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## STATUS REPORT ON PROBE OF ELECTION PRACTICES IN FLORIDA DURING THE 2000 PRESIDENTIAL ELECTION

### U. S. COMMISSION ON CIVIL RIGHTS

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The Commission has undertaken a formal investigation into allegations by Floridians of voting irregularities arising out of the November 7, 2000 Presidential election. ♦ The Commission has held two fact-finding hearings in Florida to examine whether eligible voters faced avoidable barriers that undermined their ability to cast ballots and have their ballots counted in this closely contested election. ♦ The probe is intended to uncover, for example, who made the critical decisions regarding resource allocations for Election Day activities, why were these decisions made and what specific impact these decisions had on distinct communities. ♦

Voter disenfranchisement appears to be at the heart of the issue. ♦ It is not a question of a recount or even an accurate count, but more pointedly the issue is those whose exclusion from the right to vote amounted to a ♦ No Count. ♦ ♦

We emphasize that voting technology reforms and assurances that uniform and accurate standards for counting and recounting ballots shall be implemented are encouraging and significant. ♦ These measures standing alone, however, are insufficient to address the significant and distressing issues and barriers that prevented qualified voters from participating in the Presidential election. It is our hope that Florida officials, as well as officials in other jurisdictions, will promptly resolve these major problems, which they allowed to occur, instead of hoping with the passage of time the public will forget. ♦ ♦ ♦

In total, over 100 witnesses testified under oath before the Commission, including approximately 65 scheduled witnesses who were selected for the two hearings due to their knowledge of and/or experience with the issues under investigation. The Commission heard testimony from top elected and appointed state officials, including the Governor, the Secretary of State, the Attorney General, the Director of the Florida Division of Elections and other Florida state and county officials. ♦ A representative of Database Technologies, Inc. [Choicepoint], a firm involved in the controversial, state-sponsored removal of felons from the voter registration rolls also testified.

We also heard the sworn testimony of registered voters and experts on election reform issues, election laws and procedures and voting rights. Also, the Chair and Executive Director of the Select Task Force on Election Reforms established by Governor Jeb Bush testified before the Commission. Testimony was also received from the supervisors of elections for several counties, county commission officials, law enforcement personnel, and a states attorney. In addition to the scheduled witnesses, the Commission extended an opportunity for concerned persons, including Members of Congress and members of the Florida State Legislature, to submit testimony under oath that was germane to the issues under investigation. Significantly, the Commission subpoenaed scores of relevant documents to assist with this investigation.

The evidence points to an array of problems, including those in the following categories:

- ⌋ *Key officials anticipated before Election Day, that there would be an increase in levels of voter turnout based upon new voter registration figures, but did not ensure that the precincts in all communities received adequate resources to meet their needs;*
- ⌋ *At least one unauthorized law enforcement checkpoint was set up on Election Day resulting in complaints that were investigated by the Florida Highway Patrol and the Florida Attorney General;*
- ⌋ *Non-felons were removed from voter registration rolls based upon unreliable information collected in connection with sweeping, state sponsored felony purge policies;*
- ⌋ *Many African Americans did not cast ballots because they were assigned to polling sites that did not have adequate resources to confirm voting eligibility status;*
- ⌋ *College students and others submitted voter registration applications on a timely basis to persons and agencies responsible for transmitting the applications to the proper officials, but in many instances these applications were not processed in a timely or proper manner under the National Voter Registration Act (motor-voter law);*
- ⌋ *Many Jewish and elderly voters received defective and complicated ballots that may have produced overvotes and undervotes;*

- ⌋ *Some polling places were closed early and some polling places were moved without notice;*
- ⌋ *Old and defective election equipment was found in poor precincts;*
- ⌋ *Many Haitian Americans and Puerto Rican voters were not provided language assistance when required and requested;*
- ⌋ *Persons with disabilities faced accessibility difficulties at certain polling sites;*
- ⌋ *Too few poll workers were adequately trained and too few funds were committed to voter education activities;*

The Commission's probe proceeds under the statutory duty and authority of the Commission to investigate allegations in writing under oath or affirmation relating to deprivations of the right of citizens of the United States to vote or have votes counted (PL 103-419). This investigation is also conducted pursuant to our statute which requires the Commission to investigate allegations that citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, sex, age, handicap, or national origin.

In our investigation, we use as our standard the requirements of Section 2 of the Voting Rights Act for determining whether disparate impact or disparate treatment amounting to disenfranchisement has occurred. We understand clearly that violations of the Voting Rights Act do not require proof of deliberate or intentional discrimination against citizens, if differential results, disenfranchising those who the statute was designed to protect are the result. Practices can be illegal when they have the effect of restricting opportunities for people of color, language minorities, persons with disabilities, and the elderly to participate fully in the political process and to elect candidates of their choice.

The Voting Rights Act of 1965, as amended, was aimed at subtle, as well as obvious, state regulations and practices that had the effect of denying citizens their right to vote because of their race. Perhaps the most invidious barriers to the right to vote were the seemingly neutral restrictions developed by states that had debilitating and devastating results on black voter registration.

Congress has enacted additional measures to further protect the voting rights of persons of color, immigrants, the elderly, and those with disabilities from invidious discrimination. For example, an amendment to the Voting Rights Act in 1975

permanently restricted the use of tests and devices for voter registration nationwide. The 1975 amendments also include rights for language minorities, mandating bilingual ballots and oral assistance with voting. In 1983, the Voting Rights Act was amended to clarify that the proof of discriminatory intent is not required under Section 2 claims, thus making disparate impact claims valid. Congress also enacted the National Voter Registration Act after finding that 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 participation by various groups, including racial minorities. Further, several laws have been enacted pertaining to the accessibility of the election process to persons with disabilities

*[These laws are described in an [appendix](#) to this statement].*

We are deeply troubled by our preliminary review which points to differences in resource allocations, including voting technology, and in voting procedures that may have operated so that protected groups may have had less of an opportunity to have their votes counted. We will conduct complete disparate impact and treatment analyses before the report is completed, and our final conclusions will take into account the results of these analyses.

However, it appears at this phase of the investigation that the evidence may ultimately support findings of prohibited discrimination. Two particular sources of fruitful inquiry are the questionable uses of Choicepoint data and resource allocation issues. We are attempting to document whether and, if so, how long state, county and local officials knew that certain differences in resources and procedures might impact more harshly African Americans and members of other protected groups.

The staff is continuing their analysis of the voluminous testimonial and documentary evidence compiled during this investigation. Ultimately, the Commission will pinpoint whether each of the problems identified resulted from deliberate, or harmful, yet not deliberate, discrimination, or were caused by neither.

We emphasize that the implementation of voting technology reforms and uniform and accurate standards for counting and recounting ballots would be encouraging and significant. These measures standing alone, however, will not address the significant and distressing issues and barriers that prevented qualified voters from participating in the Presidential election.

In the final analysis, new recounts of old ballots are an academic exercise. Voting is the language of our democracy and regrettably, when it mattered most, real people

lost real opportunities to speak truth to power in the ballot box. ❖ This must never occur again. ❖ As Dr. Martin Luther King, Jr. once stated: ❖ Social justice shall not roll in on wheels of inevitability. ❖

It is our hope that Florida officials, as well as officials in other jurisdictions- where barriers existed, will promptly resolve these major problems that occurred on their watch.

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## APPENDIX

The most important sections of the Voting Rights Act are Section 2 and Section 5.

Section 2 of the Voting Rights Act provides:

*No voting qualification or prerequisite to voting, or standard practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color. ❖❖*

Section 5 of the Voting Rights Act outlines the federal role in election oversight by requiring federal approval of state changes in voting procedures in areas with a history of discrimination against persons of color. ❖ Section 5 is designed to prevent new forms of discrimination from taking effect that will diminish voting opportunities or rights for people of color. ❖ It also permits the Federal Government to send examiners to covered jurisdictions to ensure that registered voters are allowed to vote and that all votes are properly counted.

The Voting Rights Act has been amended since its passage to broaden its coverage and to strengthen its effectiveness. ❖ In 1975, an amendment permanently restricted the use of tests and devices for voter registration nationwide. ❖ The 1975 amendments also include rights for language minorities, mandating bilingual ballots and oral assistance with voting. ❖ In 1983 the Voting Rights Act was amended to clarify that the proof of discriminatory intent is not required under Section 2 claims, thus making disparate impact claims valid.

Also, in an effort to further protect the voting rights of all citizens, particularly members of protected groups, including persons of color, immigrants, the elderly, and those with disabilities, Congress enacted the National Voter Registration Act:

- ☒ *to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;*
- ☒ *to make it possible for Federal, State and local government to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;*
- ☒ *to protect the integrity of the electoral process; and*
- ☒ *to ensure that accurate and current voter registration rolls are maintained.* ◆

Lastly, several laws have been enacted pertaining to the accessibility of the election process to persons with disabilities:

- ⌋ *Section 208 of the Voting Rights Act of 1965 provides that a person of his or her choice, with the exception of his or her employer or union agent, may assist any voter who requires assistance due to blindness, disability, or illiteracy*
- ⌋ *Section 504 of the Rehabilitation Act of 1973 requires recipients of federal funds to make their programs accessible to persons with disabilities, including state and local governments that receive funding.*
- ⌋ *The Voter Accessibility Act for Elderly and Handicapped Persons of 1984 expressly provides for the improvement of access to registration facilities and polling places. ◆ The law requires that state election divisions assure that all polling places are accessible to the elderly and persons with disabilities or that arrangements are made for such voters to vote in accessible locations or permanent registration facilities unless the state allows for registration by mail. ◆ Finally, the law requires that states provide registration and voting aids, such as large print instructions and telecommunication devices for the deaf (TDD ◆s).*
- ⌋ *Title II of the Americans with Disabilities Act of 1990 prohibits discrimination by state or local entities in any services, programs, or activities, including the election process, for which state and local offices are required to ensure accessibility.*

*The National Voter Registration Act of 1993, except in a handful of exempted states, requires that individuals be given the opportunity to register by mail or when*

*applying for a driver's license or public services. This specifically includes state-funded programs that provide services to individuals with disabilities.*

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