

Rights Commission's Report on Florida Election

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Following is a draft of the executive summary points from the Commission on Civil Rights report on the 2000 Florida general election. The document was given exclusively to The Washington Post. Typographical and grammatical errors were not corrected.

CONFIDENTIAL DRAFT

EXECUTIVE SUMMARY POINTS

The U.S. Commission on Civil Rights conducted the most extensive investigation to date concerning allegations of irregularities occurring during the November 2000 presidential election in Florida. The investigation, utilizing the Commission's subpoena power, comprised 3 days of hearings, over 30 hours of testimony from over 100 witnesses and a systematic review of more than 118,000 sheets of paper.

Perhaps the most dramatic undercount in this election was the nonexistent ballots of the countless unknown eligible voters, who were wrongfully purged from the voter registration rolls, turned away from the polls, and by various other means prevented from exercising the franchise. While statistical data, reinforced by credible anecdotal evidence, point to widespread disenfranchisement and denial of voting rights, it is impossible to determine the extent of the disenfranchisement or to provide an adequate remedy to the persons whose voices were silenced in this historic election by a pattern and practice of injustice, ineptitude and inefficiency.

During the November 2000 presidential election in Florida, restrictive statutory provisions, wide-ranging errors and inadequate and unequal resources in the election process denied countless Floridians the right to vote. The disenfranchisement of Florida's voters fell most harshly on the shoulders of African Americans. Statewide, based upon county-level statistical estimates, African American voters were nearly ten times more likely than white voters to have their ballots rejected in Florida. On a statewide basis, while African Americans comprised about 11% of all voters in Florida in the November 2000 presidential election, African Americans cast about 54% of the ballots that were rejected in the election. Before and during the election state and county officials were aware of several key factors that ultimately contributed to the disenfranchisement of qualified voters.

The Commission on civil rights did not find conclusive evidence that the highest officials of the state conspired to produce the disenfranchisement of voters. Instead,

the Commission found that the governor and the secretary of state, in particular, chose to simply ignore the mounting evidence that many counties were experiencing rising voter registration rates in communities with out-dated voting technology.

Furthermore, they ignored the pleas of some supervisors of elections for guidance and help.

In addition, election supervisors in the counties that experienced the worst problems failed to prepare adequately, to demand adequate resources or to raise a public outcry over the inadequacy of resources available. This lack of leadership in the important area of protecting voting rights encouraged the broad array of problems that occurred during the November 2000 presidential election. These officials simply permitted the unequal distribution of quality voting equipment and other needed resources statewide without the public being aware that an electoral disaster might be approaching.

As a result, African American voting districts were disproportionately hindered by antiquated and error-prone equipment like the punch card ballot system. Voting districts that were predominantly white were more likely to have high technology including the optical scan system and lap top computers used for verification of voter eligibility.

Poorer counties, particularly those with significant people of color populations were more likely to use voting systems with higher spoilage rates than more affluent counties with significant white populations. The Commission discovered a high correlation between percentage of African American precincts and percentage of spoiled ballots. Nine of the 10 counties with the highest percentage of African American voters have spoilage rates above the Florida average. Gadsden County, claiming the highest rate of spoiled ballots, also claims the highest percentage of African American voters. The black population is only 11%, but the number of rejected black ballots was 54%. Of the 10 counties with the highest percentage of white voters, only 2 counties had spoilage rates above the state's average. The total number of spoiled ballots was 180,000; for every 10% increase in Black voters, ballot rejection increased by 1.8%. Of the 100 precincts with the highest numbers of disqualified ballots, 83 of those precincts are majority-black precincts.

The Commission's extensive analysis of statistical data reveals that African Americans were disproportionately purged from the voter roles due to spoiled ballots rendered by undercounts and overcounts. The failure to incorporate Motor Voter registrants and the notorious, state-sponsored, erroneous purging procedures significantly contributed to the dilution of the African American vote.

The Commission also found that the lack of uniformity and absence of clear guidance from top state officials in the allocation of election-day resources, including voter

education funds and effective poll worker training contributed to the incidence of spoiled ballots.

The Commission's hearings spotlighted and this report highlights the harsh reality that despite the closeness of the election, it was widespread voter disenfranchisement and not the dead-heat contest that was the extraordinary feature of the Florida election.

The Voting Rights Act of 1965 (VRA) was enacted under the authority of Congress to enforce the Fifteenth Amendment's proscription against voting discrimination. It is aimed at subtle, as well as obvious, state action that has the effect of denying citizens the right to vote because of his or her race. Although the VRA was intended to enfranchise African Americans, the law has been amended several times to include also American Indians, Asian Americans, Alaskan Natives, and people of Spanish heritage. Additionally, the VRA includes a provision that recognizes the need for multilingual assistance for non-English speakers.

The law allows, but does not require, a violation of the VRA to be established by proof of intentional discrimination. The law may also be violated by proof that the system discriminates. To be precise, a violation of the VRA must be proved *either* by intentional discrimination *or alternatively*, by proof that the challenged system or practice interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by African American and white voters to participate in the electoral process.

Put simply, no intent to discriminate is required. Neither is proof of a conspiracy to discriminate against people of color. No proof of intentional discrimination against people of color by any state or county officials involved in the administration of elections today or yesterday is required. Violations of the VRA can be established by evidence that the state's actions resulted in African Americans and other people of color being the right to vote under the "totality of circumstances."

For example, if there are differences in voting procedures and voting technologies between white areas and people of color areas and the result of those differences is to advantage white voters and disadvantage people of color voters, then the laws, the procedures and the decisions that produced those results, viewed in the context of social and historical factors, can prove discrimination in violation of the VRA.

The Commission's findings that Florida's election was not equally open to all must be seen in the context of the Commission's jurisdiction and authority. The Commission is a fact finding body and authorized to investigate allegations of voting discrimination, fraud and other irregularities. However, the Commission does not adjudicate violations of the law, hold trials or determine civil or criminal liability. It is within the

jurisdiction of the U.S. Department of Justice and Florida officials to determine whether certain state and county officials in Florida violated the VRA and, if so, to seek appropriate sanctions and remedies.

Fraud does not appear to be a major factor in the Florida election. Instead, overzealous efforts conducted under the guise of an anti-fraud campaign resulted in the inexcusable and patently unjust removal of disproportionate numbers of African American voters from Florida's voter registration rolls.

Even though fraud did not appear to trigger statewide concerns, it seems the Secretary of State's minimal public service and outreach efforts focused on two public service announcements on voter fraud. A third advertising campaign, featuring General Norman Schwartkopf, appeared to target an elite slice of Florida's voters. This suggests that the State agency responsible for mobilizing voter participation was not interested in broadening the electorate.

The purge system in Florida proceeds on the premise of guilty until proven innocent. The process places the burden on the eligible voter to justify their right to remain on the rolls. The ubiquitous errors and dearth of effective controls in the state's list maintenance system gave priority to the exclusion of voters instead of the expansion of voter participation.

Specifically, the purge system disproportionately impacted African American voters who are placed on purge lists more often and more likely to be there erroneously than Hispanic or white voters. For instance, in Miami-Dade, the state's largest county, over 65% of the names on the purge list consisted of African Americans who represent only 20.4% of the population. Hispanics were 57.4% of the population, but only 16.6% of the purge list; whites, 77.6% of the population but 17.6% of those purged.

The Commission found no clear guidelines from the governor, the secretary of state or the director of the Division of Elections to their subordinates to employ list maintenance strategies that would protect eligible voters, particularly historically disenfranchised populations, from being wrongfully removed from the voting registration rolls.

The evidence shows, moreover, that an official of the Division of Elections encouraged representatives of the DBT Online to employ an error-laden strategy that resulted in the removal of a disproportionate number of eligible African American voters from the voting registration rolls.

The Commission found that the division of elections failed to take the same cautionary steps before the November 2000 presidential election that were taken

before the 1998 election when supervisors of elections were alerted to verify the exclusion lists with the greatest of care and to provide opportunities for persons to vote by affidavit ballot in those instances in which the voter makes a credible challenge to his or her removal from the voting registration roll.

The Commission also found that state officials missed opportunities to provide necessary training to supervisors of elections on verification procedures.

There were notable instances of communication breakdowns and malfunctioning machinery on Election Day. Aside from the lack of consistency and uniformity in election operations, many election officials failed to authorize the use of affidavits under appropriate circumstances, and had few procedures in place to confirm voter lists through central processing. The inability to reach central offices (busy signals common) to certify voters, long lines, unprepared and untrained workers, and accessibility problems were widespread. Despite the early signs of a large influx of new voters, the Florida state election apparatus was indifferent to this reality and did not respond with the appropriate array of measures to avoid the chaos that occurred.

The State's highest officials responsible for assuring effective uniformity coordination and application of the election were grossly derelict in fulfilling their responsibilities and unwilling to accept accountability. The governor maintains that he has no specific role in the election operations and points to his secretary of state as the responsible official. After the election, however, the governor waded deep into the machinery of voting by appointing a task force to seek recommendations on addressing problems encountered in the election. The Governor's post-election commitment to increased voter education initiatives among new and minority voters, before the election, it was the governor who failed to support a modest budget request of \$100,000 for voter education.

The secretary of state, the state's chief elections officer, denied any role in the gross failures and flaws that fostered disenfranchisement of Florida voters. Beyond a "ministerial" role, she pointed to the county election officials as the authorities responsible for the conduct of the election. Her claims of no responsibility in the operations of the elections are in sharp contrast to her actions in the aftermath of Election Day. While she described her role in the policies and decisions affecting the actual voting operations as limited, she asserted ultimate authority in determining the outcome of the vote count.

Notwithstanding the purposeful use of erroneous listings to promote the state's purging priorities, the permanent disenfranchisement of discharged felons raises important questions of fundamental fairness. Florida's onerous and infrequently rendered clemency process also is called into question. The Commission maintains

that former offenders who have paid their debt to society should have all rights of citizenship restored. It is also clear that African Americans, disproportionately charged, convicted and sentenced in the criminal justice system, are disproportionately impacted by the state's purging policies and practices. The governor should exercise his moral authority over elections to reform this area of state law.

With regard to accessibility issues, countless voters in Florida with special needs were denied their rights to vote due to inaccessible precincts and ballots. Voters with disabilities who rely on wheelchairs were forced to negotiate steps and unreachable polling booths or undergo tremendous humiliation by relying on others to lift them into the polling places to exercise their right to vote. Others who did not have these options were simply turned away, which denied these voters their right to participate fully in the political process.

Despite the requirements that non-English proficient voters be provided with some form of language assistance, a large number of these limited English-speaking voters were denied this assistance at Florida's polling places in the November 2000 presidential election. In some central Florida counties, Spanish-speaking voters did not receive bilingual assistance and some of these counties were subject to Section 203 of the VRA. This failure to provide proper language support resulted in widespread voter disenfranchisement of possibly several thousand Spanish-speaking voters in central Florida.

Unfortunately, the welcomed electoral reform law adopted by the Florida legislature and signed by the governor is silent on several important issues, including these accessibility issues and other factors that contributed to disenfranchisement and racial discrimination in the November 2000 presidential election. Specifically, the Electoral Reform Act is silent on the issue of felon purges, language assistance and removing barriers affecting persons with disabilities.

The Commission recommends that all reform measures require clear guidance responsibility and accountability. There must be effective monitoring systems in place and adequate resources must be distributed to ensure the meaningful implementation of these reforms.