARY MCINTOSH
State Elections Director, State of Washington

Before the

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

Regarding

FEDERAL ELECTION PRACTICES AND PROCEDURES

Thursday, May 3, 2001

Thank you Mr. Chairman and members of the committee. I appreciate the opportunity to describe to you the way Washington State has implemented various provisions of the National Voter Registration Act.

Let me begin by saying that our State was an original supporter of the National Voter Registration Act. Our previous Secretary of State, Ralph Munro, testified on numerous occasions in support of the concept of integrating voter registration with the driver's licensing process—a system commonly known as "Motor Voter."

I believe Motor Voter works. It is cost-effective, it is secure, and above all, it is bringing citizens back to the voting booth. Washington's Motor Voter registration program represents a significant step forward in the state's efforts to increase citizen participation in voting. The program, which went into operation in January of 1992, provides greater convenience and accessibility for the public while enhancing the security and accuracy of the voter registration process.

I would like to divide this presentation into three sections. First, I will discuss the registration process at our driver's licensing agencies. Second, I will present statistical information regarding the effect Motor Voter has had on voter

participation in our State. Finally, I would like to share with the committee the security features of the Motor Voter Program.

Quick, Convenient Registration

Under the Motor Voter program, eligible citizens are offered a near-automatic method of registering to vote when they apply for or renew their driver's license. The program streamlines the process by creating a computer link between voter registration and driver licensing records.

Motor Voter takes advantage of the fact that almost all of the information needed for registering to vote – name, address, date of birth – is already in the state Department of Licensing's (DOL) computer system. Whenever someone applies for or renews their driver's license, the licensing examiner uses his or her computer terminal to "call up" the information or, in the case of new applicants, to enter it in the system.

Under Motor Voter, every person applying for a driver's license or state identification card is first asked if he or she wishes to register to vote. When the answer is yes, the examiner verifies that the address information is correct and then "flags" the applicant's record with a simple entry on the computer terminal. To complete the registration, the applicant simply signs a voter registration form affirming that he or she is 18 years of age and a citizen of the United States.

For most people, the voter registration portion of the licensing process takes about **one minute** to complete (slightly longer to transfer a registration or update an address). Motor Voter represents the fastest method of voter registration available.

An Effective Response to Dwindling Voter Participation

Washington's Motor Voter program was developed in direct response to a serious decline in voter participation among the state's eligible citizens. Simply put, voter registration and voting were not keeping pace with the growth in Washington's voting-age population.

By the 1988 presidential election, voter registration as a percentage of the eligible population had dropped to an all-time low of 73.7 percent. From 1984 to 1988, registrations grew by only 40,000 people, an alarming drop from the usual growth of 100,000 to 200,000 registrations between presidential elections.

The trend was the same for voting. In the 1988 presidential election, only 56 percent of those eligible to vote actually did so. Even worse, the number of people voting in 1988 actually declined from 1984, despite a large increase in the voting-age population.

Under the previous registration system, anyone wishing to register to vote could only do so in person with an authorized registrar. While registrars were available in many locations, would-be applicants still had to find one and then make a trip to get signed up to vote.

In contrast, Motor Voter automatically provides an opportunity to register to the vast majority of Washington's voting-age population. More than one million people visit the state's 62 driver licensing outlets each year; over a four-year period, almost every eligible citizen in the state will be afforded the opportunity to register to vote.

The bottom line is that Motor Voter is working:

- During the first year of operation, the Motor Voter program recorded 218,604 transactions. On average, the program registered 875 people every working day of 1992; at times, Motor Voter registered more than **1,000 people per day**.

- For the 1992 election, a record 2.8 million citizens were registered to vote in Washington state. Registrations rose by nearly 315,000 from 1988, the second-largest increase in state history.

- In **just nine months** of operation, Motor Voter accounted for **58 percent** of the total net increase in registrations from 1988 to 1992.

- In the year 2000, a total of 127,000 voters were processed through Motor Voter. A total of 1.5 million have been processed since the program started in 1992.

- In terms of mid-term elections, voter participation is on the rise. In the 1998 General election, voter registrations surpassed levels set in 1978 and in terms of turnout, participation was at the highest level since 1982.

- While Washington, like many other states, experienced a drop in voter turnout in 1996, it did experience a significant upturn in 2000.

A New Level of Security

By maintaining face-to-face, in-person registration, Motor Voter, combined with an extensive use of mail-in voting, provides a number of new security features to safeguard the voter registration system against fraud and abuse.

One of the most important advances comes through the link between driver's licensing and voter registration. By connecting these two systems, the Secretary

of State and local elections officials have several new cross-checks and auditing tools to protect the integrity of the registration process. (For example, it is the only form of voter registration in which the applicant's photo is taken.)

In addition, the Motor Voter law requires all registrants to declare that they are U.S. citizens, it sets forth increased penalties for fraudulent registrations, and it requires that the penalties be clearly set forth on the registration form.

Additionally, this past year, the Washington Legislature passed new legislation which will add even more security to the Motor Voter Process. Not only will applicants be asked if they would like to register to vote, licensing examiners will also remind each individual that they must be a United States citizen and at least 18 years of age in order to vote.

Shifting the Emphasis

There are three basic elements involved in tackling the problem of voter participation: registration, education and turnout. Motor Voter is aimed at the first element. After all, you can't persuade people to go to the polls if they aren't registered in the first place.

Motor Voter is not a cure for all that ails our election process. It does, however, remove many of the administrative hurdles placed in front of those who want to register. Coupled with campaign reform, voter education, and programs to increase turnout, Motor Voter can provide a positive step in promoting a fully representative democracy.

Testimony before the Senate Governmental Affairs Committee
Federal Election Practices and Procedures, Part I

Presented by The Honorable John T. Willis
Secretary of State, State of Maryland
May 3, 2001

Mr. Chairman, Senator Lieberman, members of the Senate Governmental Affairs Committee, thank you for the invitation to appear before you to discuss the most important relationship under our constitutional structure of government – the relationship between individual citizens and their representatives. In Federalist Paper No. 22, Alexander Hamilton closed with the observation:

> "The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow immediately from that pure, original foundation of all legitimate authority."

The 2000 presidential election highlighted weaknesses in the election process which threaten the purity of the flow in the political stream from the people to their governmental leaders. It is, therefore, not only appropriate, but also imperative, that this Senate Committee, and other legislative bodies at all levels of government, take necessary, meaningful, and immediate action to guard against further deterioration in the quality of the relationship between citizens and their government.

The right to vote is the essence and foundation of the constitutional framework of our federal and state governments in the United States. The recognition of the sanctity and power of the right to vote requires that its exercise not be diminished or impaired. Accordingly, it is mandatory that all possible steps be taken to guarantee that every eligible citizen in the United States has the unfettered opportunity to vote and that the mechanics of voting and election procedures facilitate – not frustrate – the free exercise of the right to vote.

The conduct of elections is a complex enterprise. In the 2000 presidential election, more than 100 million voters cast ballots on over 700,000 voting machines in over 200,000 polling places throughout the country that were managed by approximately 22,000 election officials and 1.4 million part-time election workers. On election day, 1,940,089 Marylanders voted in 1,666 precincts at 1,459 polling places throughout the State, and 96,366 absentee ballots were counted within several days thereafter. Hundreds of state and county election officials, along with over 17,000 election judges stationed at the polling places, were responsible for the administration of the recent election in Maryland.

Despite the size and scope of election activity, and the important consequences of elections for citizens, the infrastructure for the administration of elections lags well behind the support systems for routine personal, commercial, governmental and social interaction in our nation and respective states. Billions of transactions utilizing modern technology are conducted every day by U.S. citizens with a high degree of confidence and user satisfaction. Citizen-voters should have the same level of confidence and satisfaction in the accuracy and capability of the systems and equipment used to exercise the most fundamental right – **the right to vote**. The technologies used for obtaining money at the ATM, pumping gas at the neighborhood service station, making airplane reservations, or checking out of the supermarket should be available for exercising the most important and fundamental right in our country.

Elections in this country should be administered by comprehensive election management systems which would provide electronic linkage through all phases of election administration – from voter registration before the election to the voting machines in polling places on election day and from the initial tabulation of results to the official certification of the election by the appropriate reviewing entity. Assisted by adequate resources and advanced technology, a comprehensive election management system can ensure accurate election outcomes and enhance public confidence in the election process.

A central component of the current election process is voter registration which the U.S. Congress has long recognized in the passage of landmark legislation such as the 1965 Voting Rights Act, as amended, the 1984 Voting Accessibility for the Elderly and Handicapped Act, the 1986 Uniformed and Overseas Citizens Absentee Voting Act, and the 1993 National Voter Registration Act (the "Motor Voter" Act). Modern technology can be employed to ensure compliance with these federal laws as well as make voter registration easier and more convenient for the citizen-voter. On-line access to voter registration information and applications, expanded opportunity to register at schools, government offices and public places, and electronic transfer of registration between jurisdictions can be securely accomplished. Election administrators can also benefit from greater use of technology in the voter registration process with improved databases, verification of information with non-election administrative agencies, and the sharing of information across jurisdictional lines.

For example, the State of Maryland began constructing in 1998 a statewide voter registration system as part of its comprehensive election management system. It is expected that the system will be functional by December 2001 and will allow real-time access to voter registration rolls by county and state election officials. This capability will ensure that a voter is not registered in more than one jurisdiction, interface with other governmental agencies in Maryland (*e.g.*, the Motor Vehicle Administration and the court system), and enable Maryland to cross reference its voter registration database with our neighboring states. With additional resources, Maryland envisions having a computer in each polling place with access to the statewide voter registration system to ensure that the voter is at the correct polling place and to verify the signature on the voter authority card with the signature on the voter registration application.

The National Voter Registration Act ("NVRA") was enacted to promote voter participation and eliminate obstacles to voter registration. In response to concerns about Maryland's implementation of the National Voter Registration Act for the 1996 presidential election cycle, and to develop strategies and techniques to ensure NVRA compliance, Maryland Governor Parris N. Glendening established the Interdepartmental Working Group on NVRA Implementation comprised of representatives from the state agencies designated as voter registration agencies. The purpose of the group, which continues to meet on a regular basis, is to enhance access of voter registration information and forms, to develop methods for increased voter registration, and to implement "best practices" used by other states in implementing the NVRA. In the recent election cycle, voter registration was promoted by the NVRA mandated agencies in both internal and public newsletters, additional training was provided to employees interacting with the public, and voter information tables were staffed in government buildings highly trafficked by employees and the general public.

During the recently concluded session of the Maryland General Assembly, legislation was adopted in response to reports of Maryland citizens being unable to vote after completing a change of address form at Maryland's Motor Vehicle Administration. Maryland Senate Bill 740 and Maryland House Bill 1458 will simplify the voter registration process for a voter moving from one jurisdiction to another within Maryland by providing for a simple transfer of registration rather than a "drop and add" process. In addition, new statutory and administrative provisions will streamline the transfer of voter information between the Motor Vehicle Administration and the Maryland State Board of Elections.

In addition to needed improvements in the voter registration process, the 2000 Presidential Election dramatically highlighted the importance of the voting system technology used to cast and count votes. Maryland's Governor Parris N. Glendening appointed a Special Committee on Voting Systems and Elections Procedures in Maryland on December 4, 2000, before the 2000 Presidential Election was judicially determined, to evaluate the voting systems and election procedures in Maryland, review existing standards for recounts and contested elections, recommend appropriate funding levels to provide Maryland with accurate, convenient and reliable voting systems, and recommend statutory and regulatory changes to ensure full and fair elections. The full 124 page Report and Recommendations of the Special Committee can be accessed from the Office of the Secretary of State's website at ***http://www.sos.state.md.us***.

As a result of its two months of research, study and work, the Special Committee confirmed that the type of voting system used by a jurisdiction ***does*** make a difference in the accuracy of the vote count and that election procedures ***do*** affect the quality of the election results. During the past decade, nineteen Maryland jurisdictions replaced mechanical lever and punchcard voting systems with optical scan or Direct Recording Electronic (electronic touchscreen ballot) voting systems. The change to more technologically advanced voting systems has been accompanied by a significant reduction in the percentage of overvotes and

undervotes for the highest office on the ballot.[1] With 2,036,455 voters participating in the 2000 presidential election in Maryland, only 10,553 voters were not recorded as casting a vote for President yielding a low percentage of unrecorded votes in sharp contrast to the experiences in other states. Modern voting systems, specifically the precinct count optical scan and Direct Recording Electronic voting systems, can prevent the voter from "overvoting" a ballot and, in Maryland, have proven to be accurate in vote counting.

While the transition to new technology is inevitably resisted for a variety of reasons, employing the most advanced voting systems and equipment is consistent with our nation's history of progress and with the ultimate goal of an informed and satisfied citizen-voter. In fact, the contemporary debate over the most appropriate voting system has a clear historical analogue. As the country's population grew rapidly, and suffrage was expanded, the voting system debate in the middle of the twentieth century was between maintaining very carefully crafted rules for counting paper ballots and authorizing mechanical lever voting systems. The fundamental nature of the debate involving accuracy, security of the ballot, and ease of voter use has not changed. See "Voting Machines Vs. Paper Ballots," The Baltimore Sun, May 3, 1935, (Early Edition). (Copy attached.)

In order to overcome the instinctive security of a paper audit trail with a marked ballot and other concerns about advanced voting systems, the selection of electronic voting systems must be preceded, and accompanied at every step of implementation, by thorough testing to ensure accurate, reliable, and secure election results. Maryland and thirty-one (31) other states have included as part of the state certification process for voting systems the Voluntary Federal Voting Systems Standards developed by the Office of Election Administration and the National Association of State Election Directors. While these voluntary standards have been implemented in a majority of states, adequate resources need to be allocated to the Office of Election Administration for continuous updating of the standards as voting system technology evolves.

In American politics, close elections are not unusual and occur regularly at every level of government and in every state. In Maryland, the 1800 presidential election produced a tie in the State's electoral votes. In the 1904 presidential election, the difference between the leading Republican and Democratic state electors was a mere fifty-one (51) votes. Former Congressman Kweisi Mfume commenced his distinguished career with a narrow three (3) vote primary election victory in a 1979 race for City Council. Important offices at county and municipal levels of government are often closely decided and, in some recent instances, have been decided by a single vote or resulted in a tie vote. The frequent occurrence of close elections demands that the voting systems and equipment used in elections be accurate and reliable and that election

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[1] See Tables 1 and 3, pp. 104 and 106, Report of the Special Committee on Voting Systems and Elections Procedures in Maryland (February 2001). The percent of "no vote" for President in Maryland has been reduced by over one-half to 0.518% for the 2000 presidential election. The percent of "no vote" for President in Maryland at the polling place was 0.450%.

procedures be open, clearly understood, and fair. In the future, there will be close elections for statewide offices, the U.S. House of Representatives, the U.S. Senate and, perhaps again, for President of the United States.

In a speech to the delegates of the Constitutional Convention in 1787 urging an end to divisiveness and in support of the proposed new governing document, Ben Franklin observed,

> "Much of the strength and efficiency of any government, in procuring and securing happiness to the people, depends on *opinion*, on the general opinion of the goodness of that government, as well as of the wisdom and integrity of its governors."

Franklin's observations ring true today. The citizens' perception and opinion of their government and political leaders is based, in large part, on their level of trust in fair, open, and accurate elections. Improvements in voting systems and election procedures are therefore a crucial component in promoting the essential relationship in our democratic form of government between actively engaged citizens and a fair, responsive government which was cherished by our nation's founders. In order to manifest the wisdom and integrity urged by Ben Franklin, a strong federal, state, and local partnership needs to be forged for election reform.

While elections have historically been funded by local government, the federal government as well as state governments should partner with counties and municipalities in the funding of the comprehensive election management systems. Members of the election community know the problems with current election administration and know how to solve them. What these hardworking and dedicated election officials need are resources to make the necessary changes to improve the administration and conduct of elections in the United States. State and local governments should not bear alone the full burden of implementation of new technologies for voter registration and voting systems. The National Association of Secretaries of State ("NASS") adopted on February 6, 2001, a useful resolution to guide federal, state, and local officials in election reform efforts. (Copy attached.)

Accordingly, I strongly urge this Senate Committee and the United States Congress to seize the opportunity presented by the increased public awareness resulting from the confusing and uncertain 2000 Presidential Election. I encourage the federal financial support for state and local election officials and suggest an annual appropriation from the U.S. Congress of $1.00 per individual of voting age in each state to assist in the necessary improvements of the equipment, voting systems, and procedures used in the conduct of federal, state, and local elections. Together, we can take significant, wise steps forward in assuring the integrity of the conduct of elections for all of the citizens of our country and ensure that the voice of the people is correctly and unambiguously heard.

Voting Machines Vs. Paper Ballots

MAY 3 1935

By CHARLES T. LeVINESS 3d

RECENTLY eighty-four men sat around tables in Superior Court room for four days and evenings at $6 per day, the party being given by the taxpayers of Baltimore. Their job was to count votes. The same votes had been counted once by six judges and clerks of election in each of the 885 polling places of Baltimore. The results had been tabulated by the newspapers and the police. Thereafter the results had been officially counted and tabulated by the Board of Supervisors of Elections. The closeness of the race had provoked the recount. *Every time the votes were counted the result was different.*

Aside from cries of fraud—which make good headlines but have only the slightest basis in fact—the disparity in the results lay squarely upon the doorstep of the paper ballot. It had failed in its only purpose: to enable registered voters accurately to record their preferences at the polls. Quite naturally the recount again revived the hardy perennial of the voting machine.

BALTIMORE city could have voting machines in short order if the election supervisors and the municipal authorities wanted them. No action by the Legislature is necessary since the Legislature has spoken more than twenty years ago and has made it a local matter.

The sections of the code under which this authority is given seem to be little known and perhaps a quotation will be pardoned:

> The election supervisors of Baltimore city and the election supervisors of the respective counties are hereby authorized and empowered to use voting machines in primary and general elections under such rules and regulations as said election supervisors may deem advisable or necessary. . . . All elections held through the medium of voting machines shall have the same validity in law as elections held by means of paper ballots.
>
> The election supervisors of Baltimore city and the election supervisors of the respective counties are hereby given the power and authority to determine what precincts in said city and what precincts in the respective counties shall be first equipped with voting machines, and said election supervisors are hereby authorized to purchase from time to time such machines as meet their approval and in such numbers as they deem advisable, payment for said machines to be made out of money appropriated for that purpose.—Acts of 1914, Chapter 513 (Code, Article 33, Sections 222, 223 and 224).

Thus to substitute voting by robot for voting by hand there are two prerequisites:

1. The election supervisors must deem it "advisable."

2. Money must be "appropriated for that purpose."

In Baltimore this means that the Mayor and City Council must do the appropriating.

In June Governor Nice's newly-appointed Board of Supervisors of Elections will take office in Baltimore, with an entirely new personnel. Before that there are municipal elections for Mayor and City Council. It might be of interest to know how these officials stack up on this question.

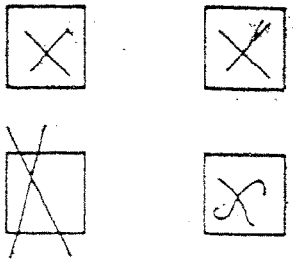
—o—

THE inadequacy of the paper ballot is nothing new. Some have claimed that with the decline in illiteracy there would be fewer and fewer spoiled ballots. But the facts do not bear out this claim. If anything, it seems that in the precincts where business men vote, one finds the most rejected ballots. In the Meyer-Sellmayer recount over 200 ballots were thrown out because the voter had used his own pencil instead of the indelible pencil ordained by the election laws. In most cases these were cast by business men who thoughtlessly or ignorantly pulled out their own pencils instead of using the little indelible slung on a chain in the dimly-lighted booth. Yet this perfectly natural act on the part of intelligent voters invalidated their whole ballots.

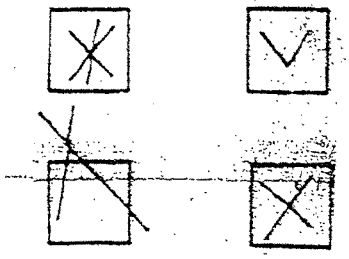
In one precinct, so the recount revealed, thirty-seven persons were disfranchised because an election judge forgot to initial that many ballots. In another place, six votes were tossed out because the election judge had subscribed his initials in pencil rather than in ink, as required by the law.

The act of making an X-mark in a square opposite a name may sound like a simple procedure even for the most unlettered. But it is far from simple for many persons, as an examination of any batch of ballots will attest. It is estimated that in any general election at least 1,000 ballots are thrown out because of faulty cross marks. In the Meyer-Sellmayer recount the ballots rejected for this reason ran over 600.

Our election laws go into painstaking detail on the subject of this X-mark—and not one voter in 1,000 has read the laws. For instance, the law says that the following marks shall be considered good:



But if the voter, by nervousness, bad sight, bad light, palsy or sheer devilry, makes any of the following marks the law says his whole ballot must be thrown out:



The reason ascribed to the distinction here is that in the upper group the discrepancies are apt to be mere errors, while in the lower bracket they are more apt to be intentional distinguishing marks—marks made to show that a certain person voted a certain way so that if a vote buyer checks up he can see if he got his money's worth, or was sold out or double-crossed or what.

So jealous is the law to maintain the purity of the polls in this respect that obviously many honest but careless voters are disfranchised at every election because of a slip of the pencil. This was graphically brought out by the recent recount.

It might be added that the above diagrams actually have been passed upon, in one shape or another, by the Court of Appeals of Maryland, thus giving the sanction of the highest authority to what might seem to the uninitiated to be hair-splitting delicateness of distinction.

—o—

VOTING machines, of course, would change all this. One votes by setting a few markers and pulling a lever. And the results are tabulated as you go.

In the past the city has bought a number of these machines on the installment plan and they are now in use in some of our precincts. The 1933 Legislature passed a law requiring the supervisors of election to use these few machines in all future elections, not more than two to a polling place. And the city could buy more on the same plan if it chose to, and if the supervisors deemed it "advisable."

Senate Bill No. 213, introduced into the last Legislature by Senator Fine, would have eliminated the two clerks in each polling place but would have kept the four judges of election. It was defeated. However, the city's right to go ahead with voting machines under the present set-up was unimpaired.

Opponents of machines cite their great cost to the city. Also they claim they are complicated to operate and are more susceptible to honest mistake than paper ballots, at least until the electorate has practiced up on them for a few years. And, too, it is claimed that ward heelers with a flair for machinery and shady practices can "fix" them to serve their own ends—on the theory that fraud, like love, will always find a way.

But machines would do away with recounts, and that would be something

NATIONAL ASSOCIATION OF SECRETARIES OF STATE ELECTION REFORM RESOLUTION

National Association of Secretaries of State Election Reform Resolution

Adopted February 6, 2001

WHEREAS, the nation's Secretaries of State are committed to protecting an individual's right to vote by ensuring access, accuracy and integrity in elections;

WHEREAS, the administration of elections is a complex enterprise involving 200,000 polling places, 7,000 jurisdictions, 1.4 million poll workers, more than 700,000 voting machines, 100 million voters and 22,000 elections officials;

WHEREAS, the United States was founded upon the principle of self-government in which the right to vote is the most important and fundamental right of the people;

WHEREAS, the conduct of elections is primarily the responsibility of state and county elections officials;

WHEREAS, America's voting systems and election procedures must ensure that all votes are counted accurately and that voting is easily understood and as convenient and accessible as possible;

WHEREAS, our collective expertise with elections issues and our strong commitment to fair and accurate elections will enhance our democratic process;

WHEREAS, the recent election and subsequent civics lesson that emerged draws critical attention to the issues that NASS has steadfastly sought to address; and

WHEREAS, to ensure that all eligible voters are afforded their constitutional right to vote and unfettered access to the elections process,

The National Association of Secretaries of State recommends that State and Local governments and election officials continue to work to:

1. Ensure non-discriminatory equal access to the elections system for all voters, including elderly, disabled, minority, military, and overseas citizens.

2. Encourage the adoption and enforcement of election day rules and procedures to ensure equal treatment of all voters;

3. Modernize the voting process as necessary, including voting machines, equipment, voting technologies and systems and implement well-defined, consistent standards for what counts as a vote throughout the election process ensuring accurate vote counts and minimal voter error;

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4. Encourage states to adopt uniform state standards and procedures for both recounts and contested elections, in order to ensure that each vote is counted and to provide public confidence in the election results;

5. Provide elections officials with increased funding to implement the recommendations of this resolution;

6. Conduct aggressive voter education and broad-based outreach programs;

7. Expand poll worker recruitment and training programs by adopting the innovative practices of other states and localities, with the ultimate goal of providing a satisfactory election day experience for all voters;

8. Maintain accurate voter registration rolls with a system of intergovernmental cooperation and communication;

9. Enhance the integrity and timeliness of absentee ballot procedures;

10. Adopt and adhere to the Voluntary Federal Voting Systems Standards for Voting Systems;

11. Provide for continuous training and certification for election officials; and

12. Collect data and election information on a regular and consistent basis to provide a nexus for public consumption and systemic improvements.

NASS further recommends that the Congress:

1. Fully fund the continuous update of the Federal Voting Systems Standards developed in consensus with state and local election officials;

2. Fund the development of voluntary management practices standards for each voting system;

3. Promote intergovernmental cooperation and communication among state and local elections officials to facilitate the maintenance of accurate voter registration rolls; and

4. Provide funding to the States to implement the state and local recommendations of this resolution.

Now, THEREFORE BE IT RESOLVED that the National Association of Secretaries of State welcomes the opportunity to work with the Administration, Congress, governors, state legislators and county election officials as well as organizations such as National Association of State Election Directors and the Election Center, all members of the election community, and concerned organizations, community groups, and the public to secure funding to ensure our citizens will have accurate, reliable, and efficient systems of elections;

THEREFORE BE IT FURTHER RESOLVED, that we, the National Association of Secretaries of State, reaffirm our determination and commitment to ensure that all eligible voters can register and vote, and that all votes will be counted accurately and fairly in each and every election.

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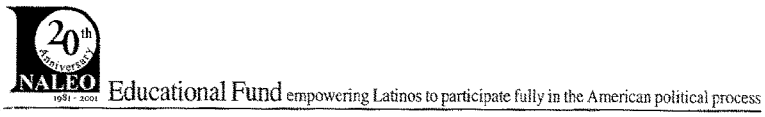

Testimony

by

Arturo Vargas, Executive Director

National Association of Latino Elected and Appointed Officials (NALEO)

Educational Fund

before

the United States Senate Committee on Governmental Affairs

on election practices and procedures

Washington, D.C.

May 9, 2001

10:00 a.m.

Dirksen Senate Office Building, Room 342

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04/01

Chairman Thompson, Ranking member, Senator Lieberman, distinguished Senators and guests. Thank you for the invitation to testify before you today on election practices and procedures. I am Arturo Vargas, Executive Director of the National Association of Latino Elected and Appointed Officials Educational Fund. The NALEO Educational Fund is the leading national organization that empowers Latinos to participate fully in the American political process, from citizenship to public service. We fulfill our mission by developing and implementing programs that promote the integration of Latino immigrants into American society, developing future leaders among Latino youth, providing assistance and training to the nation's Latino elected and appointed officials; and by conducting research on issues important to the Latino population. The NALEO Educational Fund is a 501(c)(3) non-profit, non-partisan organization. Our constituency includes the more than 5,400 Latino elected and appointed officials nationwide.

In examining the issue of election procedures and practices, I would like to offer the members of the committee our experiences of promoting Latino involvement in the electoral process, as well as the perspective of Latino voters in America today. I would like to discuss the importance of continued enforcement of the Voting Rights Act, particularly Section 203. This section of the Voting Rights Act, as I will discuss, was amended in 1975 to provide voting assistance to language minorities. Last, I would like to share with you our views about the role the federal government should play in addressing the problems that exist in our election systems. From our experience, we believe it is critical that federal election reform be accomplished in a manner that preserves and enhances opportunities for electoral participation among all minority communities. We believe the goals of many of the members of this committee in addressing election reform are completely consistent with those of full participation.

As background, I would like this committee to note that the NALEO Educational Fund has always played a non-partisan role in federal, state and local elections. From assisting Latinos in becoming citizens and registering to vote, to casting their ballots, throughout the years, our efforts have included programs to educate Latinos about voting and participation in the civic life of their

neighborhoods and communities.

I want to start by discussing the issue of voting assistance being provided in languages other than English, which will lead me into the importance of Section 203 of the Voting Rights Act and the positive impact it has had on minority electoral participation. The right to vote is a fundamental right. Yet there are many U.S. citizens of language minority backgrounds who are not fully proficient in English and cannot effectively participate in the electoral process due to language barriers. Some of these Americans were born and raised here and never had the opportunity to become fully proficient in English, others are naturalized citizens who because of their advanced age were not required to demonstrate a knowledge of the English language in order to qualify for U.S. citizenship.

Being unable to read or comprehend in English voter registration materials, referenda or ballots can discourage many of these voters, particularly first-time voters, from exercising their right to vote. Recognizing the link between language barriers and low voter turnout, Congress enacted Section 203 of the Voting Rights Act in 1975. Section 203 requires certain jurisdictions that meet certain population thresholds to provide assistance in the language of limited-English proficient communities in their areas. In enacting Section 203, Congress emphasized that many minority citizens were not exercising their fundamental right to vote due to high rates of illiteracy in English and unequal educational opportunities. Congress reauthorized and strengthened Section 203 in 1992 to make language assistance at the polls a reality for thousands of additional voters.

Many of our nation's newest citizens are eager to participate in the political process. In 1996, for the first time, the Census Bureau published data comparing voting participation rates of native-born and naturalized citizens. The data showed that the surge among Latino voters was directly attributable to immigrant voters. In 1998, 37% of naturalized Latinos voted compared to 31% of native-born Latinos. This is a significant development, particularly in an era where the participation of all of our nation's citizens is decreasing. Language assistance in the voting process helps our nation's newcomers exercise the rights they have worked so hard to attain.

Consequently, we urge that any changes to federal election law and regulations complement and strengthen the protections provided to language minorities in Section 203 the Voting Rights Act. Some opponents of these protections falsely claim that the language assistance provisions of the VRA cost election jurisdictions millions of dollars. This is simply not the case. The VRA's provisions are limited to certain specific language minorities, and geographic areas are only required to comply if they meet certain criteria for the number of limited-English proficient language minorities in their jurisdiction.

The VRA has served as a powerful tool to eliminate barriers that prevented Latinos and other ethnic groups from voting. In fact, many of the political gains Latinos have made can be attributed to the language assistance provisions of the Act added in 1975. The increases in Latino voters and elected officials have given previously excluded Americans an active voice in virtually every elected body in the nation. Still, the VRA has not been immune from those who would limit or diminish its provisions. At least one attempt has been made in each of the last five Congresses to roll back the language assistance provisions in the VRA. This would effectively deny countless numbers of American citizens of Latino and Asian Pacific descent, as well as members of other language minorities such as some Native Americans, their right to vote. We must ensure that opponents of the VRA do not use election reform as a pretense to dilute its protections.

We are also aware that many proponents of election reform advocate a host of changes to election procedures and voting technology. These proponents believe that such changes will modernize and standardize the federal election process. As you assess these proposals, we would like you to keep two recommendations in mind. First, there is an urgent need for reliable and relevant research on the impact of these proposals on citizen participation in elections. And this research needs to specifically consider the experiences and needs of Latinos and other minority voters. This is particularly true for election technology.

Most of the discussion surrounding the need to reform election practices and procedures has been about the problems of punch card ballot systems. Policymakers have raised questions about whether

Latinos and other minority voters are disenfranchised by their use. While we have seen some research indicating that Latinos are more likely to live in counties that use punch card equipment, this may be largely attributable to the fact that Los Angeles County uses this system, and Los Angeles County is home to approximately one out of eight of the nation's Latinos. We have also seen data suggesting that punch card systems have higher overvote/undervote error rates than other technologies. However, it is unclear whether these error rates are a result of such factors as poor equipment maintenance; the lack of a mechanism allowing voters to ascertain whether their ballot was punched accurately; poor chad removal systems or low voter understanding about the use of punch card ballots. Thus, it is important for us to gain a better understanding of whether technological improvements in and of themselves result in more accurate and accessible voting systems.

Finally, we recommend that any efforts to reform voting procedures, standards or technology must be accompanied by a comprehensive program to recruit and train poll workers, and to educate voters about the practical mechanics of voting. One of our earliest voter education efforts was a toll-free, bilingual hotline operated on Election Day in Los Angeles to take reports of voter intimidation or harassment. We found that only a few of our callers reported such incidents. Instead, most of the callers had basic questions such as "Where is my polling place?" "I know I'm registered to vote in this precinct, but the poll worker says I'm not. What do I do?" "How late are the polls open?" For example, we received a number of calls from sites that served as polling places for multiple precincts. A number of voters went to the table for the wrong precinct, and therefore did not appear on the registered voter roster. We were able to inform these voters about using provisional ballots (which is permitted in California), and these voters did cast their vote without a problem.

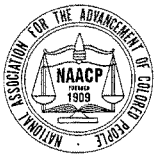
Our experience also shows, and recent census figures confirm, that in the Latino community, many voters are young or are recently naturalized immigrants who do not have a lot of experience casting ballots. They are in particular need of information about specific voting practices. This is why the recruitment and training of bilingual poll workers is so important. These workers are on the "front lines" and are the persons with whom Latinos will have the closest contact when they vote. We

understand many jurisdictions have difficulties with recruiting poll workers, and we encourage them to work with community-based organizations in their recruitment efforts.

Additionally, we believe that public and private institutions can create effective partnerships to provide voter education. Our own efforts have included presentations where we bring "mock" voting booths and equipment to adult education centers, parent education groups, and other community locations. We have found that participants greatly benefit from the "hands on" voting experience. If we decide that we need to make substantial investments in new technology, or comprehensive changes in voting procedures, we must make a similar investment in voter education.

Mr. Chairman, members of the committee, if voter education is an integral component of election reform, we not only will be able to have election systems that are more accurate and fair, but more accessible as well. Last month, the Census Bureau released Census 2000 data which revealed that the Latino population increased by 58% over the past decade. The data also showed that Latinos are no longer just living in the urban centers of America. While we believe that Congress should have a financial role in assisting states and other localities for administering elections, we also believe it has a much larger and more meaningful role. That role is leadership. The fact that we are here today discussing this important issue is a positive step by this body to lead our country into a new era of electoral participation. But we also ask today that the President take a leadership role as well. The dramatic changes in the growth and distribution of the Latino population revealed by the new Census data represent a prime opportunity for Congress and the President to set the tone for this critical discussion. Our leaders must show the Latino community, and the nation as a whole, that the aim of election reform is to help revitalize our democracy and ensure that it remains vigorous and responsive to all of our distinct voices.

Mr. Chairman, Senator Lieberman, distinguished Senators, thank you again for the opportunity to offer these thoughts and recommendations to you this morning.



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TESTIMONY OF

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OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED PEOPLE**

**ON VOTING IRREGULARITIES IN THE
NOVEMBER, 2000 ELECTION AND
PROPOSALS FOR CHANGE**

BEFORE THE SENATE GOVERNMENTAL AFFAIRS COMMITTEE

MAY 9, 2001

Good morning, Mr. Chairman, Senator Leiberman and distinguished members of the Committee. Thank you for the opportunity to come before you this morning on behalf of the National Association For The Advancement of Colored People and our 1700 Branches in 50 states, the District of Columbia, Germany, Japan and Korea.

I am here in lieu of our President and Chief Executive Officer, Mr. Kweisi Mfume, who is at this time over on the House side testifying before the House Judiciary Committee about discrimination in the federal workforce. He sends his regrets as well as his appreciation for your activism in this area.

The NAACP is deeply appreciative of the Senate Governmental Affairs Committee for convening this hearing to look into the issue of voting irregularities with respect to last year's Presidential election.

We believe that this is a matter of grave concern for our nation and its people.

We also believe that perhaps millions of voters across the nation were denied their basic right to cast a free vote and to have that vote counted. While the situation in Florida obviously received the most national and media attention, the NAACP believes that Florida is in fact a microcosm of the entire country. Throughout the United States,

millions of American citizens were, for one reason or another, not able to cast their vote or have their vote counted.

Furthermore, the NAACP strongly believes that many of the voting irregularities occurred disproportionately in communities of color, so it was ethnic minority Americans who were, in disparate numbers, excluded from having our voices heard.

There was, as best as we have been able to determine, substantial unresolved allegations across the country of massive voter disenfranchisement in African American, Hispanic American, Haitian American and Jewish communities. The election appeared to have been conducted in such a manner that many of those same communities now believe unequivocally that it was unfair, illegal, immoral and undemocratic.

The specter of these allegations alone indisputably require that the record be made complete in terms of what did and did not happen during the election, and that action be taken now to see that the problems are corrected.

Because the right to vote is the most sacred franchise in a democracy, these hearings, as uncomfortable as they might be to some, must challenge all Americans to focus again on the thorny issue of equal protection under law and whether or not such a protection was afford to duly registered voters who went to the polls on election day, November, 2000.

Every survey that we have found that was conducted after the election, regardless of where it was in the United States, has shown that the greater the percentage of black voters in a precinct the greater was the likelihood that a significant number of the ballots of those voters were never counted.

There was also a greater likelihood that computer equipment, when available at such polling places, was not adequate or on par with what was available and in use at polling places in precincts that had a relatively low or inconsequential number of African American voters.

Ask the thousands upon thousands of people who now question if their vote was ever counted, often because of where they live or the color of their skin, and they will tell you without hesitation that they feel violated and robbed.

The national response to this has been a flurry of legislative initiatives announced and undertaken by conscientious members of the House and Senate on both sides of the aisle. If anything, the bi-partisan nature alone of the response thus far has been encouraging. However, the real test will be to see what if anything of substance emerges and is signed into law under the rubric of voting and electoral reform.

In response to the problems that we have identified, the NAACP has developed a set of well thought out ideas and recommendations designed to avoid similar Election Day debacles in the future. We don't seek pride of authorship of those or any other ideas. What we do seek however is a reasonable expectation that the distinguished men and women of both chambers of Congress will work in earnest to move our nation closer

toward a universal and uniform system of fairly and accurately casting and counting ballots.

Before I discuss what the NAACP feels needs to happen to correct the myriad of problems that faces our nation's electoral process today, let me begin by recounting some of the problems that the NAACP has identified as having occurred on and around November 7, 2000.

The weekend prior to the election, the NAACP began receiving calls alerting us to the fact that a person or persons were making electronic phone calls into predominately black households, claiming to represent the NAACP, in support of Republican candidate George W. Bush. These calls were apparently taking place in the key battleground states of Michigan and Florida. Specifically, the caller was identifying him- or herself as a representative of the NAACP, saying that the organization endorsed and supported the Republican candidate for President, and urged the recipient of the call to go to the polls on Tuesday and to vote accordingly.

In response to the blatantly false and extremely illegal calls, the NAACP moved quickly to make sure that the U.S. Department of Justice, as well as the Attorneys General of each state was notified. Unable to secure a cease and desist order we used public service time on local radio stations over the next 48 hours to alert people of the false nature of the calls.

Beginning on election day, and still to this day, the NAACP national staff, as well as some of our local branches across the nation, began to receive calls from people who felt that their right to vote had been violated. Subsequent to the election, NAACP national staff, as well as several state conferences and local branches, held hearings throughout the country to investigate allegations of voter fraud, voter intimidation, as well as technical and procedural barriers that resulted in a significant number of votes not being cast or counted.

As a result of the flood of complaints we received, the NAACP held a series of hearings throughout the nation to look into the problems faced by many Americans who wanted to vote but were not able to for one reason or another. We have also continued to receive complaints through phone calls, letters, faxes, testimonials and affidavits. Below I will list a few of the more egregious trends as well as some of the particularly disturbing accounts that we have heard. If the Committee, or any Member, would like additional material, I would welcome the opportunity to share with them some of the volumes of trends and anecdotes, as well as transcripts from our hearings, that our national headquarters has collected.

One particularly disturbing trend was the blatant voter intimidation that appeared to occur throughout the nation. In Georgia, state troopers pulled over a college student who was driving people to the polls. He was told that unless everyone in the van was related to him, or unless he had a chauffeur's license, he must immediately cease and desist in driving people to the polls.

In several states, including Florida and Missouri, we have received affidavits from African Americans who were forced to show identification, while their white neighbors were allowed access with no problem.

After the election, the New York Daily News reported that off-duty police officers and prison guards wearing arm bands and armed with guns were posted outside several polling stations in New York under the guise of "identifying trouble spots."

In Missouri, an African American businessman in suburban Kansas City reported a Christian Coalition voting guide on a table next to a voting machine. Upon complaining to one election official telling him "God wants you to vote for George Bush. God wants Bush to win (Democrat Al) Gore kills babies."

Another very troubling trend that we have identified was the utilization of undertrained poll workers, as well as inoperable or malfunctioning voting machines. Again, these trends appear to be more prominent in communities of color across the nation.

The president of the NAACP Arkansas college chapter reported at a hearing that students she had registered were having problems with poll workers not finding their names on the rolls, being turned away by poll workers who indicated that their votes would not be counted, that their votes would be thrown in the trash, and being told that the poll workers simply didn't feel like looking for an individual's name on the list.

The NAACP has received reports that some states, particularly Georgia, Illinois and Florida routinely disenfranchised thousands of voters, primarily in low income or ethnic minority communities. In predominantly black Fulton County, Georgia, one in 16 votes for president was invalidated; in nearby Cobb and Gwinnet counties – both mainly white – only one in 200 ballots had to be destroyed because of "irregularities." In Illinois, more than 50 Cook county precincts reported that on average one in six ballots went uncounted, while almost every vote was counted in Chicago's outer suburbs.

We believe that it is a part of our obligation as a non-partisan organization to insist that all voters be allowed to cast an unfettered ballot and be free from intimidation and harassment as promised by the Voting Rights Act of 1965. The NAACP abhors the countless horror stories that can continue to be heard from voters across the nation, and we are incensed and bewildered that so little is being done to address this situation.

The NAACP has, therefore, developed a set of policies and procedures that we are asking every state, as well as the federal government, to adopt prior to the next election.

Like most things that challenge our gift of freedom, we must work hard to ensure that our democratic system retains its integrity. Furthermore, it is important that we act now, so as to quickly start to restore the confidence in the electoral process that was lost for many in this nation, especially in black and Latino communities.

Our policy and procedure recommendations have been crafted in response to the problems of the November 2000 election. We think that, if properly implemented, they

will go a long way toward establishing uniform national voting standards that will make it easier to ensure that every American who wants to vote can.

Specifically, the NAACP is calling on the Federal government, as well as each of the 50 states to promptly enact laws, policies and procedures that secure the following:

1. Ensure non-discriminatory, equal access to the electoral process for all voters, including ethnic minorities, the elderly, handicapped / disabled individuals, overseas citizens, and members of the US Armed Services;

2. Modernize voting and counting procedures throughout the state, including voting machines and equipment, to ensure that well-defined, uniform procedures are in place so that the genuine intentions of the voters are reflected in their ballots;

3. Provide necessary and adequate funding and resources to modernize and upgrade all equipment, state-wide, so that voting procedures are uniform and consistent throughout the state;

4. Re-train all poll workers and election officials so that there is fair, equal and uniform treatment of voters across the state;

5. Launch an aggressive voter education initiative so that potential, new and existing voters are knowledgeable on how to use the equipment correctly and so their genuine intent can be easily determined;

6. Expand poll worker training and recruitment programs, utilizing the best practices from across the nation;

7. Put into place systems to maintain and easily access correct and up-to-date voter rolls using the latest technology;

8. Enhance the integrity and timeliness of absentee ballots;

9. Reexamine all existing voting policies and procedures to ensure that your state and every municipality therein is in full compliance with the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973eeet seq.), the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) and the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.);

10. Work to identify and eliminate practices which might be perceived as intimidating to certain sectors of the population;

11. Establish clear standards for bilingual ballots for language minorities and the disabled; and

12. Reexamine, simplify and standardize voter re-enfranchisement laws so that every American who is not incarcerated who wishes to vote can do so.

The NAACP realizes that these twelve proposals, taken at once, may be perceived by some as a tall order. And, while we certainly feel that any one of them, if implemented alone, would help the current situation, I cannot stress enough the need to enact all of these policies sooner rather than later. What we need is a comprehensive bill, one that addresses the myriad of problems that we encountered in November 2000. If even one American is disenfranchised in the next round of elections, in 2002, that is one too many. Only by adopting a comprehensive package of voting reforms will we be able to say that we have done all we can to make sure that our democracy is working.

I commend this committee for your work on this issue and for trying to determine the scope of the problems that we faced last November as well as a solution to those problems. I also realize that some of the recommendations that I have laid out here today are beyond this committee's jurisdiction. I would therefore urge you, in the strongest terms possible, to work with your counterparts on other committees, as well as your colleagues in the Senate, to enact an omnibus bill that does address all of the points I have just raised. As such, I would like to bring to the committee's attention S. 565, the "Equal Protection of Voting Rights Act of 2001", which was introduced by Senator Christopher Dodd. Congressman John Conyers (D-MI) has introduced a companion bill, H.R. 1170, in the House of Representatives.

This legislation takes a comprehensive approach to the problems identified by the NAACP and other civil and voting rights groups in the November elections.

NAACP President and CEO Kweisi Mfume has also personally written to all of the 50 governors of each state and asked that they too work hard to develop uniform standards throughout their jurisdictions. The letters will be followed up by contacts from each of the individual state conference presidents.

In short, the entire NAACP organization is determined to follow through on this issue and will do all we can to see that nothing like the November 2000 Election Day debacle is repeated.

While many Americans may decry the fact that some people's rights were trampled on last November, the NAACP is especially outraged and insulted by what happened. These are rights that people marched for and, in some cases, died for only 35 years ago. Our members and our friends remember the days, not too long ago, when it was not only legal but also acceptable for states and local municipalities to block access to the voting booth based on a person's skin color, gender, socio-economic status, or ethnicity.

It is no longer legal, but as we just recently saw, it still happens. This is not okay, and we intend to devote all our available resources, if that is what it takes, to see that the situation is rectified.

I again thank the Chairman and members of this committee for holding this hearing and for your continued interest and activism in this area. I would welcome any questions or comments that you may have.

Testimony of Stephen Knack
Submitted to the Committee on Governmental Affairs
United States Senate

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Summary

In the aftermath of the 2000 Presidential election and the disputed vote in Florida, a widespread perception emerged among politicians and in the media that the use of punch cards, and of antiquated voting machinery more generally, is more common in counties with a greater percentage of minorities and poor people. Vice-President Gore stated that "the old and cheap, outdated machinery is usually found in areas with populations that are of lower income people, minorities, and seniors on fixed incomes." Senator Lieberman suggested that antiquated voting equipment "may be undermining the electoral rights of many poor and minority citizens." A series of editorials and op-ed articles in the Washington Post stated as fact that "it is mainly affluent counties that have switched" from punch cards to more modern equipment while "poor and minority voters tend to be stuck with less accurate machines," that African Americans "were far more likely to be stuck with the lousy machines than were affluent whites," that "voters in predominantly minority communities had to vote using antiquated machines," and that "the most error-prone machines tend to be in the poorest counties.

Only very limited and selective analyses underlie these assertions, however. A New York Times study reported that in the 2000 election in Florida, 64% of African American voters but only 56% of whites lived in punch card counties. A Washington Post article concluded from an examination of the Atlanta and Chicago metropolitan areas that the problem of racial differences in invalidated ballots caused by gaps in voting technology "extended well beyond Florida."

With Professor Martha Kropf of the University of Missouri-Kansas City, I have conducted a comprehensive statistical analysis of this issue, in a study titled "Who Uses Inferior voting Technology?" Our study analyzes the incidence of punch card and other voting equipment by ethnicity, income and other variables, combining county-level demographic data from the Census Bureau with county-level data on voting equipment. We found little support for the view that resource constraints cause poorer counties with large minority populations to retain antiquated or inferior voting equipment. Nationally, there is very little difference between whites and blacks, between the poor and non-poor, and between Democratic and Republican voters, in the likelihood of living in a punch-card county.

In a majority of states in which some but not all counties use punch card technology, whites, the non-poor and Republican voters are actually more likely than African Americans, the poor and Democratic voters to live in punch card counties. Moreover, counties with punch card systems on average have higher personal incomes, higher tax revenues per capita, and larger populations than do counties with more modern voting technology.

Data and Methodology

Following the general election in November of each even-numbered year, Election Data Services, Inc. surveys states and counties to obtain data on voter registration, vote totals, and voting equipment in use, with complete results available the following spring or summer. Our study uses data from 1998, the most recent year for which the voting equipment data were available. Each county is classified in the Voting Equipment Data File as either using paper ballots, lever machines, Votomatic-style punch cards, Datavote, optical scanning, electronic, or mixed.

We merged the Voting Equipment File with demographic data from USA Counties 1998, a data file available from the U.S. Census Bureau. This file provides estimates of the number of whites, African Americans, and Hispanics (who may be of any race) residing in each county in 1996, and of the number of poor and non-poor persons as of 1993. Personal income per capita and property tax revenues per capita are available for 1994 and 1992 respectively. Data are available in USA Counties on the number of votes cast for the Democratic and Republican candidates (Clinton and Dole) in the 1996 presidential election, which can be used to approximate the partisan distribution within counties.

Detailed Findings

For the U.S. overall, black-white differences in punch card use are negligible: 31.9% for whites and 31.4% of African Americans live in counties using this voting technology. Hispanics are much more likely to live in punch card counties than either whites or blacks. However, this difference is entirely attributable to Los Angeles County, where nearly one in seven Hispanics in the country reside. Whites (27.7%) are more likely than blacks (21.8%) to live in optical scanning counties, but blacks (37.8%) are much more likely than whites (26%) to live in counties using either of the technologies for which overvoting is nearly impossible if machines are programmed correctly: electronic voting and lever machines.

Differences in voting equipment associated with poverty status are very minor. The poor are slightly more likely than the non-poor to live in punch card counties, but also slightly more likely to live in counties with electronic voting.

Based on presidential voting patterns in 1996, Democratic and Republican voters were equally likely to live in punch card counties. Democrats were somewhat more likely to live in counties with "antiquated" equipment, but in the form of lever machines that produce very few invalidated ballots, not punch cards. Republicans were somewhat more likely than Democrats to live in optical scan and electronic voting counties.

In practical terms, these nationwide comparisons are relevant only for the popular vote in the presidential election. Equity in voting technology is better addressed by examining differences across counties within states. The Electoral College system grants a state a fixed number of electoral votes, regardless of the number of valid votes cast in the state. Therefore, differences in voting technology that are purely cross-state cannot disadvantage a state's voters relative to other states. For this reason, it is important to examine differences across counties within states, to exclude purely cross-state

differences that can have no electoral impact. Accordingly, we considered separately each of the 29 states in which some but not all counties use punch card technology.

The conventional wisdom regarding racial disparities in voting equipment is contradicted by the state-level comparisons: in 18 of the 29 states, whites were more likely than African Americans to live in punch card counties. The 11 states in which blacks were more likely to live in punch card counties tend to be larger, however, accounting for 191 electoral votes, compared to 162 for the 18 states in which whites were more likely to live in punch card counties.

A similar comparison between whites and Hispanics shows that the former were more likely to live in punch card counties in 21 states (representing 235 electoral votes), while the latter were more likely to live in punch card counties in only 8 states (representing 118 electoral votes).

The conventional view that the poor live disproportionately in punch card counties also turns out to be incorrect for the majority of states. In 21 states, representing 203 electoral votes, it is the non-poor who are more likely to reside in counties using this type of voting equipment. In only 8 states, representing 150 electoral votes, are the poor more likely to live in punch card counties.

Party differences, as measured by voting in the 1996 presidential election, also contradict popular belief. A greater share of Dole voters than Clinton voters lived in punch card counties in 16 of 28 states. However, the states in which Democratic voters were more likely to live in punch card counties account for slightly more electoral votes (183 to 167).

Economic Factors

The belief that minorities, the poor and Democrats tend to reside in areas using more error-prone voting equipment rests in large part on the reasonable presumption that cost matters. Electronic voting systems are more expensive than punch card systems, and counties with a lower poverty rate (and thereby a smaller share of minorities and Democratic voters in general) may be better able to afford the newer, more expensive technology. On the other hand, larger counties – where minorities and Democratic voters disproportionately reside -- may benefit from economies of scale in purchasing and implementing newer systems such as electronic voting.

Our results found little evidence that the retention of punch card systems, or the adoption of less error-prone optical scanning or electronic alternatives, is heavily influenced by considerations of affordability. Punch card counties in Florida are much larger, wealthier, and more revenue-rich than any other group of counties. It is exactly those counties which should be best able to bear the expense of modern equipment which are the most likely to retain punch cards.

For the U.S. as a whole, punch card and Datavote counties are larger and wealthier on average than those using any other voting system. Paradoxically, counties using

electronic voting constitute the group with the lowest incomes on average, and -- by a wide margin -- the lowest property tax revenues per capita.

Similar findings are produced by comparisons across counties for each state separately. For each state in which some counties use punch cards while others use modern (optical scanning or electronic voting) equipment, we calculated simple averages of county size, income, and taxes across the relevant group of counties. For example, we found that in Arkansas, punch card counties on average are larger (mean population of 63,594) than counties with modern equipment (34,139). Similarly, they are wealthier (mean personal income per capita of $16,597 vs. $14,982) and have higher tax revenues per capita (mean of $239 vs. $209 per year).

In 17 of 28 states, punch card counties tend to be larger than counties with modern equipment. Similarly, in 17 of 28 states punch card counties tend to have higher incomes, and higher property tax revenues per capita.

Conclusions

Results from our study contradict the widespread belief that African Americans, the poor, and Democratic voters are more likely to reside in counties using punch card technology, and that the choice of voting systems is largely determined by affordability. Evidence reported in the media on ethnic and party disparities in Florida and in selected metropolitan areas such as Atlanta and Chicago is inconsistent with evidence from most other states and the country as a whole. In fact, in the majority of states with some counties using punch cards and others using alternative systems, whites, the non-poor, and Republican voters are more likely than African Americans, the poor, and Democratic voters to reside in punch card counties. Moreover, there is little evidence that the choice between punch cards and more modern, less error-prone systems is influenced by economic factors. To the contrary, in Florida and elsewhere larger, wealthier and more tax-rich counties are more likely to use punch card technology, and less likely to use electronic voting systems.

Several caveats to our study should be noted. First, there are potentially important variations in the age of equipment and in the way it is operated that we are unable to control for due to a lack of data. Second, we address only the question of who uses punch card and other voting systems, and do not explore the question of whether minorities and the poor (perhaps due to greater illiteracy or lower quality of education) might make more mistakes than other voters when using punch card technology. Finally, we do not claim that the 2000 presidential election outcome was unaffected by the geographic distribution of punch card voting in the 2000 election. Unluckily for Vice-President Gore, the crucial state in the election happened to be one of the few in which Democratic voters were substantially more likely than Republicans to vote using punch card technology. Finally, the study is intended solely to investigate the consensus that rapidly emerged in the aftermath of Florida regarding who was more likely to confront antiquated voting technology, and should not be interpreted as taking a position on any of the political or legal controversies that arose in Florida following the 2000 election.

Who Uses Inferior Voting Technology?

Abstract

The American public became newly acquainted with the disadvantages of punch card ballots in the aftermath of the 2000 Presidential election. A widespread perception emerged that counties in Florida and elsewhere with a greater percentage of minorities and poor people were more likely to employ antiquated voting machinery that produces a disproportionate number of undervotes and invalid ballots. This study provides a systematic analysis of this question, combining county-level demographic data from the Census Bureau with county-level data on voting equipment collected by Election Data Services, Inc. We find little support for the view that resource constraints cause poorer counties with large minority populations to retain antiquated or inferior voting equipment. In most states, it is whites, the non-poor and Republican voters who are more likely to reside in punch card counties rather than African Americans, the poor and Democratic voters. Moreover, counties with punch card systems tend to have higher incomes, higher tax revenues, and larger populations than do counties with modern voting equipment.

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1. Introduction

In the aftermath of the 2000 Presidential election and the disputed vote in Florida, differences in voting equipment have become a national issue. The public became acquainted with the potential for punch card mechanisms to produce large numbers of invalidated ballots. An oft-cited comparison in Florida found that punch card systems produced 15 undervotes per 1000 ballots, compared to only 3 per 1000 for optical scanning systems.[1]

The U.S. Supreme Court ruling that the manual recounts in Florida violated the Equal Protection clause of the Constitution raises the prospect that states may require uniform voting technologies among their counties, and perhaps ban punch card systems entirely.[2] A Washington Post-ABC News survey found 64% of respondents in favor of (with only 29% opposed) the federal government "outlawing so-called punch-card ballots." An overwhelming 87% favored (with 12% opposed) a law "requiring all states and counties to use one kind of voting machine."[3]

A widespread perception has emerged among politicians and political analysts that the use of punch cards, and of antiquated voting machinery more generally, is more common in counties with a greater percentage of minorities and poor people. Al Gore repeatedly claimed that "the old and cheap, outdated machinery is usually found in areas with populations that are of lower income people, minorities, and seniors on fixed

[1] Washington Post, "Universities to Develop New Voting Technology," 15 December 2000.
[2] The Court opinion specifically criticized punch card balloting machines for producing "an unfortunate number of ballots which are not punched in a clean, complete way by the voter" and added that "it is likely legislative bodies nationwide will examine ways to improve the mechanisms and machinery for voting." (Washington Post, "High Court Overrules Gore Recount Plea," 12 December 2000.)
[3] Washington Post, "Public Backs Uniform U.S. Voting Rules," 18 December 2000.

incomes."[4] Joe Lieberman suggested that antiquated voting equipment "may be undermining the electoral rights of many poor and minority citizens."[5] In an opinion article, Jesse Jackson and AFL-CIO President John Sweeney charged that "voters in predominantly minority communities had to vote using antiquated machines."[6]

Only very limited and selective analyses underlie these assertions, however. A New York Times study reported that in the 2000 election in Florida, 64% of African American voters but only 56% of whites lived in punch card counties. Similarly, Democratic voters were somewhat more likely than Republican voters in Florida to reside in counties using punch cards.[7] A Washington Post article concluded from an examination of the Atlanta and Chicago metropolitan areas that the problem of racial differences in invalidated ballots caused by gaps in voting technology "extended well beyond Florida."[8] Based on this evidence, Washington Post columnist William Raspberry—like many others—has generalized that it is a "fact that the most error-prone machines tend to be in the poorest counties."[9]

It is well known that turnout rates for lower-income persons and minorities are low relative to higher-income persons and whites. Moreover, studies have found that differences in turnout rates by the poor and non-poor matter: in states where the poor are better represented at the polls, Hill and Leighley (1992) find that welfare benefits are more generous. Scholars have also found that racial diversity is associated with weaker

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[4] New York Times, "Racial Pattern in Demographics of Error-Prone Ballots," 29 November 2000.
[5] Washington Post, "A Changed Lieberman Rejoins Senate," 15 December 2000.
[6] Washington Post, "Let the Count Continue," 12 December 2000.
[7] New York Times, "Racial Pattern in Demographics of Error-Prone Ballots," 29 November 2000.
[8] Washington Post, "A Racial Gap in Voided Votes: A Precinct Analysis Finds Stark Inequity in Polling Problems," 27 December 2000. Cook County used punch card machines in the 2000 election, while heavily white and Republican DeKalb and McHenry counties nearby used optical scan equipment, with far fewer invalidated ballots. Similar differences were noted between Fulton and De Kalb counties in the Atlanta area (with a high percentage of African Americans) and the largely-white and Republican-leaning counties of Cobb and Gwinnett.

state and national voter mobilizing as well as more difficult voter registration requirements (Hill andLeighley, 1999). Other literature has examined whether more restrictive voting registration procedures contribute to differences between the poor and non-poor, and between whites and minorities, in voting turnout. Findings are mixed (Knack and White, 2000; Knack, 1999; Jackson, Brown and Wright, 1998). No comprehensive study has yet examined whether the poor and minorities have systematically different voting technology that would contribute further to their electoral under-representation.

This study analyzes the incidence of punch card and other voting equipment by ethnicity, income and other variables, combining county-level demographic data from the Census Bureau with county-level data on voting equipment collected by Election Data Services, Inc. We find little support for the view that resource constraints cause poorer counties with large minority populations to retain antiquated or inferior voting equipment. Nationally, there is very little difference between whites and blacks, between the poor and non-poor, and between Democratic and Republican voters, in the likelihood of living in a punch-card county. In a majority of states in which some but not all counties use punch card technology, whites, the non-poor and Republican voters are actually more likely than African Americans, the poor and Democratic voters to live in punch card counties. Moreover, counties with punch card systems on average have higher personal incomes, higher tax revenues per capita, and larger populations than do counties with more modern voting technology.

Remaining sections of the paper are organized as follows. Section 2 provides background on the various types of voting equipment, problems associated with each of

[9] Washington Post, "Post-Traumatic Suggestions," 1 January 2001.

them, and their frequency of use across the nation. Section 3 compares the likelihood of individuals residing in punch-card counties, for whites, African Americans and Hispanics, for the poor and the non-poor, and for Democratic and Republican voters. Section 4 examines the role of county-level economic factors (including population, income levels, and property tax revenue) in explaining differences in voting equipment in use. Section 5 concludes, noting several important caveats to this research.

2. An Overview of Voting Equipment[10]

The choice of voting equipment is determined at the county level in most states. Voting equipment currently in use can be classified into six broad categories: (1) paper ballots, (2) lever machines, (3) punch card systems, including the infamous Votomatic equipment used in Broward, Palm Beach and Miami-Dade counties in Florida, (4) "Datavote," an improved form of punch card voting, (5) optical scanning, and (6) electronic systems.

Paper ballots constitute the oldest system of voting still in use. Candidate names are printed next to boxes, which voters mark. Because they are hand counted, paper ballots remain in use mostly in small counties with few contested offices.

On *mechanical lever machines*, each candidate name is assigned to a lever on a rectangular array of levers on the face of the machines. The voter pulls down selected levers to indicate choices. Levers are connected to a counting wheel, which at the close of the polls indicates the number of votes cast on the lever that drives it. Linkages in the machines are arranged to prevent invalid votes such as overvotes.

[10] This section draws heavily from Saltman (1988), FEC (1982), information provided on the Federal Election Commission's web site (www.fec.gov), and communications with Kim Brace of Election Data Services, Inc.

Lever machines were introduced in New York State in 1892. Although machines manufactured by 5 different companies are currently in use across the nation, the sole manufacturer at one time was A.V.M., which successfully lobbied the state legislature to require the use of lever machines in all New York counties. Lever machines have not been manufactured since 1982, as the availability of lower-cost alternatives dried up the market for new lever machines.

Punch card systems employ one or more cards and a clipboard-sized device for recording votes. Information about the ballot choices is provided in a booklet attached to a mechanical holder and centered over the punch card, which is inserted by the voter. To cast a vote, a stylus or other punching device provided is used to punch holes at the appropriate locations on the card, forcing out the inside of a pre-scored area in the shape of a rectangle (the now famous "chad"). Punch card technology was invented for other purposes by a Census Bureau statistician, and first used in the 1890 census.[11] In 1964, Fulton and De Kalb (Atlanta, GA) became the first counties to use punch card systems for voting.

Datavote also uses punch technology, but is different enough to warrant a separate category. A stapler-like tool creates holes on the card with sufficient force that pre-scoring of ballot cards is unnecessary. The name and party of the candidates are printed directly on the Datavote card, so it is easier for voters to ascertain after completing their ballot whether they voted as intended. Because fewer ballot choices can be printed on each card, voters typically must vote several cards. This proliferation of cards can slow the counting process substantially (unless extra card-reading capacity is added), so that a

[11] Washington Post, "A Chad is Born," 24 November 2000.

large county such as Los Angeles might have difficulty completing their tabulations on election night were it to convert from Votomatic to Datavote.

Optical scanning systems are widely used in standardized testing and other functions besides voting. Optical scanning began to be used in voting at about the same time as punch card systems, although its use spread more slowly until the 1980s. These systems use large ballots similar to those of paper ballot systems, so that information about candidates can be printed directly on the ballot. The ballots are counted by a machine that uses light or infra-red as a sensor to discern which oval or rectangle the voter marked from a set of choicesScanners are not supposed to read smudges or erasures as intended votes, but a ballot with two choices both clearly marked is read as an invalid overvote – just as a student choosing both answers "a" and "b" on an optically-scanned multiple-choice test receives no points for a question, even if one of these options is the correct answer. In many counties, voters can feed the ballot into a reader, which returns the uncounted ballot to the voter if it contains any overvotes or other mistakes, giving the voter a chance to correct the ballot. In other counties, voters drop the ballot in a box and the ballots are all collected and fed into the machines later by election workers.

Direct recording electronic systems are similar to lever machines, and different from other systems, in that there is no physical ballot, and no possibility of overvotes if the equipment is programmed correctly. While votes are tallied electronically using punch card, Datavote, and optical scanning systems, votes are not cast electronically. Electronic voting systems are different from those systems in that voter choices directly enter electronic storage, using touch screens, push buttons or keyboards. Use of electronic voting technology began in the mid-1970s.

In Maine, Massachusetts, New Hampshire, Vermont, and Wisconsin, voting equipment is determined at the municipal level. In many (but not all) counties in these states, therefore, equipment is not uniform throughout the county. These *mixed systems* were in effect in about 4.5% of counties in 1998, representing about 8% of the population (see Table 1).

Before the advent of punch card systems in the mid-1960s, most voters in large cities, and many in medium-sized cities, together accounting for a majority of the nations' voters, used lever machines, with the remainder using paper ballots. By 1988, nearly one-third of all counties still used paper ballots exclusively, but these were mostly small counties that accounted for only about 7% of the total population (Saltman, 1988: 49, based on data collected by Election Data Services). By 1998, the latest year for which complete data are available, use of paper ballots had dropped to about 13% of counties, representing only about 1.4% of the population.

The use of lever machines has also declined steadily since the mid-1960s, if not as rapidly as the use of paper ballots. In 1988, 29% of counties, representing about one-third of all voters, used lever machines (Saltman, 1988). By 1998, about 15% of counties throughout the nation (including all counties in New York) representing about 18% of the population still used lever machines.

Beginning in 1964 and continuing throughout the 1970s, punch card systems rapidly became more prevalent, particularly in large counties previously using lever machines. For the price of two lever machines, about 15 punch card devices and a card reader typically could be purchased. Punch card machines were thus viewed as an effective way to combat long lines at the polls in large and growing counties. At their peak in the late 1970s and early 1980s, punch card systems were likely the form of voting

used by a majority of the nation's population (FEC, 1982). As of 1988, Votomatic-style punch card systems were in use in about 22% of all counties, representing about 36% of all voters. Few if any counties have converted from other systems to punch cards since then, however, and some counties have abandoned punch cards in favor of optical scanning or electronic voting. In the 1998 elections, about 18% of counties, covering about 32% of the U.S. population, employed punch card systems. Los Angeles County alone represents nearly one-tenth of all voters using punch card technology.

The use of Datavote technology remained constant from 1988 to 1998. Just over 2% of counties nationally, representing about 4% of the population, used Datavote.

The use of optical scanning systems increased dramatically in the 1990s. Only about 6% of counties, and less than 8% of voters, used optical scanning systems in 1988. These figures rose to about 39% of counties, representing about 27% of the population, in 1998. Most smaller counties that no longer use paper ballots converted to optical scanning systems.

Electronic voting has also gained in market share, replacing many lever machines but also punch card systems in some areas. In 1988, about 2% of counties and 3% of voters used electronic systems. These figures rose to about 8% of counties, accounting for about 9% of the population, in 1998.

The gradual shift away from punch card systems toward optical scanning and more expensive electronic voting systems is attributable largely to recognition among election officials of serous deficiencies in punch card technology, problems that only recently became well known among the public. Many voters do not insert cards into the holder correctly, and punch the holes in the wrong places. Voters may apply insufficient force, or pre-scoring of the cards may have been done poorly. Incompletely removed chad may

lead to intended votes being recorded as undervotes. Because no candidate information is printed on the cards themselves, voters are unable to discern mistakes by examining the card after removing it from the holder.[12]

A defeated candidate for Property Appraiser of Palm Beach County, Florida in 1984 sued for a hand recount, arguing that incomplete punches led machine counts to be unreliable, concluding that "because of the type of equipment and method used...it is impossible to accurately count any election" (Saltman, 1988: 78). In a close congressional race in Wisconsin in 1993, 1100 ballots with slightly misplaced holes were invalidated. Noting sizeable differences in the number of invalid ballots between jurisdictions using punch cards and others using alternative systems, Wisconsin's state election board placed a moratorium on the adoption of punch card systems where they were not already in use (Smolka, 1994: 206). A study by the National Bureau of Standards (Saltman, 1988: 110-111) more than a decade ago called for eliminating the use of pre-scored punch card ballots, noting that "it is generally not possible to exactly duplicate a count obtained on pre-scored cards, given the inherent physical characteristics of punch card ballots and the variability in the ballot punching performance of real voters."

In light of these problems, it is easy to second guess decisions to retain punch card systems until now. Lost in all of the publicity regarding Florida, however, are the potential drawbacks of alternative systems. Errors are not unique to punch card systems. As Saltman (1988: 8) notes, "each type of system has its own particular vulnerabilities." The executive director of the Election Center, R. Doug Lewis, writes:

[12] In some punch card counties, voters feed their ballots into machines which return them if overvotes or other mistakes are detected, and voters can correct their ballots. Some optical scan counties provide similar "second chance" equipment.

> Americans continue to amaze election officials with their creative ability to miscast votes. Give them a marking device with their paper ballot, and they take out their own pens instead—and the wet ink from a fountain pen may occlude the lens on the optical scanner. Or they use red ink and the infrared scanner won't detect it. Or they write notes, which a machine can't read. Give them an ATM-style touch screen, and they touch two candidates boxes at once—and the screen will read neither, or both, or the box in-between.[13]

Counter mechanisms on lever machines may fail to turn, due to a disconnect in the mechanical system or to excessive friction. Unlike the case with punch card systems, there are no independent ballots available for recounting if a lever machine suffers from a rare failure such as this. If the printed strips inserted in a lever machine that identify candidates are incorrect, voters may cast votes for the wrong candidate. If not all of the counters have been set to zero before the polls open, incorrect totals can be produced.[14] Even where lever machines work perfectly, their higher cost may result in an insufficient number of machines (ECRI, 1988: 7), leading to longer waiting times, perhaps deterring some people from voting.

With optical scanning systems, there are instances on record of ballot readers failing to read inordinately large numbers of ballots (Saltman, 1988). An optical scanning malfunction in Volusia County, Florida caused hundreds of votes to be missed in the 2000 election.[15] The Orlando Sentinel newspaper conducted a manual review of more than 6,000 ballots read by optical scanners as invalid in Lake County, Florida in the 2000 presidential election, and found hundreds of overvotes in which voter intent was

[13] Washington Post, "Fix the Vote, But Skip the Uniformity," 24 December 2000.
[14] A long-time Chicago political consultant told the New York Times that "when we voted by machine, there were machines where you opened up the back at 5 in the morning before the balloting began and you found a hundred votes for a certain candidate." New York Times, "Behind the Scenes, It's Old News that Elections are not an Exact Science," 17 November 2000.
[15] Washington Post, "2 Systems, 1 Punch Problem," 17 November 2000.

clear from attempted erasures or from notes written on the ballots, and several undervotes in which voters had circled a candidate's name instead of filling in an oval.[16]

Most electronic systems in use do not provide re-countable individual records of voter choices, meaning that certain software or other problems in vote tallying may not be correctable. Any system relying on computerized vote tallying, including electronic voting, optical scanning, and punch cards, is subject to both security concerns and the possibility of programming errors. Numerous instances of voting system failures and near failures for electronic and other voting systems are documented in FEC (1982).

A New York Times analysis found that more ballots are invalidated by undervotes or overvotes in punch card counties than elsewhere, but the differences are not dramatic. Even in Florida, invalid ballots are more common in paper ballot counties, and about as common in Datavote counties, over the 1996 and 2000 Presidential elections. For the U.S. as a whole, these differences are surprisingly modest (see Table 1).[17] Mistaken punch card votes may be reduced in some parts of the country by mailing sample ballots (Saltman, 1988: 34), or by including a straight-party punch location on the ballot.

Punch cards created unusually serious problems in Florida in 2000 for several reasons. First, no punch card counties in that state provide voters with access to card readers to check their ballots for overvotes or other problems; by contrast nearly all optical scan counties in Florida provide this option. Second, Florida's punch card counties are atypical in not having election workers fan the ballot cards, or pull off hanging chad, before machine counting them on election night.[18] Finally, there were

[16] Orlando Sentinel, "Gore Would Have Gained Votes," 19 December 2000.
[17] New York Times, "New Focus on Punch Card Systems," 19 November 2000. Note that the lowest rate of invalidated ballots was for lever machines, which pre-date punch card technology.
[18] Washington Post, "It's Not as Easy as 1-2-3: Problems Exist With Both Hand, Machine Counts," 19 November 2000.

problems specific to individual large counties, such as the ballot design in Palm Beach County and confusing instructions provided by Democratic Party workers to their voters in Duval County.

This discussion is not intended as a defense of punch card technology, but to suggest that differences in the accuracy of punch card and other systems was reasonably perceived (until the 2000 election) as a matter of degree, and that the retention of punch card technology was not dictated only by a sheer inability to afford newer systems. To the extent that affordability does play a role, larger counties may benefit from economies of scale in purchasing and implementing expensive electronic systems. As noted in FEC (1982, 11):

> New voting systems are, typically, first adopted by large metropolitan jurisdictions where the complexity of the ballots and the volume of voters create pressures for improved vote recording and tabulating techniques. Such jurisdictions are also blessed with the fiscal, technical, and managerial resources equal to the challenge. Only when new devices are tested and debugged in this way are they normally then adopted by intermediate-sized jurisdictions.

Because minorities and Democratic voters tend to be concentrated in larger urban counties, we should not necessarily expect to find a bias against them in the distribution of antiquated or inferior voting equipment. Tennessee is an illustrative case. In 1998, fewer than one fifth of all the state's counties had electronic voting systems. However, these included the three largest counties of Shelby (Memphis), Davidson (Nashville), and Knox , which account for a disproportionate share of the state's poor, minorities, and Democratic voters. Shelby County alone is home to nearly one half of the state's African Americans, but just over one tenth of its whites, and more than one fifth of the state's poor, but less than one sixth of the non-poor. Of course, the selection of Tennessee as an example may be no more representative nationally than an analysis based only on

Florida, or only on the Chicago and Atlanta areas. The next section provides a more comprehensive analysis of the incidence of voting equipment by demographic categories.

3. Voting Equipment Differences by Ethnicity, Poverty Status and Party Voting

Following the general election in November of each even-numbered year, Election Data Services, Inc. surveys states and counties to obtain data on voter registration, vote totals, and voting equipment in use, with complete results available the following spring or summer. Thus, the most recent year for which the voting equipment data are available is 1998. Each county is classified in the Voting Equipment Data File as either using paper ballots, lever machines, Votomatic-style punch cards, Datavote, optical scanning, electronic, or mixed. The survey does not ascertain which punch card or optical scan counties provide voters with access to card readers that checks ballots for overvotes or other problems before they are turned in.

We merged the Voting Equipment File with demographic data from USA Counties 1998, a data file available from the U.S. Census Bureau.[19] This file provides estimates of the number of whites, African Americans, and Hispanics (who may be of any race) residing in each county in 1996, and of the number of poor[20] and non-poor persons as of 1993.[21] Personal income per capita and property tax revenues per capita are available for 1994 and 1992 respectively. Finally, data are available in USA Counties (provided to the

[19] See www.census.gov/statab/www/county.html. Voting equipment for Alaska is listed by election district rather than by county, so a simple merge with census data was not possible. Because every election district used optical scanning, however, we were able to code each Alaskan county as optical scan and retain those observations.

[20] The Census Bureau defines poverty on the basis of income and family size. In 1993, a person (under 65) was considered poor if living alone with a pre-tax income (excluding capital gains and non-cash benefits) of no more than $7,518. For a household of four, the threshold was $14,763.

[21] Ideally, we would use data on persons of voting age, rather than all persons, in each of these demographic categories. However, data on voting age population are not broken down in this way at the county level. Ideally, we would also have data on ethnicity, poverty, etc. available for 1998. The impact of

Census Bureau by the Election Research Center) on the number of votes cast for the Democratic and Republican candidates (Clinton and Dole) in the 1996 presidential election, which can be used to approximate the partisan distribution within counties.

Table 2 shows the percentage of whites, African Americans, and Hispanics who live in counties using each type of voting equipment in 1998, for Florida and for the U.S. overall. Differences between African Americans and whites in Florida are small, with African Americans slightly more likely to live in punch card counties, but also slightly more likely to live in optical scan counties. The notable difference is for Hispanics, 84% of whom live in punch card counties, compared to just over 60% for whites and African Americans. This difference is entirely attributable to the use of punch card voting in Miami-Dade County, home of more than one half of Florida's Hispanics, but fewer than one in seven whites and fewer than one in five African Americans.

For the U.S. overall, black-white differences in punch card use are negligible: 31.9% for whites and 31.4% of African Americans live in counties using this voting technology.[22] Hispanics are again much more likely to live in punch card counties than either whites or blacks. However, this difference is entirely attributable to Los Angeles County, where nearly one in seven Hispanics in the country reside. Whites (27.7%) are more likely than blacks (21.8%) to live in optical scanning counties, but blacks (37.8%) are much more likely than whites (26%) to live in counties using either of the technologies for which overvoting is nearly impossible if machines are programmed correctly: electronic voting and lever machines. The black-white gap in the use of lever

these time discrepancies is likely trivial; e.g. there is no reason to expect a different rate of population growth for minorities in punch card counties and in other counties.

[22] If these data are treated as a sample for purposes of conducting significance tests, even minuscule differences such as this one turn out to be statistically significant, because of the enormous sample sizes. Causation should not be inferred from significance, however, as a switch in voting equipment in a single large county could reverse a small black-white gap.

machines suggests, however, that African Americans on average may have to wait in longer lines at the polls.

Table 3 provides similar comparisons for persons above and below the poverty line. Differences are very minor, in Florida and in the nation overall. The poor are slightly more likely than the non-poor to live in punch card counties, but also slightly more likely to live in counties with electronic voting.

Based on presidential voting patterns in 1996, Democratic voters were more likely than Republicans to live in punch card counties in Florida, as shown in Table 4. Nationally, however, the difference is negligible. Democrats were more likely to live in counties with "antiquated"equipment, but in the form of lever machines that produce very few invalidated ballots (although longer lines), not punch cards. Republicans were somewhat more likely to live in optical scan and electronic voting counties.

In practical terms, the nationwide comparisons in Tables 2-4 are relevant only for the popular vote in the presidential election. Equity in voting technology is better addressed by examining differences across counties within states. The Electoral College system grants a state a fixed number of electoral votes, regardless of the number of valid votes cast in the state. Therefore, differences in voting technology that are purely cross-state cannot disadvantage a state's voters relative to other states. For example, suppose that most Republicans or whites who live in punch card counties reside in states where punch card use is universal, so they are not electorally disadvantaged in any way (except by contributing fewer valid votes to the non-binding popular vote). Further suppose that most Democrats or African Americans who live in punch card counties reside in states with non-uniform systems, where Republicans and whites tend to live in counties using less error-prone technology. Despite being disadvantaged across counties within states,

the inclusion of cross-state differences in the data could obscure these differences and produce findings at the national level like those in Tables 2-4.

For this reason, it is important to focus only on differences across counties within states, to exclude purely cross-state differences that can have no electoral impact. Accordingly, Table 5 examines separately each of the 29 states in which some but not all counties use punch card technology.

Figures in the first two columns show for each state its percentage of whites and blacks, respectively, who live in punch card counties. The larger of the two percentages for each state is shown in bold.[23] The conventional wisdom regarding racial disparities in voting equipment is contradicted by these state-level comparisons: in 18 of the 29 states, whites were more likely than African Americans to live in punch card counties. The 11 states in which blacks were more likely to live in punch card counties tend to be larger, however, accounting for 191 electoral votes, compared to 162 for the 18 states in which whites were more likely to live in punch card counties.

A similar comparison between whites and Hispanics shows that the former were more likely to live in punch card counties in 21 states (those shown in italics in Table 5, representing 235 electoral votes), while the latter were more likely to live in punch card counties in only 8 states (representing 118 electoral votes). Florida thus turns out to be an exceptional case rather than the rule.

The conventional view that the poor live disproportionately in punch card counties also turns out to be incorrect for the majority of states. In 21 states, representing 203 electoral votes, it is the non-poor who are more likely to reside in counties using this type

[23] Virtually all of the differences in this table are statistically significant, due to sample sizes ranging from hundreds of thousands to tens of millions (in the case of California).

of voting equipment. In only 8 states, representing 150 electoral votes, are the poor more likely to live in punch card counties.

Party differences, as measured by voting in the 1996 presidential election, also contradict popular belief. A greater share of Dole voters than Clinton voters lived in punch card counties in 16 of 28 states. However, the states in which Democratic voters were more likely to live in punch card counties account for slightly more electoral votes (183 to 167). Percentages were virtually equal in the 29th state, South Dakota. Again, Florida proves to be an atypical case.

4. Economic Factors

The belief that minorities, the poor and Democrats tend to reside in areas using more error-prone voting equipment rests in large part on the reasonable presumption that cost matters. Electronic voting systems are more expensive than punch card systems,[24] and counties with a lower poverty rate (and thereby a smaller share of minorities and Democratic voters in general) may be better able to afford the newer, more expensive technology. On the other hand, larger counties – where minorities and Democratic voters[25] disproportionately reside -- may benefit from economies of scale in purchasing and implementing newer systems such as electronic voting.

No study has yet tested the belief that economic factors explain why some counties use punch cards while others use less error-prone equipment. This section provides county-level analyses of the relationship between voting technology and three economic

[24] The price of touch screen systems vary from $1500-$6000 per unit, compared to about $5000 per precinct for an optical scanning machine or a card reader for punch card ballots. See New York Times, "Armed to Send Chads into Voting Oblivion," 17 December 2000 and "New Focus on Punch Card System," 19 November 2000.

[25] Bush won a plurality over Gore in 78% of all counties, but had fewer votes nationwide, as Gore won most large, urban counties.

variables: county size (a measure of economies of scale), personal income per capita, and property tax revenues (the major source of revenue for most county governments) per capita.

Results shown in Tables 6-8 provide little evidence that the retention of punch card systems, or the adoption of less error-prone optical scanning or electronic alternatives, is heavily influenced by considerations of affordability. Punch card counties in Florida are much larger (see Table 6), wealthier (Table 7), and more revenue-rich (Table 8) than any other group of counties. It is exactly those counties which should be best able to bear the expense of modern equipment which are the most likely to retain punch cards.

For the U.S. as a whole, punch card and Datavote counties are larger (Table 6) and wealthier (Table 7) on average than those using any other voting system. Paradoxically, counties using electronic voting constitute the group with the lowest incomes on average (Table 7), and -- by a wide margin -- the lowest property tax revenues per capita (Table 8).[26]

Similar findings are produced by comparisons across counties for each state separately. For each state in which some counties use punch cards while others use modern (optical scanning or electronic voting) equipment,[27] Table 9 provides simple unweighted averages of county size, income, and taxes across the relevant group of counties. For example, the first row shows that in Arkansas, punch card counties on average are larger (mean population of 63,594) than counties with modern equipment

[26] Results in Tables 6-8 change little if outlying observations are down-weighted by taking logs. The most dramatic outliers are on property taxes, with a maximum of $34,905 per capita in North Slope, AK and $5576 for the next-highest value, Loving County TX. Taking logs, these values become 10.46 and 8.63 respectively.

[27] Combining these two categories to form a larger "modern" category lets us include many more counties and states (facilitating tests of significance) than could be included in a table comparing only electronic, or only optical scanning, to punch card counties. .

(34,139). Similarly, they are wealthier (mean personal income per capita of $16,597 vs. $14,982) and have higher tax revenues per capita (mean of $239 vs. $209 per year).

In 17 of 28 states, punch card counties tend to be larger than counties with modern equipment. Similarly, in 17 of 28 (but not the same 17) states punch card counties tend to have higher incomes, and higher property tax revenues per capita.

Those differences that are statistically significant in Table 9 are marked by asterisks. Among the 11 states in which mean population was significantly different between punch card counties and those with modern systems, punch card counties were larger in 8 states and smaller in only 3 states. Average incomes were significantly higher in punch card counties in 8 states, and significantly higher in "modern" counties in only 5 states. Taxes were significantly higher in punch card counties in 7 states, and in counties with modern systems in only 3 states.

Florida fits the general pattern. Population, income and tax revenues were all significantly higher in its 15 punch card counties than in its 24 optical scan counties (electronic voting has not yet been approved for use in Florida).

Table 10 reports results from multivariate regressions that include demographic as well as economic variables. These tests can determine, for example, whether counties of a given size are more likely to use punch card systems if they have more minorities.

There are six probit regressions, with counties as the unit of analysis. Each regression corresponds to a voting system type, with the dependent variable coded as 1 for counties with that type of equipment, and coded as 0 otherwise. These tests therefore are designed to provide information on what county-level characteristics distinguish the use of paper ballots from the use of alternative systems (equation 1), lever machines from alternative systems (equation 2), etc.

Independent variables include the African-American and Hispanic shares of the county population, the log of personal income per capita, the log of property tax revenues per capita, and the log of population. Three dummy variables are also included, representing the location of manufacturers of voting equipment. For example, all counties located in a state in which one or more punch card vendor companies are headquartered are coded as 1 for the dummy variable "punch card manufacturer."[28]

Statistically significant relationships in Table 10 are shown using asterisks. Standard errors are computed using a robust variance estimator for clustered data, treating counties across states but not within states as independent observations.[29]

Controlling for other variables, counties with a higher share of African Americans are significantly less likely to use paper ballots (equation 1), more likely to use lever machines (equation 2), and *less* likely to use punch card machines (equation 3).[30] The dependent variable in equation 3 distinguishes punch card counties (coded 1) from all other counties grouped together (coded as 0). We ran three additional probit regressions, not reported in the table, distinguishing punch card from electronic, punch card from lever machines, and punch card from optical scanning systems, respectively, with all other counties deleted in each case. Independent variables were identical to those included in Table 7. In each of the three cases, percent black was associated with a significantly *lower* likelihood of having a punch card system.

Table 7 shows that counties with more Hispanics are less likely to use lever machines, and more likely to use Datavote or optical scanning technology. Higher

[28] Information on vendor location was obtained from the Federal Election Commission's web site (www.fec.gov). Only vendors still in business are listed, unfortunately, so there is no dummy for lever machines vendor location.
[29] We also tested for heteroskedasticity associated with population size, with negative results.

incomes are associated with a lower likelihood of using paper ballots; no other significant relationship with income is found.[31] Higher property taxes are associated with a greater use of paper ballots (likely reflecting low population density) and a lower likelihood of using electronic voting. Low population levels strongly predict the use of paper ballots as expected, while large counties are more likely to use punch card or electronic voting systems. Punch card use tends to be higher in states where punch card vendors are located, but vender location for optical scanning and electronic systems is unrelated to the use of those technologies.[32]

5. Conclusion

Results from this study contradict the widespread belief that African Americans, the poor, and Democratic voters are more likely to reside in counties using punch card technology, and that the choice of voting systems is largely determined by affordability. Evidence on ethnic and party disparities in Florida, and in selected metropolitan areas such as Atlanta and Chicago, is inconsistent with evidence from most other states and the country as a whole. In fact, in the majority of states with some counties using punch cards and others using alternative systems, whites, the non-poor, and Republican voters are more likely than African Americans, the poor, and Democratic voters to reside in punch card counties. Moreover, there is little evidence that the choice between punch cards and more modern, less error-prone systems is influenced by economic factors. To the contrary, in Florida and elsewhere larger, wealthier and more tax-rich counties are

[30] If the Democratic vote share from the 1996 election.(votes for Clinton as a share of the total votes for Clinton and Dole) is substituted for percent black, it is also associated with higher use of lever machines and lower use of punch card systems.
[31] Results are similar if the poverty rate is substituted for personal income per capita.
[32] One of these dummies is omitted from equation 1, because it perfectly predicts use of paper ballots: no punch card manufacturer is located in a state with counties that use paper ballots.

more likely to use punch card technology, and less likely to use electronic voting systems.

Several caveats should be noted. First, this study has in fact found some evidence of disparities in voting equipment that may disadvantage minority groups. Blacks are more likely than whites to reside in counties using lever machines, which tend to be associated with longer waits at the polls, which may deter some persons from voting. Also, Hispanics are much more likely than whites to live in punch card counties, although this disparity would be eliminated entirely if Los Angeles County abandoned its use of punch cards – and the disparity in most individual states is inconsistent with this gap for the nation as a whole.

Second, there are potentially important variations in the way punch card systems operate that we are unable to control for due to a lack of data. For example, we cannot rule out the possibility that poorer counties are less likely to provide voters access to card readers that allow them to check that their ballots accurately reflect their voting intentions. However, the availability of this equipment could just as easily be a function of county size rather than income levels.[33] We also do not have complete data on the number and characteristics of absentee voters in each county and on which system is used for tallying their ballots.[34]

Third, this analysis addresses only the question of who uses punch card and other voting systems, and does not explore the possibility that minorities or the poor might find it more difficult than other voters to use punch card technology effectively. Studies of

[33] Cook County, Illinois (Chicago) has card readers available at the precincts, but their use by voters has been prohibited because it is unavailable in other punch card counties in the state. See Washington Post, "A Racial Gap in Voided Votes," 27 December 2000, A1.
[34] Obviously absentee voters cannot use lever machines or electronic voting; some of those counties send ballots or punch cards to absentee voters that are machine counted while others manually count absentee

Chicago, and of Duval and Miami-Dade counties in Florida discovered far higher rates of invalidated votes in precincts with large numbers of African American voters. In the case of Miami-Dade, a study reported that this racial disparity is not explained by differences in income or education levels.[35] The allegation that punch card technology is discriminatory because it produces more undervotes and overvotes in precincts with more poor and African American voters has a long history.[36] This disparity in invalid votes may be partly attributable to a greater number of voters with either no prior experience voting or limited ability to read and comprehend written instructions (particularly immigrants not proficient in English) in poorer and heavily minority precincts.[37] By no means are we denying that the limitations of punch card technology disproportionately invalidate the votes of African Americans, poor persons, or Democratic voters. However, our evidence strongly refutes the supposition that these disparities are produced by a higher probability that these persons are more likely than whites, the non-poor, or Republican voters to reside in punch card counties.

Fourth, we are not claiming that Vice-President Gore was not victimized by the geographic distribution of punch card voting in the 2000 election. Unluckily for him, the crucial state in the election happened to be one of the few in which Democratic voters were substantially more likely than Republicans to vote using punch card technology. Coupled with the unusually high rate of invalidated ballots produced by punch card voting in Florida, this disparity may well have cost Gore the presidency.

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ballots. Punch cards sent to absentee voters are particularly difficult to use, without the vote recorder devices and their attached booklets and card holders, that are available at the polls.

[35] Washington Post, "Irregularities Cited in Florida Voting: Blacks Say Faulty Machines, Poll Mistakes Cost Them Their Ballots," 12 December 2000, A38. Washington Post, "Florida Ballot Spoilage Likelier for Blacks," 3 December 2000, A1.

[36] See Hoffman (1987: 70), FEC (1982: 21) and Washington Post, "A Racial Gap in Voided Votes," 27 December 2000, A1.

[37] Orlando Sentinel, "Gore Would Have Gained Votes," 19 December 2000.

Finally, we should emphasize that this study is intended solely to investigate the consensus that rapidly emerged in the aftermath of Florida regarding who was more likely to confront antiquated voting technology. None of the findings here should be interpreted as arguing for the retention of punch card technology, or that voters are to blame when their ballots are not read in a way consistent with their voting intentions. Neither should it be interpreted as taking a position on any of the political or legal controversies that arose in Florida following the 2000 election.

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Table 1
Voting Equipment in Use, November 1998

	Florida		US		
Voting Equipment	% of counties	% of population	% of counties	% of population	Invalidated votes, 1996
Punch card	22.4	60.4	18.3	32.3	2.4%
Datavote	28.4	11.9	2.0	4.3	2.6%
Lever machine	6.0	0.4	15.3	18.3	1.8%
Paper ballots	1.5	0.1	13.2	1.4	2.2%
Optical scan	35.8	25.1	38.7	27.0	1.9
Electronic	0.0	0.0	8.1	8.8	2.1
Mixed	6.0	2.2	4.5	8.0	--

Note: Voting equipment in use is ascertained every election year in a survey by Election Data Services, Inc. Invalidated vote percentages are from the New York Times ("New Focus on Punch Card System," 19 November 2000).

Table 2
Voting Equipment and Ethnicity

	Florida			US		
Voting Equipment	White	Black	Hispanic	White	Black	Hispanic
Punch card	60.4	63.1	83.8	31.9	31.4	44.3
Datavote	12.3	8.7	3.7	4.3	2.9	7.6
Lever machine	0.39	0.37	0.05	17.6	25.2	14.5
Paper ballots	0.07	0.16	0.03	1.6	0.4	0.7
Optical scan	24.6	26.2	11.8	27.7	21.8	24.4
Electronic	0.0	0.0	0.0	8.4	12.6	6.2
Mixed	2.3	1.5	0.55	8.5	5.8	2.5

Table entries indicate percentage of persons of a given ethnicity who reside in counties with voting equipment of a particular type. Note that Hispanics may be of any race.

Table 3
Voting Equipment and Poverty Status

	Florida		US	
Voting Equipment	Above poverty level	Below poverty level	Above poverty level	Below poverty level
Punch card	61.5	63.1	31.8	33.4
Datavote	11.7	10.3	4.1	3.7
Lever machine	0.33	0.5	19.3	18.7
Paper ballots	0.06	0.08	1.5	1.5
Optical scan	24.3	24.0	26.3	26.1
Electronic	0.0	0.0	8.6	9.8
Mixed	2.1	2.0	8.5	6.7

Table entries indicate percentage of persons of poor or non-poor persons who reside in counties with voting equipment of a particular type. The poverty line was $14, 763 for a family of four.

Table 4
Voting Equipment and Party Vote, 1996

	Florida		US	
Voting Equipment	Dole voters	Clinton voters	Dole voters	Clinton voters
Punch card	55.6	63.8	31.2	31.0
Datavote	14.3	11.3	4.4	3.8
Lever machine	0.4	0.3	15.9	20.3
Paper ballots	0.1	0.1	1.7	1.5
Optical scan	26.7	22.6	29.5	24.7
Electronic	--	--	9.5	8.6
Mixed	3.0	1.8	7.8	10.2

Table entries indicate percentage of Dole and Clinton voters who reside in counties with voting equipment of a particular type.

Table 5
Punch Card Equipment and Ethnicity, Poverty, and Party Voting, by State

	Ethnicity			Poverty Status		Party Voting, 1996	
	White	Black	Hispanic	Non-poor	Poor	Dole	Clinton
AR	22.2	8.5	23.9	20.2	15.6	23.4	17.3
AZ	18.1	12.9	23.9	18.4	29.0	16.4	19.8
CA	58.3	80.8	66.6	61.3	68.3	52.2	63.7
CO	38.6	27.4	31.0	37.8	33.4	44.3	34.3
FL	60.4	63.1	83.8	61.5	63.1	55.6	63.8
GA	41.4	45.6	54.7	43.0	37.0	45.1	49.2
ID	58.4	55.3	65.7	58.5	56.8	59.8	60.2
IN	38.1	15.0	22.2	36.1	33.6	36.9	35.3
MI	12.0	8.7	8.8	11.2	12.3	11.2	11.9
MN	2.8	0.3	1.5	2.5	3.3	2.5	2.6
MO	67.4	90.8	36.5	71.4	69.0	69.3	72.3
MS	24.4	14.9	11.4	20.4	18.4	20.9	16.5
MT	17.2	5.5	17.7	16.7	18.5	18.5	13.8
NC	15.5	12.5	4.3	14.9	14.2	15.4	12.5
ND	7.3	2.1	0.2	7.5	7.4	6.5	7.0
NV	13.8	2.0	10.4	13.8	10.1	18.9	12.6
OH	74.5	73.8	71.2	74.4	75.3	73.7	74.1
OR	44.7	15.2	38.6	44.1	37.6	46.2	42.8
PA	13.4	4.4	7.0	12.2	10.4	13.6	10.5
SC	44.7	31.4	42.3	40.3	33.8	45.5	35.0
SD	15.2	5.7	9.3	14.4	13.2	14.9	14.9
TN	17.9	18.8	15.1	18.5	18.7	18.1	16.9
TX	37.8	54.7	36.6	41.6	40.0	39.1	38.7
UT	97.9	99.6	99.0	97.6	96.4	97.1	97.4
VA	21.0	26.0	17.0	21.9	21.5	21.5	19.2
WA	58.9	60.6	41.6	60.8	55.0	61.0	64.2
WI	2.2	0.3	0.8	2.2	0.9	3.2	1.8
WV	56.3	72.6	54.5	57.6	54.1	58.3	54.6
WY	20.0	7.4	19.4	19.8	16.9	20.4	18.8

Table entries indicate the percentage of each group residing in punch card counties. Note that Hispanics may be of any race. The poverty level was $14, 761 for a family of four.

Table 6
Voting Equipment and County size (mean population)

Voting Equipment	Florida	US
Punch card	589,824	150,640
Datavote	91,841*	183,984
Lever machine	14,410*	101,748*
Paper ballots	12,359*	9,123*
Optical scan	153,026*	59,609*
Electronic	--	92,565*
Mixed	79,736	150, 257

A * indicates the mean is significantly (.05, two-tailed test) less than the corresponding punch card mean.

Table 7
Voting Equipment and Personal income per capita (mean)

Voting Equipment	Florida	US
Punch card	22,540	18,299
Datavote	16,609*	18,585
Lever machine	13,497*	17,322*
Paper ballots	10,783	17,590*
Optical scan	17,239*	17,530*
Electronic	--	16,930*
Mixed	20,040	19,160

A * indicates the mean is significantly (.05, two-tailed test) less than the corresponding punch card mean.

Table 8
Voting Equipment and Property taxes per capita (mean)

Voting Equipment	Florida	US
Punch card	710.3	499.6
Datavote	470.6*	605.7
Lever machine	196.0*	478.1
Paper ballots	135.0*	876.7
Optical scan	546.0	541.7
Electronic	--	312.2*
Mixed	674.5	751.1

A * indicates the mean is significantly (.05, two-tailed test) less than the corresponding punch card mean.

Table 9
Voting Equipment and Economic Variables, by State

State	Population, mean		Personal income per capita, mean		Property taxes per capita, mean	
	Punch	Modern	Punch	Modern	Punch	Modern
AR	**63,594**	34,139	**16,597****	14,982	**239.0**	209.3
AZ	77,860	**1,206,882**	14,013	**18,827****	520.4	**595.3**
CA	**1,797,042***	319,183	**24,169***	19,937	**591.3**	547.7
CO	**134,851**	51,344	**22,075**	19,076	679.5	**952.9****
FL	**589,824****	153,027	**22,540****	17,239	**710.3***	546.0
GA	**179,581****	45,328	**18,766**	16,891	**483.2***	366.5
ID	**50,560**	28,790	**17,297**	16,159	459.4	**459.6**
IN	50,459	**63,789**	18,293	**18,972**	**503.8**	474.8
MI	**69,384**	63,589	17,463	**17,921**	**805.9***	642.6
MN	42,128	**64,302**	16,253	**18,811***	578.3	**607.5**
MO	**89,913****	25,102	**17,002****	15,752	**250.4**	221.8
MS	**41,144**	28,233	**14,514**	14,122	**343.7**	281.3
MT	15,195	**25,768**	15,748	**16,784**	**842.0**	758.8
NC	83,216	**83,671**	17,533	**17,729**	294.9	**338.2**
ND	**15,113**	14,399	17,909	**18,622***	**665.7**	592.4
NV	19,264	**155,760,**	22,760	**23,660**	**969.4**	494.0
OH	117,111	**174,403**	17,786	**19,341***	451.7	**561.7****
OR	**204,477****	74,332	**19,487***	17,928	743.3	**771.7**
PA	**126,055**	115,187	**20,213**	18,691	431.7	**441.5**
SC	**117,012***	67,489	**17,743****	15,250	**478.9****	377.1
SD	9,208	**20,326***	**19,879**	18,878	**637.5**	611.3
TN	43,689	**121,979***	16,235	**17,748***	243.7	**305.9****
TX	**436,418***	77,535	**18,692****	16,480	**722.7**	709.0
VA	**226,106**	94,427	21,442	**21,841**	592.2	**621.2**
WA	**207,730**	96,254	**19,499**	18,576	332.6	**345.2**
WI	53,817	**104,780**	**24,762**	19,778	**1059.5****	745.9
WV	**51,658***	31,313	**16,759***	15,131	**296.7****	231.5
WY	13,615	**28,026***	**21,961**	19,219	**1271.6***	785.1

A * (**) indicates statistical significance at the .10 (.05) level for 2-tailed tests.

Table 10: Probit Regressions
Voting Equipment in Use, November 1998

Equation	1	2	3	4	5	6
Dependent variable	Paper ballots	Lever Machines	Punch card	Data Vote	Optical scanning	Electronic
Intercept	12.781 (4.244)	2.420 (4.332)	-1.374 (3.055)	-4.486 (4.654)	-2.833 (3.445)	0.854 (4.394)
Black %, 1996	-1.418* (0.671)	1.983** (0.666)	-1.159* (0.485)	0.721 (0.558)	0.056 (0.552)	-0.401 (0.972)
Hispanic %, 1996	-0.297 (0.461)	-5.155* (2.216)	-1.012 (0.737)	2.052** (0.607)	1.075* (0.511)	0.268 (1.333)
Personal income per capita (log), 1994	-0.964* (0.464)	-0.413 (0.431)	-0.205 (0.352)	0.074 (0.468)	0.350 (0.411)	-0.179 (0.419)
Property taxes per capita (log), 1992	0.467** (0.145)	-0.155 (0.113)	0.016 (0.110)	0.109 (0.068)	-0.121 (0.142)	-0.519* (0.219)
Log of population, 1997	-0.767** (0.108)	0.113 (0.069)	0.233** (0.055)	0.036 (0.091)	-0.008 (0.065)	0.256** (0.044)
Punch card vendor	--	-0.051 (0.562)	1.485** (0.440)	0.538 (0.503)	-1.034** (0.306)	-0.975* (0.502)
Optical scanning vendor	0.131 (0.275)	0.550 (0.423)	-1.219* (0.624)	1.356** (0.380	0.068 (0.166)	-1.183* (0.583)
Electronic vendor	0.050 (0.394)	0.606 (0.380)	0.071 (0.293)	-0.423 (0.410)	-0.167 (0.240)	-0.073 (0.404)
Pseudo-R^2	.37	.14	.17	.29	.04	.14
Model Chi square	200.0**	26.2**	58.1**	137.1**	23.6**	64.3**
Mean, dep. var.	.13	.15	.18	.02	.39	.08

Number of cases is 3108. A * (**) indicates significance at .05 (.01) level for 2-tailed tests.

Roll Off at the Top of the Ballot: Intentional Undervoting in American Presidential Elections

Abstract

Every four years, more than 2% of voters fail to cast a valid vote in the U.S. presidential contest. The 2000 election highlighted the fact that many intended votes are invalidated because of voter confusion associated with complicated ballot designs or voting equipment. Using survey data, this study provides estimates of the proportion of invalidated presidential ballots that do not represent errors but rather intentional undervotes. Voters who are older, poorer, and who do not identify with either major party are more likely to intentionally refrain from casting a presidential vote. Black-white differences are very minor, implying that racial disparities in the rate of invalidated votes cannot be attributed to a stronger tendency among black voters to intentionally skip the presidential contest. Intentional undervoting is higher in states with a Senate contest on the ballot, and in states where the presidential vote is less competitive.

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1. Introduction

Every four years, more than 2% of voters go to the polls in November without casting a valid vote in the U.S. presidential contest (Caltech/MIT Voting Project, 2000). The 2000 election highlighted the fact that many of these 2 million or more invalidated votes were disqualified because of voter errors resulting from confusing ballot designs or from complicated or defective voting equipment.

Numerous reforms in election administration aiming to reduce the frequency of these errors have been proposed at the state and federal level. Presidents of two of the nation's top engineering schools launched an initiative to assess existing voting technology and to develop new, more voter-friendly voting machines.[1]

However, some of these invalidated votes result from voluntary abstention. Estimating the number of intentional undervotes is essential for setting realistic goals for minimizing the rate of invalidated ballots. Allegations of "millions of disenfranchised voters"[2] and widespread use of the term "error rate"[3] as synonymous with invalidated votes suggest that many observers believe nearly all of the invalidated votes were unintentional. On the other extreme, some of President Bush's spokespersons during the Florida recount claimed that "most if not virtually all so-called undervotes" involved voters who "didn't intend to vote for president."[4] Based on responses from two independent surveys, we find that more than one third but less than one half of invalidated presidential votes are accounted for by intentional undervoting.

[1] See "MIT, Caltech Join Forces to Develop Reliable, Uniform U.S. Voting Machine." MIT News Release, December 14, 2000 (web.mit.edu/newsoffice/nr/2000/voting.html).
[2] For example, see remarks by Senator Charles Schumer (D-NY) at the March 14 Senate Rules Committee hearing on election reform.
[3] For example, "Technology Slashes Detroit Voting Errors," Washington Post, 5 April 2001; see also Report of the Governor's Select Task Force in Florida (www.collinscenter.org/usr_doc/52816.doc).
[4] "Florida Ballot Spoilage Like Jar for Blacks: Voting Machines, Confusion Cited." Washington Post, 3 December 2000.

Numerous reports have indicated that the rate of invalidated ballots is far higher in precincts with large numbers of minorities and poor persons.[5] A possible explanation for this pattern is simply that minority and poor voters are more likely than other voters to skip the presidential contest voluntarily, for example if the party primaries tend to produce centrist candidates that are ideologically distant from many poor and minority voters. However, survey evidence presented below indicates that differences across racial groups in intentional undervoting are insignificant, and differences associated with income, while statistically significant, are small--suggesting that accidental undervoting and overvoting accounts for most of the invalidated presidential ballots in poor and minority precincts.

We also test for the importance of state-level variables, including the presence on the ballot of Senate or gubernatorial contests or a "straight party vote" option, the number of presidential candidates listed on the ballot, and the competitiveness of the presidential contest in the state. Senate contests increase intentional non-voting in the presidential race, while more competitive contests for states' electoral votes shows some evidence of reducing intentional non-voting.

2. Estimating Intentional Undervoting

Numerous studies have examined the determinants of "roll-off" in contests located below the top of the ballot. Roll-off is typically measured in comparison with the total votes cast for the contest at the top of the ballot. Most of these studies (e.g., Wattenberg et al., 2000; Ansolabehere et al., 1994; Vanderleeuw, and Utter, 1993; Engstrom and

5 For example, see "Racial Pattern in Demographics of Error-Prone Ballots," New York Times, 9 November 2000; "A Racial Gap in Voided Votes," Washington Post, 27 December 2000; "Florida Ballot Spoilage Likelier for Blacks: Voting Machines, Confusion Cited," Washington Post, 3 December 2000.

Caridas, 1991) assume that roll-off is intentional, in the sense that the voter does not leave the polls thinking that he or she voted in a contest when no vote was actually recorded. Explanations tend to focus on lack of voter information and interest (Wattenberg et al., 2000). Consistent with these explanations, racial disparities in roll-off tend to be lower in contests involving at least one African-American candidate (Vanderleeuw, and Utter, 1993; Engstrom and Caridas, 1991). Other studies of roll-off in lower contests on the ballot consider the possible role of confusing ballot design or difficulty in using voting equipment (e.g., Bullock and Dunn, 1996; Nichols and Strizek, 1995; Shocket et al. 1992; Darcy and Schneider, 1989; Thomas, 1968; Walker, 1966).

In contrast, "roll off" in presidential contests was neglected until after the 2000 election. Because the presidential contest generates far more interest and media attention than other races, intentional undervoting is more rare and a much larger share of "roll off"–defined with respect to total turnout—may be attributable to voter error. Beliefs vary widely regarding what fraction of the roughly 2% of ballots nationwide with no valid presidential vote are intentional, and how many are accidental. Changes in a county's rate of invalidated ballots following a change in voting technology can provide some indication. For example, Detroit's rate of invalid presidential ballots reportedly declined from about 3.1% in 1996 to 1.1% in 2000, coinciding with a shift from punch-card to precinct-count optical scan technology which allowed voters to check their ballots for overvotes.[6] This particular case suggests that the majority of invalidated ballots were accidental rather than intentional, but more comprehensive and systematic information is needed because of wide variability across jurisdictions in the measured impact of changes in voting equipment.

[6] See "Technology Slashes Detroit Voting Error," Washington Post, 5 April 2001

Because it is not possible to distinguish intentional from accidental undervotes by examining ballots, voter self reports represent the only systematic way to estimate the incidence of intentional undervoting. Survey questions from the National Election Studies (NES) and from the Voter News Services (VNS) exit polls can be used to determine the number of voters who intentionally bypass the presidential contest. In the NES, respondents who indicate they voted in the November elections are then asked "did you vote for a candidate for President?" Responses for each election dating to 1980 are summarized in Table 1.

The percentage of reported undervotes varies from one election to the next, likely due mostly to sampling error. Combined over the 1980 to 2000 period, a total of 56 of the 7,699 (0.73%) professed voters indicated they deliberately skipped the presidential contest on their ballots.

Exit polling data from VNS provides an independent check on this estimate. The 0.73% figure from the NES for intentional undervoting turns out to be remarkably similar to the rate of undervoting reported in the exit polls for 1992, the only year for which VNS data allow such a figure to be calculated. Among all exit poll respondents, as shown at the top of Table 2, 0.77% checked the box "didn't vote for President."[7]

Close agreement across the two sources does not necessarily indicate that the estimates are correct. Some actual undervoters may have claimed to vote for President to appear more virtuous, or some actual voters may have stated they didn't vote, to avoid having to report for whom they voted. Moreover, the VNS-based estimate may slightly understate undervotes. An unknown number of exit poll respondents were deleted from the published VNS data file entirely because they did not mark any option on the

presidential vote question, even the "didn't vote" option. According to VNS staff, some undervoters probably skipped the presidential vote question because they thought it was not applicable to them, not noticing the "didn't vote" option at the end of the list of five choices.

Nevertheless, the similarity of the estimates derived from these two independent sources is striking, given the very different methods and samples used. The NES is designed to be representative at the national but not the state level, and typically includes respondents from only about 30 states. The VNS exit polls are designed to be representative at the state level, as well as at the national level when weighted appropriately, and includes respondents from every state. The NES undertakes lengthy oral interviews with respondents in person or over the telephone. In contrast, the VNS questionnaires contain only a tiny fraction of the number of questions in the NES survey, and are handed to voters to fill out. On completing the survey, voters fold it and put it in a box, so exit polling responses are confidential.

3. Who Undervotes?

Unlike the NES samples, the VNS sample is sufficiently large to examine what factors are associated with intentional undervoting. We first examine who is more likely to undervote, with simple comparisons across demographic groups. We then consider state-level variables such as the presence of other salient contests on the ballot. Finally, we report results from logistic regression analyses that can determine, for example, whether a variable such as income matters holding constant other variables such as age and ethnicity.

[7] The other four boxes were for Clinton, Bush, Perot, and "other" with space to write in a name. All

As shown in Table 2, there is little difference in intentional undervoting across most ethnic groups, with 0.73% of whites and 0.82% of blacks indicating they skipped the presidential contest. The rate for Hispanics is slightly lower, and for Asian Americans slightly higher, than the rates for whites and blacks. Undervoting is a much higher 3% for the "other" category, which comprises just over 1% of the sample and presumably includes mostly Native Americans, Pacific Islanders and some persons of mixed ancestry.

Low income is associated with more undervoting. The rate for respondents with family income under $15,000 is 1.54%, about double the rate for those with family incomes of between $15,000 and $30,000.[8] The rate is halved again for those with incomes above $30,000, and declines only slightly with further increases in income group.

Undervoting is slightly lower for voters age 25-39 than for the youngest group. The most notable difference however is the rising rate beyond age 50. The rate for voters 60 and over is 1.32%.

Party differences are small, with 0.69% of self-identified Democrats indicating they didn't vote for President, compared to 0.52% of Republicans. More than 1% of voters classifying themselves as "independents" or "something else" did not vote for President.[9]

Intentional undervoting may also be influenced by other contests on the ballot. For example, where there is little else of interest on the ballot, virtually everyone who

analyses of VNS data are weighted to form a rationally representative sample.

[8] Exact income and age are unknown, as exit poll respondents mark one of eight categories for their age (collapsed here to six), and one of five categories for income.

[9] The VNS partisanship question is "No matter how you voted today, do you usually think of yourself as a Democrat/Republican/Independent/something else."

goes to the polls will want to cast a presidential vote. Where there are other important contests on the ballot, such as mayoral or gubernatorial races, Senate races, and well-publicized initiatives (e.g. those regarding term limits in 14 states in 1992), a larger number of voters who have no desire to cast a vote in the presidential contest may show up at the polls.

We can identify the state, but not the city, county, or congressional district of VNS respondents, so we are somewhat limited in ballot effects that we can measure. As shown in Table 2, voters with a Senate race on their state's ballot are nearly twice as likely to undervote (0.90%) as voters with no Senate race on the ballot (0.48%). A governor's contest on the ballot is also associated with increased undervoting in the presidential contest. Nearly 1% of voters in states with a governor's race on the ballot skipped the presidential contest, compared to 0.73% of voters in states with no opportunity to vote for Governor. As expected, the presence of other contests--particularly Senate contests—on the ballot appears to increase the number of voters who do not care to vote in the presidential race. However, undervoting is not higher in states with term limit initiatives on the ballot (result not shown in Table 2).

We also examined the possible effects of other state-level variables. Many states place a straight-party vote option on the ballot, by which the pull of a single lever or a single mark on the ballot casts a vote for all of a particular party's candidates—including the presidential candidate—that appear on the ballot. This feature has obvious implications for reducing roll-off in less salient contests on the ballot (Wattenberg et al., 2000; Walker, 1966). It could potentially reduce undervoting at the top of the ticket as well. However, we find no supporting evidence in the VNS data, with 0.78% of voters in

straight-party states and 0.76% of voters in other states declining to cast a vote for President.

States also differ substantially in the obstacles faced by presidential candidates in getting their names on the ballot. The number of candidates with their names placed on the ballot accordingly varies importantly across states. In 1992, several states had only three presidential candidates on the ballot, while New Jersey had eleven. With more candidates, abstention related to alienation or indifference may decline, as more voters can find a candidate with a similar ideology, or that caters to their pet issue. However, we found no relationship between the number of candidates on the ballot and the likelihood of undervoting.

Fewer voters may choose to skip the presidential contest in "battleground" states than in other states (e.g. Utah) where the winner of the state's electoral votes is a foregone conclusion. Accordingly, we calculated a closeness variable based on the absolute value of the difference in the vote shares of the top two vote winners in the state. Using this or alternative measures of closeness, voters in more competitive states are found to be no less likely to undervote.

4. Logit Regressions

Table 3 reports results from logit regression analyses.[10] The dependent variable is coded 1 for voters who reported that they did not vote in the presidential contest, and is coded 0 for all other voters. Negative coefficients for independent variables, or odds ratios less than one, thus indicate a reduced probability of undervoting, i.e. an increased probability of voting for a presidential candidate. Standard errors are adjusted for non-

independence of errors within states and for possible heteroskedasticity. Regression 1 includes several state-level determinants of undervoting, while regression 2 differs by including a full set of state dummy variables instead. Results for the individual-level variables are nearly identical in the two regressions.

Among ethnic categories, only "others" are found to overvote at significantly different rates from whites, the omitted category. Quantitatively, the effect of being in the "other" category is very large, increasing the likelihood of undervoting by about 2.2 percentage points on average.[11] Controlling for income and other variables thus does not narrow the difference between "others" and whites, blacks etc. that was reported in Table 2, which also exceeded 2 percentage points.

Older voters are significantly more likely than younger voters to skip the presidential contest. In Table 3, the four under-50 age groups have been collapsed into one (omitted) category, because preliminary analysis found only trivial differences among them. The two older groups both undervote at significantly greater rates than the under-50 omitted category. Being a voter between ages 50 and 59 increases the probability of undervoting by about 0.44 percentage points on average, while the corresponding effect for voters over 60 is about 0.66 points.

While greater income is always associated with a lower probability of intentional undervoting in Table 2, the pattern changes somewhat when other variables are controlled for in Table 3. The lowest-income group undervotes at a higher rate than the omitted highest-income (over $75,000) group, but the difference is significant only at the

10 Results were nearly identical to those reported below when skewed logit estimation (Nagler, 1994) is used instead of logit.

11 This figure is determined by computing the predicted probability of undervoting for each person in the sample, first with "other" coded 1 and then with "other" coded 0. The difference in these values is taken for each observation, and then averaged over the sample. Other marginal effects reported below are computed analogously.

.10 level for a two-tailed test. Being in the lowest-income group (under $15,000) increases the likelihood of undervoting on average by about 0.41 percentage points relative to the highest-income voters (over $75,000).

The middle-income groups actually undervote at lower rates than the highest-income group, controlling for other variables. For the $15,000-$30,000 group, this difference is significant only at the .09 level, and the average effect on the probability of undervoting is about 0.28 percentage points. Preliminary analysis found no difference between the $30,000-$50,000 and the $50,000-$75,000 groups, which were then collapsed into one category. This group undervotes at significantly ($p<.0001$) lower rates than the highest-income group. There is about a 0.62 percentage-point difference in the probability of undervoting for members of the $30,000-$75,000 group and the over-$75,000 group.

No difference between Democrats and Republicans is found. Independents and others undervote at significantly ($p<.0001$) higher rates than Republicans (the omitted category), with a marginal effect of about 0.42 percentage points on average. This effect is only slightly smaller than the difference reported in Table 2, indicating that the high undervoting rate of Independents is mostly not attributable to differences in age, income or other variables held constant in Table 3.

Of the state-level variables, only the presence of a Senate race on the ballot is a highly significant ($p<.001$) determinant of undervoting. A Senate race increases the probability of undervoting in the presidential contest by about 0.42 percentage points on average. A gubernatorial contest on the ballot—which was associated with a somewhat greater likelihood of undervoting in Table 2--has no significant impact on the probability of undervoting, controlling for other variables. Neither the number of presidential

candidates on the ballot, nor a straight-party voting option, influences the rate of intentional undervoting.

There is some evidence that more competitive contests for a state's electoral votes reduce undervoting. This variable is significant only at the .08 level, however, and the effect is small. A 10 percentage-point increase in the margin separating the top two vote earners (e.g. a 55%-40% split vs. a 50%-45% split) increases undervoting by less than 0.1 percentage points on average.

The low explanatory power of the model in Regression 1 of Table 3 suggests that there must be other important determinants of undervoting which we are unable to measure, using the limited information available from the exit polls. For example, we know only the states of VNS respondents, while the contests on voters' ballots differ across counties within a state, and even across towns within counties. To the extent that any of the omitted variables differ at the state level, we can capture their collective effects by adding a set of state dummy variables to the model. Adding these, as we do in Regression 2 of Table 3, requires dropping other variables measured at the state level to avoid perfect collinearity. The pseudo-R^2 increases only slightly, from .05 to .07, suggesting that omitted state-level variables are less important than local-level differences in election calendars or election administration, or individual-level differences in political attitudes, information, or demographic factors not included in the exit polls.[12] Results on the demographic and party variables in Regression 1 change only trivially with the addition of the state dummy variables in Regression 2.

12 A nationally representative subset of the exit poll respondents received a longer questionnaire, which included a question on educational attainment. For these respondents only, area population was also recorded. With only 47 undervotes in this subset, however, no reliable analyses can be conducted.

5. Conclusions

This study is intended to contribute in three ways to our understanding of political behavior and to the design of reforms in election administration. First, it complements the literature on determinants of roll off in lower contests on the ballot, by identifying factors associated with roll off, in the form of intentional undervoting, in presidential contests at the top of the ballot.

Second, the study helps to identify attainable goals for reducing the rate of invalidated ballots through innovations in voting technology and ballot design. We find that about 0.75% of voters intentionally skip the presidential contest. This rate will of course vary somewhat across jurisdictions, with variations in income, ethnicity and the age profile of the population, and with the presence of other contests on the ballot. Nationally, however, we can expect the current rate of invalidated ballots of about 2.1% to drop by no more than two thirds, even if we (unrealistically) assume fool-proof voting technologies and ballot designs, and no errors in administering elections.

Finally, our study has implications for equal protection issues raised by the 2000 election in Florida and the subsequent court rulings. A possible explanation for the very high rates of invalidated ballots reported for some heavily African-American precincts is simply that black voters intentionally undervote at much greater rates than white voters. We find no evidence to support this possible explanation, indicating that the discrepancy is attributable to differences in the frequency of errors. However, Knack and Kropf (2001) have shown that African Americans are no more likely than whites to live in counties using punch cards or other error-prone voting equipment. These findings, as well as results from Darcy and Schneider (1989) and from cross-precinct studies within

punch card counties reported in the media,[13] strongly suggest that complicated voting machinery and confusing ballot design generate a higher frequency of accidental overvotes and undervotes among African American voters than among white voters. The allegation that punch card voting technology is discriminatory because it produces high error rates in poor and African American precincts has a long history (Hoffman, 1987: 70; FEC, 1982: 21). Further research should investigate the extent to which such differences are attributable to black-white gaps in average educational attainment, educational quality, voting experience, or other factors.

We find some evidence that older and poorer voters intentionally skip the presidential contest at higher rates. These differences should be taken into account in assessing the possibility that elderly voters, for example, may make more mistakes in voting, particularly with punch-card systems, due to poor vision or decreased manual dexterity (Shocket et al., 1992). Even for older and poorer voters, however, the rate of intentional undervoting appears to be 1.5% or less.

13 See "Racial Pattern in Demographics of Error-Prone Ballots," New York Times, 29 November 2000; "A Racial Gap in Voided Votes," Washington Post, 27 December 2000; "Florida Ballot Spoilage Likelier for Blacks: Voting Machines, Confusion Cited," Washington Post, 3 December 2000.

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Table 1
Intentional Undervoting, NES Data 1980-2000

Year	Voted for President	Didn't vote for President	Percent undervote
2000	1178	4	0.34%
1996	1160	15	1.29%
1992	1689	8	0.47%
1988	1227	7	0.57%
1984	1449	14	0.97%
1980	996	8	0.80%
total	7699	56	0.73%

From question "did you vote for a candidate for President," asked only of NES respondents who indicated they voted in the November elections.

Table 2
Intentional Undervoting, VNS Exit Polling Data, 1992

Sub-sample	N	Undervote %
All respondents	54806	0.77%
White	44707	0.73%
Black	6567	0.82%
Hispanic	1778	0.64%
Asian	622	0.94%
Other ethnicity	671	3.00%
Income < $15,000	8228	1.54%
Income $15-$30,000	13427	0.79%
Income $30-50,000	14912	0.40%
Income $50-75,000	9165	0.41%
Income > $75,000	5071	0.33%
Age 18-24	5719	0.59%
Age 25-29	5673	0.48%
Age 30-39	13800	0.45%
Age 40-49	12769	0.63%
Age 50-59	7374	0.98%
Age 60+	9182	1.32%
Democrat	22019	0.69%
Republican	16418	0.52%
Independent/other	14200	1.06%
Senate contest	38232	0.90%
No Senate contest	16574	0.48%
Gubernatorial contest	11487	0.93%
No Gubernatorial contest	43319	0.73%

From VNS exit poll question question "In today's election for President, did you just vote for: Bill Clinton/George Bush/Ross Perot/Other/Didn't vote for President."

Table 3
Logit Regressions

Equation	1		2
	Coefficient (standard error)	Odds ratio	Coefficient (standard error)
Constant	-5.83 (0.39)	--	-5.48 (0.15)
African American	0.16 (0.25)	1.17	0.21 (0.25)
Hispanic	0.06 (0.36)	1.06	0.07 (0.43)
Asian American	0.22 (0.49)	1.25	0.23 (0.54)
Other ethnicity	1.38 (0.33)**	3.97	1.44 (0.33)**
Age 50-59	0.59 (0.13)**	1.81	0.58 (0.13)**
Age 60+	0.77 (0.14)**	2.15	0.73 (0.14)**
Income < $15,000	0.30 (0.18)	1.35	0.30 (0.19)
$15,000-$30,000	-0.31 (0.18)	0.73	-0.32 (0.18)
$30,000-$75,000	-0.95 (0.17)**	0.39	-0.95 (0.16)**
Democrat	-0.06 (0.16)	0.94	-0.08 (0.15)
Independent	0.53 (0.14)**	1.70	0.53 (0.13)**
Senate contest on ballot	0.65 (0.24)**	1.92	
Gubernatorial contest on ballot	0.13 (0.20)	1.13	
No. of presidential candidatest	0.03 (0.04)	1.03	
Margin of presidential contest	.012 (.007)	1.01	
Straight ticket vote option	0.01 (0.16)	1.01	
Chi square	276.3 (p<.0001)	--	114.6 (p<.0001)
Pseudo R^2	.05	--	.07

Dependent variable=1 for VNS exit poll respondent reporting that they did not vote for President, = 0 for respondents reporting they did vote for a presidential candidate. Standard errors are adjusted for possible heteroskedasticity and non-independent errors within states. Number of observations is 54,806.

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Testimony for the Senate Governmental Affairs Committee
May 9, 2001
(Prepared May 7, 2001)

Absentee Balloting and Voter Fraud

In an effort intended to reverse our long-term decline in voter turnout and to increase voting "convenience," some states have adopted no fault absentee balloting statutes. However, removing the voting process from the polling site is not good public policy for a number of reasons.

1. When combined with the restrictions imposed by Motor Voter, absentee ballots make the job of voter thieves easier:

The United States has a long history of voter fraud, from an election in New York City in 1844 in which 135% of the eligible voters turned out, to cases in more recent years involving fraudulent absentee ballots in a 1993 state senatorial election in Philadelphia, a 1994 election in Greene County, Alabama, a county commission race in 1996 in Dodge County, Georgia, and the mayor's race in 1997 in Miami. There have been numerous other cases of voter fraud, many of them furthered by some of the unfortunate side effects of the National Voter Registration Act of 1993 or Motor Voter. While allowing registration at government offices is a good idea, some of Motor Voter's other provisions have opened security holes in our voting process. For example, Motor Voter made it illegal for election officials to check someone's identification before allowing them to register to vote and mandated mail-in registration. When combined with absentee voting, an individual can register and cast an absentee ballot without any election official ever seeing him. This makes multiple registrations and multiple votes very easy. I can guarantee the members of this committee that if they complete five mail-in registration forms under five different names and submit them, they will become registered five times and could easily cast five votes through absentee ballots with almost no chance of being caught.

2. No fault absentee ballot laws do *not* increase voter turnout and may lead to *greater declines in turnout*:

According to a recent study, early voting and no-fault absentee voting states did not see any related increases in turnout and performed worse in terms of having lesser average turnout increases in years of increase such as 1992 and 1994, than states which did not adopt either of these procedures. I urge skepticism when you are asked to legislate easier access to absentee ballots based on the claim that this will help increase turnout. Motor Voter was

passed on the claim that eliminating registration requirements would increase turnout; however, while the number of individuals registering to vote has increased since the passage of Motor Voter, voting turnout has continued its general decline. Numerous studies have shown that we have a cultural problem with large groups of citizens who are not interested in participating in our political process. This long-term problem cannot be solved by changing registration rules and voting methods.

3. Absentee ballots make *vote buying* and *voter intimidation* easier to commit and make poll watching impossible:

The secret ballot prevents coercion and helps prevent vote tampering. It was instituted in the U.S. in the late 1800's to prevent these very problems which were prevalent in American elections. Absentee ballots are voted in unmonitored settings where there is no election official or independent election observer available to insure that there is no illegal coercion or intimidation. The ability of poll watchers to monitor polling sites is also an important guarantee of the integrity and security of our election process. This transparency must be maintained. No fault absentee ballot laws make it easier for campaign organizations to engage in tactics such as requesting absentee ballots in the names of low-income housing residents and senior citizens and either intimidating them into casting votes or completing their ballots for them. Residents of nursing homes are especially vulnerable. Absentee ballots also make vote buying easier because buyers can make sure that the votes "stay bought," something not possible in traditional voting locations. We make a necessary exception for military personnel or the physically disabled who cannot go to a traditional polling place. However, because of the security risks, absentee ballots should remain an exception and not the rule.

4. When voters cast absentee ballots in large numbers, the costs of political campaigns, which are already prohibitive for many citizens, are *significantly increased:*

Most campaigns spend the bulk of their money in the last few days before Election Day on advertising and get-out-the-vote efforts. When significant numbers of voters cast absentee ballots, any candidate who does not spend money on such efforts during the entire absentee voting period will be at an inherent disadvantage. No fault absentee balloting and early voting increase the cost barrier to the ability of the average citizen to participate in the political process as a candidate.

The right to cast our vote in a fair and secure election is our most precious right. Every American citizen who is eligible to vote should be able to do so with a minimum of administrative procedures and statutory requirements. None of the measures that can and should be taken to amend Motor Voter and tighten state election laws would infringe on the right of citizens to vote. Fraud can be deterred and prevented without diminishing voter turnout.

FEDERAL AND STATE LEGISLATIVE RECOMMENDATIONS

Federal legislation should be passed that:

1. REQUIRES THE U.S. IMMIGRATION AND NATURALIZATION SERVICE AND THE SOCIAL SECURITY ADMINISTRATION TO COOPERATE WITH STATE ELECTION OFFICIALS IN CHECKING THE SOCIAL SECURITY NUMBERS OF INDIVIDUALS WHO REGISTER TO VOTE TO INSURE THEY ARE U.S. CITIZENS AND THAT THE NUMBERS ARE VALID AND NOT FRAUDULENT. There have been numerous cases found of duplicate and fraudulent registrations under false names or by non-citizens because federal law prohibits states from checking someone's identification before registering to vote and because states are required to allow mail-in registration. The INS and the SSA refuse to cooperate with election officials in making routine checks of social security numbers of individuals who register. This is the only way to prevent fraudulent registrations unless election officials are allowed to check someone's identification or citizenship status when registering.

2. AMENDS THE NATIONAL VOTER REGISTRATION ACT OR MOTOR VOTER TO PROHIBIT MAIL-IN REGISTRATION AND ALLOW STATES TO CHECK IDENTIFICATION PRIOR TO ALLOWING AN INDIVIDUAL TO REGISTER. As previously outlined, this is necessary to prevent fraudulent registrations and registrations by noncitizens.

3. AMENDS MOTOR VOTER'S RESTRICTIONS ON THE PURGE PROCEDURES THAT CAN BE USED BY STATE ELECTION OFFICIALS TO DELETE INELIGIBLE VOTERS FROM THE VOTER REGISTRATION. States should be allowed to purge voters who do not vote at least once in a presidential election cycle after they have been sent notice by election officials and do not contact such officials after a reasonable amount of time. The current restrictions imposed by Motor Voter result in large numbers of ineligible persons remaining on the voter registration list, increasing the possibility that fraudulent ballots will be cast in their names.

4. REQUIRES THE DEPARTMENT OF JUSTICE TO PROVIDE FELONY CONVICTION RECORDS TO STATE ELECTION OFFICIALS. States that suspend the voting rights of convicted felons need easy access to federal felony records. The Department of Justice should be required to routinely provide such felony records to election officials of states where a defendant was a resident and likely registered to vote.

States should pass legislation that:

1. REQUIRE ALL VOTERS TO PRESENT PHOTO IDENTIFICATION AT THEIR PRECINCT POLLING LOCATIONS. A number of states already require identification to be shown by voters on election day, but all states should pass such legislation to prevent fraud at the polls. Currently, an impostor knowing the name and address of a registered voter can simply walk in and vote; requiring identification would prevent such fraud. Likewise, a dishonest poll worker could vote ballots at off-peak times,

or after the polls close by simply checking of the names of persons on the voter registration list who did not cast a ballot, making it appear as if they had. Requiring poll workers to record the registration number of the identification presented by the registered voter would prevent the poll worker from engaging in such actions.

2. REQUIRE AN INDIVIDUAL WHO REGISTERS MY MAIL TO VOTE IN PERSON THE FIRST TIME. This is necessary to prevent individuals from registering numerous times under false names with mail-in registration forms and then requesting absentee ballots to vote. Any exception to this requirement for disabled individuals who cannot vote in person should require the absentee ballot request form to be notarized or signed by at least two witnesses. When an individual can register to vote and vote without any election official ever seeing that individual and checking their identification, voter fraud becomes very easy to commit.

3. (A) REQUIRE THE ENVELOPE THAT AN ABSENTEE BALLOT IS PLACED IN TO BE SIGNED BY THE VOTER IN THE PRESENCE OF A NOTARY OR TWO WITNESSES WHOSE ADDRESSES AND TELEPHONE NUMBERS ARE PROVIDED;

(B) ALLOW ONLY VOTERS TO REQUEST AN ABSENTEE BALLOT, NOT THE VOTER'S FAMILY MEMBERS, SINCE SUCH A PROCEDURE MAKES IT IMPOSSIBLE TO COMPARE THE SIGNATURE ON A REQUEST FORM WITH THE VOTER'S SIGNATURE ON FILE; AND

(C) PROHIBIT ANY THIRD PARTIES SUCH AS CAMPAIGN WORKERS FROM DELIVERING ABSENTEE BALLOTS. Absentee ballots represent the biggest source of potential voter fraud because of the way they are obtained and voted. Requiring notarization or witnesses and allowing only voters to request absentee ballots would make such fraud more difficult to commit and improve the security of the absentee ballot process. Prohibiting third parties from delivering ballots would prevent alteration of ballots by campaign organizations and other parties.

4. REQUIRE STATE ELECTION OFFICIALS TO RUN COMPUTER COMPARISONS ON A REGULAR BASIS (AT LEAST MONTHLY) OF THEIR VOTER REGISTRATION LIST WITH THE DEATH RECORDS OF THEIR STATE VITAL RECORDS AGENCY AND CORRECTIONS DEPARTMENT TO DELETE DECEASED INDIVIDUALS AND FELONS WHO ARE INELIGIBLE TO VOTE. The administrative procedures in most states for purging deceased voters and felons from the voter roles are inadequate and slow. Requiring monthly computer comparisons would provide election officials with the information they need to begin the administrative procedures required to investigate such records and promptly and routinely purge such persons upon confirmation of the information.

5. GRANT INVESTIGATIVE SUBPOENA POWERS TO STATE AND COUNTY ELECTION AUTHORITIES AND THE ABILITY TO IMPOSE ADMINISTRATIVE FINES ON VIOLATORS OF ELECTION LAWS. Historically, election officials have relied too heavily on candidates themselves to identify election irregularities. Most election boards also do not have the authority to conduct vigorous investigations of voter fraud and

must rely on local district attorneys and police forces that are usually heavily engaged in criminal cases and are not interested in investigating or prosecuting voter fraud cases. Election officials should have the investigative powers necessary to investigate such cases and to impose administrative fines for violations.

6. AUTHORIZE STATE ATTORNEYS GENERAL TO USE STATEWIDE GRAND JURIES TO INVESTIGATE AND PROSECUTE ELECTION FRAUD OCCURRING ANYWHERE IN A STATE. Unfortunately, when local candidates or officials are involved in accusations of election fraud or irregularities, local district attorneys are often reluctant to investigate or to get involved for a variety of political and personal reasons. Giving state attorneys general the power to pursue such local cases helps insure that such cases will be investigated and prosecuted.

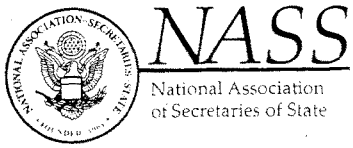
7. REQUIRE REGISTRATION AND ELECTION BOARDS COMPOSED OF CITIZEN APPOINTEES IN ALL COUNTIES AND MUNICIPALITIES THAT ARE RESPONSIBLE FOR VOTER REGISTRATION AND ELECTIONS. Conflicts of interest can only be avoided if boards made up of citizens are responsible for overseeing voter registration and elections, not elected officials who have to run for office themselves or who have budgetary and supervisory powers over county personnel who run elections. All such boards should also have equal representation from both major political parties and at least one non-partisan member. Accountability can only be insured with a truly representative system and meaningful checks and balances.

8. REQUIRE ALL COUNTY AND MUNICIPAL ELECTION AUTHORITIES TO HAVE INDEPENDENT AUDITS CONDUCTED OF THEIR VOTE TABULATION SYSTEMS, SOFTWARE, AND SECURITY PROCEDURES ON A REGULAR BASIS. In the business world, companies undergo outside audits by independent organizations to confirm to their stockholders that the companies are truthfully reporting on their financial condition and status. Likewise, election authorities should regularly have outside audits to confirm to their stockholders, the voting public, that their security procedures for conducting elections are sufficient to guarantee free and fair elections.

9. AUTHORIZE STATE ELECTION AUTHORITIES TO ESTABLISH A NATIONAL, CENTRAL DEATH REGISTRY THAT WOULD RECEIVE INFORMATION ON DEATHS FROM ALL STATE VITAL RECORDS AGENCIES AND PROVIDE EACH STATE WITH THE INFORMATION NECESSARY TO PURGE REGISTERED VOTERS WHO MAY HAVE DIED IN OTHER STATES. Even states that have good administrative systems in place to promptly purge deceased voters do not receive information on registered voters who died outside of the state. This problem could be addressed if states set up a central death registry. If such a registry was also sent voter registration information from all fifty states and the states adopted central computerized voter registration systems with the same formats, election authorities could check multiple registrations and prevent individuals from registering and voting in more than one state. Such a system, if properly instituted, could allow an individual to register once and then have his voter registration information follow him wherever he moved.

10. AUTHORIZE INDEPENDENT, NON-PARTISAN GROUPS, AS WELL AS CANDIDATES AND POLITICAL PARTIES, TO APPOINT POLL WATCHERS TO OBSERVE THE ELECTION AND VOTE TABULATION PROCESS. Having an open election process is the key to secure and fair elections and poll watchers are essential for running elections that are free from fraud and manipulation. In addition to having poll watchers in specific precincts, political parties, candidates, and independent, non-partisan groups should be able to designate statewide poll watchers with authority to be observers in any precinct or vote tabulation center.

11. REQUIRE ALL VENDORS WHO PROVIDE VOTING MACHINES, VOTING DEVICES, COMPUTER SOFTWARE PROGRAMS AND OTHER ELECTION EQUIPMENT FOR PUBLIC ELECTIONS TO UNDERGO INVESTIGATION BY STATE ELECTION AUTHORITIES OF THE FINANCIAL RESPONSIBILITY, SECURITY, AND INTEGRITY OF THE VENDOR. Most states have no such requirement for election vendors whose equipment and software is essential for choosing elected officials. Only by investigating the financial responsibility, security and integrity of such vendors can election officials help insure that no vendor will take advantage of their integral involvement in elections to manipulate voting results. This is the same type of investigation that lottery vendors must undergo in most states.



Testimony – Senate Committee on Governmental Affairs
Hearing on Election Practices and Procedures
May 9, 2001

Testimony by Sharon Priest, President, National Association of Secretaries of State and Arkansas Secretary of State

Fundamental faith in American democracy depends on well-run elections. Well-run elections require that all eligible voters have access to vote and know that their vote will be counted. The National Association of Secretaries of State (NASS) adopted a resolution making this requirement a priority. It is never acceptable to deny a voter his/her right to vote. This testimony focuses on the civil rights portion of the Secretaries resolution.

In most cases, states have good election laws and simply carrying out existing law would avoid violations based on race, language or physical disability. Unfortunately, many people are finding themselves denied their right to cast a ballot that they can understand. I believe this happens for several reasons. First, election equipment was designed not to be voter friendly, but to give almost instantaneous results. Punch cards were the demon in Florida, but I suggest further study shows that the optical scan method produces as many errors, and in some cases, more errors than the punch card. The State of Georgia recently conducted a study that showed that twenty-one optical scan counties had undervote rates of 5% or higher and one county had an undervote of rate 15%. Georgia found that undervotes are higher in predominantly black precincts than white precincts using the same equipment. They further found that counties that used the opti-scan had a higher rate of undervote than punch card counties.[1] I recite this only to point out that there is still much work to be done regarding the technology of voting.

More than technology is involved in elections. People and process also make a difference. I stated earlier that existing state laws were not always followed. Therefore, secretaries believe that poll worker recruitment and training are of utmost importance. The United States has 1.4 million poll workers involved in a general election. Many of our poll workers are "held prisoner" for up to fifteen hours on election day because of a shortage of workers. Our poll worker work

[1]Testimony of Secretary of State Cathy Cox of Georgia before the National Commission on Election Reform March 26, 2001

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force is aging. In order to have qualified poll workers, aggressive recruiting methods must be employed. In North Dakota, California and Colorado, persons under eighteen can work the polls. In Sacramento County, California, the elections board contracts with groups such as the Parent Teachers Association (PTA) and makes a contribution to the PTA in exchange for poll workers. In Arkansas, I intend to recruit from two and four-year colleges as well as the private and public sectors. Recruitment will not help if our poll workers are not trained. Mandatory training of poll workers will help voters on election day. Poll workers need training in the law, the process and need to know that civil rights violations come with personal liabilities that give no cover from state or local governments. Arkansas passed a mandatory poll worker training bill which is now Act 1820 of 2001. (Attached).

Voter education is critical to insuring that voters leave their voting precinct feeling informed, confident and satisfied with their experience. Voter education is more than knowledge of the candidates and issues, it is knowledge of their rights as voters, where to register to vote, as well as the mechanics of voting.

In trying to solve the nation's election woes and with the understanding that all elections are local, the best recommendation is flexibility in how funds are delivered to the states and flexibility in spending guidelines.

The nation's secretaries of state embrace the new interest in the elections process and are committed to having informed, confident and satisfied voters. We see this as an opportunity not to shift the funding burden to the federal government, but an opportunity to *partner*. Our democracy depends on our abilities to work together, without partisan battles, for the best interest of our beloved country.

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Testimony of R. Doug Lewis for Senate Government Affairs Committee May 9, 2001

It is impossible in just five or six minutes to tell you all of the items we can recommend to fix the worst ills of Election 2000. In just a matter of a few more weeks The Election Center's National Task Force on Election Reform, composed of representatives of the nation's elections administrators, will present a report to you and to the public a series of more than 30 specific issues for action with more than 80 specific recommendations.

Until we have finalized those recommendations, let me paraphrase a bit by saying to you that the notices of imminent death of democracy have been somewhat exaggerated.

Yes, there were problems. And some of those problems were new to all of us. And some of those problems were all too familiar.

We get a far better administration of elections in America than we deserve and certainly a lot better than we pay for. There has been an almost criminal neglect of the infrastructure of elections in about 75 percent of our jurisdictions. One-quarter of our elections offices are as well funded as other parts of government, but the other three-quarters are not. By any measure or means of evaluation, the sad fact is that we have so ignored the elections function of government that we simply have not kept up.

Whether you measure by population growth; or by the increasing complexity of laws and rules affecting elections; or by comparisons of functions and staff with other governmental units; or just by the enormity of the task, our elections offices have remained understaffed and under funded in most of America.

Policy makers and budget authorities don't understand the complexities of elections administration and most will not take the time to truly understand how the process works. Our elections officials have tried program budgets to explain the process only to be told by budget and administrative authorities that they don't have time to listen to the explanations.

Because voting equipment is expensive to replace, and because it is a major policy decision for any community to consider, it is rare that local budget authorities are willing to face up to the calls for newer or more modern equipment.

We read much about voting equipment in Election 2000 and much of what was written and reported was either inaccurate or mistaken analysis. But they have been so pervasive that much of the misinformation is believed today. And I will not spend your time or mine trying to defend punchcard systems. But the real culprits appear not to be punchcards but central counting systems. And, we now know that precinct counting systems help to significantly decrease voter error. But it took four months from Election Day of constant speaking to anyone who would listen, that we needed to look at reality and not myths if we want to repair the system, before the media and policy makers began to understand the real issues.

and the same is correct now on other issues related to this election if we are to make improvements. So let me say something that is true but not necessarily popular to hear right now. America's election system is not in a crisis. We have discovered flaws and we are on our way to fixing those. Most of America's elections were well conducted and fair to the citizens of the states. In 98.5 % of our elections, things went well. But the image of the election, based almost entirely on one state and then individual pockets of problems in a relative handful

of areas. It is important that we not base all of our decisions and our analysis of Election 2000 on the events and outcomes of what happened in Florida. Because that is an oversimplification and can lead to terribly wrong judgments when we try to repair the parts of the process that have the greatest needs. And because some of the reporting of problems about voting equipment and voters and their experiences in Florida do not hold up under examination in other parts of the country.

Most of the most egregious errors in this process won't take vast sums of money to fix. It will take calm reflection and attention to the process itself to handle the systemic problems which are generally problems that take longer to fix.

It doesn't take vast sums of money to fix a situation in which there are insufficient laws, procedures and rules. Florida was a perfect example of how lack of understanding about the process can lead to a disaster. Clearly there was a failure of law in Florida. There was no definition of what constituted a vote before the counting of votes began and so the contestants tried to define votes in their own interest. No one can blame them for that.

Clearly there were no uniform counting procedures. No uniform recounting procedures. No standards of conducting the process so that each county did the process the same way. And a state law governing portions of that process was designed strictly for state legislative races and had never been considered for its impact on a statewide race, let alone a presidential race.

Fixing those problems doesn't take vast sums of money. It takes legislative action by state legislatures.

My advice to you to is to move very cautiously and judiciously in this process. It is popular and easy to focus on the technology of voting equipment and to believe that we can throw money at such a situation and that the problem will be resolved.

I am NOT defending the status quo. As the nation's leading organization for the training and professionalization of election administrators, we teach those administrators to constantly re-look at the process, to find ways to eliminate barriers, to make changes and improvements. And, in some cases, to make significant alterations to the methods used to conduct elections.

And, as a former owner of a computer business, I have been an advocate for modernization of office equipment and voting equipment. I know how those improvements have paid off for business, for government and for nonprofit organizations.

In my role as director of the voting systems program for the National Association of State Election Directors, I know more about the technology improvements that are available for use in elections than most. But had the best technology available been in use all over Florida, does anyone really believe that a tie vote for president wouldn't have created problems?

If we do believe that technology is a piece of the answer, and I too believe that it is in a limited way, then let's focus on all of the older technologies. Let's not just focus on punchcard machines, but also all the earlier versions of optical scan (because the newer technology of optical scanners today are infinitely better), and let's also eliminate lever machines (which were last manufactured in 1982 and last parts made in 1988). Let's also eliminate the earliest versions of Direct Recording Equipment (DRE) which have been dramatically improved in just the last two years.

Let's be careful about reacting to well-intentioned but unknowledgeable institutions and organizations who write public reports with data that can lead to wrong conclusions -- all because of the haste to make news and capitalize on the intensity of the subject of elections. Some of the conclusions drawn by a myriad of organizations and then announced to the public can have the impact of leading us to make faulty policy decisions.

It is important to hear the viewpoints of all who feel a need to express themselves on this subject. But as a Congress, you folks are going to have to determine how best to react to what happened in November of 2000.

And our advice to you is to be reluctant to over react. Be reluctant to wade in with both guns blazing. Be reluctant to tamper with the process so that it favors one party or one group of Americans over the other parties or over the best interests of all Americans. Partisan answers and solutions become impediments to real bipartisan reforms.

Election administration is not a partisan process. We act as the referees of the system. Don't put us in the position of having to become partisan participants. Be careful about being pressured to action. Be careful about seeking simplistic solutions that appeal to a popular notion of national uniformity when that is exactly the opposite of what would be best for the electoral process.

Is there a level of involvement for the federal government in elections? Sure there is and we would welcome your involvement in the following areas:

Voluntary Federal Voting Systems Standards – these are an ongoing part of the reason there hasn't been a national disaster involving voting systems all over America. And you need, as a Congress, to make these standards a permanent part of the Office of Election Administration (whether in the FEC or some other agency) and fund them sufficiently that we can keep those standards a dynamic and "living" document.

Establish in law the need for voluntary Operational Voting Standards, so that the best practices related to use of voting equipment for the conduct of elections can be established and published for the states to adapt and adopt as their own.

Research: Give the Office of Election Administration (OEA) the responsibility for tracking over- and undervotes by each voting system. Give the OEA the responsibility for knowing which jurisdictions have which voting systems and what problems they experience in each election cycle.

Publications: Beef up the staff and the funding of OEA with earmarked funds so they can continue to publish instructional manuals that can assist in improving the election administration process. The OEA now publishes the Innovation Series which is an exemplary product that cannot be offered often enough because of lack of funding.

New Elections Class of Mail: Fund a new elections class of mail so that states and locales can improve voter contact. The rate of the new elections class of mail would be pegged at one-half of the then current First Class mail and would include all of the first class delivery and handling (including endorsements and supplementary services of First Class Mail). Let jurisdictions use a rate that is one-half of First Class rate at each level of automation offered by the Postal Service. We recommend that Congress provide for perpetual funding of this (rather than asking the Postal Service to fund it). At roughly three pieces of mail per voter per year (more in some jurisdictions per year and less in others), the US Postal Service has estimated the cost of this rate of mail to be $80 million a year (an amount equal to what the Congress already funds for mailings for the blind per year). We believe that this will grow to $125 million as more jurisdictions offer sample ballots and voter guides.

Education, Statewide Databases, Training: And, provide an amount of money that can be used at the discretion of the states to distribute to the local elections offices (and earmarked so that a jurisdiction can not lower its local funding when receiving federal funds) to be used for replacing voting systems, for administrator education, for pollworker recruitment and training programs, and building statewide voter databases.

In 225 years, the federal government has let the local elections jurisdictions fund all of its elections—and the federal government hasn't spent one dime of its money for the conduct of elections. Isn't about time that the federal government pays its fair share of the process?

Most of the other real improvements that are needed are the roles of the states and the local governments and can be best resolved at the local level rather than through any federal mandates.

Provisional Ballots: We must make voting fair for all Americans and assure Americans that their votes will have an equal opportunity of being counted within the process. One step in the right direction would be to authorize provisional ballots for states who do not have Election Day registration or voter affidavit process. It becomes a significant administrative burden after the election. But it can help to assure inclusion the votes of those who should have been on our voter rolls and still protect against those who were not properly registered.

I have faith in the ability and the professionalism of the local elections administrators to accomplish those tasks. However, it will also require more local and state resources to assure that we make it possible for the disabled, the elderly, for racial minorities and for our military and overseas voters to be treated fairly.

Those are our citizens – they live among us and with us. And we want to reassure them that this process is concerned about them and for them. And we will do everything in our power to make them feel welcome and dignified in this process.

I guess my statement to you is to have faith in us as competent elections administrators and to allow us to work on most of the solutions at the state and local level. We want a fair process also. We are concerned also. And we will be asking for greater support and resources from you for major items, but mostly from states and local governments.

And look for the report of the National Task Force on Election Reform for very specific recommendations to make this process better for all Americans.

TESTIMONY OF CONNY B. McCORMACK, REGISTRAR-RECORDER/COUNTY CLERK OF LOS ANGELES COUNTY, CALIFORNIA

OVERVIEW

I appreciate the opportunity to appear before you today to offer testimony on the very important issue of Electoral Reform as it pertains to the administration of elections in this country. My name is Conny McCormack and I serve as Registrar-Recorder/County Clerk of Los Angeles County, California which is the largest electoral jurisdiction in the U.S. with 4.1 million registered voters and 5,000 voting precincts. This year marks my 20th year as an Elections Administrator – first in Dallas County, Texas, then in San Diego County, California and now, for the past five years, in Los Angeles County, California.

For the November 7, 2000 General Election, a record-high 2,769,927 voters cast ballots in Los Angeles County. This was more ballots than were cast statewide in 41 of the 50 states. The logistics of preparing for a major election in Los Angeles County is very challenging – indeed, it is akin to a major military deployment.

For last year's Presidential Election, tasks included assembling and delivering voting supplies and equipment to 4,963 precincts, recruiting and training 25,131 election day poll workers, preparing 621,422 absentee/mail ballot packets (up to 35,000 daily) and, upon receipt, signature verifying, opening and sorting the 521,180 voted absentee ballots that were returned. Additionally, writing and testing vote tabulating software is always a crucial component to assure accurate compilation of all the votes, and to combine the absentee votes with the results of the 2.2 million ballots that were cast at the voting locations.

For the first time since Los Angeles County converted to punch card voting 33 years ago, not all ballots were cast on Votomatic punch cards. Our County instituted a state-of-the-art touch screen voting system pilot project in conjunction with the November 2000 election. As a result, 21,963 voters cast ballots on this modern system during the "early" voting period in the two weeks prior to election day. Use of this touch screen voting equipment allowed voters to choose presentation of their ballot in any one of the seven languages required by provisions of the U.S. Voting Rights Act and/or local ordinance. This greatly assisted thousands of voters, for whom English is a second language, in making their voting selections especially in better understanding the wording of complex ballot propositions.

Additionally, the touch screen voting system used in L.A. County allowed blind voters to cast their ballots privately and independently without assistance. This is possible due to a feature of the touch screen system that includes an audio headset and raised keypad to make voting choices. By forging a partnership between my office and organizations representing the blind and the visually impaired, the L.A. Braille Institute and Center for the Partially Sighted mailed our touch screen voting brochure to 8,000 persons on their mailing lists to advertise the availability of this new voting method. As a result, hundreds of blind voters, many accompanied only by seeing eye dogs, came to one of the nine touch screen voting locations set up throughout the County to vote privately, without assistance, for the first time in their lives.

These special features, unavailable with punch card voting, are especially desirable to serve the diverse population of Los Angeles County. A complete description and assessment of the success of the touch screen voting project is included in an attached report[1].

During my 20 years in this field of work, I have been responsible for the conduct of more than 1,000 elections and presided over a dozen recounts, including one congressional recount that was followed by an electoral contest in court (in the 51st Congressional District in San Diego in 1990). To assure strict impartiality, I have always maintained my voter registration as a non-partisan voter. It is in that vein that I offer my observations and recommendations for improvement to the process of electoral administration that is the cornerstone of our democracy.

OBSERVATIONS/RECOMMENDTIONS:

Observation I: The conduct of elections, including those involving candidates for federal office, is under the authority of local government. Counties, and in some cases cities, are primarily responsible for administering elections, with a varying amount of administrative involvement at the state level. While this authority level is appropriate under the Constitutional separation of powers, the concomitant burden of financing the costs associated with election administration in this country falls squarely on the shoulders of local government – the level least able to provide the funding. The cost of administering the November 2000 election in Los Angeles County was $20.4 million. Those cities, school districts and special districts within Los Angeles County with candidates or propositions listed on the November 2000 ballot were assessed a proportionate share of the costs of labor and supplies. However, **no** federal funding has ever been provided, even when the offices of President, Vice President, U.S. Senator and U.S. Representative are included on the ballot.

While my County Board of Supervisors unanimously supports the conversion of our 33 year-old punch card voting system to a modern, touch screen voting system, the estimated cost to do so countywide is $100 million to equip our 5,000 voting precincts. Even my recent request for $3 million to fund a modest expansion of the touch screen voting pilot project for use during the 2002 elections is in jeopardy as our County grapples with a deficit of $184 million in the County's Health Department.

Similarly, our State government is in financial turmoil due to the ongoing electricity crisis in California that, for the past several months, has been consuming an unanticipated, unbudgeted $54 million per day for spot market purchases of electricity. This crisis has relegated AB 56, the State Assembly proposal to allocate $300 million in matching grants to counties for upgrades of election systems and technology, to obscurity at best and oblivion at worst.

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[1] See attached January 17, 2001 report to the Board of Supervisors from Conny McCormack entitled "Voting System Comparisons/Evaluation of Touch Screen Pilot Project/Recommendations for the Future."

Recommendation: While the operational authority to conduct elections should remain at the local government level, counties conducting elections need federal assistance in the form of grants. Otherwise, funding required to improve the conduct of elections is destined to remain frustratingly illusive, forever number eleven on local governments' top ten list of financial priorities. An initial infusion of federal funding is clearly needed to upgrade technology, but the reality is that federal funding needs to be ongoing to sustain and maintain improvements.

One means toward sustainable funding would be a 50% reduction in postal rates for first class delivery, in effect an "elections class" of mail. The various nationwide associations of elections administrators have been advocating such a postal subsidy for several years without success to date. Another possible source of continuing federal funding is the idea of a voluntary "check off box" on IRS tax returns. While I recognize that an increase in the federal role in the arena of funding necessitates some level of oversight regarding grant administration and accountability for expenditures, in order to expedite the process and achieve results, the process should not be cumbersome.

Observation II: A number of **myths** have arisen in the aftermath of the November 2000 election that need to be dispelled in order for the American public to understand the process of election administration. The top five myths are fully presented and explained in an attachment to this testimony[2] and are summarized as follows: 1) **all** eligible ballots are counted on election night; 2) antiquated voting equipment is the **only** problem; 3) the U.S. should adopt one **uniform** vote counting system; 4) it is within the **sole** authority of election administrators to ensure proper conduct of elections; and 5) between 2-7% of the votes are "**discarded**" by election equipment. These myths are inaccurate and misleading and have led to some erroneous conclusions about the integrity of the vote tabulation process.

Recommendation: State and local governments need to retain the flexibility of choice among various types of vote counting equipment. **One size does not fit all.** Diversity of electoral equipment and multiple vendors strengthens the electoral system and fosters innovation.

CONCLUSION: I understand that my testimony is limited to five minutes. Although there is much more I would like to say in my prepared remarks regarding the complexities of conducting elections, I look forward to responding to your questions. I very much appreciate your conducting this hearing to identify the most appropriate ways we can work together to facilitate the process of improving election administration in the United States. Thank you.

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[2] See attached article entitled "On the Inside Looking Out: An Election Administrator's Perspective" by Conny McCormack published in the May 2001 edition of IFES TODAY, the quarterly magazine of the International Foundation for Electoral Systems (IFES).

January 17, 2001

TO: EACH SUPERVISOR

FROM: Conny B.McCormack, Registrar-Recorder/County Clerk

VOTING SYSTEM COMPARISONS/EVAUATION OF TOUCH SCREEN PILOT PROJECT/RECOMMENDATIONS FOR THE FUTURE

This report responds to Supervisor Antonovich's motion of November 14, 2000 requesting the Registrar-Recorder/County Clerk (RR/CC) and the Chief Administrative Officer (CAO) to report on plans to implement a state-of-the-art, tamper-proof voting system. It includes an overview of the types of currently available voting systems and also summarizes the strengths and weaknesses of each system.

The CAO's office reviewed the financial aspects of this report. Although the motion did not specifically request input from the Chief Information Officer (CIO), I requested the CIO to contribute a companion report on touch screen voting system security issues in response to the "tamper proof" portion of the Board motion. The CIO agreed to do so and his comments are included at Attachment A.

This report also evaluates the touch screen voting pilot project instituted during the "early" voting period in conjunction with the November 7, 2000 General Election. During the three-week period preceding election day, 21,963 voters cast their ballots on electronic touch screen devices at nine locations countywide.

Recommendations for the future are included at the end of this report.

OVERVIEW

Los Angeles County is the largest voting jurisdiction in the United States with over four million registered voters. For the November 7, 2000 General Election, a record-high 2,769,927 voters cast ballots countywide. This was more ballots than were cast **statewide** in 41 of the 50 states. Additionally, absentee voting reached an all-time peak -- the County's 543,143 absentee ballots[1] exceeded the total ballots cast in eight states. The logistics of preparing and delivering voting supplies and equipment to the County's 4,963

[1] Final election results included 543,143 absentee ballots: 521,180 were mail ballots and 21,963 were ballots cast via touch screen voting at the nine early voting locations established throughout the County from October 16 through November 6.

voting precincts, recruiting and training 25,000 election day poll workers, preparing and mailing tens of thousands of absentee ballot packets daily and later signature verifying, opening and sorting 521,180 voted absentee ballots, and finally counting 2.7 million ballots is extremely challenging.

Types of Voting Systems

There are three types of voting systems currently certified for use in California.[2] These are punch card, optical scan and direct record electronic (touch screen) systems. Touch screens are the most state-of-the-art with three vendors' systems having been certified by the California Secretary of State (SOS) in 1999 and an additional vendor's touch screen system receiving certification in 2000. While there has been considerable discussion regarding the viability of Internet voting, to date no Internet systems have been certified for use in California. In early 1999, the SOS convened a year-long Internet Voting Task Force whose members issued a report in January 2000 advising a "go slow approach."[3]

I. Punch Card Voting

The computerized punch card voting system was developed in the 1960s to provide a fast and accurate method of tabulating ballots at a central location. There are two basic types: a single ballot Votomatic system with 312 numbered voting positions on the ballot card and an accompanying booklet containing candidates/propositions, and a multiple ballot Data Vote system with names of candidates/propositions printed directly on the cards. In California, 73% of voters currently cast ballots on punch card systems (see Attachment B). The 312 Votomatic system has been in use in the County since it was purchased in 1968.[4] Until introduction of the touch screen system for early voting at nine sites in conjunction with the November 2000 General Election, the punch card system was the sole system used in the County for both election day and absentee voting.

The punch card system has been continually and thoroughly maintained and upgraded throughout the 32 years of operational use in the County. The 37,000 Votomatic devices are individually inspected, worn components replaced, and chad cleaned out after every election. Additionally, in 1997 the RR/CC replaced the entire inventory of ballot card

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[2] Voting systems must be certified by California's Secretary of State (SOS) prior to use. The certification process is rigorous and includes a requirement to meet the hardware and software system standards established by the Federal Election Commission.

[3] With the encouragement of the SOS, four California counties, San Diego, San Mateo, Sacramento and Contra Costa, experimented with non-binding Internet Voting on a few electoral contests in conjunction with the November 7, 2000 General Election. A report of findings is anticipated within the next few months. State legislation to authorize Internet Voting failed last year but was reintroduced last month.

[4] More ballots were cast nationwide on punch card systems for the November 2000 election than any other system (approximately 33% of the 105 million ballots cast). Most large election jurisdictions vote on punch cards including L.A. County, L.A. City, San Diego County, Chicago and Cook County Illinois, Harris County (Houston), Texas, and Dade County (Miami), Florida. Data Vote systems are primarily used by counties with less than 250,000 registered voters (the exception is Orange Co., CA which is always the slowest CA. County to report vote totals on election night due to the need to count 5-7 ballots per voter).

readers at a cost of $500,000. The 36 new card readers accurately tabulated 2.7 million ballots at the RR/CC's Norwalk headquarters for the November 2000 election.

Strengths: 1) Low Cost: the most economical system to operate as ballot cards cost 7 cents each, the 37,000 Votomatic units in our inventory were paid for long ago, and maintenance costs, including replacement parts, are low; 2) Accuracy: reliably correct results are achieved (if voters cleanly punch out the chads and the equipment is well maintained); and 3) Familiarity: after three decades of use in the County, precinct workers and voters are accustomed to it. A silver lining to the national scrutiny of punch card voting during the aftermath of the November 2000 Presidential Election is that voter awareness has increased regarding the recommendation to check for loose chips (chad) after voting. Consequently, upcoming elections in the County[5] are anticipated to be virtually chad-free.

Weaknesses: 1) Slow Count: A drawback of punch card systems utilizing a central location for ballot counting is slower tabulation of results on election night (compared with in-precinct counting followed by relaying results to headquarters). Ballots from most of the 4,963 voting precincts in the County do not arrive at the tally center (RR/CC headquarters in Norwalk) until 10:30 p.m. or later. However, throughput of ballots counted per hour at peak periods between 11 p.m. and 2 a.m. reached an all time high of up to 600,000 ballots counted per hour, significantly outpacing past countywide elections; and 2) Incomplete Punches (Chad): Recently, much attention has been focused nationwide on punch card voting systems with regard to occasional instances of partially punched through ballot cards.[6] Also, punch card voting systems do not warn voters of possible mistakes such as overvoting (i.e. voting for more than one candidate in a contest where the instructions are to vote for one).

The Absentee and Provisional Ballot Factor

No matter what type of voting system is used, a significant number of absentee and provisional[7] ballots cannot be included in the election night totals. Many absentee voters wait until the last minute to mail their ballots or they drop their voted absentee ballots off

[5] These include the March 6, 2001 24th State Senate Special Vacancy Election (created when Sen. Hilda Solis won a congressional seat in the 11/7/00 Election) and local elections being conducted by 50 cities throughout the County on that date. Additionally, the April 10, 2001 consolidated election combining the 32nd Congressional District Vacancy Election (created by the recent death of Congressman Julian Dixon) with the City of Los Angeles' mayor/council election will be held using the punch card system.

[6] A punch card ballot that is cleanly punched out tabulates very accurately. Partial punches are caused by voter error (i.e. misunderstanding how to use the system) or equipment malfunction (i.e. broken punching stylus). Instructions included in absentee ballot packets AND posted at each of the 31,000 voting booths countywide advise voters to check for and remove any loose chips (chad).

[7] Provisional ballots are cast by voters whose eligibility to vote on election day at the polling places cannot be determined by the precinct official. Therefore, such ballots are placed in individual provisional ballot envelopes and each must be researched and verified prior to tabulation. For the November 2000Election, 100,168 provisional ballots were cast in the County, of which 61,521 were counted after completion of the verification process.

at polling places on election day. All of these ballots must be individually signature verified, sorted and opened prior to tabulation. For the November 2000 General Election, the number of outstanding absentee and provisional ballots added to the count in the days/weeks following the election exceeded one million of the 11 million total ballots cast in California (of which 186,000 were from L.A. County). Consequently, close elections, whether local contests or statewide, cannot be determined based solely on election night unofficial vote totals but must await the tabulation of late absentee and provisional ballots prior to official certification of results.

There are two main goals regarding ballot tabulation: speed and accuracy. Speed is achieved with the tabulation of unofficial totals on election night. Accuracy must await the completion of the entire vote canvassing process. In addition to counting the remaining absentee and provisional ballots, the canvass process also entails a manual tabulation of ballots from a randomly selected 1% of the voting precincts. This is required in order to compare manual vote tally results with the computer counts to verify accuracy of the tabulation software. The canvass also includes an audit process to reconcile the number of voters who signed in at each precinct with the number of ballots cast at each precinct. In recognition that the vote canvass is a labor-intensive, exacting and time consuming process, California law allows 28 days to complete the canvass prior to certification of accurate, official election results.

II. Optical Scan Systems

Variations of optical scan voting systems have been available since the early 1980s and are virtually unchanged today. They utilize large (10" X 20") paper ballots containing printed candidates' names and ballot propositions. Voters mark the ballots by filling in an oval or other designated space with a pen or pencil. Voted ballots are inserted into a large machine at each precinct. Absentee ballots are tabulated at a central location. The tabulation machines use lasers to read markings placed in the designated spaces.

Following the November 1996 General Election, I submitted a memo to your Board (dated January 28, 1997) on Alternate Voting Systems that focused on optical scan voting technology. Subsequently, an optical scan voting system demonstration was held at the Hall of Administration on February 25, 1997. I contended then, and reiterate today, that this type of voting system is a prime example of "one size does not fit all." These systems are primarily used by small and mid-sized counties (under 500,000 registered voters) and would be inappropriate for our County for the reasons outlined in Weaknesses below.

Strengths: 1) User-Friendly: Candidates names and measures are printed directly on the ballot; and 2) Faster Precinct Ballot Counting: Election night unofficial vote totals from the precincts are received more quickly as votes are tabulated at the precinct level (rather than at a central location) and then transmitted, via modem or memory data pack, to the central location for accumulated totals. As a result, approximately 95% of the precinct ballots would likely be tallied by midnight (compared with 50% by midnight with punch card voting). However, absentee ballot counting at the central tabulation site

using optical scan technology is slower than punch card tabulation (see explanation under Weaknesses below).

Weaknesses: 1) High Cost: the equipment is costly. The initial hardware and software purchase would cost approximately $32 million. Equally significant would be the ongoing expense of the large, optical scan ballots which are up to ten times more costly than punch card ballots; 2) Slow Absentee Ballot Counting: The large ballots are unwieldy and must be hand fed into central count readers for absentee ballot processing. The tabulation rate is unacceptably slow when counting a large numbers of absentee ballots (compared to the speed of the punch card system)[8]; and 3) Paper System: Like punch cards, it is a paper-based system prone to a percentage of voter error (i.e. circling or placing check marks next to voting choices instead of filing in the designated space, resulting in votes that cannot be read by the tabulating machine). Additionally, machines are calibrated to read degrees of ink/pencil darkness such that votes marked using a light pencil, red pen, etc. may not be picked up by the machine[9].

III. Touch Screen Voting Systems

Touch screen devices are the most state-of-the-art voting equipment, first certified for use in California in 1999. Touch screens have the capacity to display a virtually unlimited number of candidates, contests and ballot measures on a liquid crystal display similar to an ATM. The voter touches the screen in order to indicate his/her vote for each office or ballot measure.

Los Angeles County's Experience with Touch Screen Voting

On March 14, 2000, Supervisor Knabe introduced a Board motion instructing the RR/CC to report back to the Board with a plan to use touch screen voting in conjunction with the November 2000 General Election either at selected polling places or during the absentee voting period. The RR/CC submitted a preliminary feasibility report to the Board on April 10, 2000 and invited the three certified vendors to demonstrate equipment capabilities at the Hall of Administration on June 8, 2000. Following that demonstration, a vendor evaluation committee, comprised of representatives of the RR/CC, Chief Information Office (CIO), Internal Services Department/Information Technology Service

[8] Optical scan systems are not designed to count ballots from 500,000+ absentee voters as would be required in L.A. County. It is anticipated that a multiple number of large optical scan ballots would have to be issued to each voter, as was the case in San Francisco where three optical scan ballots were required per voter due to multilingual ballots (San Francisco converted from a single punch card ballot to the optical scan system and used it for the first time for the November 2000 General Election). Reputable election vendors all concur that optical scanning systems requiring such large ballots are unworkable in a jurisdiction the size of Los Angeles County with requirements for multilingual ballots. San Francisco, with 486,000 registered voters, spent $700,000 on optical scan ballots for the November 2000 election.

[9] The highest percentage of overvotes and undervotes in Florida occurred in an optical scan, not a punch card, county. Additionally, in a statewide recount for Superintendent of Schools in Colorado following the November 2000 election, the cumulative recount vote total differences in punch card counties was 10 votes while one optical scan county revealed a difference of 1,000 votes due to equipment not detecting voters' pen/pencil marks.

(ISD/ITS) and the Auditor-Controller (A-C), established selection criteria and subsequently unanimously selected Global Election Systems, Inc. as the touch screen vendor for the pilot project. A contract was finalized with Global on August 14 for equipment and support services.

The committee determined that the best approach for the initial touch screen program was to expand voter services during the early voting period (early voting is in-person voting at satellite locations during the absentee voting period). The committee established the requirements for the touch screen voting pilot project including the capacity to 1) allow any of the County's 4.1 million registered voters to go to any of the nine established locations to vote by touch screen during the three week period prior to election day; 2) accommodate all 263 ballot styles (i.e. combinations of contests/propositions) on each and every touch screen device; 3) display each of the 263 ballot styles in the voter's choice of seven languages[10]; and 4) accessibility to voters in wheelchairs and allowing visually impaired voters to vote privately without assistance (by use of audio headset and raised keyboard).

From July 13 through the end of October, weekly project status meetings were held. Numerous RR/CC staff, together with personnel from Global Election Systems and staff of the CIO, ISD/ITS and Auditor-Controller (in their roles as members of the touch screen evaluation committee) attended.

Meeting the Technical Challenge

Conducting an election in the County using a dual voting system for the first time required integrating punch card ballot layout and vote tabulation software with completely different touch screen ballot layout and results accumulation software. The challenge involved working with four different software vendors/providers. The process first required the ability to remotely access (at the nine touch screen locations) the entire 4.1 million registered voter database (VIMS). After checking VIMS data to determine if each touch screen applicant was registered to vote and had not already been issued an absentee mail ballot, a smart card (similar to a hotel key card) was activated by Global's software for issuance to the voter. When the voter inserted the smart card into any touch screen device, the appropriate candidates and ballot propositions for that voter's precinct appeared instantly on the screen. After voting, the smart card was disabled for that voter. Smart cards were reusable and were re-activated for subsequent voters.

To obtain all election contest data in the seven languages required complex software integration with the translation vendor (CTS). Each touch screen device had to be

[10] The federal Voting Rights Act requires a County to offer ballots and other election materials in any language that more than 10,000 respondents on U.S. Census forms completed stating they had limited English proficiency. Based on the 1990 Census, the required languages in Los Angeles County are Chinese, Japanese, Spanish, Tagalog and Vietnamese in addition to English. In September 1998, Korean was added to the list by the Board of Supervisors. It is anticipated that the 2000 Census will result in requiring the addition of several more languages.

programmed with 9 million ballot combinations[11]. Also, to provide the audio versions of all 263 different ballot combinations, so that blind and visually impaired voters could cast ballots without assistance, required Global to read and index all of the varied ballot combinations. To report touch screen results along with punch card absentee totals required Global to convert ISD/ITS' punch card software, written in completely different computer language, to Global's software. No touch screen vendor, including Global, had ever faced such a daunting task of election software integration among multiple vendors.

A thorough project plan was developed with critical "go/no go" deadlines established in order to assure that the touch screen project would only be continued if success was achieve at each step. All deadlines were met and all technical obstacles were overcome. The pilot project represented a major technology leap forward.

Logistics and Cost of Pilot Project

Site preparation, equipment deployment/retrieval and daily troubleshooting involved RR/CC technical staff and members of the Global project management team. Site selection criteria included availability of computer network access, telephone access, facility space, security, parking and voter accessibility. The nine touch screen voting sites included RR/CC headquarters and six RR/CC branch offices as well as two city clerk offices in Los Angeles and West Covina (for locations and number of voters at each site see Attachment C). Between 4-6 touch screen units, including one visually impaired touch screen device, were operational at each site. The hardware worked reliably with down time experienced on only two units for less than twenty minutes (no votes were lost or compromised).

Site staffing, training and development of instructional materials was the responsibility of RR/CC election operations management. To ensure familiarity with the complex voter database, the strategy relied upon deployment of well-trained permanent RR/CC employees whose positions were back-filled during this time by temporary employees. Extensive publicity and voter outreach was accomplished by RR/CC executive office staff including the PIO, student interns and temporary employees assigned to this new project.[12]

Touch screen voting began on October 16 and continued through November 6, including the last two weekends prior to the election. Each day the number of voters increased. A

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[11] 263 ballot combinations multiplied by 4,963 voting precincts multiplied by seven languages resulted in over 9 million different versions available for presentation of the appropriate ballot to each voter.

[12] Information included in the sample ballot booklet was a key source of voter information, followed by information the media disseminated as a result of several department press releases and numerous interviews. Outreach with community based organizations proved pivotal as well, especially with regard to publicizing the unique capability for blind/visually impaired voters to cast their ballots without assistance. RR/CC staff met with 30 different visually impaired groups and partnered with the Braille Institute and the Center for the Partially Sighted to distribute touch screen voting information as part of their regular mailings to 8,000 clients. Similar efforts were undertaken with the League of Women Voters and numerous community groups.

total of 21,963 voters cast their ballots on the touch screen system. As expected, the majority of voters cast their ballots closer to election day. Fully 41% of the 21,963 touch screen voters cast ballots on the last three days prior to election day.

Final expenses for the pilot project are still being accumulated. At this time, the cost of hardware, support services, multiple vendor interfaces and additional staffing is estimated at $500,000.

Characteristics of Touch Screen Voters

We were able to determine some demographic and political affiliation characteristics of voters who chose to vote in the days/weeks prior to the election on the touch screen system. This was possible because touch screen voters, like absentee mail voters, were specifically designated as such on the voter file at the time of application to vote. The reason for this is to preclude the opportunity for a person to vote more than once (i.e. at the polls, by absentee mail and/or by touch screen).

The political affiliation of touch screen voters coincided virtually identically with the County's entire voter database. Countywide, 53.3% of registered voters are Democratic, 27.7% are Republican, 14.2% are non-partisan and 4.8% are registered with minor parties. The 21,963 touch screen voters consisted of 53.5% registered Democratic, 28.3% Republican, 14.3% non-partisan and 3.9% were affiliated with minor parties.

Touch screen (T.S.) voters tended to be somewhat younger than absentee (AV) voters who cast their ballots by mail. The chart below depicts the differences:

AGE	AV (MAIL) VOTERS	T.S. VOTERS
18-27	8%	10%
28-37	13%	21%
38-47	19%	23%
48-57	17%	20%
58-77	20%	11%
78+	8%	2%
unknown[13]	15%	13%

Voter Survey Results

Voters really liked using the new system as reflected by survey results (Attachment C). 9,296 of the 21,963 touch screen voters took the time to fill out the one page survey. Fully 99% of respondents said their satisfaction with touch screen voting was excellent or good and they would like to use this method again in future elections. Most respondents

[13] Voters who registered prior to 1976 were not required to provide birth date information but simply to affirm they were older than 18. Consequently, these voters on file are at least 42 years old and many are likely to be 60 or older.

(58%) learned about the new system from information included in the sample ballot booklet. Others learned about it from the media, community organizations, the Internet or were in government offices seeking other services and saw the large banners advertising the new service.

The majority of respondents (83%) indicated they waited between 1-10 minutes to vote. The touch screen device does not at this time accumulate information on how many voters chose to vote in a language other than English or used the audio headset available for the visually impaired. However, over 300 survey respondents indicated they voted in a language other than English and 139 said they used the visually impaired ballot station to vote using the audio headset. An informal tally by employees staffing each site revealed hundreds more chose these popular new features.

Strengths and Weaknesses of Touch Screen Voting

Strengths: 1) Fast ballot tabulation: When touch screen equipment is deployed strictly for early voting in advance of election day, votes are tabulated and results released along with the first absentee (mail) vote totals at 8 p.m. on election night. If deployed on election day in some or all voting precincts, each touch screen device accumulates vote totals on a hard drive and also redundantly on disk. Vote totals are then relayed to counting headquarters by computer modem or the disks are taken to one of several counting centers established countywide (Riverside County chose the latter process in instituting their countywide touch screen system for the November 2000 Election). When placed in every voting precinct, it would be anticipated that 95% of precinct election results would be available by midnight; 2) Accuracy: 100%, assuming thorough testing and no programming errors or equipment failure; and 3) User-Friendly: Voter surveys overwhelmingly reveal voters prefer touch screen voting over other voting systems; the system's capability to present the ballot in multiple languages, and in audio format for the visually impaired to vote without assistance, are desirable features for a diverse electorate; equipment is programmable to prevent overvoting (i.e. voters mistakenly voting for more candidates than allowed); and voters can easily review the entire ballot prior to casting their votes which alerts voters to undervoting (i.e. skipping a contest whether by intent or inadvertently).

Weaknesses: 1) High Cost: Initial hardware and software equipment purchase for a countywide system is estimated at $100 million (see cost breakdown at Attachment D). On-going hardware and software maintenance, including future upgrades or equipment replacement, is unknown but anticipated to be significant. Also, RR/CC staffing costs would be higher, including augmenting technical staffing and higher election day costs of roving troubleshooters and hiring more technically proficient poll workers[14]; 2) No tangible paper ballot: touch screen systems lack a voter "receipt" or other tangible ballot

[14] Riverside Co. instituted a touch screen system countywide for the 11/7/00 Election, employing a vast number of election day troubleshooters, at a ratio of 1 troubleshooter assigned to monitor/assist 8 precincts compared with 1 to 75 in L.A. Co. for punch card elections. Additionally, although Riverside Co. extensively trained their precinct poll workers, approximately 20% flooded the phone bank seeking assistance resulting in late poll openings and halting voting at other times throughout election day.

facsimile that could be examined by the voter and also be available in the event of a recount, dispute or computer failure (however, paper copies of ballot images from the touch screen devices can be generated for recount purposes); 3) Dual System: every voting system must have some type of paper ballot for absentee/mail voters who currently constitute 20% of the ballots cast in the County (25+% statewide). Consequently, in any election contest where the margin of victory is close, the results will still be unknown until the late absentee ballots (i.e. hundreds of thousands turned in by voters at the polling places on election day and those arriving by mail on election day) and provisional ballots cast at the polls have been signature verified, opened, sorted and counted in the days/weeks following election day until the official vote totals are certified; 4) Wary Voters: a small percentage of voters are wary of technology due to unfamiliarity with computers or desire to possess a tangible ballot. Although only 1% of the touch screen voter survey respondents cited these concerns in our pilot project, it should be noted that all of the pilot project voters made the choice to cast their ballots using the new system during the early voting period. If touch screens were installed in all voting precincts on election day, voters would be forced to use the new system (unless they chose to vote absentee by mail). Some complaints would be anticipated (as occurred to some degree in Riverside Co.); and 5) Limited Vendor Resources: the four touch screen certified election equipment vendors are small to mid-sized companies with limited support capabilities for their clients who all compete for vendor support and services at the same time of year.

RECOMMENDATIONS

Phase-in Touch Screen Voting: For the near future, it is recommended that the touch screen voting pilot project be expanded in conjunction with the early voting period for the 2001 and 2002 elections. As was pointed out in my November 6, 2000 memo to your Board, Dallas, Texas and Las Vegas, Nevada are two examples of electoral jurisdictions that introduced early voting on touch screens several years ago. Their experiences reveal that the popularity of this approach has grown so dramatically that between 20-40% of their voters, respectively, now cast ballots at early voting sites located not only in government offices but also in shopping centers.

It is anticipated that an ever-increasing number of the County's voters would take advantage of early voting on touch screens should that option be extended in future elections. In addition to enhancing voters' options of how and when to vote, it would reduce the number of voters at polling places on election day and stabilize, or perhaps lower, the high number of absentee ballots cast by mail. It would also result in speeding up ballot counting election night as touch screen votes cast during the early voting period are reported shortly after 8 p.m. on election night.

Establish a County Task Force: It is recommended that a Touch Screen Voting Task Force be established to formulate a plan of action to move toward the goal of replacing the punch card system at the voting precincts on election day. Initially, the Task Force

would identify funding sources, develop a feasibility timeline[15], explore equipment options, detail vendor selection criteria, etc. Task Force membership could include, at a minimum, staff from the Registrar-Recorder/County Clerk, Chief Information Office, Chief Administrative Office, Internal Services Department (Information Technology Service and Purchasing Divisions), County Counsel and a number of City Clerks.

Partnership with City Clerks: A strategy involving city clerks participation is essential to ensure that voters throughout the County have the opportunity to vote using the same voting system whether the election is conducted by the County or by clerks in the 88 Cities within the County[16]. Therefore, it is anticipated that purchase of new voting equipment would involve some type of financial support from the cities. Several cities have already expressed interest in the acquisition of new voting equipment.

The City of Los Angeles is considering leasing the County's current inventory of touch screen voting equipment, purchased in conjunction with the pilot project, to conduct early voting for the upcoming April 10 and June 5, 2001 City-conducted elections. Sharing the cost of expanding touch screen voting with the City of Los Angeles would build upon the foundation of the financial partnership that was forged in 1998, when the City contributed one third of the software costs of the RR/CC's conversion to the new Voter Information Management System (VIMS).

A phase-in approach to acquiring a new voting system is preferable due to several factors. These include the anticipated high cost of total system conversion and the fact that election expertise resides within only a few, small to mid-sized voting equipment companies that market equipment certified for use in California. Installing a new voting system countywide, such as was accomplished for the November 2000 Election by Riverside County (touch screen voting system) and San Francisco (optical scan system) strains vendor resources and support capabilities, and those jurisdictions are significantly smaller than Los Angeles County.

Additionally, technology is changing so rapidly that concerns have surfaced regarding equipment obsolescence. New voting system development plans have been announced recently by a coordinated Cal Tech/MIT team and also separately by Unisys in conjunction with Dell Computers and Microsoft. Several companies are also in various stages of development and marketing of Internet Voting Systems.

Also, several national task forces have been formed to study electoral reform and voting equipment options. I have been asked to serve on one assembled by the Election Center, a well-respected, non-partisan organization of state and local election officials based in

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[15] Developing RFP criteria, vendor demonstrations and contract negotiations would undoubtedly be a multi-year project given the high cost of acquisition of sufficient equipment for a countywide implementation.

[16] Countywide, 73 cities conduct their own elections and tabulate their ballots at city halls while 15 cities consolidate their elections with County-conducted elections. The County plays a substantial support role in all city elections and the registered voter database is solely maintained by the RR/CC - using the database is required for production of precincts' rosters of voters, absentee ballot processing, etc. for city-conducted elections.

Houston, Texas. These national task forces anticipate publishing recommendations by April 2001.

Numerous legislative proposals have recently been submitted, at the federal and state levels, dealing with electoral reform. Several of these propose financial assistance to counties for upgrading equipment.

This report has been docketed for oral presentation to your Board on January 30 at 10 a.m. Should you have questions prior to that meeting, please call me.

Attachments

C: Chief Administrative Officer
Executive Officer
Chief Information Officer
Auditor-Controller
County Counsel
Director, Internal Services Dept.
City Clerks

ON THE INSIDE LOOKING OUT: An Election Administrator's Perspective
(printed in magazine, IFES TODAY, May 2001 edition)

By Conny B. McCormack

Fallout from the November 2000 Election has resulted in misleading information about how elections are conducted and evoked simplistic ideas for solutions. This article aims to dispel some of the most common electoral myths that have arisen in the aftermath of the closest U.S. Presidential Election in over a century.

MYTH #1: **All ballots are counted on election night.**
REALITY: in the weeks following the November 7, 2000 Election, six million additional votes were counted for presidential candidates prior to certification of official results by the 50 states.

Election-administrators must balance two goals that are fundamentally in conflict: the public's desire, fed by the media, for instantaneous **and** complete results on election night. In actuality, speed and accuracy are attained, but at different stages of the process. Speed is achieved election night with unofficial election results. However, accuracy must await certification of complete, official results. Although timelines differ from state to state, certification occurs within several days to several weeks following the election in order to tabulate additional eligible ballots.

The volume of ballots remaining to be counted after election night has increased tremendously in many states primarily due to easing restrictions on who may cast a ballot by mail. Verification processes differ from state to state, but signature checking is typically required for each absentee/mail ballot prior to opening, sorting and tabulating. In jurisdictions with large volumes of mail ballots, to finish these processes requires several days or weeks after election night. Additionally, some states have adopted extensive provisional voting procedures to segregate ballots cast by voters whose eligibility to vote cannot be determined at the polling locations and, therefore, require post-election research and resolution at the elections office. Also, many states have laws mandating extensive vote auditing procedures prior to certification. These include a variety of automatic recount procedures, and other double checks such as comparison of the number of ballots cast to the number of voters who signed-in at every precinct.

Rather than decry the delay, the public, including candidates and the media, need to recognize that these important **post**-election procedures enhance the integrity of the ballot counting process.

MYTH #2: **The pervasive use of antiquated voting equipment is the problem.**
REALITY: Although technology upgrades are definitely needed, election administrators know that electoral problems are multi-faceted and equipment is only one component.

Indeed, all vote counting equipment works perfectly in a laboratory setting. To offer viable solutions, reform proposals must address problems and errors associated with 1)

People (voters, poll workers, election administrators and staff, vendor personnel, candidates, and the media); 2) *Procedures* (vague and conflicting laws and inconsistent policies); and 3) *Technology* (outdated computer systems, voting equipment and tabulation systems).

MYTH #3: **The United States should adopt one uniform vote counting system.**
REALITY: One size does not fit all.

Even within one state, California for example, it makes no sense to assume an appropriate system for Alpine County with 771 registered voters would be the same as the technology needed for Los Angeles County operating under legal requirements to produce ballots in seven languages for 4,102,182 registered voters. Diversity of electoral equipment and multiple vendors strengthens the electoral system and fosters innovation. A single source of tabulation equipment and software could even be a target for manipulation.

MYTH #4: **It is within the sole authority of election administrators to ensure proper conduct of elections.**
REALITY: Multiple agency involvement is a major factor outside of the control of election administrators and results in compounding the instances of errors in elections. This problem is especially acute with regard to the role of states' Motor Vehicle Departments in voter registration and the U.S. Postal Service in absentee ballot delivery. Election administrators are frustrated by bearing responsibility for all electoral errors without having the authority to manage key components of the process.

#5 MYTH: **Between 2-7% of the votes are "discarded" by election equipment.**
REALITY: Overvotes and undervotes are completely distinct ballot characteristics.

An overvote occurs when more votes are cast in a contest than is allowable. Overvotes are due to voter confusion about the voting instructions. An undervote occurs when no vote is recorded for a contest. When examining undervoted ballots, the vast majority are clearly the result of voters intentionally skipping that contest. Only infrequently does an undervote occur due to a voter incompletely marking or punching a partial hole on a ballot. Therefore, aggregating these categories and interpreting ballots containing overvotes and undervotes as "discarded" ballots is inappropriate and misleading.

In conclusion, as the U.S. Congress and State Legislatures grapple with numerous proposals for electoral reform, solutions need to be crafted that address the complexity of problems election administrators confront in the search for the illusive goal of conducting "a perfect election."

Conny B. McCormack has held the position of Registrar-Recorder/County Clerk for Los Angeles County, California for the past five years. As Registrar, she is responsible for administering elections for the largest County in the U.S. with 4.1 million registered voters, 5,000 voting precincts and 88 incorporated cities. Previously she was the Elections Administrator for Dallas, Texas and San Diego, California. In 1995 she spent a year working as an Elections Specialist for IFES in Moscow, Russia.

Statement of Mr. Samuel F. Wright, Co-Chair of the Uniformed Services Voting Rights Committee, Reserve Officers Association of the United States, for the Senate Committee on Governmental Affairs, regarding uniformed services' voting rights--May 9, 2001.

Mister Chairman and Members of the Subcommittee:

We are here today, and this issue is on our national radar screen, because of the November 2000 controversy about uncounted military absentee ballots in Florida. However, this problem is not limited to Florida, and it did not begin in the year 2000. Uniformed services personnel and their family members have had difficulty in voting for as long as they have been permitted to vote at all. (The first efforts to provide absentee ballots for citizens serving in the uniformed services came during World War II.)

As you can appreciate, there are three time-consuming steps in absentee voting. First, the absentee ballot request must travel from the voter to the local election official in his or her home town. Second, the unmarked ballot must travel from the election official to the voter. Finally, the marked ballot must travel from the voter to the election official. Each of these steps can take weeks if the mails must be used. If secure electronic means were authorized, each of these steps could be accomplished at the speed of light.

On June 26, 1952 (49 years ago next month), the Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives conducted hearings on military absentee voting.[1] The hearings established that the young men and women fighting the Korean War were in most cases being disenfranchised. I have provided a copy of the 1952 hearings report to your committee staff.

The 1952 report includes a letter to Congress from President Harry S. Truman.[2] In his letter, he called upon the states to fix this problem. He also called upon Congress to enact temporary legislation for the 1952 Presidential election. President Truman wrote, "Any such legislation by Congress should be temporary, since it should be possible to make all the necessary changes in State laws before the congressional elections of 1954."[3]

Today, almost half a century later, this problem has not been solved at the state level, as testimony before this committee has established today. In the same paragraph, President Truman wrote, "I agree with the committee that ... the Congress should not shrink from accepting its responsibility and exercising its constitutional powers to give soldiers the right to vote where the States fail to do so."[4]

We (the Reserve Officers Association of the United States) respectfully suggest that 49 years is long enough to wait for the states to solve this problem. The brave young men and women who are away from home and prepared to lay down their lives in defense of our country should not have to wait another half century to enjoy a basic civil right that the rest of us take for granted.

The Constitution grants to the Congress the power to "raise and support Armies" and to "provide and maintain a Navy."[5] The founders clearly intended that national defense would be at the very core of the responsibility of our central government, not the states.

The military voting problem cries out for a Federal solution. In 1940, when Congress enacted our nation's first peacetime conscription statute, it also enacted the first law requiring civilian employers to reemploy persons who left their civilian jobs for military service.[6] During the congressional debate, Representative R. Ewing Thomason of Texas forcefully asserted that, "This is Uncle Sam's law, this is Uncle Sam who is drafting these men, and he ought to be fair enough to see that the [veterans' reemployment] law is enforced."[7] What is true of the statutory right to reemployment in one's civilian job should, we respectfully submit, be even more true of the constitutional right to vote.

In 1973, Congress amended the Veterans' Reemployment Rights (VRR) law to make it applicable to the states, as employers.[8] The constitutionality of requiring the states to comply was upheld.[9] The constitutional right to vote is at least as precious as the statutory rights conferred by the VRR law. Whether we as a nation are conscripting young people into the Armed Forces, or whether we are relying on volunteers (as we have done since 1973), the Congress clearly has the authority and the responsibility to ensure that those who serve in our nation's uniformed services do not lose valuable rights because of their service to our country.

I invite the Committee's attention to the most eloquent opening paragraph of President Truman's 1952 letter to Congress:

> About 2,500,000 men and women in the Armed Forces are of voting age at the present time. Many of those in uniform are serving overseas, or in parts of the country distant from their homes. They are unable to return to their States either to register or to vote. Yet these men and women, who are serving their country and in many cases risking their lives, deserve above all others to exercise the right to vote in this election year. At a time when these young people are defending our country and its free institutions, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve.[10]

I respectfully suggest that President Truman's words are as true today as they were in 1952, and that those words are addressed to you, as members of the 107th Congress. With your help, America's sons and daughters who serve in our nation's uniformed services will not have to wait another half century to enjoy a basic civil right that the rest of us take for granted. I have attached a list of specific legislative provisions.

1. *H.R. 7571 and S. 3061: Bills to permit and assist Federal personnel, including members of the Armed Forces, and their families, to exercise their voting franchise,* 82d Cong., 2d Sess. (June 26 and July 1, 1952) (hereinafter "1952 Hearings").
2. 1952 Hearings, pages 35-37. Our association, the Reserve Officers Association of the United States, was associated with Harry S. Truman for most of the 20th Century. In 1922, he was one of our founders, and he was a member from that date until his death in 1973. In 1950, as President, he signed our Congressional charter.
3. 1952 Hearings, page 37.
4. Id.
5. U.S. Const., art. I, section 8, clauses 12 and 13.
6. Pub. L. 76-783, 54 Stat. 885.
7. Cong. Rec., 76th Cong., 3d Sess., page 11699 (Sept. 7, 1940).
8. Vietnam Era Veterans' Readjustment Assistance Act, 88 Stat. 1594.
9. See Peel v. Florida Department of Transportation, 600 F.2d 1070 (5th Cir. 1979); Jennings v. Illinois Office of Education, 97 LRRM 3027 (S.D. Ill. 1978), aff'd, 589 F.2d 935 (7th Cir. 1979). See also Cantwell v. County of San Mateo, 631 F.2d 631 (9th Cir.), cert. denied, 450 U.S. 998 (1980) (striking down a California law that conflicted with Federal law on retirement benefits for Reserve Component members).
10. 1952 Hearings, page 35.

APPENDIX TO TESTIMONY OF SAMUEL F. WRIGHT
CO-CHAIRMAN, UNIFORMED SERVICES VOTING RIGHTS COMMITTEE
RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

The Reserve Officers Association of the United States (ROA) supports the enactment of the proposed "Military Overseas Voter Empowerment Act of 2001" (H.R. 1377). That bill was introduced on April 3, 2001, by Representatives William M. Thornberry (Texas), Randy Cunningham (California), Sam Johnson (Texas), and Ellen Tauscher (California).

We support the entire bill, but I will limit my specific comments to sections 3 ("Guaranty of Residence for Military Personnel"), 6 ("Coverage of Recently Separated Uniformed Services Voters"), and 7 ("Electronic Voting Demonstration Project").

GUARANTEE OF RESIDENCY

As a Navy judge advocate, I have had many occasions to advise military clients about domicile questions, for voting and taxation purposes. Almost a decade ago, I was one of two authors of an article entitled "Domicile of Military Personnel for Voting and Taxation."[1] The article was published in the September 1992 issue of The Army Lawyer, an official Army publication for military judge advocates. I have provided the committee staff a copy of that article.

The co-author of the 1992 domicile article was Major (then Captain) Albert Veldhuyzen, USAR. Today, Major Veldhuyzen is a member of ROA, and he serves with me on ROA's Uniformed Services Voting Rights Committee.

In our 1992 article, we explain the legal basis for the advice that military judge advocates have been giving their clients for decades. An individual entering active duty starts out with a "domicile of origin" at his or her "home of record" (the place where he or she lived before entering active duty). "A service member may maintain domicile in his or her home of record throughout his or her military career if he or she never demonstrates an intent to establish a new domicile elsewhere."[2]

A member of the uniformed services on active duty can establish a new domicile, called a "domicile of choice," while on active duty. To do so, he or she must simultaneously have a physical presence in the place to which he or she wishes to change and the intent to make that place his or her home. Neither intent alone nor physical presence alone nor intent alone is sufficient to effect a change in the service member's domicile.

Once established, a domicile (either of origin or choice) should be entitled to permanence. Only the creation of a new domicile should effect the destruction or relinquishment of the service member's prior domicile. Because intent alone is not sufficient to create a new domicile, a change in the member's intent about where to live after leaving active duty should not destroy the member's pre-existing domicile. Otherwise, the member is left without a domicile (or the right to vote) anywhere.

The typical career service member (one who serves on full-time active duty for 20 years or more) probably changes his or her mind many times about where to live after leaving active duty. The final

decision about relocation is often made based on the availability of post-service civilian employment. The member cannot anticipate years in advance where he or she will find a job upon retirement from active service.

We candidly acknowledge that states without a state income tax (like Florida and Texas) are overrepresented among the active duty force. "Taxation often will be a service member's prime consideration in choosing domicile."[3] We see no reason to apologize for this disparity. Comparing tax rates when choosing where to live is hardly limited to members of the uniformed services. Every day, tens of thousands of individuals and businesses consider tax rates when deciding whether or where to relocate.

A dispute about this issue arose in the immediate aftermath of the 1996 general election in Val Verde County, Texas. The outcome of two local elections (for Sheriff and County Commissioner) was decided by exactly 800 military absentee ballots. When those absentee ballots were added to the count, a different pair of candidates won for those two offices.

Immediately after the election, a supporter of the two unsuccessful candidates filed suit in the United States District Court for the Western District of Texas (Judge Fred Biery presiding). The plaintiff sought to have the court discount the 800 military absentee ballots and thereby change the result of the election.

With the permission of the court, the plaintiff sent a 24-page deposition on written interrogatories to each of the 800 military absentee voters. The deposition amounted to a detailed residency questionnaire. Each recipient of the deposition was required to complete it under oath and return it to the court.

The deposition asked many detailed questions about sleeping arrangements, bank accounts, association memberships, etc. However, the bottom-line question was, "Where do you intend to live after leaving active duty in the Armed Forces?" Judge Biery relied upon the depositions in finding a "likelihood of success on the merits" and enjoining the seating of the two successful candidates.

Judge Biery's discussion of one particular voter (representative of most of the 800) is particularly instructive. The voter is an active duty Air Force officer. At the time of the 1996 general election, and at the time he completed the residency questionnaire, he was stationed in Colorado.

In his written deposition, the voter stated that he will probably return to Texas upon retiring from the Air Force, in 2010 or later. He stated that he will probably retire in Austin or San Antonio, not Val Verde County. Judge Biery stated that this individual's absentee vote in Val Verde County is invalid because he lacks the present intent to return to that specific county.[4]

If this officer cannot vote in Val Verde County, by absentee ballot, he cannot vote anywhere. He gave up his domicile of origin, at his home of record, when he established a domicile of choice in Val Verde County while stationed there in the early 1990s. He cannot reestablish his domicile of origin without moving back to his original home town. Of course, he cannot do that while serving on active duty in the Air Force. He cannot establish a new domicile of choice in Colorado, his current duty

station, because he has already decided (and stated in his deposition) that he does not intend to remain in Colorado after leaving active duty. He cannot establish a new domicile of choice in Austin or San Antonio based solely on an intent to move there many years into the future. It is Val Verde County or nowhere. His situation is typical among career members of the uniformed services.

In each of the last four years (1997-2000), the Senate (but not the House) has passed language to counteract this harmful 1997 precedent. This language has been included in the Senate version of the National Defense Authorization Act, but the House has refused to go along. This year, we need to get such language through both houses of Congress and signed by President Bush. Section 3 of H.R. 1377 contains the language that we need.

COVERAGE OF RECENTLY SEPARATED VOTERS

In the 1996 Presidential election, 64% of the active duty force voted or at least attempted to vote.[5] Almost 90% of that 64% voted (or attempted to vote) by absentee ballot.[6]

So long as he or she is on active duty, a member of the uniformed services is permitted to use the Federal Post Card Application (FPCA) form as a simultaneous temporary voter registration application and absentee ballot request. In most states, using the FPCA to request an absentee ballot does not get the voter onto the permanent voter registration list. Very few members of the uniformed services are registered to vote in the traditional sense.

Upon leaving active duty, by retirement or otherwise, the member must register to vote in the traditional way, as a condition precedent to voting. In most states, the deadline for doing so is about 30 days before the election. If the member leaves active duty shortly before the election, he or she will almost certainly be disenfranchised. He or she is no longer entitled to use the FPCA, because he or she is no longer on active duty. He or she cannot vote in person because he or she is not registered. He or she did not have the opportunity to register because he or she did not leave active duty and move to or return to the jurisdiction until after the voter registration deadline had already passed. Each month, more than 20,000 members of the uniformed services leave active duty.[7]

Section 6 of H.R. 1377 would enfranchise persons who leave active duty during the last 60 days before an election, as well as their voting-age family members. ROA strongly favors this accommodation for persons who have only very recently completed their active duty service to our country.

ELECTRONIC VOTING DEMONSTRATION PROJECT

As we enter the 21st Century, we (as a nation) still conduct absentee voting essentially as we did in the 19th Century, by "snail mail." As you can appreciate, there are three time-consuming steps in absentee voting. First, the absentee ballot request (FPCA) must travel from the voter to the election official. Second, the unmarked ballot must travel from the election official to the voter. Finally, the marked ballot must travel from the voter to the election official. Each of these steps can take weeks if the mails must be used. If secure electronic means were authorized, each of these steps could be accomplished at the speed of light.

I personally have had a bad experience with the United States Postal Service while trying to vote by absentee ballot. During my most recent extended active duty period (October 1999 through March 2000), I completed an FPCA and mailed it to the Honorable Charlotte Cleary, General Registrar of Arlington County, Virginia. (This pertained to Virginia's Presidential Primary, conducted on February 29, 2000.) Although I used the correct address, as contained in DoD's Voting Assistance Guide, the Postal Service returned the form to me marked "Attempted not known" more than ten days after I mailed it. I have provided the committee staff a copy of my completed FPCA.

Even before the Postal Service returned my form, I sent an e-mail to Charlotte Cleary, inquiring about the whereabouts of my absentee ballot. She responded that she had not received my request. At my request (by e-mail), she faxed me a Virginia absentee ballot request form. I completed it and faxed it back to her. She then mailed me a ballot, which I received, marked, and returned by mail. I believe that my ballot was counted, but I cannot be sure.

We (ROA) believe that the technology already exists which will enable members of the uniformed services and others to cast secure and private electronic absentee ballots. Section 7 of H.R. 1377 would require DoD to conduct an electronic voting demonstration project in the 2002 general election and to report to Congress by June 2003. We hope that the demonstration project will work well and that Congress will then enact an electronic voting entitlement in time for the 2004 Presidential election.

We believe that Congress should mandate electronic voting as an option for uniformed services voters, including their family members. Congress should not wait on the states to enact such legislation. DoD can administer a single national electronic voting system, but DoD cannot administer 50 different state systems. Only the enactment of Federal legislation will result in a system that will really work.

1. Veldhuyzen & Wright, "Domicile of Military Personnel for Voting and Taxation," The Army Lawyer, September 1992 (hereinafter "domicile article").
2. Domicile article, page 15.
3. Domicile article, page 17.
4. Casarez v. Val Verde County, 957 F. Supp. 847, 860 (W.D. Tex. 1997).
5. Department of Defense (Federal Voting Assistance Program) press release dated June 17, 1997.
6. Id.
7. Mr. John Godley of the Federal Voting Assistance Program, Office of the Secretary of Defense, obtained this figure for me by contacting the central personnel offices of each branch of the service.

Secretary of State
214 State Capitol
Atlanta, Georgia 30334

TESTIMONY OF THE HONORABLE CATHY COX
Georgia Secretary of State

NATIONAL COMMISSION ON FEDERAL ELECTION REFORM
MARCH 26, 2001
THE CARTER CENTER, CECIL B. DAY CHAPEL
ATLANTA, GEORGIA

Thank you Mr. President. I appreciate the opportunity to participate in this very important hearing this morning. As an election official who is deeply concerned about the problems that exist in our current systems of casting and counting votes, I am so very pleased that the Commission has selected Atlanta as its first stop in its series of four public hearings at presidential libraries across the country.

Your visit is particularly timely, since just a few days ago, the Georgia General Assembly passed my comprehensive election reform package created to address many of the weaknesses that exist in Georgia's existing election systems. With the passage of Senate Bill 213, Georgia has taken a bold step on the path to more accurate, fair and user friendly voting systems.

In fact, we believe Georgia is the first state in the nation to enact legislation that mandates a uniform system of voting by 2004. And what is even more gratifying is that the bill passed nearly unanimously, with broad bi-partisan support, including that of my good friend Representative Irvin. In Georgia, Democrats and Republicans spoke with one voice that we must dramatically improve our antiquated voting systems and assure our citizens that their votes will be accurately counted on election day.

As the presidential election drama unfolded in Florida last November, one thought was foremost in my mind: There, but for the grace of God, go I.

Because the truth is, if the presidential margin had been razor thin in Georgia, and if our election systems had undergone the same microscopic scrutiny that Florida endured, we would have

fared no better. And perhaps we would have fared even worse.

Like Florida, we have several different voting systems. Some are merely outdated. Some are true antiques tracing their origins to Thomas Edison and the 19th Century.

Like Florida, we had thousands and thousands of ballots that registered no vote in the presidential race, what we call undervotes. Nearly 94,000 voters that went to the polls in November either did not vote for president, made a mistake that voided their ballot, or did not have their vote counted by a machine.

That is an undervote percentage of 3.5 percent -- a number that compares unfavorably with Florida, which had an undervote rate of 2.9 percent – and the overall national rate that has been reported at 1.9 percent.

Like Florida, we had wide variations in undervote rates from county to county. Some counties showed undervote percentages of less than one percent. But others showed disturbingly high percentages in the double digits. When more than one in ten ballots register no choice in the most important race, it doesn't take an election expert to know that something is seriously wrong with the system.

And that brings me today to what I believe is the crucial issue for any group reviewing the aftermath of November's elections-- -- How we **cast** and **count** our votes. For many decades, even centuries, numberous Americans have fought for the right to *cast* a vote. Now that all American adults finally have that Constitutional right, it is shocking to learn that many of those votes are not being *counted*. All the ideas for election reform are important and worthy of discussion, but nothing is more critical than assuring that our votes are **actually and accurately counted**.

Since November we have spent a great deal of time analyzing Georgia's undervote, especially the variations that occur from county to county and from precinct to precinct. Our report offers interesting insight into a whole range of issues, but let me focus this morning on just one of them. And that is the undervote performance of opti-scan systems as compared to punch cards.

Although optical scan systems offer satisfactory performance in some counties, in many other locations optical scan undervote rates are extremely high – well above the averages of more antiquated

systems. In fact, 21 opti-scan counties in Georgia had undervote rates of five percent or higher, and one opti-scan county had an undervote rate of 15 percent.

In addition to our overall analysis of all Georgia counties, we were interested in the differences in undervoting that exist by race. So we studied presidential undervote percentages in 92 predominately black precincts and compared those to predominately white precincts in the same county.

We found that, across the board, undervotes are higher in predominately black precincts than in white precincts in the same county-using the same equipment. We have called this the "undervote gap."

But the biggest surprise is that this undervote gap was higher--that's right, higher, in counties that utilized opti-scan systems than in counties that use the punch card.

In punch card counties, the undervote gap was 3.7 percent.

In counties that employ opti-scan, the undervote was 5.4 percent.

So the undervote gap between blacks and whites is nearly two percentage points higher in opti-scan counties.

The reasonable question one would ask when presented with these findings is "Why?" Why are voters in predominately African-American precincts more likely to cast an undervoted ballot, and why is this variation even greater in opti-scan precincts than in punch card precincts?

We simply do not know the answer. Anecdotally, we know the kinds of errors voters can make on opti-scan ballots. Sometimes voters place a check mark or an "X" rather than blackening the circle. Sometimes voters, trying hard to make sure their vote is counted, both blacken a circle by their candidate's name AND write-in their candidate's name, thus creating what appears to the counting machine to be a duplicate vote, or overvote.

But whatever the cause of the disparity, we believe the data makes a compelling argument that further deployment of opti-scan systems in Georgia would be bad public policy, and could even be considered a decision that disenfranchises minority voters.

Clearly, our findings cry out for more analysis of this racial disparity in the use of voting equipment. While we have confidence in the data we have collected in Georgia, we also recognize that more

detailed national analysis is warranted.

So much of the focus coming out of Florida was on the shortcomings of the punch card system. And those shortcomings are undeniable.

But in Georgia, we now believe that replacing punch card with opti-scan would be the electoral equivalent of jumping from the frying pan into the fire.

We believe that electronic equipment – systems that are flexible, accurate, that prevent overvoting and that feature a paper audit trail – offer the best option for improving the reliability of our election systems.

I know time is short this morning, but let me quickly address two additional issues that I believe are particularly critical in this debate.

The first is the issue of undervotes and why they occur. Some observers suggest that undervotes in the presidential race simply reflect the conscious decision of voters to skip that race and make other choices later down the ballot. Our data strongly suggests otherwise. In the 13 Georgia counties that compute duplicate votes (or overvotes) as a separate category, these inadvertent duplicate selections constituted 61.5 percent of the total undervote.

In addition to duplicate votes, it is also unquestionably the case that an additional number of voters attempt to make a selection, but because of their error or flaws in the counting mechanism their vote is not recorded.

when we compare Georgia's undervote performance to other areas in the nation that enjoy modern electronic equipment, we see an enormous disparity in our respective undervote counts. In Clark County (Las Vegas), Nevada, which uses electronic machines, the undervote rate on election day was only 0.21 % -- that's a rate **16 times** lower than Georgia's.

I simply do not believe that the good people of Nevada are 16 times smarter or more capable than the folks here in my native Georgia. No, the critical difference is that Las Vegas voters are using equipment that reduces the opportunity for voter or computation errors.

The Second critical issue relates to the preliminary report of the Caltech/MIT Voting Project, which proposes that the undervote rate of electronic equipment, or DRE's, actually is higher than that of opti-scan.

I certainly do not propose to get into a detailed statistical critique of this report, But it seems to me there are two serious problems with the study as it currently is formulated.

The first is the source of the data. The vast majority comes from a private firm called Election Data Services, rather than directly from the counties or states. EDS, as I understand it, makes no attempt to verify the data it receives, and to do so would of course be a massive undertaking.

The second problem with the study is the issue of absentee votes. In our Georgia analysis, one of the most difficult hurdles was to strip out the absentees from the precinct results. This must be done because an absentee ballot is frequently cast in a different manner from the ballots cast in person on election day. For example, you obviously cannot vote electronically by mail – most DRE counties use optiscan for their absentee voters.

The Cal Tech MIT study fails to remove absentee votes from the statistical pool, and this may have had a significant impact on their conclusions.

The Commission is engaged in important work, to help fashion the best solutions to improve the accuracy and fairness of America's electoral process. Thank you for inviting us to participate in today's hearing, and I welcome your questions.

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Testimony of the Honorable Bill Jones
California Secretary of State

Submitted to the U.S. Senate Committee on Governmental Affairs
May 9, 2001

Mr. Chairman and members of the Committee, I welcome your invitation to submit testimony to you for your review and consideration about the elections process in California and how we are working to improve that process in the aftermath of the controversial November 2000 election. During the last six years, we have instituted major reforms and modernized the election management and voting procedures in pursuit of our two paramount goals of 100 percent voter participation and zero tolerance for fraud.

But even a very good elections system can be made better. The last election pointed to specific problems we can solve. It also brought to light new challenges that elections officials will face, some which could threaten the integrity of the voting process. I will outline for you the solutions we are working to implement in California. In addition, I will point out the challenges which, I believe, should be addressed at both the state and federal level.

To understand the reforms we are proposing for California, I really only need to note two basic facts. There are approximately 15.6 million voters in our state and more than 25,000 voting precincts for statewide elections. The scale of such an electorate makes significant demands on the creativity and energy of elections officials. But, by taking advantage of various procedural and technological innovations, we have been able to improve the efficiency of our elections, increase voter turnout and deploy new voting technologies that have served as a model for the rest of the nation.

To meet the demands of our dynamic electorate after the November 2000 election, we proposed a 10 Point Election Reform Plan. Let me outline its key reforms.

THE 10 POINT ELECTION REFORM PLAN AND THE FUTURE OF CALIFORNIA ELECTIONS

The centerpiece of this Election Reform Plan is a $230 million Democracy Fund which counties can use to upgrade their voting systems using newer technology like

optical scan ballots or touch screen computers. We are working closely with Speaker of the California Assembly Robert Hertzberg on his expanded proposal for $300 million, which also provides a state government match of $3 for every $1 a county contributes to modernize their voting equipment.

I believe that funds like this in states, or through one of the measures now making their way through Congress, will provide the financial resources for counties to fairly tailor their voting systems to the needs of their voters. Congress can play a vital and critical role in giving states, which might not have the funds to do so, the ability to shape their elections process.

There is a tremendous interest in new voting technology. We sponsored an Election Technology Exposition in January and drew 40 vendors of innovative voting systems and nearly 400 attendees, largely made up of county elections officials. If states are the laboratories of democracy, counties are the foundation of that experimentation. We should encourage innovation and creativity to deal with the challenges of elections in the 21st century.

One of the great challenges, as the last election also made so clear, is to target and increase the amount of voter education and outreach – including education on how to properly cast a ballot on a given voting system. We have asked for $10 million for such efforts this coming year in California. We may require additional funds. This is a simple, commonsense reform that ought to be widely adopted. The more voters are confident and comfortable with going to the polls and using the voting systems, the more democracy prospers.

There are specific proposals in our Election Reform Plan directed at the elections process itself. These include restricting political campaigns from collecting completed absentee ballot applications. There was a record 3.2 million absentee ballot requests for the November 2000 election and this trend will only grow. Campaigns collecting these applications often delay sending them to elections officials. This, in turn, delays voters from receiving their absentee ballots, or at worst prevents them from obtaining an absentee ballot in a timely fashion. The practice of campaigns harvesting absentee ballot applications and delaying their return to election officials should end.

We have also proposed changes to the National Voter Registration Act or "Motor Voter Law" to make it more practical in real world elections. These changes would include using digitized (not to be confused with digital) signatures to automate registration address changes through the Department of Motor Vehicles.

Two particular proposals in the Election Reform Plan would safeguard the vote. First, identification should be required at the polls. This is simple, safe, and fair. A fundamental right is at stake. If we must show identification to rent a video or cash a check, we ought to protect the vote at least as much. The second reform is to curb the release of exit polling data. I submitted testimony to the House of Representatives Committee on Energy and Commerce in February that is highly critical of the 'rush to

judgment' caused by the release of exit polling data. It is empirically demonstrable that this practice of calling elections based on exit polls discourages voters, especially on the West Coast.

As a brief aside, I note that the Committee heard testimony last week that on Election Night the television networks erroneously but very emphatically declared the polls in Florida were closed when in fact the polls in the Panhandle remained open for some time. Pollworkers said that there was an immediate and dramatic dropoff of voters from that point on. This is a stark example of the need for television network restraint and responsibility when voting is still going on. Television networks have a tremendous ability to affect the vote and that ability must be very carefully channeled.

I have personally urged the television network executives to restrain the release of exit polling data and all 50 Secretaries of State have joined in the same request. This is one reform for the next election that must be addressed. It can be implemented in many ways from uniform polling closing, the embargo of exit poll results until 11 p.m. EST or extending Daylight Savings Time on the West Coast to lessen the time difference on Election Day between the East and West Coasts. I believe from my conversations with the television network executives that they are not flatly opposed to careful, thoughtful and responsible changes in their Election Night coverage. But change must come.

In addition to these proposals, new challenges I mentioned earlier, were revealed during the November 2000 election.

THE PROMISE AND CHALLENGE OF THE CYBER AGE

There is not doubt that the computer and the Internet have profoundly affected every aspect of our lives, and that includes the cornerstone of democracy, the vote itself. We have used the best of these cyber age tools to improve the vote in California.

The first step in the creation of fair and efficient elections is the creation and maintenance of a clean and reliable voter roll. In 1995, the League of Women Voters and other organizations estimated that California's 58 individual county voter rolls were clogged with 10-20% deadwood – meaning that voters who had died or moved away still remained on the voter file, creating the potential for fraud, increased costs for election officials and an artificially depressed voter turnout.

In California, we have made voter file maintenance a priority and have removed more than two million ineligible voters from the active rolls since 1996.

The deadwood identification and removal was accomplished through several new reforms which will also prevent the future accumulation of ineligible voters on the rolls.

First, we included a field to capture to driver's license number of voters on the voter registration affidavit. With 15.6 million names and an extremely mobile

population, we needed a unique identifier to cut down on unnecessary duplication and reduce the potential for fraud while saving substantial tax dollars at the same time.

Second, as we were assembling a list of unique identifiers for each voter, we also began the development of our new electronic statewide voter file, CALVOTER, which links the voter files of all 58 counties into one database, allowing us to prevent duplicate registration as voters move from one county to another.

You may be aware that the most recent Federal Elections Commission study in 1997 on the subject said that only 10 states had real-time, online access to a database like CALVOTER. 16 states have no statewide database at all. In addition to its role in the voter roll maintenance, the network also allows the vote totals from our 58 counties to be sent electronically to the Secretary of State on election night. The various election fund proposals before Congress could also be used to encourage states to create their own statewide voter file databases.

CALVOTER also enabled us to implement our Voter Integrity Plan that allows for the routine tracking of illegal cross-county double voting or illegal voting by felons. Information obtained through CALVOTER has led to successful investigations and convictions of individuals who have committed voter fraud.

We have moved forward to certify new voting system technologies to make use of the best systems available. In California, counties may only utilize voting systems that have been certified for use by the Secretary of State. The Secretary only certifies a system after it has been reviewed by two independent testing laboratories. One review ensures that the hardware and software of a voting system are compliant with federal election standards and the other review ensures the system is in compliance with California law.

Since 1999, California has approved four new touch-screen voting systems and decertified 45 obsolete voting technologies.

In addition to leading the nation in the deployment of new voting technology, we have also led in the review of potential entirely new voting systems, such as the possibility of one day casting ballots over the Internet. The California Internet Voting Task Force Report laid out a four-stage process for the evolution of on-line voting that has subsequently been embraced by virtually all other organizations who have studied the issue, including the National Science Foundation. Although voting over the Internet from the comfort of one's home or office is not likely to be secure in the foreseeable future, the parameters for judging the security of such a system are available in our Internet Voting Feasibility Study (available on the Internet at http://www.ss.ca.gov/executive/ivote/).

California provides a national model in voter education through our statewide and local ballot pamphlets and our extensive Internet presence. Through the pamphlets mailed to their home and the information on our web site, voters can read arguments for and against each ballot proposition, impartial policy and fiscal analysis of each ballot

measure and review statements by candidates for statewide office. Through the web site, voters can also search and review campaign contribution and expenditure data through our on-line filing system.

The Internet has also recently opened up the possibility of electronic voter fraud in traditional elections. This is the challenge I described earlier. During the 2000 election cycle we investigated, for the first time, criminal complaints of votes being auctioned and/or traded over the Internet. There were three kinds of abuse of the vote using the Internet that we, along with other states, had to deal with.

First: votes were individually offered over the Internet for sale. We were able to identify the people involved, but this new kind of crime requires sophisticated electronic capabilities to both stop and then prosecute. It also requires that states swiftly obtain the cooperation of Internet companies. We learned that Internet service providers and domain registries are very willing to work with elections officials to end this kind of voter fraud. The real possibility exists that the practice of votes for sale on the Internet proliferates so quickly it will overwhelm elections officials, especially if it happens very close to an election.

Second: an Internet site was created in New York State, moved to Austria, and purported to auction blocs of votes from other states around the country. We worked closely with elections officials in Illinois and Wisconsin, among others, to shut down this blatant vote corruption immediately. Once again, elections officials were forced to venture into a new world where they had to work with Internet domain registries and domain banks in order to stop voter fraud. This particular case reveals the challenge for us for the next election cycle. While we were successful in shutting down the site in Austria, it moved overnight to Russia, beyond the legal process of California. And for practical purposes, beyond that of the United States.

Third: shortly before the November 2000 election sites sprang up daily that offered to swap or trade votes for Vice President Gore and Ralph Nader. We had only a short time to review three of these sites and determined that two did not violate California law, and one was engaged in illegal vote trading. We were able to shutdown that site. Oregon and other states with whom we were in contact took action against different sites.

The challenge these three situations reveal is that the Internet requires the cooperation of states and the federal government where vote fraud or vote manipulation exists. I urge the Congress to study this problem before the next election cycle and I will make our experience in California available to assist in that important review.

Finally, let me note two reforms that have worked in California and could work elsewhere in the country.

CALIFORNIA VOTE REFORMS

The November 2000 election vividly demonstrated the need to have uniform manual recount procedures in place before an election. Each certified voting system is mandated by state law to have procedures for its operation during a manual recount of the vote. The Secretary of State certifies the voting systems that counties are permitted to purchase. The primary voting systems in California include: punch-card ballots, optical scan ballots and touch-screen voting machines. In 1999, we decertified 45 obsolete systems, some dating back to the 1950s and requiring vacuum tubes to operate.

Since 1991 California has had uniform manual recount standard for pre-scored punch card voting systems as part of the certification required of voting systems. These manual recount procedures have been used in numerous elections since then. They ensure that fairness is built into the often adversarial atmosphere in a recount.

The second reform addresses the issue of increasing the participation of all eligible voters. California is one of 10 states that takes advantage of the provisional ballot for voters who do not appear on the rolls at their polling place for a variety of possible reasons. The ability for voters to cast a provisional ballot virtually eliminates the possibility that a voter can be shut out of the polling place on election day. During the official canvass that follows election day, the circumstances for the voter's exclusion from the voter rolls are researched and the election official determines whether or not the voter is entitled to have the provisional ballot counted. Although only 10 states currently use this kind of ballot, it should be standard across the nation.

As an election official I know that every election cycle brings fresh challenges. I look forward to them with optimism. Our new century will find voters, states and the federal government, and technology linked as never before. I believe that together we will meet the challenges, create new opportunities for greater voter participation, and continue to be, not only in California, but also throughout the nation, the most successful experiment in popular government in history.

STATEMENT FOR THE RECORD
JAMES C. DICKSON, CHAIR, DISABLED VOTE PROJECT

Mister Chairman, distinguished panelists:

I am Jim Dickson. I have worked on elections for over thirty years, ten as a volunteer and twenty as a professional. Currently, I am Chair of the Disabled Vote Project, a coalition of 36 national disability-related organizations that worked for over a year to increase the political participation of Americans with disabilities. New York State was one of our most successful states, with broad participation from organizations representing sensory, physical and mental disabilities. I am also Vice President of the National Organization on Disability.

Over 14 million voters with disabilities cast their vote in the 2000 presidential election. This was an increase of more than 2.7 million from the 1996 election. Unfortunately, more than 21 million voting aged people with disabilities did not cast a ballot. A recent Harris Poll survey commissioned by the National Organization on Disability found that about 40% of people with disabilities voted in the November election. This is up from 30% in the 1996 election, but still far below the national average of about 51% of the public voting. The low voter turnout of people with disabilities is due to a number of causes, but a major piece of the problem is inaccessible polling places and voting systems.

The majority of Americans take for granted their right to privacy at the polling place. According to the U.S. Census more than 10 million voters with disabilities are unable to able to exercise this right because their visual impairment makes it difficult or impossible to see print. These voters cannot cast a secret ballot; they must rely on the courtesy of family members, friends or even sometimes strangers to cast their vote for them. This is completely unacceptable. I am blind. Everyday I walk down the street, catch a bus to go to work, get off at my stop, enter my building, board the elevator, push the button for my floor, enter my office, turn on my computer, download my emails, and begin my day at work. I do this every day, by myself. Millions of people just like me do these very same things, independently. But when I go to my polling place I have to bring my wife or my ten year-old daughter with me. Someone else has to cast my vote for me. Once, after my wife cast my ballot, she said to me, "Jim I knew that you loved me, but now I know you trust me because you think I marked your ballot for that idiot." The point of that anecdote is there is always some level of uncertainty when another person marks your ballot for you. Twice in Massachusetts and once in California, while relying on a poll worker to cast my ballot, the poll worker attempted to change my mind about whom I was voting for. I held firm, but to this day I really do not know if they cast my ballot according to my wishes.

We need accurate, effective, and accessible voting systems. These systems already exist. Money cannot be a reason to purchase inaccessible systems and continue the disenfranchisement of the nation's largest minority. Texas has already led the way. In 1999, the state legislature passed and Governor Bush signed into law, legislation that requires any new voting system purchased to be fully accessible to voters with disabilities and the system must offer a secret and independent ballot to voters who are blind or who have low vision. (Attached to my testimony please find the Texas legislation and regulations) This means computer systems with a simple adaptation that offers speech synthesis so that I, and others like me, can hear the ballot. Another simple adaptation is the use of special switches that allow voters who have arm or hand disabilities and are unable to hold a pen to cast their ballot privately. (See attached list of manufacturers who produce accessible voting systems)

According to the Federal Election Commission, 20,000 of the 120,000 polling places across the country are physical inaccessible to voters with disabilities. This means voters who use wheelchairs or other mobility devices across the country are unable to enter their polling places. In response to an online survey on polling place access, Carl Herr from Jamaica, New York reported that, "Although a wheelchair ramp had been installed, the ramp led to the door of the building which when opened led to an inside set of stairs with no modifications to make them accessible." (Attached is a compilation of more than 700 complaints about inaccessible polling places from around the country)

Around the country, the patience that the disability community has expressed, as we wait for polling places and voting systems to be made accessible, is running thin. There is a growing body of litigation. The courts are ruling that polling places must be made accessible. New York Attorney General, Elliot Spitzer, sought a preliminary injunction to modify polling place accessibility in an effort to bring the Delaware and Schoharie counties into compliance for the election primaries scheduled for March 7, 2000. The injunction was granted on February 8, 2000 by Senior Judge Howard G. Munson of the Northern District of New York. The suit followed years of informal efforts to work with the counties to achieve compliance.

In a press release, Elliot Spitzer said, ""This suit was brought because the civil rights of New Yorkers with physical disabilities were being violated and they were denied their right to vote. In addition, the elderly, and those who use a walker, cane, or wheelchair were also being denied a fundamental right of participation," said Spitzer. "This decision will ensure that their rights are maintained."

In order to allow citizens with disabilities to exercise their franchise with the same freedom and independence as the rest of the population, I submit the following recommendations.

1) All polling places should be physically accessible to voters who use wheelchairs and/or have mobility impairments. Legislation should mandate a collaborative process between the disability community and election officials to inspect every polling place and by a statutory deadline existing polling places should be made accessible or the polling place should be moved to an accessible location.
2) In every polling place there should be at least one polling device that would offer a secret ballot to all voters with disabilities. Any state funds used for the purchase of new polling equipment must only be used to purchase accessible voting systems that offer a secret ballot, and the polling site the new equipment is placed in must also be 100% physically accessible.
3) The election community should conduct a coordinated outreach effort through the disability community in order to recruit people with disabilities to be poll workers. The nation, must recruit and train competent poll workers. Most election officials report that it is difficult to find people who can volunteer the one or two days a year necessary to be election workers. 70% of people with disabilities are unemployed.
4) Poll workers must be educated about disability etiquette in their training sessions. They must learn how to appropriately serve voters with disabilities.
5) Any materials prepared by election officials to educate the voter on the candidates or voting procedures must be made available in alternative formats, so that people with visual impairments and other disabilities can listen to or read this information.

Compliance with these points needs to be enforceable by an individual or organization's right to sue and if the individual or organization prevails, they should be entitled to reasonable attorney's fees.

Testimony Submitted for the Record
by the Federal Election Commission
Hearing on Election Reform
before the
U.S. Senate Governmental Affairs Committee
May 9, 2001

Mr. Chairman, Senator Lieberman, Members of the Committee, the Federal Election Commission (FEC) is pleased to submit this testimony for the record in connection with this very important hearing on federal election reform.

There has been considerable discussion about the need for federal assistance to the state and local election administrators responsible for acquiring, installing, operating and maintaining the nation's voting machinery. The 2000 Presidential election raised issues about both the adequacy of voting machines and the standards used by local election officials, who, in some cases, are not trained election administrators. Apparently, there is a general consensus the federal government could provide valuable and timely assistance to the states to improve their election administration. We believe the FEC is well positioned to provide that assistance.

The federal government already has taken steps to help state and local election officials make informed decisions about voting equipment. In response to requests from states for technical assistance, Congress authorized the FEC to develop national Voluntary Voting Systems Standards (VSS) for computer-based systems. These standards, first published in 1990, established minimum performance requirements for reliable voting systems. The FEC has established an Advisory Panel of election officials from around the country to assist with this and other election administration projects.

of VSS in 1999, long before the 2000 election. The FEC plans to release Volume I (Technical Standards) of the updated VSS for public review and comment on June 19, 2001. Volume II (test criteria) will be released for public comment on October 31, 2001, with the FEC issuing the final updated standards (Volumes I and II) on April 12, 2002.

The VSS currently are being used in a national testing effort overseen by the National Association of State Election Directors (NASED), who have established a process for vendors to submit their equipment for evaluation under these national standards. States are free to adopt the VSS. Thirty six states have done so, either wholly or in part. The standards do not dictate a particular type of design for voting equipment; instead they measure the reliability of existing voting equipment, without stifling future innovation.

While establishing the VSS was a useful initial step toward raising the quality of voting systems, the problems in the 2000 election illustrate the need to expand the VSS in two crucial areas. First, the standards should be enhanced to address human interface with the voting system to prevent, for example, a poorly designed ballot from causing confusion at the polling place. Thoughtful and logical ballot layout should use time-tested elements borrowed from the graphic and communication design communities to make voting a more natural, intuitive function. Second, the VSS should be expanded to include certain standards for operation, for example in the area of maintenance. While a machine may meet a particular standard when it is new, repeated use without proper maintenance can render a machine ineffective or useless. Other areas of interest to election officials include operational standards for testing and measuring performance of equipment, acquiring new systems, and security.

In addition to updating and expanding the VSS, the FEC also believes, the federal government should make a sustained commitment to help state and local election officials gather and compare data about the nature of any equipment failures that occur. As numerous witnesses have testified, the lack of consensus among the states about the pros and cons of punch-card, optical scan, and direct recording electronic (DRE) voting systems is fueled, in part, by insufficient comparative data. As members of the technology and design communities have noted, there is no formal mechanism for systematically reporting voting equipment failures. Until there is a national commitment to track the performance of voting equipment over time, voters and election officials will find it difficult to determine whether their jurisdiction's equipment is performing as well as it should.

For the Commission's efforts to update and enhance the existing standards to be successful, there must be participation from the interested public, including election officials and the technology and design communities. The contribution of citizen organizations also will be critical to the ultimate success of the standards. Setting standards essentially is a matter of identifying what works and what does not. And, it emanates from the collective experience of vendors and purchasers, of experts and end users.

With several Senate and House hearings held this week to address voting technology and election reform issues, we hope Congress will continue to examine how the federal government can contribute to improving election systems nationwide. Coupled with an on-going commitment to gathering data on actual voting equipment

Coupled with an on-going commitment to gathering data on actual voting equipment performance, up-to-date standards can go a long way toward ensuring the quality of voting systems, while still allowing innovation and improvement to occur.

The FEC believes an objective, comprehensive approach is the best solution to the current issues about federal election administration. While an immediate response might be for Congress to provide federal funds to acquire new voting machinery, that approach alone would not address the establishment of ballot design standards and operation standards for testing and performance measurement of voting equipment, maintenance, acquisition procedures for voting systems, and system security practices.

The FEC has submitted a proposal to Congress which is designed to accomplish the objectives noted in this testimony as noted by several witnesses. We believe the most efficient way to accomplish these objectives for improving the nation's voting systems is to build upon the work begun by the FEC's OEA. Any federal initiatives to improve election administration should be located at the FEC, both to leverage existing expertise and to build on existing relationships with state and local election officials. This is a critical advantage if swift and meaningful assistance to state and local officials is sought for future elections.

We have submitted for the record a copy of the Federal Election Commission's proposal for an enhanced FEC/OEA mission. It was prepared in response to the numerous calls for reform of election administration. This enhanced support for OEA is sought to assist state and local election administrators to develop election administration standards and guidelines.

- The Election Center
- The National Association of State Election Directors
- The National Association of Secretaries of State
- The International Association of Clerks, Recorders, Election Officials and Treasurers
- The Council of State Governments
- The National Conference of State Legislatures
- The National Association of Counties and the National Association of County Recorders, Elections Officials and Clerks

We thank the Chairman and members of this committee for holding this hearing. The FEC welcomes any questions you may have.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OFFICE OF THE CHAIRMAN

March 27, 2001

The Honorable Richard B. Cheney
President of the Senate
United States Senate
S-212, the Capitol
Washington, D.C. 20510

Dear Mr. Vice President:

Pursuant to provisions of the Federal Election Campaign Act (FECA), the Federal Election Commission (FEC) herewith transmits its FY 2002 Budget Request of $47,671,000 and 375 FTE for consideration by Congress. This budget request is submitted concurrently to the Office of Management and Budget. See 2 U.S.C. §437d(d).

While the FEC is aware of the general budgetary climate, and has striven to reach agreement with OMB on our budget request, we did not reach agreement for the FY 2002 request. Therefore, we must independently make a special appeal to pursue the staff and resources necessary to fulfill our statutory mission. And, depending upon the scope of campaign finance reform legislation under consideration, the FEC could face significant additional resource needs.

Our request is $6,260,000 and 18 FTE greater than the amount included in the OMB's recommendation of $41,411,000 and 357 FTE. The OMB budget for the FEC is inadequate to fund operations even at the Current Services level because no provision is made for increases in non-salary costs, and it fails to fully cover mandatory pay and health benefit increases. Our estimate of the cost of a true Current Services level for FY 2002 is $42,797,500 for 357 FTE. In addition, by freezing non-salary cost levels, the OMB budget would foreclose the opportunity for the FEC to assist state and local election officials to develop operational standards to address a variety of election administration issues.

Our request represents a continuation of funding from FY 2001, as accurately adjusted to cover inflation, federal COLAs, and the cost of implementing our Information Technology (IT) Strategic Plan. In addition to such Current Services level, we are requesting $4,873,500 and 18 FTE for programmatic increases in FY 2002, which includes resources to enhance the Office of Election Administration (OEA) mission.

These initiatives would enhance the existing and planned Voting Systems Standards (VSS) and address other election administration issues, including acquisition of new voting systems, administering elections, training election workers, ballot design, and public education.

Furthermore, this budget request will allow the FEC to build upon the many accomplishments made in the past several fiscal years. A number of initiatives were a direct response to the PricewaterhouseCoopers Technology and Performance Audit and Management Review of the FEC ("the PwC Audit"). Several other initiatives were undertaken by the Commission to improve productivity and better utilize resources or were in response to legislative requirements. Significant FEC successes include:

- Mandatory Electronic Filing Program. The first mandatory electronic filings were received for the monthly reports due on February 20, 2001. Of the 605 reports received for the February 20 filing, 440 reports were filed electronically. Only one committee required to file electronically submitted a paper report. More than 1,000 committees filed electronically during the 2000 election cycle under the voluntary electronic filing program.

- Administrative Fine Program. This program was implemented with the July Quarterly Reports due on July 15, 2000. As of March 12, 2001, the Commission has made public its final determination in 48 cases and has collected civil money penalties totaling $63,230. In addition, the percentage of reports filed late in the later stages of the 1999-2000 election cycle decreased when compared with the two previous election cycles. For example, 11% of the 2000 Year-End Reports were filed late, while 24% were filed late for the 1998 and 22% for the 1996 Year-End reporting periods.

- Campaign Cycle Reporting. The new rules became effective for the reporting periods beginning after December 31, 2000. Corresponding revisions to the reporting forms went into effect at the beginning of this year. These news rules simplify candidate committee record-keeping and increase the usefulness of the disclosure database.

- Implementation of a state filing waiver program. This program allows state election offices to apply for and receive a waiver for maintaining paper copies of reports at state offices, by making the FEC reports available online. The FEC provides states with surplus computer equipment. This program relieves state offices of filing and maintenance burdens, relieves committees of duplicative state filing, and maintains or increases the level of state disclosure. The new rules to implement this program took effect on June 7, 2000. To date, 47 states or similar jurisdictions have been granted a filing waiver and are therefore included in the program.

- Development of a pilot Alternative Dispute Resolution (ADR) program. This program promotes compliance with the FECA by encouraging settlements for eligible respondents in lieu of the traditional enforcement or litigation processes. The program began on October 1, 2000. As of March 1, 2001, the ADR Office concluded eight agreements based on seven complaints filed with the Commission. Settlements were obtained in an average of 91 days from the time matters were referred to the ADR Office. Civil penalties from the eight agreements totaled approximately $17,800.

- Establishment of a program to allow the agency to focus more resources on the Title 2 audit-for-cause program. Commencing with the audits of the 2000 cycle candidate committees, we plan to conduct 40-45 Title 2 "for cause" audits per election cycle as opposed to an average of 20-25 over the three election cycles from 1992-1996. While we increased the Title 2 audits in the 1998 cycle, the 2000 cycle represents the first time the FEC has a true "stand alone" Title 2 audit capability that will not lose most of its resources to the statutory Title 26 audits during presidential election cycles.

- Implementation of the Case Management System (CMS) in OGC, after completing an extensive design and development process, making the system operational. This included extensive training and input of legacy data into the system. The CMS will now provide case tracking, case management, and time reporting for OGC programs.

- Over the last several years the Commission has embarked on an effort to improve timeliness of enforcement actions, and to increase the percentage of the caseload actively worked. To augment its traditional enforcement efforts, the Commission has implemented an ADR Program, an administrative fine program, case management, and an Enforcement Priority System (EPS). The goal of all initiatives has been to focus limited enforcement resources on the more substantive cases, to increase the percentage of cases activated, and to improve the ratio of cases closed with substantive Commission action compared to those dismissed with no action. As a result there were significant improvements in enforcement in recent FY's: Over 50 percent of cases were activated (FY 1998-2000), an improvement over the average of 40 percent from FY 1995-1997; the ratio of active to inactive pending cases on average improved to over 50 percent in FY 1999; and, a dramatic increase in cases closed with substantive action, from roughly 40 percent in FY 1999 to approximately 75 percent in FY 2000.

- The Commission successfully completed revisions to the FEC regulations to permit the institution of the voluntary, then the mandatory, electronic filing program; the administrative fine program; election cycle reporting; state filing waiver program; and the coordination rules.

- Migration of the FEC legacy databases to new, Y2K compliant technology through a newly procured IT contract for basic IT services.

- Continuation of the migration of FEC IT systems to a client server environment, and building the technological foundation for the client server system.

The Commission also transmits its FY 1999-2000 Performance Report, its revised FY 2001-2007 Information Technology Strategic Plan, its FY 2001-2007 Strategic Plan, and its FY 2002 Performance Plan, in accordance with the Government Performance and Results Act (GPRA). In addition, included in the submission is our most recent status report to Congress on the PricewaterhouseCoopers recommendations. The foregoing summarizes the FEC FY 2002 budget request. I urge you to consult our more detailed Budget Justification. It contains several charts depicting how our budget request would be allocated and how it compares with previous years.

Again, the Commission strongly urges the full support of our FY 2002 budget request. We are ready to answer any questions you may have and to work with you in securing sufficient funding for the Commission in FY 2002.

Sincerely,

Danny L. McDonald
Chairman

Enclosure

National Association of State Election Directors
Resolution in Support of Federal Election Commission
Appropriation Request

Adopted February 4, 2001

WHEREAS, the National Association of State Election Directors acknowledges the important role that the Office of Election Administration of the Federal Election Commission plays in elections in the United States;

WHEREAS, the Office of Election Administration assists state and local election officials as a national clearinghouse for election administration;

WHEREAS, there is a need to accelerate the updating of the Voluntary Federal Voting System Standards that were published in 1989;

WHEREAS, voluntary standards should be developed to address operational functions associated with voting systems, including such functions as acquisition, installation, testing, training, administration, and maintenance of existing and new systems;

WHEREAS, the Federal Election Commission has submitted a funding request to Congress for the Office of Election Administration that includes a $3 million supplemental appropriation and $2.5 million appropriation increase for FY 02.

Now, THEREFORE BE IT RESOLVED that the National Association of State Elections Directors supports the budget request for the Office of Election Administration submitted by the Federal Election Commission to update the Voluntary Federal Voting System Standards and to develop additional operational standards for new and existing voting systems.

BE IT FURTHER RESOLVED that the National Association of State Election Directors urges Congress to appropriate the supplemental funding at the earliest possible time.

BE IT FURTHER RESOLVED that the National Association of State Election Directors by adoption of this resolution neither supports nor opposes the retention of the Office of Election Administration within the Federal Election Commission.

Ann McGeehan, President

Secretariat:
The Council of State Governments
444 North Capitol Street, N.W. Suite #401, Washington DC 20001
Phone (202) 624-5460 • Fax (202) 624-5452 • E-mail: dscott@csg.org • www.nased.org

National Association of Secretaries of State
Resolution to Support the FEC Budget Requests

Adopted February 6, 2001

WHEREAS, the National Association of Secretaries of State acknowledge the important role that the Office of Election Administration of the Federal Election Commission plays in elections in the United States;

WHEREAS, the Office of Election Administration assists state and local election officials as a national clearinghouse for election administration;

WHEREAS, there is a need for an update to the Voluntary Federal Voting System Standards;

WHEREAS, standards should be developed to address operational standards for acquisition, installation, testing, training, administration, and maintenance of existing and new systems;

WHEREAS, the Federal Election Commission has submitted a funding request to Congress to update the voluntary voting system performance standard;

Now, THEREFORE BE IT RESOLVED that the National Association of Secretaries of State supports the budget request of the Office of Election Administration of the Federal Election Commission to update the Voluntary Federal Voting System Standards and to develop additional standards for new and existing voting systems.

Hall of States, 444 N. Capitol Street, N.W., Suite 401, Washington, DC 20001
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www.nass.org

RESOLUTION

(Federal Election Commission)

WHEREAS, the American electoral process has come under the most intense scrutiny ever in the wake of the 2000 Presidential Election;

WHEREAS, every facet of the American electoral process is a subject for discussion, from ballot preparation to ballot accessibility, from poll worker training to the schooling of election administrators, from the counting of ballots to the non-counting of ballots;

WHEREAS, a restoration of the American voters faith in the electoral process is of immediate and tantamount importance;

WHEREAS, federal legislation addressing election reform continues to grow in number and scope each day, producing theories, solutions and remedies;

WHEREAS, programs are now in place that have the ability to offer insight into the concerns brought on by the Presidential Election, such as the Federal Election Commission's Office of Election Administration;

AND WHEREAS, the Federal Election Commission's Office of Election Administration, has long been a non-partisan resource for state and local election officials through its 20-member Advisory Panel, through its periodicals on all facets of election administration and through its pioneering of voting system standards;

BE IT THEREFORE RESOLVED THAT:

The International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT), in one voice from its 1500 members nationwide, endorses Congressional legislation intended to study election reform;

AND FURTHER, asks Congress to utilize the resources in place through the Federal Election Commission's Office of Election Administration, its vast amount of archived data on election administration and the expertise readily available through its Advisory Panel;

AND FURTHER, asks Congress, through its proposed federal legislation on election reform, to expand the resources of the Office of Election Administration in budget and staff, enabling the OEA to bring about the reform that the nation now awaits;

AND FURTHER, that IACREOT stands ready as a resource organization to assist Congress in any study of election reform proposed by the new Congress, and its members are available individually to answer any and all questions.

APPROVED AND ADOPTED on this 20th day of January, 2001, at the Mid-Winter Meeting of the International Association of Clerks, Recorders, Election Officials and Treasurers, in Billings, Montana.

Gerald A. Gibson, President

Robert Parten, Secretary

The Council of
State Governments

Washington Office

General Counsel & Director
Jim Brown

President
Governor Dirk Kempthorne, ID

Chair
Senator Manny Aragon, NM

Executive Director
Daniel M. Sprague

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CSG EXECUTIVE COMMITTTEE

RESOLUTION

IN SUPPORT OF FEDERAL ELECTION COMMISSION APPROPRIATION REQUEST

WHEREAS, the National Association of State Election Directors acknowledges the important role that the Office of Election Administration of the Federal Election Commission plays in elections in the United States;

WHEREAS, the Office of Election Administration assists state and local election officials as a national clearinghouse for election administration;

WHEREAS, there is a need to accelerate the updating of the Voluntary Federal Voting System Standards that were published in 1989;

WHEREAS, voluntary standards should be developed to address operational functions associated with voting systems, including such functions as acquisition, installation, testing, training, administration, and maintenance of existing and new systems; and

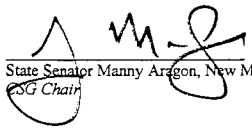
WHEREAS, the Federal Election Commission has submitted a funding request to Congress for the Office of Election Administration that includes a $3 million supplemental appropriation and $2.5 million appropriation increase for FY 02.

NOW THEREFORE BE IT RESOLVED that the Council of State Governments supports the budget request for the Office of Election Administration submitted by the Federal Election Commission to update the Voluntary Federal Voting System Standards and to develop additional operational standards for new and existing voting systems.

BE IT FURTHER RESOLVED that the Council of State Governments urges Congress to appropriate the supplemental funding at the earliest possible time.

BE IT FURTHER RESOLVED that the Council of State Governments by adoption of this resolution neither supports nor opposes the retention of the Office of Election Administration within the Federal Election Commission.

Adopted this 7th Day of April, 2001 at the
CSG Spring Task Force and Committees Meetings
In Santa Fe, New Mexico



State Senator Manny Aragon, New Mexico
CSG Chair

The Council of
State Governments

Washington Office

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CSG EXECUTIVE COMMITTEE

RESOLUTION ON

VOTING EQUIPMENT STANDARDS

WHEREAS, reliable and accurate voting equipment is necessary to insure an accurate and fair election in every state and territory;

WHEREAS, every state, territory, or local government will benefit from a set of technical standards for durability and accuracy against which to judge the voting equipment they purchase;

WHEREAS, the Federal Election Commission's Office of Election Administration established core standards for accuracy and durability in 1990;

WHEREAS, states were invited to adopt these standards voluntarily; and

WHEREAS, the National Association of State Election Directors, the Federal Election Commission's Office of Election Administration, and The Election Center have worked jointly over the past decade to implement the vision of a national voluntary testing program for election equipment; and

WHEREAS, 32 states have voluntarily adopted some form of state-wide testing program which election equipment must pass prior to purchase, many incorporating the Independent Testing Authority program of NASED.

THEREFORE BE IT RESOLVED that The Council of State Governments strongly encourages every state to adopt some sort of mandatory testing program for election equipment in order to insure to the greatest extent possible that the equipment, and equipment support, will be of the highest quality to insure the quality and accuracy of the election process.

Adopted this 7th Day of April, 2001 at the
CSG Spring Task Force and Committees Meetings
In Santa Fe, New Mexico

State Senator Manny Aragon, New Mexico
CSG Chair

LAW AND JUSTICE COMMITTEE

NCSL Special Task Force on Elections Reform
Final Recommendations
May 7, 2001

1. NCSL acknowledges that a national debate on election reform has begun and that any Congressionally mandated changes in election processes necessarily will impact state and local elections. The NCSL Task Force recognizes that state law controls the processes and the administration of matters pertaining to federal, state, and local elections. It logically follows that NCSL, as the national voice of the various state legislatures, should be at the center of this national debate.

2. NCSL finds that most of the significant federal legislation introduced in the 107th Congress contains guidelines for the formation of an election commission or task force to examine election issues and to develop guidelines or mandates for federal elections which necessarily will affect state and local elections. NCSL recognizes Congress' desire to have a voice in the national debate on election reform and understands the formation of a federal commission or task force to provide such a voice may be inevitable. NCSL believes that it must be an equal partner within any such federal commission or task force because this effort must be a partnership among federal, state, and local officials.

   Should Congress move forward with election reform legislation that requires the formation of a federal commission or task force to examine election reform issues in the states, NCSL will lend its support to such effort only if state legislators are included in the composition of any such commission or task force.

3. NCSL acknowledges that, due to events surrounding the last presidential election, public confidence in the election process must be restored. NCSL recognizes that states may need federal block grant funding to assist in the implementation of new and innovative election reform procedures. NCSL also believes that such funding should be based on broad principles, not upon specific mandates which would lead to a "one size fits all" approach to

elections. Therefore, NCSL supports a block grant formula which awards money to states for broad-based purposes dealing with election reform, and opposes any funding mechanism, which seeks to mandate specific requirements on the states.

4. NCSL is of the opinion that the creation of another new agency to administer these block grants is unnecessary, believing that the Federal Elections Commission may be the most appropriate federal agency to administer any such federal block grant program.

5. NCSL supports federal block grant funding to states for the following broad purposes:

- Improving election technology, systems and ballot design;
- Facilitating voter registration, verification and maintenance of voter rolls;
- Improving the accuracy and security of election procedures and vote counts;
- Educating citizens on representative democracy and election processes and systems;
- Providing greater access to voter registration and polling places especially for rural and disabled voters; and
- Providing training and education opportunities for elections personnel.

Excerpt from the Report of the NACO/NACRC Commission on Election Standards And Reform, 2001

Funding for administration (program 2) should be distributed to local election jurisdictions based upon measures of election activity and financial need[i]. This money would come in every year without application.

We recommend that eligibility for either program be contingent upon a state having on file with its chief election officer a plan for providing equal opportunity to its citizens to vote and have their votes counted.

For assistance with mailing (program 3) the Commission has adopted recommendations of the National Association of Secretaries of State which would create a new "Elections Class" of postage which will be rated at 50 percent of the rate of first class mail and include all entitlements and services of the first class mail designation.[ii] And further, that if the Postal Service changes the name or resignation of first class mail that the Elections Class will automatically be tied to any successors of what is not termed first class mail.

Research and dissemination of information. The FEC Office of Election Administration already has the responsibilities to conduct or sponsor research on the administration of elections and to disseminate information. We recommend increased funding for these functions. We also recommend that the Office undertake the following projects:

- An immediate completion of the update and continuing maintenance of Federal Voting Systems Standards.
- Research on vote residuals associated with different voting systems,
- Research on the ways in which voting equipment does or does not accommodate various disabilities.
- Research on best operational practices for election and voter registration offices,
- Creation of a central repository of information on voting equipment problems and solutions reported by election officials.
- Evaluation of the practicality of demonstrating the use of voting equipment in the polling place by such devices as continuous loop video.
- Collection and dissemination for use by state and local offices of educational materials for key audiences, e.g. voters, the press, poll workers, election officials.

Administration. Administration and awarding of grants should be separate from any agency that has enforcement responsibilities for compliance with voting and elections laws. Responsibility for these programs should lie with the Office of Elections Administration whether it remains with the FEC or is made a separate agency.

Military and overseas voting. Fourteen states count military/overseas ballots received after the election as long as they are postmarked on or before election day. The problem is that some ballots arrive without postmarks or with illegible postmarks. While this problem is not unique to the military, we recommend that the Department of Defense address the issue to reduce future confusion over the counting insofar as possible.

Resolutions of the Election Center Elections Reform Task Force

(Note: The following resolutions were passed by the full Task Force on February 7, 2001, at its meeting in Savannah, Ga. They are included here with reports of Task Force subcommittees for reporting purposes but did not originate from a subcommittee.)

OFFICE OF ELECTIONS ADMINISTRATION (OEA)

Task Force supports a supplemental appropriation to the OEA (or a successor agency) in the current fiscal year for the purposes of accelerating the update of the NASED Voting Systems Technical Standards, and beginning the development of management standards and operational procedures.

The OEA should be adequately funded and staffed on an ongoing basis consistent with its mission to provide support to elections administrators through the development and maintenance of technical and operational standards, studies, reports, statistical data collection and dissemination, technical assistance and the solicitation and collection of best practices from around the nation.

The OEA should be specifically acknowledged in federal law along with the position of director of the OEA and the Advisory Panel of State and Local Election Officials.

FEDERAL VOTER ASSISTANCE PROGRAM (FVAP)

The Federal Voter Assistance Program (or a successor agency) should be adequately funded and staffed to provide support and assistance to both voters and local elections officials in assuring the voting rights of military and overseas Americans are protected and exercised in a timely and complete manner. A formalized process for input of local elections officials should be developed similar to the current process used with the OEA.

FEDERAL LEGISLATION

Task Force supports separation of the issues of Campaign Finance Reform and Elections Administration Reform in Congressional legislation.

Any federal funds that may be appropriated for the election system should be appropriated to the states with provisions for equitable treatment of all states. Such funds should be available on a matching basis of not more than 25% local match, with provisions for no match grants in areas of economic hardship.

Any program that provides federal funds should recognize that funds can be used for purposes of improving the elections system for the benefit of America's voters including, but not limited to management and administrative improvements, training, operational improvements, voter registration improvements and equipment purchases and upgrades.

NATIONAL COUNCIL ON DISABILITY

An independent federal agency working with the President and Congress to increase the inclusion, independence, and empowerment of all Americans with disabilities.

May 8, 2001

The Honorable Senator Joseph I. Lieberman
Senate Governmental Affairs Committee
Washington, D.C. 20510

Dear Senator Lieberman:

On behalf of the National Council on Disability (NCD), I want to thank you for your leadership in federal election reform and for the two-part hearing (May 3 and May 9, 2001) on federal elections practices and procedures. Your work to ensure an equitable system of elections in this nation is essential for many disenfranchised citizens.

NCD is an independent federal agency mandated to make recommendations to the President and Congress on disability issues. In keeping with the our mission to advise the President and Congress on public policy that affects people with disabilities, NCD has taken an interest in the ability of Americans with disabilities to participate in the electoral process. I want to inform you of our activities and to offer our expertise to you and the Committee staffs as you move forward with your work on this all-important issue.

As you know, Congress passed the National Voter Registration Act (NVRA) of 1993 to promote the exercise of voting rights. Section 7 of this Act specifies that each state shall designate, as voter registration agencies, all offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities. One of the largest agencies serving people with disabilities in each state is the vocational rehabilitation agency. Attached please find the NCD Report on implementation of NVRA by state vocational rehabilitation agencies and our recommendations for improving the implementation of this critical law. NCD also has prepared a statement on the problems people of disenfranchised groups of voters (people with disabilities, senior citizens, individuals with low incomes and citizens from diverse racial and ethnic groups experience in voting). NCD strongly recommends that any enacted voting reform legislation:

- Supports the right of all citizens to vote independently by guaranteeing accessibility to all stages of the electoral process (from voter registration to election-day practices);
- Provides meaningful technical assistance and enforcement mechanisms to ensure the right to independent and accessible voting;
- Incorporates modern technological systems that enhance voting accessibility; and
- Sets uniform federal legislative guidelines and criteria for the use of federal funds for voting reform, including the requirement to purchase only accessible systems.

We hope that this information will be included in the Committee hearing record and will useful to you and your colleagues on the Senate Governmental Affairs Committee as you pursue improvement of federal election policies and procedures. We would offer the expertise of the members of NCD and we welcome the opportunity to meet with you and your staff in the near future to further explore ways that our leadership can be of assistance to you as you move forward with election reform legislation.

Sincerely,

Marca Bristo
Chairperson
cc: Joyce Rechtschaffen, Minority Staff Director

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Inclusive Federal Election Reform

March 2001

One of the fundamental rights guaranteed to Americans is the right of voting through a secret ballot. However, this right is often denied to Americans with disabilities and other disenfranchised groups, such as senior citizens, people from diverse cultures, and those who have low incomes. Statistics[i] show that for 35 million voting-aged citizens with disabilities:

- 14 million people of voting age who have a disability are unregistered voters
- People with disabilities vote at a rate 11 percent lower than the general population
- 81 percent of voters who are blind or have visual impairments rely on others to mark their ballots
- An estimated 20,000 of the nation's 170,000 polling places are inaccessible to voters who use wheelchairs[ii]
- 1,231 of the 1,681 (73%) polling places in Philadelphia were physically inaccessible to voters with disabilities

These statistics highlight the need to improve voting procedures and systems. President George W. Bush's *New Freedom Initiative* contains proposals for improving access to polling places and ballot secrecy. Many proposals to reform the electoral process are currently before the 107th Congress. Voting reform will certainly be considered and likely enacted in time to affect the 2002 elections. It is imperative that any voting reform law also provide for the full access for voters with disabilities, and allow for their private and independent voting.

The major issues for voters with disabilities range from opportunity for voter registration and implementation of existing laws to the review of policies, procedures, and practices such as the availability and dissemination of culturally sensitive information, and universal design. In its *1999 Progress Report*, the National Council on Disability (NCD) recognized the critical need for election reform and reiterated "its challenge to the President and Congress to enact legislation … [that] would include the recognition of the right of all individuals to vote independently, guaranteed accessibility to all stages of the electoral process (from voter registration to election-day practices), and meaningful technical assistance and enforcement mechanisms to ensure the right to vote." NCD has also noted "many election officials are considering moving to a system of voting that would enable people to vote by computer or through other remote technologies." Although the existing laws for voting have paved the way for more Americans to vote, they neither include enforcement components nor address in a comprehensive way the use of current technology, including universal design, to promote full participation by all citizens. NCD recommended that these new systems be made accessible to all people with disabilities (NCD's *1997 Progress Report*). In its 1996 report, *Implementation of the National Voter Registration Act by State Vocational Rehabilitation Agencies,* NCD reported that 75 percent of people with disabilities who received services from state vocational rehabilitation agencies were never asked to register to vote as the law requires. A 2000 Harris poll indicates that 42 percent of this group was still not offered the opportunity to register.

Another NCD report, *Lift Every Voice: Modernizing Disability Policies and Programs to Serve a Diverse Nation* (December 1999), included accounts of unequal opportunity for citizens from diverse racial and ethnic groups to access and participate in various areas of society including voting. The National Council of La Raza has raised issues related to language accessibility needs and the voting process. The NAACP has publicized findings of voter disenfranchisement and allegations of discrimination. The Leadership Conference on Civil Rights gave recent testimony before Congress that included the disenfranchisement of citizens, including people with disabilities.

Although a Harris poll reported an increase in the number of people with disabilities voting in the recent Presidential election, according to the National Organization on Disability, if people with disabilities voted at the same rate as the general population, there would have been 3.5 million more votes cast in November 2000. The overall impact of unmet accessibility needs of people with identified disabilities, and findings on other citizens with conditions such as those related to the aging process have not yet been evaluated.

To effectively address the broad range of issues related to voting accessibility and to develop strategic actions at the national level, NCD makes four recommendations that expand upon those offered in past reports.

1. The President and Congress must enact inclusive federal legislation that incorporates the use of modern technological concepts and systems capable of ensuring full participation by all citizens. Existing conditions, needs, and strategies to remove barriers must be identified and included in voting reform legislation with provisions that recognize and support the right of all individuals to vote independently. In particular, any voting reform legislation should: (a) address voting access for people with vision, hearing, cognitive, physical, language, and technology needs; (b) set uniform federal legislative guidelines and criteria for the receipt and use of federal funds, including requiring the purchase of accessible systems only— which would parallel restrictions imposed on the use of federal funds by the Rehabilitation Act; and (c) require accountability processes for implementing the guidelines.

2. The President and Congress must address complex issues and concerns surrounding existing federal legislation and effective ways to improve those laws through amendments or regulatory action. It is imperative, however, that current rights and protections are maintained, rather than diminished. NCD reiterates its recommendation to amend the 1984 Voting Accessibility for the Elderly and Handicapped Act to include guaranteed accessibility to all stages of the electoral process (from voter registration to election-day practices), and meaningful technical assistance and enforcement mechanisms to ensure the right to vote.

3. NCD encourages bipartisan national, state, and local voter registration and get-out-the-vote initiatives for people with disabilities and other disenfranchised Americans. Any comprehensive federal voting reform legislation must incorporate basic provisions for culturally sensitive, ongoing training and education of public officials, employees, and the general public about all aspects of voting. It is also imperative that public service providers, poll workers, election officials, and ordinary citizens are provided concrete opportunities to increase awareness of applicable laws and effective practices.

4. The President and Congress must contact key citizens from disenfranchised groups and include them on any commission or similarly named body to investigate the status of the full range of voting accessibility issues in America. Any dialogue on voting reform issues should include a broad cross-disability and cross-cultural representation of these stakeholders.

NCD urges our nation's leaders to respond in a timely manner to these recommendations in order to ensure full participation in democratic processes by all of our citizens. Our society at-large will be the ultimate beneficiary.

# # #

The National Council on Disability (NCD) is an independent federal agency making recommendations to the President and Congress on issues affecting 54 million Americans with disabilities. NCD's overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature of severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

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[i] Data extracted from material compiled by the National Organization on Disability and Louis Harris Poll/Harris Interactive

[ii] Paralyzed Veterans Association testimony 03-07-01, based on 1999 Report of the National Voter Independence Project

IMPLEMENTATION OF THE NATIONAL VOTER REGISTRATION ACT BY STATE VOCATIONAL REHABILITATION AGENCIES

NATIONAL COUNCIL ON DISABILITY

October 1, 1999

National Council on Disability
1331 F Street, NW, Suite 1050
Washington, DC 20004-1107

IMPLEMENTATION OF THE NATIONAL VOTER REGISTRATION ACT BY STATE VOCATIONAL REHABILITATION AGENCIES

This report is also available in braille and large print, on diskette and audiocassette, and on the Internet at the National Council on Disability's award-winning Web page (http://www.ncd.gov).

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The views contained in this executive summary do not necessarily represent those of the Administration because this document has not been subjected to the A-19 Executive Branch review process.

LETTER OF TRANSMITTAL

October 1, 1999

The President
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the National Council on Disability (NCD), I am pleased to submit the report *Implementation of the National Voter Registration Act by State Vocational Rehabilitation Agencies*.

Voting is one of the most fundamental rights in a democratic society. In order to promote the exercise of this right, the National Voter Registration Act (NVRA) was enacted in 1993. Section 7 of NVRA specifies that each state shall designate, as voter registration agencies, all offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities. One of the largest agencies serving people with disabilities in a state is the vocational rehabilitation agency.

To date, no study has been undertaken regarding the implementation of NVRA by state vocational rehabilitation agencies. The purpose of this report is to assess the experience of these agencies in implementing this critical legislation. NCD finds that state agency implementation is inconsistent and not well coordinated. The report offers recommendations for improving implementation of this critical law by state vocational rehabilitation agencies.

NCD stands ready to work with you and stakeholders outside the government to address the issues identified in this report and to empower persons with disabilities by facilitating their participation in the political process.

Sincerely,

Marca Bristo
Chairperson

(This same letter of transmittal was sent to the President Pro Tempore of the U.S. Senate and the Speaker of the House of Representatives.)

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PREFACE

Historically, people with disabilities have been subjected to discrimination and denied equal opportunity to participate in many aspects of American society. Segregation, exclusion, and denial of meaningful opportunities to participate in activities fundamental to living in a democratic society too often have relegated people with disabilities to second-class citizenship.

Discrimination is sometimes based on fear, ignorance, or prejudice; other times it is based on indifference or benign neglect. Still other times, discrimination is the result of the failure to make programs or services accessible.

In recognition of the need to ensure equal justice, the Americans with Disabilities Act (ADA) was signed into law on July 26, 1990, by President Bush. ADA, as an omnibus civil rights statute, reflects our nation's commitment to include people with disabilities in all aspects of American society.

The National Voter Registration Act (NVRA) extends the vision of ADA by requiring that voter registration be simple and convenient for all citizens, particularly for citizens with disabilities. By enacting NVRA, Congress has significantly increased the likelihood that people with disabilities will exercise the right to vote—one of the most fundamental rights in a democratic society.

NVRA has been in effect for most states since January 1, 1995. To date there has been no study of the implementation of NVRA. This report assesses the experience of a sample of state vocational rehabilitation agencies in implementing NVRA.

It is hoped that this report will help promote the full implementation of this landmark legislation by vocational rehabilitation agencies as well as other agencies serving people with disabilities.

ACKNOWLEDGMENTS

All research, data collection, and analysis for this study was conducted under contract for the National Council on Disability by the Center for the Study and Advancement of Disability Policy at The George Washington University School of Public Health and Health Services, Washington, DC. The principal researcher and lead author for this report is Robert Silverstein, J.D., with administrative assistance provided by Melanie Gabel.

We wish to thank the state directors of vocational rehabilitation who agreed to participate in the study, particularly those directors who agreed to provide detailed information concerning the administration of the programs in their states. These states are California, Connecticut, Georgia, Iowa, Michigan, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and Washington.

We also wish to thank Jim Dickson of the National Organization on Disability for his continued interest in advancing the empowerment of persons with disabilities through voter registration. In addition, we wish to thank Jo-Anne Chasnow of HumanSERVE, whose expertise in the technical details of National Voter Registration Act implementation provided critical insights regarding best practices for achieving the purposes of the Act.

EXECUTIVE SUMMARY

On May 20, 1993, President Clinton signed into law the National Voter Registration Act (NVRA). In a nutshell, the purpose of NVRA is to make registration convenient and accessible for all eligible voters, including persons with disabilities.

Section 7 of NVRA specifies that each state shall designate as voter registration agencies, all offices in the state that offer state-funded programs primarily engaged in providing services to persons with disabilities. One of the largest agencies providing services to persons with disabilities in every state is the state vocational rehabilitation agency, which provides assistance to persons with disabilities to prepare them to engage in gainful employment. In 1998, vocational rehabilitation agencies provided services to more than 1.2 million persons with disabilities, of whom 623,000 were new recipients of services.

These designated voter registration agencies are required to verbally or in writing offer an opportunity to register to vote to each person who is served, including providing services such as mailing voter registration application forms, assisting applicants in completing voter registration forms, accepting of completed forms, and transmitting of forms to appropriate election officials.

NVRA has now been in effect for most states since January 1, 1995. To date no survey has been undertaken of the implementation of NVRA by state vocational rehabilitation agencies. The purpose of this report is to assess the experience of state vocational rehabilitation agencies in implementing NVRA in a sample of states.

In keeping with the National Council on Disability's (NCD's) mission to advise the President and Congress on public policy that affects people with disabilities, NCD has taken an interest in the ability of Americans with disabilities to participate in the electoral process. NCD is hopeful that aggressive and coordinated implementation of NVRA by

state vocational rehabilitation agencies will result in greater voter participation by people with disabilities.

Key Findings and Conclusions, Recommendations

Six topics are analyzed in this report:

1. Overall approach to implementation of NVRA by state vocational rehabilitation agencies
2. Adoption of NVRA-mandated policies and procedures by state vocational rehabilitation agencies
3. Monitoring, data collection, recordkeeping, and reporting
4. Appointing coordinators to oversee implementation of NVRA
5. Training
6. Incentive systems to encourage implementation

1. Overall Approach to Implementation

Findings and Conclusions

States included in the survey reported a range of attitudes about and approaches to implementation of NVRA. Some embraced the objectives of NVRA; others resented NVRA as simply another "unfunded federal mandate" and adopted a minimal compliance approach; and still others were forced to comply by court order.

Recommendations

To ensure that all state vocational rehabilitation agencies provide the opportunities to register to vote envisioned by NVRA, NCD recommended the following:

- The Rehabilitation Services Administration (RSA) should monitor states' compliance with NVRA.
- The Client Assistance Programs and State Rehabilitation Councils established under title I of the Rehabilitation Act of 1973, as amended, should undertake ongoing oversight of the NVRA.

2. Policies and Procedures Mandated by NVRA

Findings and Conclusions

All the vocational rehabilitation agencies surveyed incorporate in their forms and written materials the specific requirements mandated by NVRA, such as the content of the registration forms, services that must be provided to clients, and prohibitions regarding influence.

There are, however, significant variations among states in the options applicants are provided on forms for describing whether or not they want to register to vote. The choices registrants are offered are unclear.

Recommendations

To help address these inconsistencies, NCD recommends the following:

- In its next report to Congress, the Federal Election Commission (FEC) should address the lack of clarity in the choices registrants are offered.
- States should adopt the following five categories from which applicants may describe their preferences (based on South Carolina's system):
    - Yes, I would like to register to vote.
    - I am not eligible to register to vote.
    - I am already registered to vote.
    - Registration assistance is offered, but I choose to register by mail (form provided).
    - No, I would not like to register to vote at this time.

3. Monitoring, Data Collection, Recordkeeping, and Reporting

Findings and Conclusions

Insufficient Data Reporting

Policies and procedures regarding monitoring, data collection, recordkeeping, and reporting vary considerably among states. Overall, there is a lack of meaningful aggregate data reported by vocational rehabilitation agencies regarding basic results of voter registration efforts. Without such data, it is difficult—perhaps impossible—to ascertain to what extent state vocational rehabilitation agencies are implementing NVRA. In states in which lawsuits have been filed and won, state agencies have been required to collect aggregate data.

Inclusion of NVRA Data in Agencies' Computerized Information Systems

Several states surveyed report that they have successfully included data reporting about implementation of NVRA in their computerized case management systems.

Single Combined Application Form for Voter Registration and Vocational Rehabilitation Services.

To facilitate the voter registration process, FEC recommends use of a single integrated voter registration form that is a perforated or pressure-sensitive part of the agency's own form for services. Most states surveyed do not use a single application form for vocational rehabilitation services and thus have not adopted the FEC recommendation.

Use of Site Identification Codes

Only a few states use site identification codes that allow election officials to ascertain how many persons registered or declined to register at a particular agency.

Recommendations

To improve recordkeeping and facilitate implementation of NVRA by state vocational rehabilitation agencies, NCD recommends the following:

- Every state vocational rehabilitation agency that has or is planning to adopt a computerized case management system should implement NVRA as a core component of the system.
- State vocational rehabilitation computer systems should be linked with statewide systems used by election officials.
- All states, whether or not a state adopts a computerized system, should collect the following data and tabulate results by agency:
    - number of clients served during the reporting month
    - number of clients who were offered a voter registration application
    - number of clients who declined to apply for registration
    - number of clients who declined to apply because they indicated that they are already registered to vote
    - number of applications taken by clients to be mailed or delivered
    - number of applications mailed or delivered by the agency
- Vocational rehabilitation agencies that adopt a single integrated application form for vocational rehabilitation services should include voter registration as a perforated or pressure-sensitive part of their agency's form.
- Vocational rehabilitation agencies should use site codes to report data to state election officials, enabling these officials and other stakeholders to ascertain the extent to which each agency is implementing NVRA.
- To monitor the effectiveness of agency registration programs, state election officials should be required to account for the number of voter registration applications received from each agency office.

4. Appointing Coordinators to Oversee Implementation

Findings and Conclusions

Research indicates that a principal component of a successful agency registration program is the appointment of a coordinator in each agency office to be responsible for all voter registration activities. All states reported that they appointed a coordinator at the state level; many states reported that they appointed a coordinator at the district level. A few states specified the responsibilities of coordinators in policy manuals.

Recommendations

NCD recommends the following:

- Every state should designate a coordinator within the state office who is responsible for monitoring the implementation of NVRA. The coordinator's job responsibilities should be described and documented so that expectations are clear.
- States that have district offices and private agency sites should designate a coordinator who is responsible for implementing NVRA, and the coordinator's responsibilities should be specified in writing.

5. Training

Findings and Conclusions

Research indicates that training is a significant factor in a successful agency voter registration program. The results of this study indicate that initial training occurred in most states shortly before NVRA went into effect or after a court decree was handed down or a legal settlement was reached. Some states report that training is ongoing. In other states the nature and extent of ongoing training is unclear.

Recommendations

NCD recommends the following:

- State policies should require that new employees receive training from either agency staff or the state agency responsible for voter registration.
- Existing employees should also receive periodic training.

6. Incentive System

Findings and Conclusions

Research indicates that good management includes the use of "carrots" as well as "sticks." Pennsylvania has adopted an incentive program that rewards agencies that register significant numbers of voters at their offices.

Recommendations

NCD recommends the following:

- Every state should consider establishing an incentive program. Pennsylvania's model of public recognition and award for agency performance is one possible approach.
- Evaluations of employees who provide vocational rehabilitation services should include their implementation of NVRA.

INTRODUCTION

Background

Voting is one of the most fundamental rights in a democratic society. Yet in 1993 Congress found that almost 70 million eligible citizens did not participate in the electoral process because they were not registered to vote. [Senate Report No.103-6 at page 2]

To promote the exercise of this right, Congress enacted and President Clinton signed into law the National Voter Registration Act (NVRA) on May 20, 1993. [Public Law 103-31]

The purpose of NVRA is to make voter registration as simple and convenient as possible for all eligible voters, including persons with disabilities. NVRA accomplishes this objective for people with disabilities by requiring each state to designate as voter registration agencies all offices of state-funded programs primarily engaged in providing services to persons with disabilities, including state agencies providing vocational rehabilitation services.

NVRA is significant to persons with disabilities. According to data from the U.S. Bureau of the Census' Current Population Survey, only six out of ten adults with disabilities (62 percent) were registered to vote in the 1996 presidential elections, compared with almost eight out of ten (78 percent) among the nondisabled population, a significant gap of 16 percent. This finding was recently reported in a National Organization on Disability (NOD)/Lou Harris Survey of Americans with Disabilities (1998). The NOD/Lou Harris survey also found that only one in four adults with disabilities (25 percent) has been offered voter registration services from a government or community agency in the last five years.

A recent report prepared by Douglas L. Kruse, Ph.D., Kay Schriner, Ph.D., Lisa

Schur, J.D., Ph.D., and Todd Shields, Ph.D. for the Disability Research Consortium, Bureau of Economic Research, Rutgers University, and the New Jersey Developmental Disabilities Council titled *Empowerment Through Civic Participation: A Study of the Political Behavior of People with Disabilities* (April 1999) surveyed a random sample of 700 people with disabilities and 540 people without disabilities about voting in 1996 and 1998 and voter registration, among other things.

The major findings of the 1998 survey are as follows:

- People with disabilities were, on average, about 20 percentage points less likely than those without disabilities to vote and 10 points less likely to be registered to vote, after adjusting for differences in demographic characteristics (age, sex, race, education, and marital status).

- If people with disabilities voted at the same rate as those without disabilities, there would have been 4.6 million additional voters in 1998, raising the overall turnout rate by 2.5 percentage points.

- The one-third of people with disabilities who are employed were as likely as employed people without disabilities to vote, while the two-thirds who are not employed were 17 percentage points less likely to be registered, and 30 percentage points less likely to vote, than nonemployed people without disabilities.

- Close to one-fourth of respondents have registered to vote since NVRA took effect, close to one-tenth have registered at a state department of motor vehicles, and close to 1 percent have registered at a disability agency or other public assistance agency, in both the disability and nondisability samples.

Another recent report (1998) prepared by the Office of Election Administration of the Federal Election Commission (FEC) titled *Implementing the National Voter Registration Act: A Report to State and Local Election Officials on Problems and Solutions Discovered 1995–1996* [FEC *Report* at pages 1-4] found that over 24,600 separate sites in 41 states provided agency voter registration opportunities for their service recipients during the period studied by the report. Registration applications received at all agency sites combined represented 11.12 percent of the total number of applications in the United States. Public assistance agencies accounted for 6.33 percent of this figure, agencies designated by the state accounted for 4.18 percent, disability service agencies accounted for 0.43 percent, and armed forces recruitment offices accounted for 0.18 percent.

In *National Disability Policy: A Progress Report November 1, 1997–October 31, 1998*, the National Council on Disability (NCD) encouraged the President and Congress to recognize that the ability of a person with a disability to vote should not depend on the goodwill of the state election agency but instead should be guaranteed as a federally protected civil right, with real consequences when the right is violated. Accordingly, NCD also encouraged the President and Congress to enact legislation that would amend the Voting Accessibility for the Elderly and Handicapped Act to recognize the right of all people to vote independently; guarantee accessibility to all stages of the electoral process (from voter registration to election day procedures); require the Architectural and Transportation Barriers Compliance Board ("Access Board") to establish standards for the accessibility of polling places, polling methods, and registration materials; strengthen the law's enforcement mechanisms to ensure that private individuals are able to enforce their rights; and require regular and meaningful monitoring of access to elections for people with disabilities by FEC or other appropriate entity.

Purpose of Report

This report by NCD, an independent federal agency, analyzes the experience of state vocational rehabilitation agencies in implementing NVRA. NCD decided to focus on the experience of state vocational rehabilitation agencies because of the substantial number of persons with disabilities served by these agencies—well over 1.2 million persons on an annual basis. Of this number, approximately 623,000 are new recipients of services.

Topics analyzed in this report include the following:

- overall approach toward implementation adopted by the state vocational rehabilitation agency
- agency's adoption of policies and procedures mandated by NVRA
- monitoring, data collection, recordkeeping, and reporting
- appointing coordinators to oversee implementation of NVRA
- training
- incentive system to encourage implementation

Scope of the Report

This report describes policies and procedures related to the implementation of NVRA reported by a sample of state vocational rehabilitation agencies. The analysis did not attempt to ascertain whether the policies and procedures reported by these agencies are in fact being used or whether agency staff is implementing the policies and following the procedures. Nor did the analysis include interviews of persons with disabilities to ascertain their perspective. In other words, this report is not a compliance audit.

Research Approach and Activities

For 1996, 1997, and 1998, all state vocational rehabilitation agencies in the nation were asked to submit aggregate data regarding the numbers of persons they served and the number of persons who registered or declined to register to vote. In addition, 15 states (based on geographic diversity, size, and the extent to which aggregate data was available) were asked to share copies of written policies, procedures, forms, and training materials used to implement NVRA, describe quality assurance procedures used, and describe any problems or successes in implementing NVRA. The states providing information were California, Connecticut, Georgia, Iowa, Michigan, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and Washington.

Report Structure

This report has two parts. Part I describes the major provisions in NVRA applicable to implementation by vocational rehabilitation agencies. Part II describes the major findings of the study undertaken by NCD to determine what is known about the experience of state vocational rehabilitation agencies regarding the implementation of NVRA and then sets out NCD's conclusions and recommendations.

PART I:
DESCRIPTION OF THE MAJOR PROVISIONS OF THE NATIONAL VOTER REGISTRATION ACT

FINDINGS, OBJECTIVES, AND PRIMARY STRATEGIES

In enacting NVRA, Congress cited three critical findings. First, the right of citizens of the United States to vote is a fundamental right. Second, it is the duty of federal, state and local governments to promote the exercise of that right. Third, discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in federal elections. [Section 2(a)]

The overall objectives of NVRA are the following:

- To establish procedures that will increase the number of eligible citizens who register to vote in elections for federal office;
- To protect the integrity of the electoral process by ensuring that accurate and current voter registration rolls are maintained; and
- To enhance the participation of eligible citizens as voters in elections for federal office. [Section 2(b)]

Congress devised three primary strategies for accomplishing these objectives. The first strategy is to expand the number of locations and opportunities where eligible citizens may apply to register to vote. The second strategy is to require voter registration file maintenance procedures that, in a uniform and nondiscriminatory manner, identify and remove the names of only those people who are no longer eligible to vote. The third strategy is to provide certain fail-safe voting procedures to ensure that an individual's right to vote prevails over current bureaucratic or legal technicalities. [*Implementing the National Voter Registration Act of 1993: Requirements,*

Issues, Approaches, and Examples, prepared by the National Clearinghouse on Election Administration, Federal Election Commission, Washington, DC. [FEC *Guide* at page I-1]

APPLICABILITY OF THE LAW

NVRA applies to all states except those that satisfy specified criteria. NVRA includes two categories of exemptions. The first category includes states in which voter registration for federal elections is not required (so long as such a law was in effect continuously on and after March 11, 1993). The second category is for states that permit, in federal elections, election day registration at the polls (so long as such a law was in effect continuously on and after March 11, 1993, or else was enacted on or prior to March 11, 1993 and by its terms came into effect upon the enactment of NVRA). [Section 4(b)]

According to FEC, six states consider themselves exempt from NVRA: Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin, and Wyoming. [1998 FEC *Report* at page 1-1]

EFFECTIVE DATE

In most states, the effective date of NVRA was January 1, 1995. [Section 13(2)] Some states, however, needed to amend their state constitutions in order implement NVRA. In these states, the effective date was extended either to January 1, 1996, or to 120 days after the date by which a constitutional amendment was legally possible without having to hold a special election (whichever date was later). [Section 13(1)]

THE ROLE OF FEDERAL AGENCIES

NVRA directly involves four federal agencies in its administration.

The Department of Justice is responsible for civil enforcement of NVRA [Section 10(a)] as well as criminal enforcement. [Section 12]

FEC is responsible for providing technical assistance to states describing their responsibilities and suggesting "best practices," developing a mail-in voter registration application form for federal elections, and submitting biennial reports to the Congress.

The U.S. Postal Service is directed to encourage states to use the National Change of Address files for the purpose of identifying voter registrants who have changed their addresses. [Section 8(c)(1)(A)]

NVRA requires that each state and the Department of Defense jointly develop voter registration application procedures at Armed Forces recruitment offices.

According to FEC, in addition to these four federal agencies, NVRA indirectly involves the Department of Education, the Department of Health and Human Services, and the Department of Agriculture because these departments oversee many of the agencies providing assistance to persons with disabilities and the public

assistance agencies that must provide voter registration services. [FEC *Guide* at page I-5]

DESIGNATION OF A STATE ELECTION OFFICIAL

NVRA requires each state to "designate a state officer or employee as the chief state election official to be responsible for coordination of state responsibilities under this Act." [Section 10] NVRA also assigns the chief state election official the duty of making national and state mail registration forms "available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs." [Section 6(b)]

NATIONAL PROCEDURES FOR VOTER REGISTRATION FOR FEDERAL ELECTIONS

NVRA directs states to establish three broad categories of procedures to register people to vote in federal elections.

The first procedure allows voter registration with an application made simultaneously with an application for a motor vehicle driver's license. [Section 5]

The second procedure allows voter registration to vote by mail application. [Section 6]

The third procedure allows voter registration at specified federal, state, or nongovernmental offices. [Section 7] This third procedure was included in NVRA because Congress wanted the states to reach out to those sectors of the population that are not likely to have driver's licenses or other identification cards issued by a motor vehicle agency. [Senate Report No. 103-6 at pages 14, 28; House Report No. 103-9 at page 12; Conference Report No. 103-66 at page 19]

SPECIFIC AGENCY REGISTRATION PROVISIONS, INCLUDING PROCEDURES TO REGISTER TO VOTE FOR PEOPLE WITH DISABILITIES

Agencies serving people with disabilities. NVRA mandates that states give people the opportunity to register to vote in elections for federal office or change their registration address when applying for or receiving services or assistance at any office in the state that provides public assistance [Section 7(a)(2)(A)] or at or through any office in the state that provides state-funded programs primarily engaged in providing services to persons with disabilities. [Section 7(a)(2)(B)] State vocational rehabilitation agencies are included in this category. [See House Report No. 103-9 at page 12]

This provision of NVRA is intended to encompass not only people with physical disabilities but also people with cognitive disabilities and people with mental illness or other mental disabilities—state law permitting. [FEC *Guide* at page 4-3]

Congress also recognized that many people with disabilities are less likely to visit offices in order to obtain service or benefits. [House Report No. 103-9 at page 12]

As a result, NVRA requires that if a voter registration agency designated by the state provides services to a person with a disability at the person's home, the agency shall provide voter registration services at the person's home, as well. [Section 7(a)(4)(B)]

Congress mandated that these agencies provide assistance in voter registration because if the states are required to include these programs, "we will be assured that almost all of our citizens will come into contact with an office at which they may apply to register to vote with the same convenience as will be available to most other people under the motor voter program of the Act." [Conference Report No. 103-66 at page 19]

In addition, a state may, at its discretion, offer voter registration at offices providing services to persons with disabilities that are not within the mandatory category described above.

General requirements and prohibitions applicable to agency registration. NVRA includes a number of specific requirements and prohibitions applicable to agency-based registrations.

NVRA specifies that people must be provided the opportunity to register to vote at the time of their original application for services or assistance and when filing any recertification, renewal, or change of address relating to such services or assistance. [Section 7(a)(6)(A)]

Those who decline to register to vote must do so in writing or by not checking a box on a form that contains wording specified in the Act. [Section 7(a)(6)(A) and (B)]

If an individual does register to vote, the particular agency at which the applicant submits a voter registration application may not be publicly disclosed. [Section 8(a)(6) and 8(I)(1)]

Agencies providing voter registration services must offer the same degree of assistance to people in completing a voter registration form as they offer to people in completing the agency's own forms, unless the applicant refuses such assistance. [Section 7(a)(4)(ii) and 7(a)(6)(C)]

The person who provides such services in the agency is prohibited from:

- seeking to influence an applicant's party preference or party registration,
- displaying any political preference or party allegiance,
- making any statement or taking any action whose purpose or effect is to discourage the applicant from registering to vote, or
- making any statement or taking any action whose purpose or effect is to lead the applicant to believe that a decision whether or not to register has any bearing on the availability of services or benefits. [Section 7(a)(5)]

The form to be used in applying for voter registration in an agency. NVRA specifies that agencies distribute to each applicant a mail-in registration form that is either the national mail registration form or the "office's own form if it is equivalent to" the national mail registration form, unless the applicant declines in writing to register to vote. [Section 7(a)(4)(A)(I) and Section 7(a)(6)(A)]

NVRA also specifies some of the language that must appear as part of the

declination form. [Section 7(a)(6)(B)] In addition, NVRA specifies that "no information relating to a declination to register to vote in connection with an application made at an agency office...may be used for any purpose other than voter registration." [Section 7(a)(7)]

NVRA specifically requires the following components of the declination:

- "If you are not registered to vote where you live now, would you like to apply to register to vote here today?"
- if the agency provides public assistance, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."
- "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME" (with yes and no boxes provided).
- "If you would like help filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."
- "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with..... (the blank being the name, address, and phone number of the appropriate officials to whom such a complaint should be addressed)."

The transmission of voter registration applications from agency offices to the appropriate state election official. There are two ways in which agency voter registration can be transmitted to the appropriate election official—by the agency itself or

directly by the applicant. If applicants submit voter registration applications to the state agency, NVRA specifies that the agency must transmit the registration applications to the appropriate election officials within ten days after acceptance, or, if accepted within five days before the close of registration, within five days of acceptance. [Section 7(d)]

RECORDKEEPING AND REPORTING REQUIREMENTS

NVRA requires voter registration officials to maintain for at least two years and to make available for public inspection (and where available, for photocopying at a reasonable cost), "all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered." [Section 8(I)(1)]

According to FEC, in addition to retaining the documents described above, election officials may also want to have retained for their own purposes declination statements completed by applicants for public assistance. [FEC *Guide* at page 7-4] The Election Crimes Branch of the Department of Justice has indicated that declination statements may fall under the 22-month document retention requirements of 42 USC 1974 et seq. [FEC *Guide* at page 7-4]

According to FEC, ideally, the declination statement completed by each applicant for public assistance—whether it indicates that the applicant wishes to register to vote or declines to do so—would contain the name of the applicant and the date the statement was completed. This could be accomplished preferably by having the applicant sign and date the completed statement or else by having the service agent note the name and date on the statement. If the name and date are affixed to the declination statement, it could then be removed from the applicant's case file and retained separately by the agency under secure and confidential conditions. [FEC *Guide* at page 7-4]

PART II:
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

INTRODUCTION

Part II of this report is divided into six sections:

- Overall Approach to Implementation
- Adoption of Policies and Procedures Mandated by NVRA
- Monitoring, Data Collection, Recordkeeping, and Reporting
- Appointing Coordinators to Oversee Implementation
- Training
- Incentive System

Each section addresses a specific topic and includes findings, conclusions, and recommendations.

OVERALL APPROACH TO IMPLEMENTATION

Findings. NCD finds that the overall attitude about and approach to implementation of NVRA varied significantly among the state vocational rehabilitation agencies included in the survey. Several agency officials expressed support for and endorsement of the primary objective of NVRA—to empower people with disabilities by expanding the number and range of locations where eligible citizens may obtain and complete the voter registration process. On the other hand, some states viewed NVRA as "an unfunded federal mandate" and as an intrusion on a state's right to set its own policy agenda.

In fact, after enactment, some states refused to implement the law and were forced to comply by court action (e.g., California, Michigan, Pennsylvania, South Carolina, and Virginia). As one state official explained to staff members at his vocational rehabilitation program,

> We do not have any options nor can we say "no" to doing it (the governor tried this already, the state was sued, and the court ordered us to get with it), and so it [voter registration] needs to become a routine part of every intake because it is here to stay.

For some states and their vocational rehabilitation agency, implementation of NVRA is a low priority. One vocational rehabilitation official expressed the opinion:

> We have not devoted a lot of resources to staff development or quality assurance to this program. We do not track anything in our vocational rehabilitation database pertaining to voter registration. We have not established an incentive system. While we respect the importance of voter registration, we do not feel we have resources to commit to intensive efforts [regarding] recordkeeping and tracking of this ancillary function that is not part of our primary business.

When NVRA was initially enacted, there was some concern that implementation would create significant problems for public agencies, such as agencies administering vocational rehabilitation programs. According to the Office of Election Administration of FEC in the 1998 FEC *Report* (page 4-1), states reported "experiencing far fewer problems than were forecast."

These general findings are consistent with the findings of this study:

- "No difficulties have been reported." (California)

- "We have had minimal difficulty implementing NVRA and we were able to work through initial difficulties with accessibility." (Oklahoma)
- "No significant problems." (Pennsylvania)
- "No problems are known at this time." (Virginia)

Where problems were identified, they related to counselors' acceptance of voter registration as part of the responsibilities:

- "The only difficulty we have is getting counselors to ask clients if they want to register to vote." (Rhode Island)
- "The most problem is getting counselors to make this a part of their normal procedures." (Iowa)

Conclusions and Recommendations. It is critical that vocational rehabilitation agencies implement NVRA in a manner that will maximize the likelihood that all applicants for vocational rehabilitation services and all current clients are provided a meaningful and effective opportunity to register to vote.

NCD recommends that the Rehabilitation Services Administration include compliance with NVRA in its monitoring of states carried out in accordance with the provisions of title I of the Rehabilitation Act of 1973, as amended.

In addition, Client Assistance Programs and State Rehabilitation Councils established under title I of the Rehabilitation Act of 1973, as amended, should be required to undertake ongoing oversight to ensure that all state vocational rehabilitation agencies provide the opportunities to register to vote envisioned by NVRA. These oversight efforts should include a review of state policies and procedures and data documenting implementation, as well as interviews with a random sample of people with disabilities applying for assistance under the vocational rehabilitation program, to determine their perspectives about the opportunities the agency provided to register to vote.

ADOPTION OF POLICIES AND PROCEDURES MANDATED BY NVRA

Background. As explained in Part I of this report, NVRA includes specific requirements governing the implementation of the Act by state registration agencies, including agencies administering vocational rehabilitation programs.

Requirements specified in NVRA govern, among other things, the content of registration forms, the services that must be provided to clients (e.g., distributing mail-in voter registration application forms, offering assistance to applicants in completing forms, and accepting forms and transmitting them to state election officials), prohibitions regarding influence, assurances of confidentiality, and the right to file complaints.

Findings. All the state vocational rehabilitation agencies surveyed incorporated in their forms or written materials the policies required by NVRA pertaining to voter registration. In some states, the policies were set out in policy directives; in other states, the policy appeared in manuals.

As described in Part I of this report, NVRA specifies that a registration form developed by a state must include the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?" The form must also include boxes to indicate whether the applicant would like to register or declines to register to vote (failing to check either box is considered a declination to register), together with the following statement in prominent type: "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME."

There was, however, significant variation reported among the states concerning the options on forms applicants were provided for describing whether or not they wanted

to register to vote. The variation concerned how to characterize three categories of people:

- persons already registered to vote
- persons ineligible (e.g., because of age, competency, or criminal record)
- persons who take a voter registration form home rather than register at the office

For example, the voter registration form used in Connecticut adopts the language included in NVRA. In addition, the form includes a separate space for use by agency personnel only to indicate, by checking a box, whether or not a voter registration form was completed, or whether a voter registration form was given to applicant for later mailing at applicant's request.

In New York, applicants who are already registered to vote or who requested and received a mail-in registration form are considered to have "declined" to register to vote.

In California and Virginia, applicants are offered three choices:

- ☐ I am already registered to vote at my current address or I am not eligible to register to vote and do not need an application to register to vote.
- ☐ Yes I would like to register to vote (please fill out the attached form).
- ☐ No, I do not want to register to vote.

Note: If you do not check any box, you will be considered to have decided not to register to vote at this time.

In California, the form also includes a line for the agency employee to complete, stating, "Voter Registration form completed Yes __No __," followed by space for employee's initials. A note on the form to the agency employees states that if the

employee gives the applicant a form to register to vote but the applicant decides to take it home, fill it out, and return it him or herself, the employees should check the box indicating that no registration form has been completed since it will not be possible to determine whether or not the voter follows through with completing the form.

In Virginia, the form includes a space for agency use only, stating, "Voter registration form completed: Yes ___ No ___. Voter registration form given to applicant for later mailing (at applicant's request)." But state policy specifies that if clients indicate to their caseworkers a desire to complete the application at a later date, they are counted under "Yes, I would like to apply to register to vote."

In Pennsylvania, applicants are offered four choices:

- ❑ Yes, customer mailed/delivered application
- ❑ Yes, agency mailed/delivered application
- ❑ No, already registered
- ❑ No, no reason

If no box is checked, you will be considered to have decided not to register to vote at this time.

In South Carolina, applicants are offered five choices:

- ❑ A. I am not eligible to register to vote.
- ❑ B. I am already registered to vote.
- ❑ C. Registration assistance is offered but I chose to register by mail, form provided.
- ❑ D. Yes.
- ❑ E. No.

If no box is checked, you will be considered to have decided not to register to vote at this time.

Conclusions and Recommendations. All of the state vocational rehabilitation agencies surveyed incorporated in their forms and written materials the requirements specified in NVRA. Significant variation among the states, however, was reported regarding the options describing whether or not applicants wanted to register to vote. The variation related to three categories of people—persons already registered to vote, persons ineligible to vote, and persons who take a voter registration form home with them rather than register at the office.

The categories "Yes, I want to register" and "No, I declined to register" specifically included in NVRA are too broad and as a result are confusing. In addition, these categories do not provide sufficient information for policy makers to determine whether or not the objectives of NVRA are being achieved.

NCD recommends that FEC address this issue in its next report to Congress. NCD also recommends that states adopt South Carolina's five questions from which applicants may choose to describe their preference:

- Yes, I would like to register to vote.
- I am not eligible to register to vote.
- I am already registered to vote.
- Registration assistance is offered, but I chose to register by mail (form provided).
- No, I would not like to register to vote at this time.

MONITORING, DATA COLLECTION, RECORDKEEPING, AND REPORTING

Background. As explained in Part I of this report, NVRA and the implementing regulations specify mandatory policies governing data collection, recordkeeping, and

reporting. Of particular relevance to this report are policies governing the implementation of NVRA by state registration agencies, including vocational rehabilitation agencies.

The final regulations promulgated by FEC require that every state report the number of registration applications received by, among other categories, all state-funded agencies primarily serving persons with disabilities. The federal report does not require that the state disaggregate the data among particular agencies serving people with disabilities within the state. Nor does the federal report require information about the number of declinations.

FEC, however, concludes, "information regarding the total number and rate of persons registered by each social service agency might prove valuable to local election officials and public interest groups even if such detailed information is not requested by FEC". [FEC *Guide* at page 7-5] FEC also explains that each agency should retain declination information to provide an audit trail of all agency transactions should there be subsequent official or legal inquiries. [FEC *Guide* at page 7-5]

FEC also recommends that states that have not yet done so voluntarily develop and implement a statewide computerized voter registration database, ensure that all local registration offices are computerized, and link the statewide system, where feasible, with the systems of public agencies relevant to NVRA (e.g., vocational rehabilitation agencies). [1998 FEC *Report* at Appendix A]

Furthermore, FEC found that to monitor the effectiveness of agency registration programs, many jurisdictions have found it useful to account for the number of registration applications received from various agency offices. [1998 FEC *Report* at page 4-5]

Findings regarding aggregation of data and computerization. This report surveyed all 50 states' vocational rehabilitation agencies to ascertain their experience in implementing NVRA. For 1996, 1997, and 1998, aggregate data was requested regarding five items described below. "Aggregate data" is defined as data that currently exists or is stored in a computerized system and can easily be retrieved by the vocational rehabilitation agency or state election official. To the extent aggregation was not implemented in a state, the agency was asked to inform the researchers that such data did not exist in aggregate form.

The five data items sought were the following:

1. The total number of persons served by the vocational rehabilitation agency (new referrals).
2. The total number of persons who check the box on the voter registration application form saying that they would like to register to vote.
3. The total number of persons who check the box on the voter registration application form saying that they decline to register to vote.
4. The total number of persons who do not check either box on the voter registration application form.
5. The total number of completed voter registration application forms accepted by the agency for transmittal to the appropriate state election official.

Responses were received from 30 states. Of the states responding to the survey, only five reported aggregate data for the items requested (California, Michigan, New Jersey, New York, and South Carolina). In other words, there is a lack of meaningful aggregate data in most states regarding the basic results of voter registration efforts. Without such data, it is difficult and perhaps impossible to ascertain to what extent state

vocational rehabilitation agencies are implementing NVRA. In states in which lawsuits have been filed and won, state agencies have been required to collect aggregate data.

There seem to be two recordkeeping and reporting trends: First, a number of states are computerizing their voter registration systems. For example, in 1997 Pennsylvania developed new forms that include voter registration options and shifted to an electronic data collection process.

Second, several states have decided to include implementation of NVRA in their new computerized case management systems. For example, in New Jersey, when applicants for vocational rehabilitation services reach a certain stage in the application process for vocational rehabilitation services and the counselor has not yet documented whether or not an individual with a disability was offered the opportunity to register to vote, the computer rejects the case.

In South Carolina, the voter registration process is handled through their computer system. In Michigan, a new case management system will be going online in 1999, and implementation of NVRA will be included as part of the system. A similar effort is under way in New York.

In contrast, some states that have computerized their system have not included items to allow for NVRA implementation (e.g., California).

Findings regarding scope of the data elements included in reports. As explained in this report, there is a need to fine-tune the type of information included in voter acceptance/declination forms. New monthly reports developed by several states reflect best practice for collecting this information. For example, in Pennsylvania every agency must now report the following data:

- number of clients served during the reporting month

- number of clients who were offered a voter registration application
- number of clients who declined to apply for registration
- number of clients who decline to apply because they indicate they are already registered to vote
- number of applications taken by client to be mailed or delivered
- number of applications mailed or delivered by the agency

South Carolina now requires collection of the following data:

- number of clients served during the reporting month
- number of persons not eligible to register to vote
- number of persons already registered to vote
- number of persons to whom registration assistance is offered but who chose to register by mail, form provided
- number of persons who would like to register to vote at the agency
- number of persons who declined to register to vote at this time

Findings regarding single combined form for voter registration and application for vocational rehabilitation services. To facilitate the voter registration process, FEC recommends a single integrated form to be used in which the voter registration form is a perforated or pressure-sensitive part of the agency's own form for services. [FEC *Guide* at page 4-5] Most of the states surveyed currently do not use a single integrated form. For example, in California an applicant for vocational rehabilitation

services fills out seven separate forms to qualify for vocational rehabilitation services and a separate voter registration form.

Findings regarding use of site identification codes for disaggregation. An additional issue concerns disaggregating data by each agency serving people with

disabilities. Agencies must report data without breaching NVRA confidentiality requirements. These include the prohibition against public disclosure of information regarding any individual's declination to register or regarding the specific public assistance agency through which any particular individual registered.

Some states do not include any information that permits state election officials to ascertain the source of the registration (e.g., California and Connecticut). In contrast, vocational rehabilitation sites in New Jersey, New York, Virginia, and Pennsylvania have specified codes to identify agencies while at the same time maintaining confidentiality for individual registrants.

Findings regarding accountability of agency forms. Several of the states included in the survey reported that to monitor the effectiveness of agency registration programs, they are required by their election officials to account for the number of registration applications that are received from the various agency offices.

Conclusions and recommendations. To improve monitoring, data collection, recordkeeping and reporting, NCD makes the following recommendations.
First, every state vocational rehabilitation agency that has computerized or is planning to computerize its case management system should include implementation of NVRA as a core component in the system, including an automatic case "reject" element if applicants for vocational rehabilitation services have not been offered voter registration assistance as of a specified time.

Second, whether or not the state adopts a computerized system, states should include the data elements in their reports used by Pennsylvania and South Carolina.

Third, vocational rehabilitation agencies that adopt a single integrated application form for vocational rehabilitation services should include the voter registration form as a perforated or pressure-sensitive part of the agency's form.

Fourth, vocational rehabilitation agencies should report data to state election officials by using site codes to enable state election officials and stakeholders to ascertain the extent to which each agency serving persons with disabilities is implementing NVRA.

Fifth, to monitor the effectiveness of agency registration programs, election officials should be required to account for the number of registration applications that are received from the various agency offices.

APPOINTING COORDINATORS TO OVERSEE IMPLEMENTATION

Background. According to FEC, research suggests that a principal component of a successful agency voter registration program is appointing a coordinator in each agency office to be in charge of, responsible for, and enthusiastic about voter registration activities, including ensuring an adequate supply of forms, monitoring voter registration activities, training new employees, and resolving questions and problems that arise in coordination with state or local election officials. Such a task need not be full time, but it must be ongoing. (FEC *Guide* at page 4-9)

Findings. All the states surveyed designated statewide coordinators to be responsible for implementing NVRA. Many of the states appointed coordinators at district offices to be responsible for NVRA implementation. In Pennsylvania, specific responsibilities of coordinators at district offices are specified in manuals (e.g., maintaining an adequate supply of applications, recordkeeping and reporting, monitoring voter registration activities, training new employees, resolving questions and problems). The manual also describes counselors' responsibilities (do's and don'ts) and the responsibilities of district offices. In New York there is a program coordinator at each district office and 33 private agency sites.

Conclusions and recommendations. NCD recommends that every state designate a coordinator within the state office who is responsible for monitoring implementation of NVRA. NCD also recommends that the specific responsibilities be described and documented so that expectations are clear. When coordinators leave their jobs, replacements can refer to documents to understand the job responsibilities.

Similarly, in states that have district offices and private agency sites, a coordinator should be designated as responsible for implementation of NVRA, and the coordinator's responsibilities should be specified in writing.

TRAINING

Background. According to FEC, in addition to appointing coordinators to be in charge of implementing NVRA, a second component to a successful agency registration program is the adequate training of all agency employees involved in voter registration. [FEC *Guide* at page 4-9] Training includes helping employees know how to ensure that voter registration forms are completed and signed correctly, how to offer and provide assistance to registrants, how to transmit applications to the state official responsible for voter registration, and how to complete periodic reports. FEC also explains that after an initial training of all current employees, the training of new employees can be the responsibility of the agency person appointed to be in charge of the program. [FEC *Guide* at page 4-9]

Findings. It appears that initial training occurred in most states immediately before or after the law went into effect or after a court decree was handed down or settlement reached. Some states, such as California, have comprehensive training manuals. In New York, comprehensive training is provided at least twice a year by the state official responsible for voter registration. Other states appear to have few if any training materials, and it is difficult to ascertain the extent to which training is ongoing. One state reported "no ongoing training and no specific training materials."

Conclusions and recommendations. The extent to which training is occurring on an ongoing basis for new employees in most states is uncertain. NCD recommends that state policies be amended to require that new employees receive training either from agency staff or from the state agency responsible for voter registration. In addition, NCD recommends that current staff be required to undergo periodic retraining.

INCENTIVE SYSTEM

Background. In addition to using "sticks" to ensure implementation of NVRA, good management practice includes the use of "carrots."

Findings. Only one state, Pennsylvania, has adopted an incentive program under which voter registration agency offices earn a Voter Registration Certificate of Achievement Award. The award is called the "Secretary of the Commonwealth's Outstanding Voter Registration Agency Award."

The award is given in three categories: Gold, Silver, and Bronze. The state has adopted criteria for making awards, of which the most significant is the number of people the agency assisted in registering to vote by completing the form in the agency's office. Gold is awarded for 75 percent or more, Silver for 50 to 74 percent and Bronze for 25 to 49 percent.

Conclusions and recommendations. NCD recommends that states implement creative approaches that reward employees who embrace their responsibilities under NVRA, such as the incentive program described above. Pennsylvania's model of public recognition and award for agency performance is one approach that both rewards and gives visibility to NVRA implementation effort. In addition, evaluations of employees' performance in providing vocational rehabilitation services should also evaluate employees' implementation of NVRA.

CONCLUSION

Registering people with disabilities to vote, in a simple and convenient manner, is of critical importance to ensure full participation in our democracy. By increasing voter registration, state employees will empower people with disabilities as full citizens to exercise their right to vote. The purpose of the National Voter Registration Act (NVRA) is to help reach this goal.

This report examines the implementation of NVRA by state vocational rehabilitation agencies and includes a number of specific recommendations for improving aspects of the Act's implementation by these agencies.

Although this report is limited to a review of implementation by state vocational rehabilitation agencies, the recommendations will also be helpful in improving implementation by other state and local agencies serving people with disabilities.

APPENDIX

MISSION OF THE NATIONAL COUNCIL ON DISABILITY

Overview and Purpose

NCD is an independent federal agency with 15 members appointed by the President of the United States and confirmed by the U.S. Senate.

The overall purpose of NCD is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

Specific Duties

The current statutory mandate of NCD includes the following:

- Reviewing and evaluating, on a continuing basis, policies, programs, practices, and procedures concerning individuals with disabilities conducted or assisted by federal departments and agencies, including programs established or assisted under the Rehabilitation Act of 1973, as amended, or under the Developmental Disabilities Assistance and Bill of Rights Act; as well as all statutes and regulations pertaining to federal programs that assist such individuals with disabilities, in order to assess the effectiveness of such policies, programs, practices, procedures, statutes, and regulations in meeting the needs of individuals with disabilities.

- Reviewing and evaluating, on a continuing basis, new and emerging disability policy issues affecting individuals with disabilities at the federal, state, and local levels and in the private sector, including the need for and coordination of adult services, access to personal assistance services, school reform efforts and the impact of such efforts on individuals with disabilities, access to health care, and policies that act as disincentives for individuals to seek and retain employment.

- Making recommendations to the President, Congress, the secretary of education, the director of the National Institute on Disability and Rehabilitation Research, and other officials of federal agencies about ways to better promote equal opportunity, economic self-sufficiency, independent living, and inclusion and integration into all aspects of society for Americans with disabilities.

- Providing Congress, on a continuing basis, with advice, recommendations, legislative proposals, and any additional information that NCD or Congress deems appropriate.

- Gathering information about the implementation, effectiveness, and impact of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

- Advising the President, Congress, the commissioner of the Rehabilitation Services Administration, the assistant secretary for Special Education and Rehabilitative Services within the Department of Education, and the director of the National Institute on Disability and Rehabilitation Research on the development of the programs to be carried out under the Rehabilitation Act of 1973, as amended.

- Providing advice to the commissioner with respect to the policies and conduct of the Rehabilitation Services Administration.

- Making recommendations to the director of the National Institute on Disability and Rehabilitation Research on ways to improve research; service; administration, and the collection, dissemination, and implementation of research findings affecting persons with disabilities.

- Providing advice regarding priorities for the activities of the Interagency Disability Coordinating Council and reviewing the recommendations of this council for legislative and administrative changes to ensure that such recommendations are consistent with NCD's purpose of promoting the full integration, independence, and productivity of individuals with disabilities.

- Preparing and submitting to the President and Congress an annual report titled *National Disability Policy: A Progress Report.*

International

In 1995, NCD was designated by the Department of State to be the U.S. government's official contact point for disability issues. Specifically, NCD interacts with the special rapporteur of the United Nations Commission for Social Development on disability matters.

Consumers Served and Current Activities

While many government agencies deal with issues and programs affecting people with disabilities, NCD is the only federal agency charged with addressing, analyzing, and making recommendations on issues of public policy that affect people with disabilities regardless of age, disability type, perceived employment potential, economic need, specific functional ability, status as a veteran, or other individual circumstance. NCD

recognizes its unique opportunity to facilitate independent living, community integration, and employment opportunities for people with disabilities by ensuring an informed and coordinated approach to addressing the concerns of persons with disabilities and eliminating barriers to their active participation in community and family life.

NCD plays a major role in developing disability policy in America. In fact, it was NCD that originally proposed what eventually became the Americans with Disabilities Act (ADA). NCD's present list of key issues includes improving personal assistance services, promoting health care reform, including students with disabilities in high-quality programs in typical neighborhood schools, promoting equal employment and community housing opportunities, monitoring the implementation of ADA, improving assistive technology, and ensuring that persons with disabilities who are members of minority groups fully participate in society.

Statutory History

NCD was initially established in 1978 as an advisory board within the Department of Education (Public Law 95-602). The Rehabilitation Act Amendments of 1984 (Public Law 98-221) transformed NCD into an independent agency.

STATEMENT OF THE NATIONAL FEDERATION OF THE BLIND

to

Committee on Governmental Affairs

United States Senate

May 9, 2001

On behalf of the Federation and the blind people I represent, I want to begin by expressing my sincere thanks to you and this Committee for the opportunity to share the concerns of blind voters throughout the country.

The members of the National Federation of the Blind have a strong interest in any legislation affecting the voting process in this country, and we have a proud history of advocacy on behalf of full participation by the blind in our nation's electoral process. The National Federation of the Blind was very much involved in the process which led up to the 1982 enactment of amendments to the Voting Rights Act of 1965. We also participated in the development of the Voting Accessibility for the Elderly and Handicapped Act enacted in 1984.

To say that the Presidential Election of 2000 is apt to become the catalyst for lasting changes in the way Americans vote is simply to state the obvious. Politics aside, the election of November, 2000, demonstrated to everyone that the most fundamental right and responsibility of citizens in our democracy--choosing our elected representatives--is vulnerable to antiquated methods and technology, especially in closely fought elections. The integrity of the process demands a solution, and the technology now available and becoming available, makes it possible.

Several bills are before the Senate for consideration, but all of them have a common thread. The technology being used to cast and count ballots throughout the United States is not as reliable as we thought it was and certainly not as reliable as it could be. This means that changes in voting technology, already being made in the natural course of events, will be accelerated. It also means that the changes which do result from the present situation are apt to be in place for many decades to come.

This latter point--that the new technology which will emerge will be with us for many years to come--is particularly important to the blind. In 1982, when Congress passed amendments to the Voting Rights Act, we advocated very strongly for a national standard to ensure that persons unable to read the printed ballot or the instructions on the voting machine would be able to have assistance provided by another person of the disabled voter's own choosing. We asked for this standard because of the widespread and objectionable practice of having election judges from each party physically present in the booth to assist a blind voter and monitor the casting of the ballot. It is an understatement to say that this process was both intimidating and demeaning to the blind voter, leading far too many to stay away from the polls on election day.

Congress agreed with us in finding that it is wrong to subject blind people to the scrutiny of election judges, but the voter assistance provision which was passed with the Voting Rights Amendments of 1982, was only a partial solution. However, it was really the best and most appropriate solution available at that time. That is no longer the case since microchip and digital technology will undoubtedly change the way Americans vote--not only in the next election but far beyond.

In the wake of the 2000 election, states and political subdivisions are scrambling

to update their antiquated voting machines with electronic and computer-based voting systems. Arizona is already testing internet voting, and many jurisdictions have purchased touch-screen digital voting machines. Under present law, individual states develop and apply their own standards to approve or "certify" voting systems used in local jurisdictions. This is precisely why Congress must become involved in helping to set the standards applied to voting technology in the future.

In the case of technology, for example, the needs of blind voters are rarely understood or considered by the states in establishing criteria for certification of new voting systems. Consequently, the principle of "equivalent visual and non-visual access" has not been adopted as a standard. As a result, virtually all electronic voting technology is unusable by as many as one million people who are blind and millions more who cannot see enough to read a printed ballot or visual display screen on a voting machine.

Section 508 of the Federal Rehabilitation Act as amended in 1998, requires Federal departments and agencies to ensure that their electronic and information technology is accessible to individuals with disabilities. It means that all electronic and information technology purchased by the federal government must be equipped and configured for effective use by anyone with or without a disability. This law also applies to technology (such as information kiosks) intended for public use.

At this point, Section 508 only has limited applicability to states. Therefore, it really has no direct applicability to voting. However, the principle of section 508--equivalent access--is sound. If section 508 did apply to all governmental entities, including states and local jurisdictions, then equivalent access would be required. In fact, only one state that I know of presently has a law requiring all voting equipment to be

accessible to individuals with disabilities. That law was signed by the then Governor of Texas, George W. Bush. Therefore, I guess I can safely claim to have the support of the President of the United States for the point we are making here today.

According to the National Center on Policy Analysis, low voter turnout is primarily due to inconvenient voting procedures. Confirming this, an Ohio study pointed to intimidating" voting methods as a significant reason why people don't vote. For blind people these factors are compounded by voting systems which are not only "inconvenient" but unusable. Inaccessible voting systems discourage blind voters from exercising the most fundamental right of citizenship--the right to vote.

Modern technologies (such as synthesized speech and speech activated software) allow electronic information to be accessed through visual and non-visual means. Using these technologies, blind people would be able to vote privately and independently. This is a step beyond the voter assistance provision presently in the Voting Rights Act, which will remain for years to come as the method most preferred by some blind people. However, with the advent of new technology, we can do better. This is especially important for those of us who are becoming accustomed to communicating by means of the computer. This is something we do every day; so why not communicate independently and effectively when we vote.

The expectations and possibilities are changing for all Americans in regard to virtually everything we do. That includes the way we vote, as well. Blind people are not excluded from these advancements. With the possibility now upon us for voting independently and privately--with or without sight--the provision for voter assistance will not be good enough.

This principle has been embraced by most of the bills which address voting process reform in the Senate. Many of these bills have important provisions relating to standards for voting technology. And, most important of all, the standards called for in these bills would require non-visual access to voting technology purchased with federal funds, so blind people could cast their ballots both independently and in private. Enactment of these requirements as a part of legislation on voting process reform would extend the convenience and benefits of electronic voting systems to sighted and blind voters alike. This is the most important principle for blind Americans. On behalf of the National Federation of the Blind, I thank you for your time and consideration of our issues.

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