



America's Modern Poll Tax

How
Structural
Disenfranchisement Erodes
Democracy

November 7, 2001

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EXECUTIVE SUMMARY

One year ago, George W. Bush and Al Gore were locked in a desperately close race to become the 43rd President of the United States. Within days, the nation's collective attention was focused on Florida, and the American public had been introduced to terms like "butterfly ballots" and "pregnant chads." Underneath the whirlwind of court cases, recounts and protesters, this debacle has produced evidence of one of the greatest threats to American Democracy in recent history – structural disenfranchisement.

STRUCTURAL DISENFRANCHISEMENT

"Structural disenfranchisement" is the modern equivalent of poll taxes, grandfather clauses, and literacy tests -- quietly invidious, but equally destructive to the bedrock of our democracy. The cumulative effect of multiple problems and breakdowns in election systems, structural disenfranchisement results in millions of Americans being denied their right to vote. Even though the more overt forms of disenfranchisement have been outlawed, structural disenfranchisement continues to perpetuate inequity and exclusion. In today's equivalent of the poll tax, there is no one guilty actor and rarely smoking gun evidence of discriminatory motive. Instead, inequity is built into the system, encompassing conspicuous failures to comply with the Motor Voter Law and legislative gridlock over desperately needed funding for ailing election systems. Structural disenfranchisement also includes the bureaucratic blunders, indifference, and flagrant disregard for voting rights that produced and will continue to produce election day nightmares like Florida.

The federal government guarantees every American's right to vote, but state governments bear the unique task of handling the structural aspects of voting. Even for federal elections, Congress has assigned to the states the power of registering people to vote, setting up polling places, training poll workers, printing ballots, and making the rules for who is and is not eligible to vote. The states have further delegated many of these functions to local governments, although the states remain legally responsible for the actions and results of their local partners. When states and localities shirk their responsibilities or otherwise manipulate election systems, the end result is structural disenfranchisement, and voters are either turned away from the polls or their votes are thrown out and not counted.

While the fiasco in Florida gave Americans a glimpse into the rampant dysfunction and glaring neglect plaguing our nation's election systems, AMERICA'S MODERN POLL TAX: HOW STRUCTURAL DISENFRANCHISEMENT ERODES DEMOCRACY reveals problems much deeper than punch card machines and much wider than Florida. AMERICA'S MODERN POLL TAX exposes structural disenfranchisement as a national problem that operates behind the scenes to erode the foundation of Democracy.

The Report also uses the term "ballot blockers" to refer to the numerous, interlocking practices and mechanics that comprise structural disenfranchisement. While some ballot blockers, like shoddy, error-prone voting equipment and inadequate funding, are easily recognized, most involve the structural elements of election administration: ill-trained

poll workers, failures to process registration cards on time or at all, inaccurate registrations rolls, overbroad purges of voter rolls, unreasonably long lines, inaccurate ballot translations and a shortage of translators to assist voters who speak languages other than English.

The Report also introduces another, less visible form of ballot blocker – a culture of indifference that tolerates and excuses widespread disenfranchisement. The report gives specific examples of bureaucratic ineptness, political posturing and a general failure to take responsibility for fixing a clearly broken election system. This culture of indifference is revealed when legislatures neglect financially starved election systems and when election officials turn a blind eye while sending equipment they know to be problematic into poor and minority communities, producing incorrectly translated ballots and putting polling places in buildings that are not wheelchair accessible.

AMERICA'S MODERN POLL TAX concludes that for the past year, state legislatures and the United States Congress have done virtually nothing to address the glaring deficiencies in our nation's election system. Absent a rapid and significant infusion of resources for election reform measures and a clear, defined chain of accountability for their implementation, the election system as currently administered will ensure that millions of votes will not be counted in the 2002 midterm election and probably the 2004 presidential election as well. Such problems will further undermine confidence in our democracy. They will skew the results of elections and have a corrosive effect on the American public's fundamental belief in Democracy.

REPORT OVERVIEW

AMERICA'S MODERN POLL TAX sets out information from two types of research. First, an investigation into the national scope of structural disenfranchisement produced a collection of eight case studies from states and cities across the nation: New York City; St. Louis, Missouri; Texas; Virginia; Georgia; Florida; Massachusetts; and Illinois. These locations were chosen because they reveal shocking levels of disenfranchisement in every corner of the country. Structural disenfranchisement is not limited to these eight places. The evidence suggest that few, if any, states are exempt. The case studies are illustrations of the nature of the national problem, exposing the mechanisms of structural disenfranchisement. These eight examples delve beneath the headlines to identify the combination of actions and inactions taken before election day that produced "a near meltdown" of the system on November 7, 2000 and disenfranchised four to six million Americans across the country.

The second part of the investigation involved a survey of state election directors, which reinforces the findings of the case studies. By surveying the individuals responsible for the administration of elections in 42 states, the report provides a broad snapshot of the health of our election system nationally. Election administrators paint a disturbing picture of legislatures' callous rejection of repeated requests for resources to update antiquated systems and out-of-date practices. Politicians at the state and federal levels – coincidentally elected by those who are not disenfranchised – show little real concern for expanding the electorate by fixing structural problems that cause disenfranchisement.

The Report also found other troubling developments since November 2000. Several state governments (including Florida) face class-action lawsuits brought by voters. Generally, these lawsuits claim that a failure to improve election administration and technology violates the Constitution and federal and state laws. Distrust of government in some minority communities, particularly St. Louis and Chicago, appears to have deepened considerably because of structural disenfranchisement.

This Report is not an exhaustive survey of election problems in every state and locale. Moreover, it does not treat in detail the issue of ex-offender disenfranchisement. Laws barring ex-offenders from voting disenfranchise millions of Americans, disproportionately African-American and Latino, and these laws likely played a critical role in the outcome of the Florida election.¹ Nor does this report examine the extremely important issue of access to the ballot for voters with disabilities.²

HIGHLIGHTS OF CASE STUDIES

NEW YORK CITY: In New York City polling sites, a Spanish sign instructed voters to choose three candidates in a race where voters were actually only supposed to choose one candidate. In six polling places the Chinese translations for “Democrat” and “Republican” were reversed. According to the U.S. Department of Justice, New York State has “abdicat[ed] its responsibility” under the federal voter registration law. Moreover, New York’s own Attorney General has decried the “numerous structural deficiencies” in the state’s election system.

GEORGIA: Georgia’s Secretary of State, Cathy Cox, reports that state’s current voting system “is unsatisfactory and should be thoroughly overhauled.”³ Comparing Georgia’s voting system to the one in Florida, Cox said in many ways Georgia was worse, declaring bluntly that during the Florida recount she thought, “There, but for the grace of God, go I.”⁴ The state’s computer “crashed” two weeks before the election, dropping thousands from the voter rolls. Congressman John Lewis was among the Atlanta voters who found their polling place closed when they arrived on election day. That precinct opened half an hour late, but seven of 13 voting machines still did not work.

VIRGINIA: In the 2000 election, untold numbers of citizens did not vote because of a badly flawed voter registration system, incomplete registration rolls and extremely long lines.⁵ A member of the state Board of Elections acknowledged serious problems and concluded that the “attitude” with regard to running elections “clearly needs to be changed within the Commonwealth and it has to start from the top down.”⁶

ILLINOIS: In some inner-city precincts in Chicago with predominately minority populations, *almost four out of every ten votes cast for President were discarded.*⁷ The extraordinary discarded vote rates in minority communities could have been avoided were it not for a state rule that barred Cook County from turning on technology that would have allowed voters to notice and correct mistaken ballots before leaving their polling place. Such a rule was not in effect for several predominately white counties, some of which had discarded votes rates as low as 0.3 percent.⁸

ST. LOUIS, MISSOURI: An egregiously overbroad purge that placed thousands of qualified voters on “inactive” lists, combined with unconscionable polling place deficiencies, caused a “near meltdown” of the election system in St. Louis. Missouri Secretary of State Rebecca McDowell Cook blasted the city’s Board of Elections for creating a “cloud” that hangs over the election process in St. Louis.⁹

FLORIDA: Florida’s State Election Division instituted a purge of voters whose name and birthdate closely resembled those of persons convicted of a felony despite warnings from its own data experts that thousands of eligible voters would be removed from the rolls. These voters, and a multitude of others, were wrongfully barred from voting on election day. While the problems with hanging chads were well publicized, less attention has been paid to the fact that black votes were discarded at a rate about ten times higher than non-black votes.¹⁰

MASSACHUSETTS: On Election Day 2000 in Boston, confusion reigned in dozens of the city’s 254 precincts as inaccurate registration lists, untrained poll workers, and jammed phone lines overwhelmed the capacity of the election apparatus. David Viera, an elections commissioner, conceded there were “irregularities” on Election Day in Boston.

TEXAS: In Texas, barriers to minority voting rights included outright voter intimidation more reminiscent of the Jim Crow era than 21st century America.

SURVEY OF STATE ELECTION DIRECTORS

AMERICA’S MODERN POLL TAX contains a new and unprecedented survey of election directors around the country. Although the survey was designed to capture only the subjective assessment of state election directors, it provides a revealing look at the shortcomings of state election systems. The main findings of the survey include:

- The state of election administration is one of chronic avoidance and long-term neglect. While many election directors genuinely desire to make voting easy, convenient and accurate, they lack the resources to do the job properly. Just as important, some lack the ability or will to force local election officials to fix serious problems.
- State election officials report that they are woefully underfunded and that most of their requests to the state legislature for more money have been denied. Some have even had their funding cut since the 2000 elections.
- Election officials acknowledge that funding shortages lead to critical, unmet needs for better equipment, improved training and other structural improvements.
- Despite widespread and persuasive evidence that minorities face much higher voting barriers than whites, state election directors generally are unaware of racial disparities in the voting process. One state described its November

2000 election as almost “flawless” despite extensive complaints from minority communities.

- It is significant both practically and symbolically that only three of the 50 state elections directors are non-white. Despite clear evidence to the contrary, many state election officials said there were no problems with disenfranchisement in minority communities. Additionally, many top election officials seem unwilling to acknowledge that even where there is no clear intent to discriminate, structural disenfranchisement still disproportionately impacts minority communities.

RECOMMENDATIONS

AMERICA’S MODERN POLL TAX concludes with a series of hard-hitting recommendations that take into account the recommendations previously made by a number of well-respected organizations and commissions. Protecting democracy and guaranteeing equal access to the polls regardless of race, language, ethnicity or disability requires:

- Federal policies that set nationwide, uniform election policies.
- A federal guarantee of access to provisional ballots.
- Enforcement of laws requiring that voting be accessible to all people with disabilities, regardless of their disability.
- Policies that will automatically restore voting rights to former offenders after they have completed their sentences.
- A centralized voter database administered by non-partisan individuals.
- Federal standards that minimize discarded vote rates and require a precinct-level discarded vote rate no greater than 0.25 percent.
- Federal requirements that jurisdictions provide programs to educate voters on how to protect their right to vote.
- Laws to strengthen the ability of private individuals to bring actions to enforce all relevant voting rights and anti-discrimination laws.

The Report concludes that affected communities and democracy advocates should mobilize to force change. While many activists already are seeking federal and state legislation, the role of state and local election officials should not be neglected. These officials wield enormous power. Many of them are elected and could be held accountable at the ballot box. Yet, their electoral contests typically attract little attention. In addition, community watchdogs could monitor the performance of election officials, not just on election day, but year round. Many of the most damaging actions – such as overbroad purges – occur well in advance of election day.

HISTORICAL CONTEXT AND RELEVANT LAWS

While this report focuses primarily on recent events relating to the November 2000 election, it is imperative to consider them in the historical context of minority voting rights in the United States. Some members of the African-American community, in particular, reacted to the election with bewilderment and anger in part because the experiences of black voters at the polls in November 2000 seemed to mirror those of earlier generations.

The withdrawal of federal troops from the South in 1877 signaled the end of Reconstruction and the beginning of government-assisted campaigns to disenfranchise African Americans and other minority voters. Between 1890 and 1910, all southern states rewrote their state constitutions to disenfranchise black voters across the South. With Mississippi taking the lead, followed by South Carolina and Louisiana, many Southern states created laws that imposed on voters residency requirements, poll taxes, and literacy requirements, and in many instances outright intimidation.¹¹ While these laws were neutral on their face, they were discriminatory in their impact. White election officials often exempted white voters from these requirements. Not surprisingly, these restrictions resulted in extremely low black registration rates. For example, in 1964, only 6 percent of Mississippi's eligible African-American population was registered.¹²

In the North, voter registration laws enacted in the early part of the 20th Century disenfranchised immigrants, who in earlier times had been eligible to vote as soon as they reached this nation's shores.¹³ In addition, Hispanic and Asian-American voters were often asked for proof of citizenship at the polls, while whites were not, and other examples of intimidation against these groups were common. For voters whose native language was not English, language barriers effectively kept them from voting.

The landmark Voting Rights Act of 1965 ("VRA")¹⁴ put an end to literacy tests and poll taxes, and offered hope that the incidents described above would become relics of the past. Section 2 of the VRA prevents the implementation of any law or practice that results in the dilution of minority voting rights -- even if there was no *intended* discrimination. For example, a state that has a pattern of higher discarded vote rates in minority communities could be vulnerable to legal action under this provision, even if election administration had no intention to discriminate. The VRA has been amended to include other ethnic minorities, including Latinos, Asian-Americans, American Indians, and Alaska Natives. Once certain triggering mechanisms are met with regard to population levels of persons who do not speak English, the law also requires that language assistance be provided at the polls to voters who need it.¹⁵

It was not until the late 1960s that legal barriers to the effective political participation of African Americans and other minorities started to be wiped off the books.¹⁶ But voter registration barriers remained. In many states, registration had to be performed by a registrar or deputy registrar. Private individuals and groups could not take the registration forms to convenient locations such as churches and shopping centers. In

Georgia, there were no African-American registrars or deputy registrars outside of Atlanta, and in Mississippi, a voter had to register in two different locations.

Then, in 1993, the National Voter Registration Act (“NVRA”)¹⁷, commonly referred to as the Motor Voter Law, was enacted. The NVRA requires all states affirmatively to offer voter registration to any person using services from a Department of Motor Vehicles or a social services agency. It prohibits “purging” of voter lists except through careful procedures that are non-discriminatory and do not penalize people for not voting. The law also requires that states provide fail-safe voting procedures that permit an individual to vote on election day even if legal technicalities (e.g., his or her name is not the voter rolls despite being registered) get in the way. The NVRA has produced dramatically higher registration rates for voters of all races and ethnicities, but as a general matter, minority registration rates still lag behind those of whites. A failure by many states and counties to implement the Voting Rights Act and the NVRA effectively, and uneven enforcement of these laws by the Department of Justice, help to explain how many of the election day problems documented in this report continue.

CASE STUDIES

Introduction

Put into historical context, the case studies are revealed to be more than isolated incidents; they are the latest manifestations of a long string of acts in the voting context that either discriminate outright or result in structural disenfranchisement. These discouraging denials of opportunities and taxes on minority and poor voters raise serious questions about equality in our body politic. The case studies that follow dramatically reveal the extent to which ballot blockers exist because election officials are not held accountable for bad decisions or a lack of diligence regarding their legal responsibilities. Voters suffer because election officials encounter neither moral pangs nor legal obstacles in failing to ensure the equal opportunity of minorities and the poor to participate in our pluralist political process.

We start with New York, which has major funding and registration problems; follow that with Georgia, which experienced a higher discarded vote rate than Florida; and continue with Virginia, Illinois, Missouri, Massachusetts, and Texas. Florida is also included because it provides an excellent frame of reference for the other states. In all of these examples, one can see significant degrees of voter disenfranchisement.

New York

New York City is known as one of the most sophisticated urban areas in the world – the epicenter of international finance, a place sparkling with theatre and fashion, and home to some of the most expensive real estate in the country. But when it comes to elections, New York City seems mired in the past. New York State has so undermined voter registration efforts for low-income persons that the U.S. Department of Justice has made it the only state in the country currently sued by the federal government to force compliance with the federal Motor Voter Law.¹⁸ And, because the city and state refuse to allocate sufficient funds for election administration, the voting rights of people in lower-income and predominately minority areas of New York City count far less than those in more prosperous and mostly white neighborhoods of nearby Suffolk and Nassau counties.

It is hard to overstate New York's none-too-proud history of restricting ballot access to candidates and the franchise to voters.¹⁹ Its complex ballot access rules have excluded major presidential candidates like John McCain, Steve Forbes, and Jerry Brown.²⁰ Its voting machines, more than four decades old, are prone to breakdown and are serviced by ill-trained and poorly paid mechanics.²¹ Counting of votes is so slow and error-prone²² -- sometimes taking months to complete -- that all four major Democratic candidates for mayor *and* Mayor Giuliani sought a court order before this year's primary to get Supreme Court justices to do the counting.²³ The state ranks embarrassingly low in rates of voter turnout and voter registration.²⁴ Moreover, it is mostly low-income and minority persons whose votes are suppressed.²⁵ Members of the New York City Board of Elections admit the city is in violation of state election law because it does not have enough voting

machines.²⁶ Even last month's mayoral primary run-off created a confusing and delayed vote count, with the Board of Elections admitting that it had counted 42,000 votes twice.²⁷

Three of the five boroughs of New York City – the Bronx, Brooklyn and Queens – all ranked in the top six of the largest counties nationwide in their discarded vote rates in the November 2000 election.²⁸ The only large counties in the country that ranked worse than these three boroughs were Palm Beach and Miami-Dade in Florida, and Cook County (Chicago) in Illinois.²⁹ (We refer to votes cast, but not counted, as “discarded,” which includes undervotes, overvotes, and other rejected ballots. Appendix A sets out an explanation of voting technology and how it relates to “discarded votes.”) The Bronx – whose population is overwhelmingly African-American and Latino -- had a discarded vote rate of 4.7 percent, as compared to 0.7 percent for predominately white Suffolk County.³⁰ Overall, New York City had a discarded vote rate of 3.9 percent, or 88,835 lost ballots out of 2.2 million cast, far higher than the national average and three times higher than the rest of the state.³¹ New York's Attorney General, Elliott Spitzer, has decried the “numerous structural deficiencies” in New York's election system and proposed a program of wide-ranging reform.³² State and city leaders have done little or nothing to back the recommendations.

Voter Registration Failures

Since the National Voter Registration Act took effect in 1995, failure to implement the law has deprived thousands of qualified residents of registration opportunities and so blunted the effect of the law that the state was sued by the U.S. Department of Justice.³³ The lawsuit, the only one of its kind in the country, accuses the state of “abdicating its responsibility” to implement the NVRA.³⁴ The state is resisting the lawsuit with a technical defense, described below.

The Justice Department lawsuit lays out a disturbing pattern. Designed to expand and ease access to voter registration, the NVRA requires each state to offer voter registration opportunities to *all* citizens who apply for a driver's license or for benefits from a public assistance agency (such as a family assistance or disability aid office). While those applying for driver's licenses tend to come from all economic classes, those seeking social service benefits are predominately minority and almost exclusively low-income. In New York, records show that only about one-third of applicants in social service agencies were offered the opportunity to register, even though federal law requires that *all* such applicants be offered the opportunity.³⁵ In 1997 and 1998, only about 10 percent of all applicants statewide were offered this opportunity.³⁶ Moreover, neither of the state's two large social service agencies effectively monitors compliance or takes steps necessary to ensure compliance.³⁷

The net effect was that fewer residents in New York City, which has a large minority population, were registered to vote compared to upstate New Yorkers. Studies show nearly every county outside New York City has registered nearly double the number of

voters than those registered inside the city. For example, in the first year after the NVRA took effect, predominately white Monroe County registered far more voters than Queens despite having less than 40 percent of the population of Queens.³⁸ It is no wonder that New York City's registration and turnout rates have been approximately 10 percent to 15 percent lower than the state as a whole, and of the largest 26 cities nationwide, New York City ranks 23rd in its registration rate.³⁹ As is the case with the state as whole, low-income and minority citizens within New York City are disproportionately the non-voters.

The NVRA also has been undermined in other ways. The state failed to implement the NVRA in time for the mandated start date of January 1, 1995, thereby depriving thousands of individuals the opportunity to register to vote for the 1996 election cycle. Moreover, New York Governor George Pataki gutted the unit of the state election board responsible for implementing the NVRA – mandating a \$306,000 budget cut targeted specifically to the six new staff members hired for this purpose⁴⁰ -- and the number of state agencies mandated to conduct voter registration was limited.⁴¹ The Board was also forced to scrap plans to open an office in New York City to help implement the NVRA.⁴²

Language Assistance Deficiencies

In the November 2000 election, the city also apparently failed to comply with the provision of the Voting Rights Act requiring language assistance be provided to Spanish-speaking, Chinese-speaking, and Korean-speaking residents.⁴³ Attorneys and volunteers from community-based advocacy groups found major translation and other problems while monitoring twenty polling sites in areas with large Chinese and Korean-American populations. Part of the problem is that the city's Board of Elections has not staffed either its office or polling sites with a sufficient number of competent translators. The shortage of machines in the Bronx, which has the highest Spanish-speaking population of any of the city's boroughs, only exacerbated the problem for non-English speakers.

At six polling sites in Chinese-American neighborhoods, the ballot reversed the Chinese translation for "Democrat" and "Republican." Despite receiving a complaint shortly after the polls opened, the translation error was not fixed.⁴⁴ In the race for Supreme Court Justices, voters were supposed to pick three choices, but the Chinese translation asked them to pick five.⁴⁵

In one instance, a Spanish sign instructed voters to choose three candidates in a race where voters were actually only supposed to choose one candidate.⁴⁶ Another advocacy group found a shortage of Spanish-speaking interpreters to assist voters, and some interpreters could not speak adequate Spanish.⁴⁷ Various factors stemming from language issues and the discriminatory allocation of voting machines, said one group, "have conspired to disproportionately disenfranchise minority voters, reduced their opportunities to participate in the political process, and resulted in increasing the likelihood of discouraging and thwarting Bronx voters from casting their ballots."⁴⁸

Lever Machine Problems

New York City uses lever machines that were purchased in 1964 from a manufacturer that no longer exists. Sometime in the 1970s, and for reasons nobody seems to remember, the Board of Elections disabled the fail-safe latches that are built into the machines to prevent voter error.⁴⁹ In the November 2000 election, as many as 60,000 city residents lost their vote for President simply because the latches were not operational.⁵⁰ An analysis of city election records demonstrates that these discarded votes were far more common in low-income neighborhoods with large numbers of African-American and Latino residents. Some Bronx districts, for example, discarded votes at five times the rate of Staten Island districts. In the ten Assembly Districts with the highest discarded vote rates, median income in 1990 ranged from \$11,000 to \$32,000 and seven of the ten had populations that were overwhelmingly African-American or Latino.⁵¹ In the ten districts with the lowest discarded vote rates, incomes ranged from \$36,000 to \$50,000, and all but one had populations that were overwhelmingly white.⁵²

Not only do the lever machines in New York City fail to work properly, there is a severe shortage of these machines. State law requires that at least two machines be installed in precincts with at least 800 voters; this speeds voting, and allows a lifeline for voting to proceed should one machine break down. Yet the city's Board of Elections was short 641 machines in the November 2000 election, producing lines of several hours. In one Bronx polling place, voters were turned away for the first five hours of election day because the one machine there was broken.⁵³ Bridget Dickerson, who works in a chiropractor's office, arrived at her Brooklyn polling place at 7:30 a.m. only to find the line so long she had to leave to arrive at work on time. She observed "a lot" of people who "were turned back" as a result of the lines.⁵⁴ Even Mayor Giuliani had to wait 30 minutes to vote at his Manhattan precinct.⁵⁵

The longer lines in the Bronx were not just happenstance, but the result of conscious decisions by the Board of Elections. Despite the state law mandating second machines be installed in all large election districts, the Board decided not to send a single extra voting machine to any of the 201 eligible election districts in the Bronx. Manhattan, with the largest white population of any of the boroughs, received extra machines in 345 of its 441 large election districts.⁵⁶ A majority of large districts in Brooklyn and Queens also received the back-up machines.⁵⁷ This decision was not a one-time aberration. In the 1996 presidential election, the Bronx received only one double machine, while Manhattan received 355.⁵⁸

A spokesman for the Board said no extra machines were sent to the Bronx because voter turnout there was historically low.⁵⁹ Part of the reason voter turnout is lower in the Bronx might have to do with the long lines – and even closed polling places -- produced by a shortage of machines and other political factors that reduce minority voting participation. "I think there are some voters who look at a polling place and see incredibly long lines and never come back," said Douglas Kellner, a member of the Board of Elections.⁶⁰ Kellner said he was "shocked" that the Board decided not to send

any additional machines to the Bronx while sending so many to Manhattan, adding that the decision made the city vulnerable to claims of racial discrimination.⁶¹

Political patronage reportedly also is a significant feature of election administration in New York City, contributing to the problems outlined above. Several high-ranking employees of the city's Board of Elections are relatives of election officials, and one received more than \$62,000 in overtime in 2000, more than tripling his salary.⁶² Investigations also indicate that patronage has affected the hiring of voting machine technicians, an extremely important job given the decrepit condition of the equipment. One senior supervisor scored only 13 out of a possible 100 on a performance exam (a passing mark is 65), and 24 other technicians scored so low they needed additional training.⁶³ The training, however, was never scheduled.⁶⁴ The technician's job only pays \$13 per hour, so the Board of Elections has had difficulty hiring qualified persons. In a last-ditch attempt to avoid a repeat of the problems, the Board contracted with a private company to service the voting machines for the 2001 election.⁶⁵ It is paying the private company \$57 per hour for its service, or more than four times what it pays its fulltime staff.⁶⁶

The Official Response

There are few more vivid examples than New York of how multiple factors can come together to create structural disenfranchisement. Restrictions on registration opportunities, faulty technology, political patronage, racially insensitive decisions and a lack of funds all conspire to undermine the democratic process, particularly for minority voters. For five years, the state's legal team has resisted the federal lawsuit seeking to expand registration opportunities, claiming the state's social service agencies cannot be held responsible for whether their field offices comply with federal law.⁶⁷ It appears no other state has taken such a limited view of its role in promoting voter registration.

Elected officials in New York from both parties have failed to ensure that the administration of elections is sufficiently funded. A failure of the nation's largest city to have enough voting machines to comply with the law is bad enough, but using 40-year-old lever machines virtually guarantees high rates of discarded votes even if there were enough machines. The decision to allocate the machines unevenly across the city was discriminatory on its face and only exacerbated the problems.

The Attorney General's report on the election process, prepared in the wake of the Florida election dispute, recommends same-day registration, the establishment of a statewide computerized registration database, an upgrade in equipment, easier ballot access and improved voter assistance at the polls.⁶⁸ Few politicians have rallied behind the proposals, which received limited attention when they were released. Not even a single prominent elected official, for example, has endorsed the recommendation for same-day registration, despite the fact it is supported by election administrators in the six states where it is used. The chances of any short-term improvement in voting rights in New York seem dim indeed.

Virginia

Jeremelva Pilgrim, a young mother from the town of Portsmouth in southeast Virginia, made what was for her a momentous decision in August of 2000. For the first time in her life, she registered to vote.⁶⁹ “Before then, I felt that as an African American my vote really wouldn’t count,” Pilgrim said. “But I decided to make my voice heard.” Pilgrim, a bank teller, duly registered at a social service agency in her hometown. When she showed up at the polls, however, her name was not on the voter rolls. The poll worker did not offer her a provisional ballot, which is allowed under Virginia law in such situations. Despite arguing with the poll worker, Pilgrim was not allowed to vote – and according to her, may never vote again as a result.

Pilgrim’s story is typical of thousands of citizens in Virginia. Virginia is a classic example of a state with a myriad of obstacles facing voters that have a disproportionate impact on minorities. In the November 2000 election, 50,000 voters in Virginia had their ballots discarded because of technical failures, and untold numbers of citizens did not vote because of registration snafus or long lines.⁷⁰ Despite the significant problems reported in the November 2000 election, the state legislature has not allocated additional funds for training and Governor Gilmore has resisted calls for an equipment upgrade.⁷¹

The Facts

Virginia has an extended history of racial discrimination in voting that helped shape Pilgrim’s view that her vote would not make a difference. When Virginia’s leaders re-wrote the state constitution in the early part of the century, a major goal was to take away the right to vote from the state’s African-American citizens by imposing a literacy test and exorbitant poll tax, obstacles that were not removed until 1969.⁷² When the NVRA was passed in 1994, then-Governor George Allen resisted its implementation, claiming it was an unfunded federal mandate that violated state’s rights. The courts forced compliance, but the state’s voters suffer because of its late start in implementing the law and a profound lack of commitment and know-how in some state agencies charged with carrying out voter registration responsibilities.⁷³

Virginia’s problems with the NVRA seem to originate in the confusing design of the voter registration form that the state uses at its Department of Motor Vehicles and social service agency offices around the state. For example, after filling out the form, many residents inadvertently bypassed answering question “12” on the back of the form (all of the other questions and the signature line were on the front of the form). Others, after filling in each box, neglected to sign it. DMV workers are not required to check for signatures or otherwise notify citizens that they failed to completely fill out the forms.⁷⁴ Forms that are not completely filled out and signed are considered invalid, and the person is never notified so he or she can again attempt to register.⁷⁵

In Fairfax County alone, more than 1,000 complaints were filed on election day from voters frustrated that their names were not on the voting rolls.⁷⁶ In Richmond, Donna Mustanski reported to vote at 9 a.m. only to find out she was listed as dead; she gave up

“depressed” rather than fight the bureaucracy and miss work.⁷⁷ Valerie Wallace, who thought she had registered in 1998 but was not on the rolls, was furious that she was not told her registration form was not processed. “If you think you’ve paid your electric bill but you haven’t, they let you know before they shut off your electricity,” she said. “My feeling is that I was disenfranchised by my own government.”⁷⁸ Herbert Gilliam, a postal worker from Virginia Beach, had voted for eight years at the same precinct at College Park Elementary School.⁷⁹ He also was not on the rolls when he showed up on November 7; he saw at least six other people at his precinct turned away because their names were not on the voter rolls. After persisting, he was allowed to cast a provisional ballot. To this day, he is not sure his vote was actually counted.

Hearings

A few weeks after the 2000 presidential election, U.S. Representative Bobby Scott conducted a hearing where aggrieved voters could present sworn testimony.⁸⁰ A series of witnesses presented firsthand evidence of glaring deficiencies, including eight counties that ran out of voter registration forms in the late summer; broken machines in several precincts in Richmond; voters illegally told they could not vote without a photo identification; poll workers who did not offer provisional ballot opportunities, or any assistance, to voters who thought they were registered but did not appear on the voter rolls; unreasonably long lines; unreasonable limits for time to spend in the voting booth; an intimidating, high-profile police presence in precincts where African Americans voted in large numbers; and polling places that closed early.

Sherrin Alsop, a member of the Board of Supervisors of rural King and Queen County, testified that poll workers arbitrarily, and with no legal basis, barred voters from taking sample ballots into the booths.⁸¹ “We had a large amount of people that are below the fourth grade level voting,” Alsop told the panel. “They needed the sample ballots in order to adequately vote the way they wanted to vote...” After calling the county election office to complain, Alsop testified that the county’s election supervisor told her she would call the precincts to fix the problem. Alsop later found out that no call from the election supervisor was received in the precincts, and that sample ballots had continued to be barred from voting booths on election day throughout the county.⁸²

Alsop also noticed that throughout the county, in precincts where as many as 80 percent of the voters are African-American, poll workers were almost exclusively white. A lawsuit had been brought in the county in the early 1980s to force the hiring of poll workers who were African-American, but that county election officials did not invite these poll workers to return year after year. For the 2000 election, the county election supervisor appointed a white person to run her precinct, which was 80 percent African-American, because she claimed she could not find a single qualified person of color. Such statements, which on their face raise serious questions, indicate at a minimum the need for more community-oriented and culturally-sensitive poll workers. Many of the elderly voters, Alsop said, find it more difficult to ask a poll worker a question when that person is white, rather than African-American. “What’s going to happen is that we’re

going to have a lot of people in my district who are not going to vote anymore because they feel uncomfortable and apprehensive about doing so,” she said.

Official Response/Conclusion

Michael Brenner, one of three members of the state board of elections, attended the Scott hearings. Speaking as the last witness, he acknowledged many of the problems outlined in the testimony and said the “attitude” with regard to running elections “clearly needs to be changed within the Commonwealth and it has to start from the top down.”⁸³ He said one of the key challenges is convincing county election supervisors to lend staff to train DMV workers in voter registration, consistent with the NVRA, and to ensure that DMV workers understand voter registration is part of their mission. “I can assure you that the state board does not take this lightly,” he said.⁸⁴

Since the 2000 election, however, little has been done. Virginia Governor James Gilmore flatly rejected a proposal by state legislators to upgrade voting technology in the seven counties that use punch card systems, claiming that voting equipment was purely a local responsibility.⁸⁵ The state election chief, Cameron Quinn, said the budget of her office has actually decreased since the November 2000 election. Because of the lack of funds, the state has been unable to create a computerized registration database of the sort recommended by the National Commission on Federal Election Reform, chaired by former Presidents Jimmy Carter and Gerald Ford, or to help counties with training of poll workers and equipment upgrades. Asked if there were voting problems specifically related to African Americans, she said complaints were “isolated” and that she did not see it as a particular problem that merited special attention. Also, the supervisor from King and Queen County, disagrees. “I want to say it seems like a scary thought, but it seems that instead of moving forward, we’re speeding backwards.”⁸⁶

Georgia

Shortly after the polls opened on November 7, 2000 at the Stoneview Elementary School near Atlanta, lines rapidly backed up and extended outside into the damp, chilly air. It quickly became evident that something had gone terribly awry – several citizens, some of whom had voted at Stoneview for years, were being turned away because their names did not appear on the registration lists. In addition, there clearly were not enough voting machines. As voters protested and poll workers tried in vain to contact the election office, only to find busy signals, the lines grew longer still and tempers began to fray.

Most of the voters were African-American, and rumors started to circulate that the delays and inaccurate registration lists were not a mere coincidence – particularly given the state’s long history of voting discrimination. As the afternoon turned to evening, edging close to the 7 p.m. closing time, a line of several hundred voters still stretched out the door and around the block. It was raining outside, and the atmosphere bordered on pandemonium as voters feared they would be turned away.⁸⁷ Poll workers finally decided to keep the polls open past the closing time, temporarily calming angry voters. The last voters did not cast their ballots until after 10 p.m., long after the media had declared the state for George W. Bush. Barbara Lane, one of those in line that evening at Stoneview, later testified under oath as follows:

*On November 7, 2000, I waited in line five hours to vote. I’m gonna repeat that. I waited in line five hours to vote. I arrived at the polls with my daughter at 5:00 p.m. It wasn’t until 10:00 p.m. that I was able to cast my vote. It took me five hours to exercise my constitutional right to vote.*⁸⁸

The Facts

The long lines at Stoneview are symptomatic of much deeper problems in Georgia during the November 2000 election, all of which disproportionately impacted minority voting rights. Problems started with voter registration in the state’s DMV and social service agencies, which are required by the Motor Voter Law to offer voter registration to anybody seeking services. The names of many first-time voters who filed registration forms through these offices -- including a large number of students from Atlanta University, a historically black college – simply failed to turn up on the voter rolls.⁸⁹ One voter, from Chatham County, lodged a typical complaint: “The name of my son and many other person’s names were omitted from the Board of Registration’s listing, yet they had records on file in their office.”⁹⁰ Shevawn Carter, a first-time voter, arrived at her polling site at 5:30 p.m. After waiting in three different lines, she finally arrived at the front at 9:20 p.m. only to be told she was in the wrong location because of rezoning. After asking for a challenge ballot, she was told there was nothing that could be done. “I feel my rights were taken away,” she said.⁹¹

It turned out that the state’s mainframe computer, which handles a statewide voter registration database, was unreliable generally and crashed just over two weeks before election day, losing about 3,000 voter records.⁹² Each year, the computer requires \$1.8

million to operate, but only \$928,000 was allocated.⁹³ It is also likely that, either through a lack of training or mistakes, many of the voter registration forms were simply not transmitted from state agencies to county election authorities.⁹⁴ Other counties simply gave up on trying to send the names of new registrants to the central computer because it was often slow or out of service.⁹⁵

The Secretary of State documented other problems. The ballot itself was long and in many places confusing, often including dozens of uncontested judicial races and local referenda.⁹⁶ Many voters were not advised of changed polling places.⁹⁷

Many of these problems contributed to the long lines outside of polling places. Juanita Cribb, a 50-year-old woman from a town in an Atlanta suburb, testified that she waited in line for seven hours before she could vote at the Rock Chapel Elementary School.⁹⁸ She said voters stood in the rain and had to step through mud, rocks, and ditches. Although it is impossible to know the number of votes not cast because voters turned away from the polls when they saw the long lines, Cribb and others observed dozens of people simply walking away in frustration. When U.S. Representative John Lewis and his wife went to vote in the morning, their polling place was closed. The polling site finally opened 30 minutes late, but seven of the 13 voting machines were broken.⁹⁹ Lewis could not get through by telephone to the county election headquarters to inform officials of the problems. He finally went there personally to inform them of the problem.

Several counties that used the optical scan voting systems chose not to activate their error notification systems, leading to error rates among these usually reliable systems of five percent or higher in some counties.¹⁰⁰ Some counties simply failed to administer the voting process competently. One county gave out markers that could not be read by the vote recorder.¹⁰¹ Another that allowed ballots to become damp, thereby preventing the opti-scan reader from operating properly, was advised to use a hair dryer to remove the dampness.¹⁰²

As a general matter, African-American voters in Georgia who were able to brave the long lines were significantly less likely to have their votes counted than white voters. As a whole, Georgia's discarded vote rate was 3.5 percent, the third-worst state in the country. Georgia discarded ballots at approximately double the national norm, a far higher rate even than Florida, which with its notorious butterfly ballot and hanging chads still came in at 2.9 percent.¹⁰³

Georgia's high discarded vote rate does not adequately capture the severe problems in certain hard-hit counties and precincts, most with predominately African-American voters. Fulton County, which has a high minority population and uses the less reliable punch card system, had a discarded vote rate of 6.3 percent. Several precincts in the county, which encompasses Atlanta, had discarded vote rates of 10 percent or higher.¹⁰⁴ In contrast, the optical scan voting systems in suburban Cobb and Gwinett Counties produced a discarded vote rate of 0.6 percent, or *ten times lower than the one in Fulton County*.¹⁰⁵ Put another way, for every 10,000 votes cast, *Fulton County had 570 more discarded votes than either Cobb or Gwinett Counties*. The disparity in error rates had a

significant racial impact in the November 2000 election: almost half (46.23 percent) of Georgia's African-American voters lived in counties that used the punch card system, as compared to only one quarter (24.73 percent) of the state's white voters. In all, more than 93,000 Georgians who cast ballots did not have their vote counted in the presidential race.¹⁰⁶

Georgia's Secretary of State, Cathy Cox, conceded it is "a critical priority to modernize the state's election system."¹⁰⁷ Comparing Georgia's voting system to the one in Florida, Cox said in many ways Georgia's was worse, declaring bluntly that during the Florida recount she thought, "There, but for the grace of God, go I."¹⁰⁸ Interestingly, the problems in Georgia are not new. Cynthia Welch, election chief in Fulton County, said in the 1992 presidential election 108 of the county's 125 precincts with more than a five percent discarded vote rate were in heavily black areas.¹⁰⁹ Welch's request for \$3 million to switch to the optical scan machinery used in the more prosperous neighboring counties has been ignored for nine years.¹¹⁰

The Official Response

Some political officials responsible for election administration in Georgia, particularly Secretary of State Cox, have been forthcoming about diagnosing the causes of the high discarded vote rate. However, a correct diagnosis does not always lead to a cure. This is particularly true when the political will needed to allocate the necessary funds for "treatment" is lacking, as it is in Georgia. Unless immediate corrective measures are taken, Georgia's embarrassingly high discarded vote rate -- and the truly exorbitant high discarded vote rates in certain minority communities -- will likely remain for the 2002 election and well beyond.

Largely at the urging of Cox, the Georgia legislature passed an electoral reform package in 2001 *but did so without funding the majority of reforms*. Punch card technology will again be used in the 2002 election in 17 counties across the state, including in the two largest high-minority areas, Fulton and DeKalb counties, where discarded vote rates among African Americans were ten times higher than those in neighboring and predominately white counties. Moreover, Cox is vigorously resisting a lawsuit to force the state to scrap the punch card technology for the 2002 election, preferring instead to wait until 2004 to upgrade all counties to an electronic voting system simultaneously. The problem is that there is no guarantee that funds will be available for the statewide upgrade, which is estimated to cost between \$30 million and \$200 million.¹¹¹ The longer the upgrade gets delayed, the longer the racial gaps in the discarded vote rates will likely persist, and the more the damage will be.

A lawsuit filed by several African-American voters, asserts that the punch card technology dilutes minority voting power in violation of Section 2 of the Voting Rights Act. Secretary of State Cox's assertion that it is better to wait to replace the punch card technology is no consolation to those whose votes were cast but not counted in the 2000 election. It appears affluent communities are having their electoral needs met first, while in seemingly Marie Antoinette fashion the poor and minorities are being were told, "Let

them vote next time.” As Walter Andrews, one of the voters suing the state, said, “We’ve got the technology to deal with this now.”¹¹²

Illinois

Cook County

Cook County encompasses Chicago and some of its suburbs and had the highest discarded vote rate of any large city in the country in the 2000 election. The county provides a case study of how the nation's patchwork system of flawed voting machines and idiosyncratic rules, exacerbated by politics and bureaucratic languor, can produce staggeringly high discarded vote rates.¹¹³ In some inner-city precincts in Chicago with predominately minority populations, *almost four out of every ten votes cast for President were discarded.*¹¹⁴ The extraordinary discarded vote rates in minority communities could have been avoided were it not for a state rule that at the time barred Cook County from using technology that would have allowed voters to notice and correct mistaken ballots before leaving their polling place. Such a rule was not in effect for several predominately white counties, some of which had discarded votes rates as low as 0.3 percent.

The discrepancy in rates of votes cast but not counted between minorities and whites has been documented publicly in the academic community for more than a decade. For years, election authorities either did not have the will or ability to address the problems.

In 1990, a detailed study based on official records from city and county election authorities demonstrated that overwhelming numbers of votes by African Americans were routinely discarded in Cook County.¹¹⁵ The study also determined that discarded vote rates "are vastly greater in poor and heavily Democratic areas of the county than in wealthy and heavily Republican areas."¹¹⁶ In the 1988 presidential election, 4.78 percent of the votes in the 40 lowest-income wards and townships in Cook County were not counted, a discarded vote rate nearly 96 percent higher than that in Cook County's 40 wealthiest wards and townships.¹¹⁷ The study concluded: "The punch-card voting system used in Cook County has effectively disenfranchised poor voters by the tens of thousands."¹¹⁸ It also demonstrates that discarded votes in Chicago almost certainly cost Democrat Adlai E. Stevenson III the 1982 Illinois gubernatorial election (Stevenson lost by about 5,000 votes statewide), and could easily change the outcome of close county races.¹¹⁹

Facts Relating to the 2000 Election in Cook County

Since the release of the findings in 1990, the discarded vote rate in Cook County has gone from bad to worse. Cook County in the November 2000 election had the second highest discarded vote rate of any large county in the nation – 6.18 percent, or approximately double the national norm for jurisdictions using punch card voting systems.¹²⁰ (Palm Beach County's discarded vote rate of 6.4 percent was the nation's highest for large counties.)¹²¹ Of the 2 million votes cast in Cook County, about 128,000 were discarded. In the city of Chicago, which has a higher percentage of minorities than Cook County generally, the discarded vote rate was 7.04 percent.¹²² In Illinois, where

the vast majority of jurisdictions use punch card voting systems, the discarded vote rate was 3.9 percent, the highest of any state in the country.¹²³

One way to illustrate the stark disparities in uncounted vote rates within Illinois is to compare Chicago with nearby McHenry County, whose population is overwhelmingly white. According to the 2000 census, African Americans comprise 37 percent of the population of Chicago and less than 1 percent of the population of McHenry County. In Chicago, which used a punch card system without error notification, the discarded vote rate was 7.06 percent. McHenry County used the more reliable optical scan equipment with an in-precinct error notification mechanism, and its discarded vote rate was only 0.3 percent.

In some areas of Chicago, the discarded vote rates were apparently the highest in the nation.¹²⁴ In one precinct of Ward 29, where African-Americans and Latinos comprise more than 83 percent of the population, the discarded vote rate was 36.73 percent.¹²⁵ In another precinct of the same ward, 157 votes out of 439 cast were discarded, a discarded vote rate of 35.76 percent.¹²⁶ Twenty precincts in Chicago had discarded vote rates of 20 percent or higher and more than 450 precincts had discarded vote rates of 10 percent or higher – almost all of them in heavily minority neighborhoods.¹²⁷ Discarded vote rates were less than 3 percent in the city’s three wealthier and overwhelmingly white lakefront wards (which is still significantly higher than the national average of 1.9 percent).

A large part of the problem was that 97 of the 110 election jurisdictions in Illinois use the notorious punch card voting system that caused so many problems in Florida.¹²⁸ The punch card jurisdictions produced a discarded vote rate of 4.08 percent, compared to .88 percent in jurisdictions using the optical scan system with an error notification mechanism.¹²⁹ Significantly, a state rule preventing use of the error notification system (explained below) in Cook County likely increased the discarded vote rate. The error notification system makes certain that a vote is valid before a voter leaves the polling location.

The Official Response

The responsibility for election administration in Cook County is shared between the Chicago Board of Election Commissioners, which administers elections in Chicago’s 50 wards, and the Office of the County Clerk in Cook County, which administers elections in the county’s 30 townships outside of Chicago. Each entity must service approximately 2.5 million voters. Both bodies produced post-election reports that laid most of the blame for ballot errors on the voters and their supposed low educational level.¹³⁰ “It’s not necessarily that its (the technology) is defective,” said Scott Burnham, a spokesman for the Cook County Clerk’s office. “It’s a matter of finding out what voters are doing wrong.”¹³¹ The Chicago Board of Election Commissioners suggested that voter registration drives and the Motor Voter law drew many first time or infrequent voters more apt to make mistakes.

An analysis by the *Chicago Tribune* disputed the official “blame the voter” explanations. The *Tribune* demonstrated that areas of Chicago reporting the most ballot problems also had the highest percentage of experienced voters.¹³² In one precinct with a 20 percent discarded vote rate, 96 percent of the voters had voted in city elections in either 1996 or 1998.¹³³ Moreover, the *Tribune* showed that 46,000 of the county’s voters clearly intended to vote for president, but because of problems endemic to punch card systems, the insertion of the stylus left only dimples or hanging chads.¹³⁴ David Woods, a professor at the Ohio States University Institute for Ergonomics and a specialist in the science of designing machines to work with humans, concluded: “These are not dumb voter problems, but rather predictable results. You start packing everything into a small space and it’s very easy for mis-entries to occur, misalignments to occur.”¹³⁵

The November 2000 election was also the first one in Illinois that eliminated the “straight party” vote, which let voters punch for an entire slate; in the 1996 presidential election, 70 percent or more of the voters in several of the precincts with the highest error rates voted a straight-party ticket. Election officials say this sudden change confused many voters, resulting in more undervotes and overvotes than normal.¹³⁶ Even the Chicago Board of Election Commissioners admitted that the ballots were enormously complicated, cramming 456 perforated punch holes covering choices for 77 judgeships in addition to the many choices for the presidential and legislative races.¹³⁷ For a punch card ballot to work, the voter must manually align it with two posts on the machine. Yet in the ballot redesign for the November 2000 election, instructions on how to align the ballot with the posts were barely noticeable in the middle of Spanish and English instructions on how to complete a write-in vote.¹³⁸ And if the card for this type of voting system is not aligned properly, nothing prevents a voter from punching away and feeling like the vote was cast correctly, even though the hole or dimple is being put in the wrong place.

The Role of the State Legislature

Many of the discarded votes would have been avoided had Cook County activated (via a switch) the error notification system built into the punch card voting system. This move would have allowed the city’s thousands of confused voters a chance to be notified of any errors on the spot so they could be corrected before leaving the precinct. Apparently because of political concerns, the state legislature had barred Cook County from using this system.¹³⁹

The legislature justified the prohibition by claiming that because some other counties near Chicago lack the error notification technology, Cook County should be barred from using it too, so as not to give it an “unfair” advantage. Yet the more prosperous and Republican-leaning counties of McHenry and Dekalb, which used in-precinct error notification systems on their optical scan equipment, reduced their error rates to 0.3 percent – *or about 100 times lower than the most error-prone precincts in Chicago*. Had Cook County been able to use its error notification system properly, it is likely that its error rate also would have been negligible. Election officials in Cook County concede that the error rates would have been “dramatically decreased” if the error notification

technology was used.¹⁴⁰ Langdon Neal, the Chicago Board Chairman, says, “I can’t stress enough the legislature will not give us the authority to simply flip the switch and use this technology.”¹⁴¹

The Chicago Board of Elections Commissioners received court permission to use the error notification system in Special Aldermanic elections held in two wards on February 27, 2001. The results underscore the role partisan politics played in the disenfranchisement of so many minorities in Cook County in the November 2000 election. In the February 2001 special election, the error notification system slashed the discarded vote rate to a fraction of what it was in the 2000 election – to 0.7 percent from 9.3 percent in the 17th Ward, and to 1.11 percent from 12.4 percent in the 37th Ward.¹⁴² A lawsuit is pending to force use of any voting system that will prevent disparate impact on minority voters.

East St. Louis, Illinois

East St. Louis, Illinois, whose population is majority African-American and where more than half the residents live below the poverty line, is one of the most destitute urban pockets in the United States.¹⁴³ It was one of six places visited by President Clinton in his “poverty tour” in 1999. The area’s relative poverty represents a brief but graphic illustration of how a lack of funds can undermine the right to vote.

East St. Louis used the more reliable optical scanner voting system. However, officials there decided the county could not afford to purchase equipment that allows voters to feed their ballots into a tabulating machine while in the precinct.¹⁴⁴ The machine spits the ballot back to the voter if it was erroneously marked. The discarded vote rate was 10.88 percent in East St. Louis, compared to the statewide average of 3.9 percent. In one precinct, the discarded vote rate was 22.30 percent; in 27 out of 44 precincts, the discarded vote rate was higher than 10 percent. In all, 1,441 votes of the 12,244 cast were not counted.

St. Louis, Missouri

Leonard Massey, an African American and a long-time St. Louis resident who has voted in the same precinct for 15 years, had a startling experience on the morning of November 7, 2000.¹⁴⁵ After arriving to vote at 9:30 a.m., a poll worker told Massey that his name was not on the voting roster and he therefore could not cast a ballot. The poll worker indicated that Massey was probably on the “inactive” voter list, but Massey had not missed a general election in years. Besides, Massey had never heard of an “inactive” list. In situations like this, the poll worker said she was supposed to call the St. Louis Election Board headquarters to check on Massey’s status, but that she already had tried to get through and the phone lines were constantly busy. She did not have the “inactive” list at the poll, which would have allowed her to verify Massey’s registration, because the Board decided it could not afford the \$2,500 cost of printing copies for each of the city’s 262 precincts.¹⁴⁶

Perplexed and disappointed, Massey went home without voting and tried several times to call the Election Board. Each time, he got a busy signal. He called the office of his Alderman to complain as well, and he was told to go directly to the election board’s office downtown. Arriving there, he was greeted with an extraordinary sight: hundreds of voters, overwhelmingly African-American, lined up out the door and around the block. Several of those in line told Massey that their names – like his -- had not appeared on the roster of active voters when they went to their polling places, despite the fact they had been registered.

At the Board’s headquarters, Massey waited in line three hours to get to the front. After the official confirmed to Massey that he indeed was registered, she gave him a written verification and told him to return to his polling place to cast his ballot. He did as instructed, returning to his polling place and again waiting in a long line. Massey finally voted at 5:30 p.m. – literally having spent the entire day trying to exercise his right to vote. Hundreds of other citizens in St. Louis – where a majority of all voters are African-American -- had similar experiences. Nobody knows how many simply gave up and headed home.

The Facts

It is not hyperbole to say that poor administrative decisions and inadequate planning caused St. Louis to experience a near-meltdown in the November 2000 election. The voting problems in St. Louis had little to do with technology, and much to do with the structural elements of election administration. These troubles were exacerbated by the gross under funding of the election system. These factors set in motion a chain of events that hampered the entire voting process and produced a near-riot at headquarters on election-day evening.¹⁴⁷ Thousands of people were waiting in line at polling places around the city to vote when the polls closed at 7 p.m.¹⁴⁸ Conflicting last-minute judicial decisions confused the situation further. While this near-meltdown affected all voters, African Americans were impacted disproportionately. African Americans comprise about 53 percent of the voting population in St. Louis. Observers said approximately 80

percent of the people in line at election headquarters that afternoon and evening were African-American.¹⁴⁹

In a report published in January 2001, Missouri Secretary of State Rebecca McDowell Cook blasted the city's Board of Elections for creating a "cloud" that hangs over the election process in St. Louis.¹⁵⁰ The Report found a multitude of shortcomings, the most severe of which was the creation of an "inactive" list that removed names of legitimate voters like Leonard Massey and otherwise failed to comply with state legal requirements¹⁵¹ and the NVRA.¹⁵² The Report determined there were flaws in the accuracy and integrity of the voter rolls at many precincts, and found that "increasing numbers of special voter problems led to delays for other voters, long lines in the polling places, increased demand on the communications systems... public perceptions regarding the preparedness of the Board and the integrity of the voting process, and many other problems."¹⁵³

The Inactive List

The creation of the "inactive" list resulted from an inexcusably flawed attempt by the Election Board to purge its voter rolls of dead persons or those who had moved out of the jurisdiction. Like the authorities in Florida whose incredulous decisions when purging ex-offenders, the St. Louis Board did not exercise sufficient care in creating the "inactive" list. Names of registered voters in St. Louis were put on the "inactive" list if cards the Board sent via the postal service to registered voters were returned as undeliverable. After the cards were returned, the Board took no additional steps to verify that voters had moved, that the postal service did not make an error, or that two general elections had passed without the voter casting a ballot (as required by the NVRA before removing a voter from the rolls).¹⁵⁴ It turned out that more than 22 percent of registered voters in St. Louis were placed on the "inactive" list, the highest such percentage for any jurisdiction in the state.¹⁵⁵

The Board also failed to include in its mailing explanatory language required by Missouri state law, a fact alone that apparently invalidated the "inactive" list used in the November 2000 election.¹⁵⁶ Noting that the Election Board chose to forego a more expensive but less error-prone mailing, the Secretary of State found that the entire "inactive" list could not be used until the mail canvass contained the statutorily-required language. Damage from use of the "inactive" list in the November 2000 election, however, already had been done.

Problems Created by the Inactive List

On Election Day 2000, problems created by the "inactive" list quickly snowballed because of a series of decisions made by the Election Board. State law allows persons on the "inactive" list (whether placed there properly or not) to vote by affirming their residence to an election judge at the polling place. However, copies of the "inactive" lists were not sent to the precincts because the Board chose not to print them, claiming it could not bear the expense at \$90 per copy.¹⁵⁷ The only alternative was for poll workers

to telephone the Election Board to verify the voter was on the “inactive” list, but the phone lines were constantly busy because the Board had not installed an adequate telephone system in its central office nor provided computers to the polling places. In order to vote, persons not on the list were forced to travel downtown to the central office, where it took hours to get through the lines. Those who arrived early enough and were patient enough to be serviced before the central office closed still had to go back to their original polling place to cast their ballots, causing them to wait in three long lines in two locations. Observers estimate that hundreds of people were in line at the central office when the polls closed, and untold more probably were unable to return to their polling places in time to vote.¹⁵⁸

Use of the “inactive” list in St. Louis had an immediate spillover effect on all voters there. First, the Board discounted the “inactive” list when deciding how many ballots to print, causing a shortage of ballots.¹⁵⁹ Because a disproportionate number of names on the list came from predominately African-American precincts, the shortages were more acute in those precincts.¹⁶⁰ The Board also failed to train election judges in voting procedures for those on the “inactive” list or, for that matter, in *any* voting procedures.¹⁶¹ Lines were unreasonably long at many polling places as voters protested when they found their names were not on the voting rosters.¹⁶² Poor design of the voting roster furthered slowed the process, as did the omission of a large number of names, apparently due to a computer glitch.¹⁶³ Registered voters who changed their addresses in the month before the election also were not on the regular voting rosters.¹⁶⁴

Frustrated by their inability to contact the central office, throughout the day poll workers told voters to call the central office themselves.¹⁶⁵ But voters also could not get through because the central office made only three numbers available to the public and had only eight lines overall.¹⁶⁶ In contrast, Kansas City (with roughly the same number of voters as St. Louis) used 39 phone lines on election day, and hired temporary clerical workers to help answer the phones.¹⁶⁷ Interestingly, the St. Louis Election Board clearly anticipated election day problems because they *did* pay the cost of having large signs printed and posted at each precinct, instructing voters to “insist” poll workers call the Election Board headquarters if their name did not appear on the roster.¹⁶⁸ In light of the difficulties in making those phone calls, this sign must have seemed like a cruel joke to voters and poll workers alike.

Given the long lines and delays created by use of the “inactive” list, a group of voters successfully petitioned for a court order mandating that the polls remain open until 10 p.m. at the polling places, and until midnight at the central office. The Board had no efficient way to communicate this order to the polling places, and notice of the order arrived in several places after the polls had closed.¹⁶⁹ An appeals court quashed that order at 7:45 p.m., but dozens of voters who arrived at central headquarters after 7 p.m. (several of whom had arrived at their polling places on time) were unable to vote. The situation was so tenuous that the Board, fearing unrest, waited for additional police to arrive to notify those in line that they would not be able to vote and should disperse.¹⁷⁰

The Official Response

Since the November 2000 election, the response from officials in St. Louis has been characterized more by bureaucratic self-protection than strong leadership. The Election Board continued to defend its use of the “inactive” voting list in the face of a protest by several prominent community leaders.¹⁷¹ In a letter to the Board, a coalition of groups said the use of the “inactive” list “violates the voting rights of ... approximately 50,000 St. Louis citizens” and asked that the list be discontinued until a canvassing could be done consistent with legal requirements.¹⁷² The Election Board also refused to meet with several leaders of the African-American community. One leader said, “there now exists a deep distrust and dissatisfaction with the St. Louis Board of Elections in the city’s African-American community.”¹⁷³

Voters filed a class-action lawsuit and succeeded in getting a court injunction barring use of the “inactive” list without letting those on it vote by affirmation (verifying their address).¹⁷⁴ The Court found that “irreparable harm” would result if the “inactive” voter list was used without letting citizens vote via affirmation. Voting during the March primary went far more smoothly, partly because Verizon donated the use of 400 cell phones so polls workers could communicate with the central office.¹⁷⁵ Federal monitors from the Department of Justice were on site for the March primary, but they were there to examine allegations of voter fraud rather than disenfranchisement.

The Secretary of State’s post-election report suggested that the Board build partnerships with community groups to address the election problems, and to help recruit poll workers. The Report also recommended that the Board improve communications between polling places and the central office, enhance the accuracy of voting records, implement a new voter registration system and establish and monitor quality control measures. But the Board remains strapped for cash and continues to spend far less on elections administration per voter than other urban jurisdictions in Missouri.¹⁷⁶ It is doubtful most of the recommendations will be adopted unless Board members decide to push strongly for them, or alternatively, the litigation initiated by Leonard Massey and other voters is successful.

Florida

Florida's flawed election system, which delayed the outcome of the presidential election for weeks, is probably the most scrutinized in the country's history. For a comprehensive assessment of Florida's performance in the November 2000 election, we suggest the Report of the U.S. Civil Rights Commission and the state's Election Task Force appointed by Governor Jeb Bush.¹⁷⁷ We present a brief summary of the most important issues concerning Florida, both because they serve as a frame of reference for what happened in other states, and because they show how reform still must overcome stiff resistance even when the injustices are obvious and most of the world knows about them. To its credit, Florida remains the only state in the country whose legislature has passed and funded a wide-ranging election reform package.¹⁷⁸ However, the state is fighting a several lawsuits brought by minority voters who do not believe the reform package goes nearly far enough.

Florida had a multitude of problems with the November 2000 election. Largely because of these problems, the chance of a vote by an African American being discarded was about ten times higher than the probability for a non-African American.¹⁷⁹ We focus here on two with the greatest impact on ballot access: – the “purging” of voting lists, and general confusion in ballot design and election technology. Both of these resulted in the disenfranchisement of thousands of voters and probably determined the outcome of the presidential election.

Florida's History of Disenfranchisement

At the time of the Civil War, almost half the population of Florida was African-American, and through the time of Reconstruction adult black males voted in significant numbers and were elected to local, state, and federal offices.¹⁸⁰ In fact, 19 of the 76 legislators elected after Florida adopted its new constitution in 1868 were black. Josiah Walls, a former slave, was Florida's first black member of Congress and was elected three times, in 1870, 1872, and 1874. It would be another 118 years, however, before Florida sent its next black representative to Congress.¹⁸¹

This incredible reversal of progress in black voter participation was the direct result of Florida's passage of a series of election laws that effectively shut African Americans out of the political process. Florida was the first southern state to adopt the poll tax, and it also took other steps to disenfranchise African Americans.¹⁸² One such step was multiple ballot boxes that required voters to place eight separate ballots in corresponding ballot boxes. With only a 60 percent literacy rate in the black population, voters were unable to place the correct ballot in the proper ballot box and did not have their votes counted. From 1888 to 1892, black male turnout in Florida dropped from 62 percent to 11 percent.¹⁸³

One stark example of minority voter suppression in Florida's history, memorialized by the author Zora Neale Hurston, occurred in the farming town of Ocoee in 1920.¹⁸⁴ The

Republican Party had conducted registration drives of black citizens in order to involve them in the political process. The Sunday before the election, the Ku Klux Klan held a silent march.¹⁸⁵ A prominent black citizen of Ocoee, Mose Norman, had paid his poll tax and complied with registration requirements. Poll workers told him he was not registered when he went to the polls. Later, a fight broke out when another prominent black citizen attempted to vote. The white community erupted, and by night's end, lynchings and arson changed the town forever. On Election Day in 1920, the black population of the town numbered several hundred; the next day, it was down to two.¹⁸⁶ In 1978, Ocoee had one black voter.¹⁸⁷ Seen in historical context, events surrounding the 2000 election in Florida take on added meaning for the state's African-American residents.

Purging of Registration Lists

The procedure for removing a citizen from the voter registration rolls is fraught with minefields. As we have seen in so many areas of the country – St. Louis perhaps being the most obvious – removing voters from the registration lists without following careful procedures can result in the disenfranchisement of untold numbers of people who are eligible to vote. As a result, the NVRA sets out specific guidelines that bar states from “cleansing” their voter registration lists in a discriminatory or slipshod fashion.¹⁸⁸ Voters who have possibly moved outside of their voting jurisdiction must fail to respond to a postal canvassing, and not vote in two consecutive federal elections, before their names can be removed. Under the NVRA, *non-voting alone* cannot trigger removal from the voter registration list. Florida's removal process seemed to do violence to the principles contained in this important federal law.

To complicate matters, Florida is one of only eight states that does not automatically restore voting rights to former prisoners who have completed their sentence and parole.¹⁸⁹ In 1997, after widespread fraud was reported in the Miami mayor's race, the legislature passed a bill requiring the strict enforcement of an 1868 law that took away the right to vote for all those convicted of a felony who had not received clemency from the state, regardless of how long they had been out of prison.¹⁹⁰ With this bill as a catalyst, two years before the 2000 election the state spent \$4 million to hire a private firm to “purge” the state's voting rolls of ex-offenders. While the population of Florida is about 15 percent black, the prison population in the state is about 54 percent black.

The resulting “purge” was farcical in both design and execution. The ground rules created by the state ordered a voter targeted for removal from the list if his or her name had only an 80 percent match in letters with a list of about 175,000 former offenders compiled by the Florida Department of Law Enforcement. That is to say, in a state with 16 million people, where many persons have similar names and dates of birth, exact matches were not required. Nor was there any mechanism employed to verify that the persons purged did indeed have a felony conviction. Verification by telephone contact was originally required, but was later written out of the contract with the private company. Finally, the purge lists included Florida residents with convictions from other states, whose voting rights already had been restored by those states and who were therefore eligible to vote in Florida.

The result of such an exercise should have been foreseeable to its authors. Thousands of innocent people who had never been convicted of a crime were removed from the rolls. The Rev. Willie David Whiting, who had never spent as much as a day in jail, was listed as having a felony conviction. Initially, he was prevented from voting until he threatened to take legal action and was permitted to vote. He was apparently confused with Willie J. Whiting. The two men were born two days apart and thus were considered a match via a “derived” name and birthdate. Even one County Supervisor of Elections was listed, despite never having been convicted of a crime.

Error rates were extraordinary: out of 4,847 who appealed their removal from the voting rolls under this procedure, 2,430 were judged not to have felony convictions. Some 8,000 voters who were included had never been convicted of anything but misdemeanors. The racial disparities were also significant. In the Tampa area, 15 percent of voters are African-American; 54 percent of those on the felony purge list were African-American. In Miami, 20 percent of the population is African-American, but 66 percent of the list was made up of African Americans. The impact of the purge was exacerbated by the fact some counties did not remove voters from the rolls until one month before the election, meaning many who had voted in the September primary were not on the voting list in November. Because of the late date of the purge – and the lack of notification – voters were unable to correct the mistakes or, alternatively, go through the expensive and time-consuming process (which often involved hiring a lawyer) of seeking clemency.

About half a million Florida citizens have been disenfranchised as a result of the law permanently barring former offenders from voting. Many additional voters were incorrectly classified as offenders and disenfranchised as a result of these lists, but neither the state nor the company contracted to do the purge has determined the exact number. The degree of disenfranchisement, which impacts minority voters to a far greater degree, sometimes seems to result from pure political calculation. On several occasions, conservative legislators in Florida have made misdemeanor crimes (punishable by less than one year in prison) into felonies (crimes punishable by one year or more in prison) by simply adding one day to the sentences, thereby increasing the pool of permanently disenfranchised (and disproportionately African-American) citizens.

It is worth noting that the “purge” list used in the 2000 election – with its approximate matches – was apparently designed and pushed through by an official of the Florida Division of Elections. Despite warnings by the contracting company that the list would be inexact, this official forged forward with this rationale: “Just as some people might have been removed from the list who shouldn’t have been, some voted who shouldn’t have.” Put another way, the Division of Elections appeared to be saying that just because an ineligible person might have voted (which is a felony under Florida law), then it was acceptable to deny an eligible voter the right to vote (for which there is no effective remedy).

Error-Prone Machines, Disability Access, and General Confusion

An underfunded election system, inept planning and indifference by officials to legal responsibilities resulted in the disenfranchisement of thousands of additional voters in Florida. Again, these excluded voters were disproportionately poor and African-American. The four counties with the largest African-American populations – Miami-Dade, Broward, Palm Beach and Duval – used the more error-prone punch-card systems, which had a statewide discarded vote rate of 4 percent compared to .8 percent for the state’s optical scanning systems.¹⁹¹ About 100,000 votes were lost in those four counties alone, more than half of the total discarded votes in the state.¹⁹² One study showed that of the 100 precincts with the highest number of disqualified ballots, 83 were majority African-American precincts.¹⁹³

Gadsden County and Leon County, which border each other in the Panhandle, provide a vivid illustration of the differing discarded vote rates. Gadsden County, predominately rural and poor, is the only county in Florida whose population is more than half African-American. It had a discarded vote rate of 12.4 percent, the highest in the state.¹⁹⁴ The more prosperous Leon County, which is about 29 percent African-American and home to the state capital and two universities, used an optical scan system with in-precinct counting that permits the voter to correct mistakes. Its discarded vote rate was only 0.18 percent. Put another way, voters in Leon County were approximately *60 times as likely to have their votes counted* as were voters in Gadsden County.

Ballot design also played a role in the high discarded vote rates. The “butterfly ballot” in Palm Beach was notoriously confusing.¹⁹⁵ The county placed the names of candidates on two facing pages, with punch holes running down the center. Arrows pointed from the names to the punch holes. The problem was that when the ballots were fed into the machines, some voters said the holes did not line up with the arrows. Reform Party candidate Patrick J. Buchanan was the second hole down the center of the ballot, while Al Gore’s name was the second name on the left side of the ballot. The result was that in Palm Beach County, which has only 337 Reform Party members, Buchanan received 3,407 votes – four times higher than the next highest county vote total he received in the state. More than 19,000 Palm Beach County voters punched two separate holes when voting for President, thereby invalidating their ballots.

In Duval County (Jacksonville), confusion also apparently resulted in thousands of discarded votes.¹⁹⁶ The list of presidential candidates was spread over two pages. The sample ballot instructed voters “to vote all pages” on the ballot. More than 21,000 persons voted for one presidential candidate on the first page, and then another on the second page. The overall rate of rejection for votes cast by African Americans in Duval County was an estimated 23.6 percent, compared with a rate of 5.5 percent for votes cast by non-African Americans.¹⁹⁷ In Palm Beach County, the overall rate of rejection for votes cast by African Americans was 16.3 percent, compared with 6.1 percent for votes cast by non-African Americans.¹⁹⁸

In its assessment of the Florida vote, the U.S. Civil Rights Commission conducted a sophisticated statistical analysis that suggested a strong relationship between race and the chance a voter would have his ballot rejected. For the entire state, the rate of rejection for votes cast by African Americans was 14.4 percent, compared with a rate of 1.6 percent for votes cast by non-African Americans.¹⁹⁹ The widest discrepancy was in the area of “overvotes” – these were rejected at a rate of 12 percent for votes cast by African Americans, as compared to 0.6 percent for votes cast by non-African Americans.²⁰⁰

Registration blunders also played a major role in keeping citizens from voting. Dedrana McCray, an 18-year-old, first-time voter, had an experience on Election Day 2000 that was typical of many throughout the state.²⁰¹ McCray went to the polls with her parents and sister, her voter registration card in hand. Poll workers allowed her family members to vote, but Ms. McCray’s name was not on the voter registration roll. She waited as the poll worker called the county election office to check her voter registration status, but was repeatedly met with busy phone signals. McCray gave up and went home in tears. “I thought it’d be a happy day,” Ms. McCray said. “I was telling my Mom and Dad, ‘We’re a voting family, but I would never want to vote again.’ It is a hassle. If you have all your stuff and ID and you’re registered and everything is right, why go through that if you still can’t vote?”²⁰²

The Official Response

Florida’s Election Reform Act, passed by the state legislature and signed into law by Governor Jeb Bush in May, 2001, offers opportunities for significant improvements to the administration of elections.²⁰³ The Act de-certified punch card machines and provides funds to counties to upgrade equipment. Uniform ballots are required for each voting system. The Act also creates a statewide, computerized voter registration database, and it rejects contracting with private firms to maintain the state’s voter registration lists. It also requires precincts to offer provisional balloting so a citizen can vote even if not on the voting rolls, but the provisional ballot may not be counted, even for the presidential election and statewide offices, unless the voter arrives at the correct precinct. Finally, the bill provides funds for poll worker training and voter education. It will take time to determine the impact these measures will have.

The Election Reform Act, however, falls far short in a number of key areas that will likely continue to lead to a significant level of disenfranchisement. The legislature rejected automatic restoration of voting rights for ex-offenders after the completion of their sentences. No changes were made to assist individuals whose first language is not English. Nothing in the bill provides better access for voters with disabilities. The legislature also rejected same-day registration. The provisional ballot measure will not correct many of the problems that occurred in the last presidential election because it is narrow in scope, requiring ballots to be cast at the “correct” polling place. Legal challenges have been asserted under the Voting Rights Act and the NVRA to several provisions of the law.²⁰⁴

A lawsuit brought against the state and seven counties, alleging violations of the Constitution and federal statute, maintains that the new election law does not remedy the problems.²⁰⁵ The lawsuit, *NAACP v. Harris*,²⁰⁶ asks for numerous changes, including sufficient training for poll workers to administer elections uniformly; issuance of a receipt to each voter who registers; and requirements that all persons who use the services at the Department of Motor Vehicles and Social Service Agencies have an equal opportunity to register. It also seeks an order that all “purges” of voter rolls be completed not later than 90 days before any election, and that all purges adopt uniform and non-discriminatory procedures.

Massachusetts

In popular lexicon, Massachusetts is considered one of the more progressive states in the country – the last place one might expect to find election irregularities that undermine minority voting rights. For that reason, Massachusetts is illustrative of how a state with little history of *de jure* racial discrimination can have its election apparatus suffer serious breakdowns that disproportionately undermine minority voting rights. Though the outcome here was never in doubt, if the race had been close, Massachusetts could easily have gone the way of Florida.

On election day 2000 in Boston, confusion reigned in dozens of the city's 254 precincts. David Viera, an election commissioner, conceded there were "irregularities" on election day in Boston. "They were not malicious and not planned, but the Election Department failed to plan in many instances," he told a City Council hearing.²⁰⁷

The Facts

The problems in Boston began when the Election Department created an "inactive" voter list similar to the one that caused so much confusion in St. Louis. This list, which had 20,000 names on it, led to many voters being turned away at the polls. Unlike St. Louis, poll workers in Boston were able to identify that a voter was on the inactive list. But most poll workers were not trained in how to let those on the list vote via a provisional ballot. William Parker, who was monitoring the polls at a predominately African-American precinct in Roxbury, said he personally witnessed between 75 and 100 voters being turned away because they were on the inactive list.²⁰⁸ "The people were saying, 'I've been voting here my entire life,'" Parker said. "They were turned away because their names were dropped without notification that they had been dropped from the list."²⁰⁹

Sarah Shaw, who was a poll watcher at the David A. Ellis school in Roxbury, said several poll workers were uncooperative when they encountered voters who were not on their list. She reported:

People were leaving. They were upset. They were angry. Getting through to City Hall proved almost impossible. The lines were busy. And the [poll] workers were clearly not very trained because even though there was a letter which said that if people came with certain identification, they could be allowed to vote, the [poll] workers where I was did not seem to understand how to process the information and ... allow the people to vote.²¹⁰

Secretary of State William F. Galvin ordered a recount of all Boston ballots after city election workers discovered at least 30,000 votes were overlooked in 51 precincts scattered throughout the city.²¹¹ The problem surfaced after election officials double-checked tally sheets filled out by poll supervisors who counted ballots at polling places the night of the election.²¹² Many of the tally sheets indicated not a single vote on certain ballot questions, despite the fact thousands of voters used the machines.²¹³ Officials believe counters in at least 51 of the city's precincts misread the voting machine tally,

which might have made a difference in at least one ballot referendum concerning greyhound racing.²¹⁴

In response to reports of voter troubles, several community groups organized a hearing where voters could present sworn testimony.²¹⁵ Witnesses reported that: voters were turned away from the polls in significant numbers;²¹⁶ poll workers were often discourteous;²¹⁷ lines were unreasonably long in many precincts, causing discouraged voters to give up without voting;²¹⁸ some voters were given one minute to vote;²¹⁹ polling locations were changed at the last minute, confusing voters; some poll workers did not know how to tally votes from the machines after polls closed;²²⁰ and some poll watchers were not allowed to view counting procedures, contrary to state law.²²¹

One witness told of a voter who had difficulty getting to the polls because he was an amputee. This person's name was not on the voter rolls, and he ended up having to travel to four different polling places before he was allowed to vote.²²² "No one even tried to help him," the witness said. "He was... about in tears. And it was a young man that, you know, had we not went with him to each one of those locations, he wouldn't have voted."²²³

In the Boston suburb of Newton, old wooden boxes to store paper ballots broke, leading to ballots being stored in an open and overflowing containers.²²⁴ One ballot referendum, asking whether the number of the town alderman should be reduced from 24 to 16, was mistakenly left off of a batch of ballots for several hours in five precincts.²²⁵ One voter noticed that the counter on a voting machine that had been used all day registered zero on the presidential election.²²⁶ "It is ironic that at a time when our presidential election has raised so many issues about voting irregularities, that here in Newton ... this flagrant problem occurred," said Constance Kantar, a voter who testified before city officials.²²⁷

Official Response/Conclusion

For several weeks after the November vote, election officials in Boston refused to acknowledge the extent of the problems. Not a single official from the city's election board attended the highly-publicized election hearing in Roxbury sponsored by several community groups concerned with minority voting rights. The state legislature has not allocated funds for election reform. A leading official in the state election office described the November 2000 vote as almost "flawless" and said that little needed to be changed other than funds for training of poll workers and election supervisors.²²⁸ Marie St. Fleur, a state representative and leader in increasing voter turnout among minorities, was one of many who disagreed with this assessment. She said: "We were ready to take advantage of [the higher turnout], but the City wasn't ready to handle it."²²⁹ Given that few changes have been made and election officials refuse to acknowledge the extent of the problems, it is likely these deficiencies will persist.

Texas

Most of the barriers to minority voting rights outlined in this report concern election administration – faulty technology, lack of poll worker training, shoddy voter registration practices, and a shortage of capacity to absorb a large turnout. In Texas, barriers to minority voting rights were of a different sort. They concerned instances of outright voter intimidation more reminiscent of the Jim Crow era than 21st century America. While these instances were not officially sanctioned, they serve as a chilling reminder that even now individuals will resort to the basest of tactics to intimidate minorities from going to the polls.²³⁰

The Facts

In Ft. Worth (Tarrant County), the intimidation appeared to be organized by a local woman, Della Brooks, who has a history of right-wing activism.²³¹ Brooks was a vocal supporter of the congressional campaign of Bryndon Wright, a former aide to House Majority Leader Dick Armey who was trying to unseat Congressman Martin Frost.²³² Frost regularly receives very high vote percentages from African Americans in his district. Several of Wright’s campaign workers, and some of his family members, seemed to take an active role in the efforts to intimidate voters.²³³

In August of 2000, Brooks distributed leaflets with the title “The Sister Soldiers” in African-American neighborhoods by inserting them in mailboxes or surreptitiously tucking them inside the fold of the home edition of the local newspaper.²³⁴ One of the leaflets, which appeared three months before the election, accused several long-time African-American community activists of violating the law by engaging in the legal activity of assisting elderly voters apply for absentee ballots. Another leaflet, in apparent reference to Rep. Frost, said: “Who is the Jew who gave \$100 million to Israel and \$1 million to the southeast side of Fort ‘Apartheid’ Worth?”

The leaflets cited specific federal voting statutes, and then falsely claimed that the African-American voters had been “stealing our votes and/or giving them to the person of choice of the highest bidder. This is AGAINST THE LAW!” The leaflet also warned: “VOTING FRAUD IS STILL ILLEGAL! STOP THIS NOW!” Another leaflet named seven African-American citizens of Ft. Worth and claimed that they have engaged in “the NEW AGE SLAVE TRADE...” One African-American citizen was singled out and falsely accused of selling absentee votes. The leaflets presented no evidence of such conduct, and neither Brooks nor any other person came forward to present evidence to local authorities that supported the accusations.

According to Congressman Frost, about two weeks before the election, recorded messages were transmitted via telephone to African-American voters in Ft. Worth warning them about criminal penalties for vote fraud. Several of the recipients assumed the messages came from the campaign headquarters of Wright; the voice on the call was recognized as one of his campaign workers and spokesperson, Geoffrey Mitchell.²³⁵ The message stated: “If someone takes your ballot from your home telling you that they will

take care of mailing it, they will be in violation of U.S. election law and are liable for criminal prosecution and your vote will not count.” The only people to receive these messages were African Americans. The statements made in these messages are wrong as a matter of law – no federal or state law, including the Voting Rights Act, prohibits persons from mailing ballots for absentee voters.

Finally, the group led by Brooks videotaped several African-American citizens who were engaged in efforts to lend a hand to voters during the early voting period. Ealy Boyd, an African American and a Vietnam Veteran who had assisted several elderly voters in the Ft. Worth area who wished to vote absentee, said he was videotaped by Brooks or someone associated with her.²³⁶ Immediately after Boyd left one voter’s house, Brooks reportedly called the voter and stated that she had a videotape of Boyd leaving the voter’s house, and that both the voter and Boyd would be going to jail. On Election Day, while Boyd was helping voters at the polls, he and a colleague were subject to taunts for several hours. Boyd called it “the worst voter intimidation and voter suppression in the black community that I’ve ever seen in Tarrant County.”²³⁷ Arthur Bender, a Democratic party official who worked with Boyd on election day, added:

*There’s only so much you can take of being called a ‘slave owner,’ a ‘boy’. Ealy was my slave. That’s what he was saying. And, I mean, I really – I was really angry and upset about it. And it was constant. I mean, it went on for four and five hours in your face... He was right here in my face saying those things as I was trying to give these [ballots] to voters. And some of those voters drove off. They drove off because it was such a scene out there.*²³⁸

Boyd testified:

*“... towards the midday on election day, I was out in Precinct 1153 in Forest Hill and it was – it was chaos the way they were screaming and hollering and trying to intimidate voters and giving out misinformation to voters who was coming into vote. There was no cause for that. I mean, it was – crazy... and keep in mind that this only happened in the black community here in Tarrant County. It never ventured out and got into the Anglo community at all...”*²³⁹

The county’s Republican Party asked the Secretary of State’s office to send voter inspectors into nine predominately African-American precincts to “protect” voters at these polling places from persons like Ealy Boyd. The Secretary of State agreed to deploy the inspectors. No such request was made for inspectors to monitor voting at precincts in mostly white neighborhoods.

Wharton County

Wharton County, with a population of approximately 42,000 and located about 50 miles southwest of Houston, has never had a countywide elected official who was African-American.²⁴⁰ C.G. Walwyn, an African American who worked for the Harris County (Houston) Sheriff's Department, ran in the 2000 election for sheriff against the incumbent.²⁴¹ Walwyn claims that intimidation efforts against him and a campaign worker were partly responsible for his defeat.

On October 16, 2000, Walwyn says he attended church services in Wharton (the county seat) with Lynda Nichols, one of his active supporters. Nichols, who is white, indicated to Walwyn she was getting anonymous phone calls from somebody threatening to burn a cross in her yard and string up her dogs and "gut them" if she did not stop working on the campaign. At 4 a.m. the next morning, Nichols was awakened by a fire that completely burned the back door and porch of her house. Two planks of wood were removed and placed on the yard in an apparent cross burning. When Nichols ran out the front door, she found a picture of Walwyn burning alongside an empty mason jar. A few days later, Walwyn found his name painted over on the door to his office. Despite attracting a wide base of support in the white community, Walwyn ended up with 34 percent of the vote. "After the fire, after the cross burning, the support dropped," he said.

In a series of articles, the county newspaper quoted local law enforcement officials as saying the fire appeared to be arson.²⁴² "None of this happened until I supported a black man," said Nichols, who was treated for smoke inhalation.²⁴³ Even the incumbent sheriff and Walwyn's opponent, Jess Howell, condemned the incident as "pitiable" and urged the community not to be divided by the incident.²⁴⁴

According to Walwyn, the local district attorney said he did not think the fire and prior phone calls were related, and that it could not have been a hate crime because Nichols was white. The Wharton police chief said he did not have a motive for the incident, but the county offered a \$250 reward for information leading to the arrest and conviction of those responsible.²⁴⁵ And the Texas Rangers, the state's elite police unit, apparently did not conduct a full investigation. One year later, no arrests had been made.

STATE ELECTION DIRECTOR SURVEY

Overview of Election Administration in the United States

What many call our “national election system” is actually a patchwork of different sets of statutes, regulations and practices that control, administer and fund elections in the 50 states and the District of Columbia. Even for federal offices such as the President and members of the U.S. Senate and House of Representatives, Congress has given the states and District of Columbia the authority to conduct the elections. Congress has enacted the Voting Rights Act and the NVRA to protect the franchise. Congress has the power to regulate federal elections more comprehensively, but has not generally exercised this power. Thus, it is the states that actually control who is eligible to vote and whose votes get counted.

The states have delegated many critical election functions to thousands of local governments. States are ultimately responsible for ensuring that elections are conducted in compliance with the U.S. Constitution and laws, including supervising the actions taken and results produced by local election authorities. However, in practical terms, the responsibility for the uniformity, fairness and equality of elections is divided among federal, state and local officials. The responsibility is further fragmented between the legislative bodies at each level (including Congress, state legislatures and local commissions and councils and elected or appointed officials (such as Secretaries of State, Boards of Election Members, Election Division Directors, local Supervisors of Elections, etc.).

State election directors are at the center of the scattered set of actors responsible for elections. Until the Florida election dispute made Katherine Harris a household name, these persons (who can be anyone from an elected Secretary of State to a civil servant) wielded enormous power with very little scrutiny by the media and the public. Decisions made by these individuals are often out of public view, but they can have an enormous impact on who gets to vote and the outcome of close elections. For example, an election official in Florida decided the state would “purge” its voter list by using names that had only an 80 percent match with a lists of persons convicted of felonies. This one decision mistakenly prevented thousands of voters from casting ballots, and likely helped determine the outcome of the Presidential race.

Now that the Florida controversy has passed, most state election directors have settled again into their normal routines. Given their vast power and unique vantage point, Advancement Project designed and conducted a survey to ascertain what they know and what they think about the future of elections in their states.

This survey was designed to capture the *subjective* assessment of state election directors. This perspective provides important insights into the progress, or lack thereof, that these individuals are uniquely qualified to ascertain. For example, comments by state elections officials on funding shortages in the administration of elections is probably highly reliable, as funding issues are central to their daily responsibilities.

We of course cannot expect the perspective of these individuals to be a *complete* assessment of actual conditions in their respective states. One thing that was very clear from the survey is that state election administrators have extremely difficult jobs, made more so by a general shortage of funds and staff expertise. While funding shortages are no excuse for many of the problems outlined in AMERICA'S MODERN POLL TAX, there is no doubt that an increase in funding would allow states more easily to conduct efficient and less error-prone elections.

Survey Conclusions

The survey, conducted by telephone, was of election directors and/or their immediate subordinates. (The survey methodology is described in detail in Appendix B.) Of the election offices for the 50 states and District of Columbia, 43 participated. If the nation is concerned about avoiding a repeat of the Florida election experience, the results are not encouraging. Key findings from the survey are:

- *State elections officials around the country report overwhelmingly that they do not have the financial resources to address all of their problems in the administration of elections.*
- *Despite persuasive evidence that problems like those exposed in Florida are widespread in many places across the country, since November 2000 the vast majority of state legislatures have not allocated a single additional dollar for elections administration and some have actually decreased elections spending.*
- *Despite widespread and persuasive evidence that African Americans face much higher voting barriers than whites, state elections directors generally refuse to acknowledge racial disparities in the voting process. One state described its vote as almost "flawless" despite widespread complaints in minority communities.*
- *In a country with a long history of discrimination against minority voters, it is significant both practically and symbolically that only three of the 50 state elections commissioners are non-white.*

Thirty-Seven States With No Additional Funds for Elections Administration

Nearly all state election directors say they lack sufficient funds to carry out all of their responsibilities. This critical lack of funding has made election administration extremely difficult. When asked whether their legislatures had increased funding for elections administration as a direct result of last November's election, 37 states said there had been no increase by the legislature, that the legislature had decreased funding, or that any minimal increase allocated was unrelated to the 2000 Election.

Denise Lamb, New Mexico's Director of Elections, said, "[I] [n]ever have enough staff or money; [the] governor hasn't allowed an increase in eight years. This office has had seven people in elections since 1984." When the NVRA was passed in 1993, Lamb asked the Governor for money to train DMV [Department of Motor Vehicles] workers in

voter registration and was told “to do the best I could with zero.” Lamb powerfully summed up the priorities of politicians: “It’s really outrageous when you look at the amount of money spent on campaigns – billions of dollars – and then you try to buy a few voting machines and you end up fighting with the road graders for money.”

The Texas director of elections said simply, “We could do more if we were given more money,” and cited two large areas where money is needed -- upgrading voting systems and implementing a statewide voter registration database. The Texas Legislature banned the purchase of new punch card machines, but did nothing to replace machines currently used. In California, the chief of elections division said his budget is not enough, and that a request for new voting equipment let has left the legislature “still scratching its head.” The state legislature did place a bond measure on the March 2002 ballot that would, if passed, contribute to the cost of new equipment. The sentiment of many election directors toward their legislatures is summed up by the former Arkansas director of elections, “They want the moon but don’t want to pay for it.”

Secretary of State Cathy Cox of Georgia has been a leading voice for reform, testifying before Congress and national commissions, making clear that Georgia could have experienced a far worse election debacle than Florida, had the election in Georgia been similarly close. In response to her call for action, the Georgia legislature passed an election reform package that included the phase out of punch card voting machines, but allocated no state money to fund this beyond a pilot program.

In North Carolina, the state’s Legislature banned punch card machines by 2006, but passed no funding to do so. This action prompted the general counsel for the board of elections to say the bill was passed “to make [the Legislature] look impressive but in reality it doesn’t mean a thing.”

In Indiana, the Legislature passed bills allocating \$4 million to assist counties in purchasing new voting equipment, \$5 million for the creation of a statewide computer database, and a measure for voter education – apparently progress on first glance. However, the co-director of the Indiana Election Division concluded that it is “highly doubtful I’ll see those funds before 2003.” The legislature earmarked election administration funds to come from the money generated by the state lottery that has been the subject of scrutiny for mismanagement. Accordingly, the Elections Division has yet to see a single penny supposedly allocated to it. And even if this year’s money earmarked for voting equipment had actually been delivered, it would have been a mere pittance of the amount required. To phase out punch card machines in the 35 Indiana counties that use them would cost from \$20 million to \$60 million.

Several states have been waiting to see whether Congress will make federal aid available, although the prospects for federal assistance are fading. One director of elections said, “Frankly, after what happened September 11, there isn’t going to be any money in Washington for this. I’ll be surprised if anything comes out of Congress.” A general counsel to a state election office said he was “very doubtful any money will be available.

Earlier on [this year], when election reform was discussed, there was going to be millions of dollars. Now zero. No grant money -- federal or state.”

Many states have cited statewide budget shortages and tightened economic forecasts as a reason for not funding election reform, counting the issue as one item on a long list of needs that cannot be met with current resources. In Alabama, for example, an elections division staff member said there were problems with all agencies in the state, and that this is “not a good time to ask for more money.” Wisconsin’s executive director of the State Elections Board said his budget has “decreased as a result of the economy.”

In Oregon, “interest in [election reform] picked up” in the state legislature after the 2000 Election and \$2 million of a \$7 million request for a statewide computer registration database was initially granted by the Legislature earlier this year. However, the money has now been withdrawn by a state budget committee and is currently “in limbo.”

These funding problems also affect local jurisdictions. Maryland’s director of the election management division of the State Board of Elections said, “We are already providing many levels of support to local election officials and would very much like to be able to provide more. The counties have historically suffered at the hands of a county government not recognizing that the election process needs to be properly funded. Anything we or the [federal government] could provide, trickle down, would be of assistance.”

States With Funding Increases

Six states’ election directors have seen some increase in funding, but most additional funding is incremental and targeted for narrow tasks. In two cases, election directors who had long advocated for increased resources used the Florida controversy as a bargaining chip to gain attention to the pressing needs of their offices. In Nebraska, for example, the election director said, “I went into the legislature after the Election, and before they wouldn’t have given me the time of day, but I mentioned Florida and they ponied up.” He was able to double his staff from *one to two* fulltime persons. In South Carolina, the executive director of the State Election Commission stated that although his base budget did not increase, his office received one-time funding to implement a new statewide voting system that had been “talked about for years.” He said, “Florida didn’t have anything to do with that necessity, but I did use Florida as a chip in there.”

Maryland passed several election-related measures, including upgrading its voter registration system, improving the laws governing absentee ballots, and replacing voting machines statewide. To pay for the equipment, the state split the cost evenly with the counties. Before last year’s election, the state ordered its voter registration files to be computerized, a process that remains funded and ongoing. The director of the election management division of the State Board of Elections said, “The General Assembly has been extremely accommodating to us.”²⁴⁶

In Arkansas, the legislature appropriated \$150,000 for poll worker training. However, this amount is not nearly enough to cover the cost of such training, which the legislature

now has required the State Board of Elections to provide. Previously, such training was voluntary.

In Idaho, the election director said the Florida election dispute was a “wake-up call for all of us,” and the state legislature allocated carry-over money (extra money not used in the previous budget cycle) to be used for a variety of election issues, most notably a two-day training for election officials in November of this year to prepare for the 2002 elections. The money will also be used for voter education efforts and creation of improved materials for poll workers on Election Day. As the election director summed up, “More money equals better people, policy, procedure.”

Unmet Needs

As several of the accompanying case studies illustrate, state election offices have critical unmet needs. Those listed most often by election directors are: poll worker training and payment; training of county and local election officials; voter education and outreach; voting machines; computers and automation; and increased staff.

Poll worker training

Nearly every state director described the daunting challenge of finding, training, and paying poll workers. In fact, the survey indicated that 26 out of 43 states need additional funds for poll worker training. Untrained or unqualified poll workers can produce devastating levels of disenfranchisement. A simple failure to properly implement a provisional ballot rule, as happened time and again in St. Louis, can result in the immediate disenfranchisement of untold numbers of eligible voters.

States often face the prospect of enlisting and training tens of thousands of people to work one 14-to-16-hour day for less than minimum wage (compensation ranges from \$55 to \$150 a day). The election directors said the long hours and low wages create chronic shortages. Texas’ election director reports that urban counties in the state have had trouble getting enough workers and election directors for New Mexico and Vermont expressed concern about the difficulty of replacing an aging pool of poll workers. California reports problems with the skill level of poll workers:

Each of the 58 counties, some big and some small, has people going into elections without any particular skill base. Elections have run for a long time without any spotlight. As the spotlight increases, that’s when we see all the warts; a lot of times, people don’t know how the law has changed or what procedures flow from these changes. Some people are 15 years behind what the law says--and those things become vulnerabilities. Election workers should have specific skills, shouldn’t be just well intentioned citizens.

A few states have come up with innovations that do not require substantially more money. Nebraska, for instance, has the power to draft poll workers, akin to jury duty. Colorado and South Carolina have opened poll worker jobs to high school juniors and seniors in good standing with their schools, a program they say has met with great success. North Dakota also allows 16-year-olds in good standing to work the polls, and

now allows county auditors to look outside their county for poll workers. South Dakota allows Independents, in addition to Democrats and Republicans, to work the polling places. However, these states are the exception, not the rule. Georgia reports shortages in poll workers even with high school students acting as poll workers.

One state acknowledged the need for more money to train poll workers but considered it to be exclusively a state concern. The director of Michigan's Bureau of Elections said, "To go to the federal government to get money to train workers is an admission of failure."

Training of County and Local Election Officials

Over half of the state election directors expressed frustration with the lack of professional standards for the county and local election directors. Several said that they need more money to train these officials.

In California, the election director said, "My biggest priority for which additional money would be used is the development of an Election Official Training Academy, to bring everyone (all election officials) up to the same standard, to promote uniformity of administration and procedure during elections and the election administration process. These things are not going on systematically at all right now; no standards, no credentialing."

Voter Education

Voter education is one of the most important functions state election directors wish they could fully fund. Nearly all directors expressed a desire for more funding to ensure that voters are better equipped with more information about the voting process. This education ranges from instructions on how to vote on new voting equipment, to familiarizing voters with ballot design, to educating school children on basic civic values.

The director of the election management division of Maryland's State Board of Elections said that for voter education, "We have a little, tiny budget for this. No one has money to do anything across the board." In Kansas, the Deputy Assistant Secretary of State for Elections expressed a need for voter education on marking the ballot. "We don't have actual chads...but when voters don't color in the oval, or rest their pen in an oval while they are thinking, it's equivalent to a dimpled chad." In Arkansas, a position for a staff member in the elections division to handle outreach and public education was eliminated due to lack of funding.

Some states do engage in voter education. Maine currently has a series of educational programs, including printed manuals on how to vote, mock elections in schools, coordinated efforts with businesses, essay contests for children, and the like. California spends approximately \$10 million to print a comprehensive state ballot pamphlet, a practice followed (at lesser cost) by a few other states.

Voting Machines

The problem with voting machines has been the most widely reported issue after the 2000 Election. California's election division has asked for \$300 million to upgrade voting equipment; Michigan's Bureau of Election has estimated the cost of machine replacement to be \$30-\$40 million. Georgia's statewide upgrade is expected to cost between \$30 million and \$200 million, depending on the technology chosen. While many state election directors (18 of 42) wish to spend considerable resources upgrading machines, they worry that the high cost of new equipment will crowd out other, equally important, priorities.

Computerization

Automation and computerization of voter registration lists are large areas of concern in over one-third of the states surveyed. Many states have ordered computerized registration systems, or expressed a desire to move in this direction. As the experience in Florida underscores, computerization of voter registration lists – and access via computer to those lists at the polling places – will enable poll workers to more easily avoid many of the myriad technical problems that occurred on election day. However, non-partisan officials should be in charge of those databases, to protect voters from partisan-motivated manipulation such as Florida's overbroad purge before the 2000 election.

Staff

Over one-quarter of the directors stated they needed additional staff in their office. For example, New Mexico's Director of Elections reports: "[I] [w]ould love to have a person to do nothing but voter registration and a person to do nothing but NVRA, but when I requested this, the governor said he would veto the bill."

States Reporting No Unmet Needs

Several states did report that their funding needs were met completely or adequately. Colorado and New Hampshire said no additional funding was needed for anything; one Massachusetts official said the 2000 election was almost "flawless" and though more money is always nice, no pressing need was going unmet. As the case study of Massachusetts suggests, however, state election officials may be out of touch with problems experienced in the Boston area.

Knowledge of Minority Voter Disenfranchisement

As the case studies in AMERICA'S MODERN POLL TAX demonstrate, disenfranchisement of minority voters marked the 2000 Election in several states around the country. State election directors exhibit a troubling lack of awareness of these problems. They were almost unanimous in their experience that *few if any* reports of racial discrimination were given to them, and many said that they did not think their state experienced any specific reports of problems related to African Americans or other minorities. In fact, a far greater number of state election directors discussed problems relating to voters with disabilities than problems relating to racial minorities. If problems were acknowledged, they were thought to be aberrational and not systemic.

Virginia experienced so many complaints of minority voter disenfranchisement that Congressman Bobby Scott held a hearing on the issue in December. Yet, when interviewed in August 2001, the secretary of Virginia's Board of Elections indicated that the "relatively few complaints" from the African-American community were isolated. In most cases, she said minority complaints don't turn out to be racial, but were "a resource problem affecting all citizens."

Other directors indicated that racial disenfranchisement could not occur for demographic reasons. The director of elections and campaign finance of Vermont said, "We don't really have any minority groups in Vermont." Similarly, the chief deputy secretary of state for elections in Idaho said, "We don't have any significant pockets of minorities in Idaho, except the Indian reservations. On reservations, there is an interpreter at the polling place due to [the] Voting Rights Act. We have curbside voting for the disabled." In Maine, the director of the Bureau of Corporations, Elections, and Commissions, said there were no specific reports and that "we have a low minority population. I think we're the whitest state in the country. [I] don't think there are problems but [we] don't have diversity."

The co-director of the Indiana Election Division said he received more complaints from black and Hispanic voters than other groups, but attributed this to greater "sensitivity to their voting rights," rather than a higher incidence of problems. He opined: "I am not sure if it happens more to them. ... Those who have had their voting rights historically taken away might be more attuned to it. I know if my grandfather had his voting rights taken away because of his skin color, I would be the first one to make a call."

When asked about reports of irregularities with minority voters, the Texas director of elections said, "No complaints filed in our office." She acknowledged that incidents were reported in a Congressional report from the House Judiciary Committee about alleged police intimidation of elderly black people in Fort Worth, but that she did not see them or confirm they occurred.

Racial Composition of State Election Directors

The survey indicated that only one of the 50 states – New Jersey -- has an African-American elections director. Of the other 49 states, only the chief election director for Hawaii (Japanese-American) and the director of elections for New Mexico (multiracial) are non-white.²⁴⁷ No state has an election director who is Latino. One election director refused to divulge his racial background, responding, "I am a U.S. citizen so my race doesn't matter."

The racial and ethnic composition of the nation's election directors is important in both a practical and symbolic sense. First, given our nation's long history of racial discrimination against minority voters, it is important symbolically for those who administer elections to reflect racial progress in the body politic and the racial and ethnic composition of the country. Second, it is important on a practical level – both to restore confidence in the elections system among all voters and to increase cultural sensitivity at

the polling sites. Some minority voters cited in AMERICA'S MODERN POLL TAX, for example, attributed their disenfranchisement at least partly to the fact that poll workers and administrators were insensitive to their concerns. Poll officials frequently make *ad hoc* decisions on election day based solely on face-to-face interactions with voters. Effective communication and cultural sensitivity are important factors in making proper decisions under these circumstances. While state election officials do not serve voters directly at the polls, the lack of diversity in their ranks, combined with their lack of familiarity with the problems experienced by minority voters, suggests that public scrutiny of the selection process for election directors is warranted.

FINDINGS AND RECOMMENDATIONS

AMERICA'S MODERN POLL TAX catalogues overwhelming evidence that our Democracy suffers from structural flaws that threaten the voting rights of every American, disproportionately disenfranchising minorities and low-income voters. The report presents compelling proof that politicians and election administrators have done next to nothing to seriously address the modern equivalent of the poll tax – structural disenfranchisement. While this report provides a sobering assessment of their regrettable inaction, it also lays out a positive course of action for communities.

After all, the victorious struggle to enact the 1965 Voting Rights Act, which abolished the poll tax and has been termed “one of the most monumental laws in the entire history of American freedom,”²⁴⁸ was not led by politicians or bureaucrats. The turning point in the quest for this Act came on “Bloody Sunday,” when civil rights activists were brutalized by state police as they peacefully marched for voting rights across the Edmund Pettus Bridge in Selma, Alabama. The movement for voting rights in the mid-20th Century began in communities with grassroots organizing, protests in the streets and sermons from pulpits. The political establishment embraced this movement only after it had gained so much momentum, it was too powerful to ignore.

The fundamental reforms needed to overcome structural disenfranchisement are not likely to be made without a similar, community-based democracy movement, committed to finishing the task begun by earlier civil rights activists. To succeed, this movement must understand and address the problems experienced by minority voters while building a multiracial coalition in support of a broadly inclusive democracy. Dr. Martin Luther King, Jr., admonished in 1967: “The future of the deep structural changes we seek will not be found in the decaying political machines. It lies in new alliances of Negroes, Puerto Ricans, labor, liberals, certain church and middle-class elements.”²⁴⁹ This comment is as apt today as it was then.

The outline of a revitalized democracy movement emerged in Florida in the aftermath of the 2000 Presidential election. Civil rights, labor, religious, women's groups and others joined together to protest massive voter disenfranchisement that may have changed the outcome of the election and to demand that the system be fixed so the injustice never again occurs.²⁵⁰ The legitimacy of our government, the accountability of our leaders and the freedom of all Americans must rest on a foundation of equal voting rights--a foundation without the huge cracks that currently exist.

Recommendations for Community Action

Focus on fundamental change. Structural disenfranchisement occurs because public officials refuse to fix the inherent flaws in the nation's election system. Many worthwhile improvements in voting machines have been proposed and should be supported. Some of the most compelling proposals are summarized below. But democracy advocates should not neglect more fundamental improvements, even if the struggle for these reforms is long term. Structural disenfranchisement can be overcome

most effectively by implementing systems that affirmatively facilitate and encourage broad participation. The ultimate goal should be to make voting easy, convenient and inclusive. Requirements that voters register weeks in advance, rules that bar voting by ex-offenders and systems that purge voters merely because they move should be challenged as fundamentally inconsistent with real participatory democracy.

Make Clear That Antiquated Equipment Is Only the Tip of the Iceberg. Structural disenfranchisement results from the interaction and layering of multiple factors. Although the public has been well educated about antiquated voting equipment and hanging chads, there is less understanding about other obstacles, such as error-ridden lists, unfair purges and arbitrary deadlines. It would be a terrible mistake to focus on equipment alone when so much of the problem stems from lack of leadership, lack of accountability, inadequate training of poll workers, unavailable translation services, inadequate implementation of the NVRA, and refusals to activate existing technology allowing voters to correct mistakes that would prevent their ballot from being discarded.

Insist On Clear Federal Accountability for the Conduct of Federal Elections. A huge hurdle to democracy advocates is what seems like unwillingness on the part of public officials to take responsibility for implementing plans for election reform. Both the case studies and the survey of election directors reveal the difficulty in holding officials accountable for the massive disenfranchisement that occurred in 2000. Local election officials point the finger at state legislators, who claim to be waiting for congressional funding, but Congress does not want to usurp the authority of local officials. State officials often claim a lack of authority over local decisions about polling place locations, staffing and resources. One official even denied responsibility for purges that her office ordered local registrars to implement.

Only Congress has the power to mandate fair and uniform administration of federal elections across the country. Congress can define the clear standards needed to dismantle structural disenfranchisement and can clarify the responsibility for implementing and funding a fair system. Many state election commissioners interviewed for this report's survey resisted the idea of a federal role in setting minimal standards, saying elections are historically a state and local function. The case studies set out in this report illustrate the ill-fated results of that historic role and powerfully make the case for much stronger federal oversight. Once Congress sets fair rules and procedures for federal elections, it is highly likely that states will follow this federal leadership in administering state and local elections.

Create Year-Round Local Coalitions To Monitor the Selection and the Performance of Election Officials. As the election director survey makes clear, state election officials wield enormous power. The case studies leave no doubt that the same is true for most local election boards and employees. Yet, the criteria and process for the selection of election officials generally has not been a high priority for communities seeking to hold governments accountable for outcomes such as better schools and healthier communities. Yet, just as voting is fundamental to the exercise of political power to improve neighborhoods, the quality of election officials is fundamental to the right to vote.

Even after Congress creates stronger federal standards, democracy advocates also will find it in their interest to keep close watch on the performance of election officials. Many of the ballot blockers that caused structural disenfranchisement in the 2000 election actually violated federal and state laws, including the Voting Rights Act and NVRA. Heightened awareness and public scrutiny might have prevented many of these problems from occurring. While many organizations, as well as political parties, have created voter-protection operations on election day, less attention has been paid to the formation of well-organized, year-round monitoring coalitions. Local networks could coordinate efforts throughout the election cycle to bring voter registration, purges and other activities to light, as well as assisting ex-offenders in applying for restoration of voting rights, studying the actions of clemency boards, and advocating for legal and policy change.

Recommendations for Policy Makers

The Ford-Carter Commission had 13 major recommendations, each with sub-recommendations. The National Association of Secretaries of States suggested several areas of best practices. Other groups, such as the Constitution Project, also have made recommendations. These suggested reforms include upgrades in equipment, new ballot design, enhanced training, federal funding, easier registration, uniform poll closings and even a national voting holiday. A summary of the major studies and their recommendations is attached in Appendix C. This report does not repeat these recommendations, almost all of which seem worthy. Instead, we summarize below seven specific reforms that we believe are particularly important to the goal of overcoming structural disenfranchisement.

Provisional Voting

No eligible voter who comes to a polling place on election day should be denied the opportunity to cast a ballot, even if the voter mistakenly goes to the wrong precinct. Federal law should require all polling sites to offer a provisional ballot to any voter who believes he or she is registered in that state, regardless of the person's address. After the election and verification of the person's eligibility to vote, the vote should be counted. If the voter casts a ballot at the wrong precinct or even the wrong county, then that ballot should be considered a "limited provisional ballot" and count but only for those offices for which the voter was actually eligible to vote. Moreover, procedures should be established to ensure that voters casting provisional ballots receive notice of the determination made as to whether the provisional ballot cast was counted and an opportunity to challenge a determination that the ballot should not be counted.

Accessibility

The federal government should require voting equipment that is accessible to voters with disabilities and that permits all voters to cast a secret ballot. Moreover, states should be required to provide translations for non-English speakers consistent with the requirements of the Voting Rights Act. Reports of the failure to adhere to these requirements, in New York City and in other areas, are widespread. For the visually impaired, the federal

government should require technologies such as synthesized speech and voice-activated software that will enable private and independent voting.

Restoration of Voting Rights for Ex-Offenders

The scale of felony disenfranchisement in the U.S. is far greater than in any other nation.²⁵¹ In the last 30 years, the dramatic expansion of the criminal justice system and an increase in racial disparities in the prison system has substantially increased the ranks of the disenfranchised. Almost four million Americans have currently lost their voting rights as a result of a felony conviction. Approximately 13 percent of African-American men in the country are disenfranchised because of criminal convictions.²⁵² Florida has approximately 500,000 persons who are unable to vote because of felony convictions.

At a minimum, states should automatically restore voting rights to otherwise eligible citizens who have been convicted of a felony once they have fully served their prison sentences.²⁵³ In an effort to expedite the assimilation of offenders into the community, this restoration of voting rights should apply to those on probation and parole.

Voter Lists

Each state should create a computerized database of all registered voters and centralize responsibility for control of the list with non-partisan individuals who do not owe their jobs to political patronage. Voters who move within the state should not be removed from the lists but merely have their registration address updated the first time they vote after moving. With this database, inaccurate purges of legally registered voters will be easily traced to one source instead of many (this would have prevented the problems associated with the Florida purging) and will reduce opportunities for election fraud. It will also prevent the level of confusion on voting day that was seen throughout the country and illustrated most vividly in this report in the Missouri case study. A registration database connected to each precinct will minimize several other problems, including confusion over “inactive” voting lists, long lines, and general confusion at polling sites.

Voter Education

In advance of the election, the federal government should require every jurisdiction to provide every voter with a sample ballot and basic information about voting procedures. It should be made clear that voters can take sample ballots into the voting booths. Where new voting machines are being used for the first time, demonstrations on the proper use of the machines should be accessible to all voters before and on election day. Further, in compliance with NVRA, voters should be educated about the importance of updating their voter registration address when they move.

Standardize and Minimize Discarded Vote Rates and Require Precinct-level Discarded Vote Rates No Greater Than 0.25 percent

The evidence presented in this report clearly illustrates that discarded vote rates are higher in minority communities than non-minority communities. The federal government must take the lead in minimizing discarded vote rates and standardize such rates across precincts. It is an important way to remove the racial taint from the voting process.

Either through Congress or a new federal election office of the sort recommended by the Ford-Carter Commission, a maximum level of discarded votes should be set that would be *applied to every precinct* in the country. This discarded vote rate should be on the order of one-quarter of one percent; a rate this low would allow the country to regain almost all of the four to six million votes the Caltech-MIT study claims were discarded during the 2000 election. A national *precinct-level* standard also will provide states with the necessary incentive to lower discarded vote rates across the country so that minority voters are no longer thrown out at greater rates due to a state's faulty election system. Once the federal threshold is established, each state should be required to achieve a discarded vote rate either lower or equal to the federal standard. Each state or jurisdiction should be free to make new investments in technology and other measures, in whatever combination it chooses, as long as it meets the federal threshold. Eligibility for federal grants to purchase voting equipment, train poll workers, and for voter education will be directly linked to complying with this new standard.

Enforcement

Enforcement of voting rights and anti-discrimination laws in the United States needs to be strengthened. It is clear that our nation's civil rights laws suffer from a lack of enforcement at the federal level. The civil rights division of the Justice Department, which has by far the most resources, should simply enforce federal voting rights law already on the books. Instead, it has taken a relatively passive posture toward the problems outlined in this report. For example, the federal government has not initiated a single lawsuit based on voter disenfranchisement in the 2000 election. The few lawsuits that have been filed around the country, namely – in Florida, Illinois, California, Missouri, and Georgia – are spearheaded by private attorneys or non-profit groups with limited resources.

If the Department of Justice will not do it, Congress should pass legislation that gives private individuals, the ability to bring private actions to enforce all relevant voting rights and anti-discrimination laws, with no restrictions on class actions and remedies. Congress should also overturn cutbacks on the availability of attorneys fees and expert witness fees, which have made it more difficult for those denied the franchise to find qualified attorneys; and provide grants to state attorneys general to enforce anti-discrimination laws in registration and voting.

END NOTES

¹ *Felony Disenfranchisement Laws In The United States*, The Sentencing Project (policy report) (available at www.sentencingproject.org).

² For detailed information on voting rights for persons with disabilities, we recommend a report available from The National Voter Independence Project, *Voters Denied Equal Access At The Polls: A Report on the Status of Accessibility to Polling Places in the United States* (available at www.halftheplanet.com/departments/vote/intro.html).

³ *The 2000 Election: A Wake-Up Call For Reform and Change* (“Cox Report”), Office of Georgia Secretary of State Cathy Cox, January 2001, p.3 (available at www.sos.state.ga.us).

⁴ United States Senate Committee On Commerce, Science and Transportation, Testimony of Cathy Cox, March 7, 2001 (available at www.sos.state.ga.us).

⁵ Tyler Whitley, “50,000 Presidential ‘NonVoters’ in VA,” *Richmond Times-Dispatch*, December 3, 2000.

⁶ Congress of the United States, House of Representatives, Public Hearing On Perceived Registration Impediments and Possible Voting Irregularities in the 3rd District, December 18, 2000, Richmond, Virginia (“Virginia Hearings”), p. 74 (on file with Advancement Project).

⁷ Records of State Board of Elections, Cook County Clerk, Chicago Board of Election Commissioners, 69 Washington Street, Chicago, IL, 60602, Landon D. Neal, Chairman (on file with Advancement Project).

⁸ *Ballot Review November 7, 2000 Election and Related Statistics*, Chicago Board of Election Commissioners, 69 Washington Street, Chicago, Ill. 60602, Langdon D. Neal, Chairman.

⁹ *Analysis and General Recommendations Report Of The Office Of The Secretary Of State Regarding The November 2000 General Election In The City Of St. Louis*, Office of Secretary of State, State of Missouri, January 4, 2001 (“Secretary’s Report”).

¹⁰ U. S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (June 2001) (“Civil Rights Commission”), Executive Summary, p. 2.

¹¹ Dayna L. Cunningham, *Who Are To Be the Electors? A Reflection on the History of Voter Registration in the United States*, 9 Yale L & Pol’y Rev. 370 (1991).

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¹³ Id.

¹⁴ Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. Sec. 1971, 1973 to 1973bb-1 (1982)).

¹⁵ Congress adopted language minority provisions of the Voting Rights Act after finding that the right to vote among language minority citizens was “directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation.” 42 U.S.C. 1973aa-1a.

¹⁶ Many of the voter qualifications and barriers found unconstitutional were discriminatory on their face. See, e.g., *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) (poll tax prerequisite to voting violates equal protection); *Smith v. Allwright*, 321 U.S. 649 (1944) (banning white primary); *Guinn v. United States*, 238 U.S. 347 (1915) (invalidating grandfather clause that exempted whites from literacy test); *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621 (1969) (excluding non-property owners from school district election); *Reynolds v. Sims*, 377 U.S. 533 (1964) (legislative reapportionment).

¹⁷ Pub. L. No. 103-31, 42 U.S.C. Sec. 1973gg.

¹⁸ Memorandum of Law of the United States In Support Of Motion For Partial Summary Judgment, *United States of America v. State of New York, et. al.*, Civil Action No. 96-5562 (FB)(MDG), Eastern District of New York, dated April 27, 2001, p. 2.

¹⁹ For an overview of New York’s highly restrictive ballot access rules and recommendations to reform them, see *Voting Matters In New York: Participation, Choice, Action, Integrity*, Office of New York State Attorney General Eliot Spitzer, February 12, 2001, pp. 18-31 (available at www.oag.state.ny.us/press/reports/voting.pdf).

²⁰ Id.

²¹ Stephanie Saul, “City Pays High Price for Its Ill-Prepared Voting Machine Workers,” *Newsday*, August 13, 2001.

²² Stephanie Saul, “Election-Day Blunders Plague New York,” *Newsday*, April 8, 2001. The notoriously cumbersome counting of votes in New York City had a very real impact on the 1997 mayoral race. It appeared for several days after the primary vote that there would be a runoff between Ruth Messinger and the Rev. Al Sharpton for the Democratic nomination. Both candidates campaigned as such, spending

hundreds of thousands of dollars of additional public campaign funds. When the final vote was finally certified, it turned out that Messinger actually had won on the first ballot and the runoff was canceled. To this day, Messinger said the slow vote count deprived her of a boost in the polls and that it “had negative impacts on all sides,” not the least of which was the significant expenditures of public money for campaigning that turned out to be unnecessary. Similar confusion occurred following the recent mayoral runoff between Mark Green and Fernando Ferrer. See, e.g., Michael Cooper and Diane Cardwell, “Ferrer Doubts Green Victory After Miscount,” *The New York Times*, October 15, 2001.

²³ Stephanie Saul, “Ballot Fears Prompt Suit,” *Newsday*, September 8, 2001.

²⁴ Ronald Hayduk, Assistant Professor of Political Science, City University of New York, *Gatekeepers To The Franchise: Election Administration and Voter Participation In New York*, p.13 (unpublished paper on file with Advancement Project).

²⁵ *Id.*

²⁶ Stephanie Saul, “Vote Machines Come Up Short; Led to long lines at some polling places,” *Newsday*, April 2, 2001.

²⁷ See, e.g., Michael Cooper and Diane Cardwell, “Ferrer Doubts Green Victory After Miscount,” *The New York Times*, October 15, 2001; Diane Cardwell, “Ferrer and Green Camps Continue Fight Over Count,” *The New York Times*, October 17, 2001.

²⁸ *Voting: What Is, What Could Be*, Caltech-MIT Voting Technology Project, July 2001, p. 90 (available at www.vote.caltech.edu).

²⁹ *Id.*

³⁰ *Id.*

³¹ Stephanie Saul, “Uncounted Votes; Experts: Disabled latch could skew election results,” *Newsday*, July 22, 2001.

³² Office of New York State Attorney General Eliot Spitzer, “Spitzer Unveils Comprehensive Analysis of New York State’s Election Process and Issues Recommendations,” February 12, 2001 (available at www.oag.state.ny.us/press/2001/feb/feb12a_91.html).

³³ See, generally, Ronald Hayduk, “The Politics of Motor-Voter: The Case of New York” (on file with Advancement Project).

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³⁵ *Id.*, p. 3.

³⁶ *Id.*, p. 32.

³⁷ *Id.*, pp. 16-18.

³⁸ Ronald Hayduk, “The Politics of Motor-Voter: The Case of New York,” p. 24.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*, pp. 21-22.

⁴² *Id.*, p. 22.

⁴³ Letter from Asian American Legal Defense & Education Fund (“AALDEF”) to Mr. Daniel DeFrancesco, Executive Director, New York City Board of Elections, December 22, 2000 (on file with Advancement Project).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Letter from Puerto Rican Legal Defense & Education Fund (“PRLDEF”) to Mr. Joseph Rich, Acting Chief of Voting Section, United States Department of Justice, dated June 11, 2001 (on file with Advancement Project).

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- ⁵³ Letter from Puerto Rican Legal Defense & Education Fund (“PRLDEF”) to Mr. Joseph Rich, Acting Chief of Voting Section, United States Department of Justice, dated June 11, 2001.
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- ⁶⁰ *Id.*
- ⁶¹ *Id.*
- ⁶² Stephanie Saul, “Electing Overtime; 20 election workers got more than \$20,000 extra last year,” *Newsday*, June 10, 2001.
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- ⁶⁸ *Voting Matters In New York: Participation, Choice, Action, Integrity*, Office of New York State Attorney General Eliot Spitzer, February 12, 2001, Appendix A-1.
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- ⁷⁰ Tyler Whitley, “50,000 Presidential ‘NonVoters’ in VA,” *Richmond Times-Dispatch*, December 3, 2000.
- ⁷¹ Interview with Cameron Quinn, Secretary of Virginia State Board of Elections, August 24, 2001.
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- ⁷³ Virginia Hearings, p. 79.
- ⁷⁴ Judith Malveaux, “Some Learn They Weren’t Registered; Lack of Signature On Form From DMV Disqualified Them,” *Daily Press* (Newport News), November 8, 2000.
- ⁷⁵ Virginia Hearings, pp. 73-79.
- ⁷⁶ Carrie Johnson, “Voter Registration At Issue, Process A Fiasco, Democrat Says,” *Richmond Times-Dispatch*, November 10, 2000.
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- ⁷⁹ Interview with Herbert Gilliam, October 16, 2001.
- ⁸⁰ See generally, Virginia Hearings, pp. 30-72.
- ⁸¹ *Id.*, p. 54
- ⁸² *Id.*, p. 55
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- ⁸⁴ *Id.*
- ⁸⁵ Tyler Whitley, “Democrats: Replace Punch Card Machines,” *Richmond Times-Dispatch*, December 15, 2000.
- ⁸⁶ Virginia Hearings, p. 57.
- ⁸⁷ Public Hearing Before the DeKalb County NAACP (“Georgia Hearing”), Stoneview Elementary School, Lithonia, GA, December 16, 2000, p. 55 (on file with Advancement Project). Direct comments from voters in this section come from the official transcript of this hearing.
- ⁸⁸ *Id.*, pp. 26-27.
- ⁸⁹ Georgia Hearing, p. 74.
- ⁹⁰ Cox Report, p. 21.
- ⁹¹ Georgia Hearing, Affidavit of Shevawn Carter, Exhibit 6.
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- ⁹⁴ Id., p. 22.
- ⁹⁵ Id., pp. 19-20.
- ⁹⁶ Id., p. 8.
- ⁹⁷ Id., p. 14.
- ⁹⁸ Melanie Eversley, "Testimony Says Legal Florida Voters Blocked," *The Atlanta Journal and Constitution*, April 1, 2001.
- ⁹⁹ Melanie Eversley, "Forum Lets Georgians Detail Voting Problems," *The Atlanta Constitution*, March 30, 2001.
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- ¹⁰² Id.
- ¹⁰³ *Voting, What Is, What Could Be*, p. 89.
- ¹⁰⁴ *Undervote Analysis of African-American Precincts In Georgia*, Office of the Georgia Secretary of State, 2001.
- ¹⁰⁵ First Amended Complaint, Civil Action No.: 1:01-CV-0318-ODE, Northern District of Georgia, Atlanta Division (on file with Advancement Project).
- ¹⁰⁶ Cox Report, p. 3.
- ¹⁰⁷ United States Senate Committee On Commerce, Science and Transportation, Testimony of Cathy Cox, March 7, 2001 (available at www.sos.state.ga.us).
- ¹⁰⁸ United States Senate Committee On Commerce, Science and Transportation, Testimony of Cathy Cox, March 7, 2001.
- ¹⁰⁹ John Mintz and Dan Keating, "A Racial Gap In Voided Votes," *Washington Post*, December 27, 2000.
- ¹¹⁰ Id.
- ¹¹¹ The state legislature allocated \$5 million for a pilot project in 13 cities to test electronic voting equipment from various vendors. Cox estimates that the cost to upgrade the entire state will be anywhere from \$30 million to \$200 million, depending on the technology chosen.
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- ¹¹³ There are 110 elections jurisdictions in Illinois, 97 of which use punch card voting systems and 13 of which use optical scan systems. Cook County, the most densely concentrated part of the state in terms of population, uses the punch card system.
- ¹¹⁴ Records of State Board of Elections, Cook County Clerk, Chicago Board of Election Commissioners.
- ¹¹⁵ Joanne H. Alter, *Discarded votes: How the punch-card voting system disenfranchises Democratic voters* (on file with Advancement Project.) At the time, Alter was running for the position of Cook County Clerk, a job responsible for administering elections in the County outside of Chicago. Alter lost the election.
- ¹¹⁶ Id., p. 2.
- ¹¹⁷ Id., p. 3.
- ¹¹⁸ Id., p. 1.
- ¹¹⁹ Id., p. 2. Alter's study was prescient. In reference to discarded votes, she wrote in 1990: "The problem almost certainly is not confined to Cook County. It probably is national in scope, since the punch-card system is used in jurisdictions that account for more than half of the votes nationwide. If the problem this report documents in Cook County exists in other urban areas – as I believe it does – it could easily swing a close presidential election from a Democratic candidate to a Republican candidate." Id.
- ¹²⁰ Douglas Holt, "Cook County 'Undervote' Sets Off Alarm," *Chicago Tribune*, December 24, 2000.
- ¹²¹ *Voting: What Is, What Could Be*, p. 90.
- ¹²² *Ballot Review November 7, 2000 Election and Related Statistics*, Chicago Board of Election Commissioners, 69 Washington Street, Chicago, Ill. 60602, Langdon D. Neal, Chairman.
- ¹²³ *Voting: What Is, What Could Be*, p. 89.
- ¹²⁴ Statistics on discarded vote rates in Chicago come from *Over/Under Vote Analysis*, Chicago Board of Elections, and an analysis prepared by the ACLU of Chicago (both on file with Advancement Project).
- ¹²⁵ Id.
- ¹²⁶ Id.
- ¹²⁷ Id.

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- ¹²⁸ Amended Class Action Complaint, Civil Action No. 01 C 0208, United States District Court for the Northern District of Illinois, para. 26.
- ¹²⁹ *Id.*
- ¹³⁰ *Ballot Review November 7, 2000 Election And Related Statistics*, Chicago Board of Election Commissioners.
- ¹³¹ Douglas Holt and Michael J. Barnes, “State Worst In Ballot Errors,” *Chicago Tribune*, April 29, 2001.
- ¹³² *Id.*
- ¹³³ *Id.*
- ¹³⁴ *Id.*
- ¹³⁵ *Id.*
- ¹³⁶ *Id.*
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- ¹⁴² Douglas Holt and Michael J. Barnes, “State Worst In Ballot Errors,” *Chicago Tribune*, April 29, 2001.
- ¹⁴³ “As Clinton Visit Approaches, East St. Louis Looks For Economic Boost,” *Kansas City Star*, July 4, 1999; see also Greg Kline, “Getting East St. Louis Wired,” *The News-Gazette* (Champaign), October 16, 2000.
- ¹⁴⁴ Douglas Holt, “Cook County ‘Undervote’ Sets Off Alarm,” *Chicago Tribune*, December 24, 2000.
- ¹⁴⁵ Complaint For Declaratory And Injunctive Relief, *Chantay C. Moore, et al., v. Board of Election Commissioners of the City of St. Louis, et. al.*, Missouri Circuit Court, Twenty-Second Judicial Circuit (City of St. Louis), Cause No. 014-00587, Division 3, filed March 5, 2001 (on file with Advancement Project).
- ¹⁴⁶ Ishmael Lateef Ahmad, “Black Leaders May Sue Over Inactive Voter List In City,” *St. Louis American*, March 1-7, 2001.
- ¹⁴⁷ For a general overview of the problems, see Secretary’s Report.
- ¹⁴⁸ Interview with Denise Lieberman, August 14, 2001; see also Safir Ahmed, “Slimin’ the City,” *Riverfront Times*, November 15, 2000; Secretary’s Report, p. 10.
- ¹⁴⁹ Interview with Denise Lieberman, August 14, 2001.
- ¹⁵⁰ Letter from Secretary of State Rebecca McDowell Cook to St. Louis City Board of Election Commissioners, January 4, 2001 (on file with Advancement Project).
- ¹⁵¹ *Id.*
- ¹⁵² *Id.*, p. 5.
- ¹⁵³ *Id.*, p. 3.
- ¹⁵⁴ Letter from June Striegel Doughty, legal counsel to Missouri Secretary of State, to Directors of St. Louis City Board of Election Commissioners, December 11, 2000 (on file with Advancement Project).
- ¹⁵⁵ Letter from the Rep. William Lacy Clay to Attorney General John Ashcroft, February 15, 2001 (on file with Advancement Project).
- ¹⁵⁶ Letter from June Striegel Doughty, legal counsel to Missouri Secretary of State, to Directors of St. Louis City Board of Election Commissioners, December 11, 2000, citing Mo. Rev. Stat. 115.193.3.
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- ¹⁶⁰ *Id.*, p. 6.

¹⁶¹ Secretary's Report, p. 11. The Secretary's Report indicated that election judges (poll workers) in St. Louis are paid \$79 per day, far less than those in other areas of the state. Officials say the low pay makes it difficult to recruit qualified election judges.

¹⁶² Id., p. 3.

¹⁶³ Id., p. 9

¹⁶⁴ Id.

¹⁶⁵ Id., p. 6.

¹⁶⁶ Id., pp.12, 18.

¹⁶⁷ Id., p. 12.

¹⁶⁸ Id., p. 6.

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¹⁸⁹ *Felony Disenfranchisement Laws In The United States*, The Sentencing Project; see also, John Lantigua, "How The GOP Gamed The System In Florida," *The Nation*, ("Lantigua article") April 30, 2001; Civil Rights Commission, Chapter 5.

¹⁹⁰ This section is based generally on the Lantigua article, which is the most comprehensive analysis currently available of the felon disenfranchisement issue as it relates to the 2000 election in Florida.

¹⁹¹ Lantigua article, p. 17; Civil Rights Commission, Chapter One, p. 10.

¹⁹² Lantigua article, p. 17.

¹⁹³ Civil Rights Commission, Chapter 9, p. 2.

¹⁹⁴ Id., Executive Summary, p. 3; Chapter 8, p. 3.

¹⁹⁵ Id., Chapter 8, p. 5.

¹⁹⁶ Id., p. 7.

¹⁹⁷ Id., Chapter 1, p. 12.

¹⁹⁸ Id., p. 13.

¹⁹⁹ Id., Chapter 1, p. 11.

²⁰⁰ Id.

²⁰¹ Mireya Navarro and Somini Sengupta, “Arriving at Florida Voting Places Some Blacks Found Frustration,” *The New York Times*, November 30, 2000.

²⁰² Id.

²⁰³ Civil Rights Commission, Epilogue, p. 4.

²⁰⁴ Reuters, “Florida Voting Reforms Discriminate, Lawsuit Says,” August 15, 2001. Among other claims, the lawsuit alleged that the election reform creates an illegal literacy test that discriminates against minorities by requiring that a list of voter responsibilities be posted at each polling site. The lawsuit asserts the provision violates the Voting Rights Act ban on any requirement that voters demonstrate “ability to read, write, understand, or interpret” any matter or demonstrate any knowledge of a particular subject.

²⁰⁵ The lawsuit was brought by several organizations, including the National Association for the Advancement Colored People, NAACP Legal Defense and Education Fund, the American Civil Liberties Union, Lawyers’ Committee For Civil Rights Under the Law, Advancement Project, People for the American Way Foundation and the law firm of Williams & Associates.

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²⁰⁷ Katherine Zezima, “City Official Admits Election Day Problems,” *The Boston Globe*, February 9, 2001.

²⁰⁸ Regina Montague, “Election Gripes Aired At Hearing,” *The Boston Globe*, November 29, 2000; Transcript from “Community Hearing On Voter Irregularities In Boston” (“Boston Hearings”), November 28, 2000, p. 106.

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²¹⁰ Boston Hearings, p. 54.

²¹¹ Steven Wilson, “Galvin Cites Concern, Orders Boston Recount,” *The Boston Globe*, November 10, 2000.

²¹² Id.

²¹³ Id.

²¹⁴ Id.

²¹⁵ The Boston Hearings were sponsored by several elected officials and advocacy organizations, including the NAACP Boston branch, the Lawyers’ Committee For Civil Rights, and Sen. Dianne Wilkerson.

²¹⁶ Boston Hearings, pp. 76, 94, 106.

²¹⁷ Id., pp. 46-47.

²¹⁸ Id., pp. 63, 76, 102.

²¹⁹ Regina Montague, “Election Gripes Aired At Hearing,” *The Boston Globe*, November 29, 2000; Boston Hearings, p. 96.

²²⁰ Boston Hearings, p. 109.

²²¹ Id., p. 70.

²²² Id., pp. 57-58.

²²³ Id., p. 58.

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²²⁹ Boston Hearings, p. 24.

²³⁰ Information in this case study came primarily from sworn testimony provided by individuals at two public hearings in Texas sponsored by the state NAACP. Testimony about the incidents in Ft. Worth took place on December 15, 2001 at a hearing in Ft. Worth (“Ft. Worth Hearings”). The incidents in Wharton County came from a hearing held on December 19, 2000 in Houston (“Houston Hearings”). Transcripts of the hearings are on file with Advancement Project.

²³¹ Debra Dennis, “Newsletter sparks charge of FW voter intimidation,” *Dallas Morning News*, September 7, 2000.

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- ²³³ Ft. Worth Hearings, p. 29.
- ²³⁴ Debra Dennis, "Newsletter sparks charge of FW voter intimidation," *Dallas Morning News*, September 7, 2000.
- ²³⁵ Letter from Rep. Martin Frost to the Honorable Bill Lann Lee, Assistant Attorney General for Civil Rights, October 18, 2000 (on file with Advancement Project).
- ²³⁶ Ft. Worth Hearings, pp. 28-34.
- ²³⁷ *Id.*, p. 28.
- ²³⁸ *Id.*, p. 40.
- ²³⁹ Ft. Worth Hearings, pp. 29, 30.
- ²⁴⁰ Houston Hearings, pp. 32-48.
- ²⁴¹ *Id.*
- ²⁴² Benjamin C. Sharp, *Wharton County Journal-Spectator*, October 18, 2000 (on file with Advancement Project).
- ²⁴³ *Id.*
- ²⁴⁴ *Id.*
- ²⁴⁵ Benjamin C. Sharp, *Wharton County Journal-Spectator*, October 21, 2000 (on file with Advancement Project).
- ²⁴⁶ As noted earlier, the State of Florida enacted the Florida Election Reform Act of 2001 in May which allocated over \$30 million to fund a host of election-related measures, including the elimination of punch card voting machines and the creation of a statewide voter registration database. See the Florida Election Reform Act of 2001, S.B.1118, 103rd Reg. Sess. (Fla. 2001).
- ²⁴⁷ The elections director for the District of Columbia is also African-American.
- ²⁴⁸ David J. Garrow, *PROTEST AT SELMA: MARTIN LUTHER KING, JR. AND THE VOTING RIGHTS ACT OF 1965* (Yale University, 1978).
- ²⁴⁹ Dr. Martin Luther King, Jr., *WHERE DO WE GO FROM HERE?* (1967).
- ²⁵⁰ See, e.g., Lani Guinier, "What We Must Overcome," *The American Prospect*, March 12, 2001.
- ²⁵¹ *Felony Disenfranchisement Laws In The United States*, The Sentencing Project.
- ²⁵² *Id.*
- ²⁵³ Two states, Maine and Vermont, permit inmates to vote.

APPENDIX A

UNDERSTANDING VOTING TECHNOLOGY AND HOW IT RELATES TO DISCARDED VOTES

Caltech-MIT Study

As documented by the Caltech-MIT study on voting technology, the equipment used to cast and count ballots in the United States discards millions of votes in each presidential election.¹ This report is about *all* structural elements of the elections system, including technology. As we point out in the recommendations, voting technology needs to be upgraded in many states, but technology alone will not come close to solving all of the problems outlined herein. That said, it is critically important to understand the basic categories of voting technology and their various characteristics and costs, to fully appreciate the total mosaic of our elections system and the options for improvement. There are five primary voting systems, listed from oldest to newest: paper ballots, lever machines, punchcards, optical scan, and electronic voting machines (called DRE, for Direct Recording Electronic machines). Voting technology has evolved rapidly. In 1980, 60% of voters used the relatively old paper ballots or lever machines; in 2000, only about 19% of the voting population used these aging voting systems.²

Paper ballots are the oldest technology. They were nearly universally used in the 19th century, and they remain widely used in rural areas. About 12% of U.S. counties used paper ballots in 2000, but only 1.3% of the country's population are in those counties. These ballots are counted by hand.

Lever machines, which were first introduced in the late 19th century, require that the voter pull down a set of levers associated with each preference. In 2000, about 15% of the nation's counties, and 18% of the nation's population (including all of New York City, which experienced significant difficulties), used these machines, which directly record the vote.

Punch cards, made notorious by the Florida election, were introduced in the 1960s. They require the voter to insert a stylus through holes in a heavy stock card; when the hole is not punched completely through, a "chad" is often created. In 2000, this voting system was used by approximately 19% of counties, covering 34% of the nation's population. Counting is automated via scanners.

Optical scan ballots, which experienced significant growth in the 1990s, require the voter to fill in a circle, similar to the way answers are recorded on standardized tests. About 40% of counties used them in 2000 (including Cook County, Illinois), covering 27% of the population. Counting is automated via scanners.

Electronic Voting Machines (DREs) allow the voter to record preferences via on a touch screen, similar to an ATM machine. These machines, the most expensive of all available technology, directly record the vote. Miscounting is virtually impossible, assuming “voter-friendly” ballot design and adequate implementation.³ About 9% of counties used DREs in 2000, covering about 11% of the nation’s population.

There is a consensus among technologists that the optical scan system has the lowest error rates over the last four presidential elections.⁴ Optical scan ballots average a “discarded vote” rate nationwide of 1.5%.⁵ While electronic voting machines have more potential to make the discarded vote rate negligible, they often have been hampered by poor ballot design. Optical scan machines cost about two-thirds less than electronic machines.⁶

While it is critical to use technology that accurately records all votes, it must again be emphasized that *the debate over technology is not the principal problem with defending the freedom to vote*. Studies found that some jurisdictions had high discarded vote rates using the less error-prone optical scan systems.⁷ It is safe to say that many elements work in confluence to explain why millions of persons are disenfranchised – and these include issues such as whether a voter can be notified of and correct a mistake in the voting booth, regardless of the type of voting system used; availability of provisional ballots; clarity of ballot design; “purging” of voter lists that produce inaccurate results; adequate training of poll workers; sufficient number of voting machines; translation services for those who speak English as a second language; voter education efforts; access and privacy for the disabled; a state’s laws and procedures on restoration of voting rights for felons, and so forth.

When a voter arrives at the poll and casts a ballot that is not counted because of a mechanical or other deficiency in the voting system, that vote is discarded and that individual is effectively disenfranchised. We call these votes “discarded votes.” We define “discarded vote rate” as the number of “discarded votes” relative to the overall number of ballots cast. (Some studies refer to “discarded votes” as “spoiled ballots” or with the more technical term of “residual votes.”) It is important to remember that the “discarded vote” rate does *not include* the untold number of persons who do not cast ballots because they were wrongfully turned away from the polls experienced unreasonably long lines or faced other obstacles that existed on election day in various places, as discussed in this Report. However, “discarded vote rates” are an important (albeit incomplete) measure of total voter disenfranchisement, and they will be referred to often in this Report. There are two kinds of discarded votes:

- “Overvotes” occur when the voting system records two or more votes in a particular race where only one vote is permitted, regardless of the voter’s actual intent.
- “Undervotes” occur when the voting system determines that the voter has cast no vote in a particular race, regardless of the voter’s actual intent.

Some “undervotes” in a presidential election reflect the intent of the voter, but experts agree that intentional “undervotes” account for only a relatively small portion of the total of discarded votes. The vast majority of discarded votes *are not intended* by the voter. In its study, the General Accounting Office found research indicating that the percentage of voters who reported deliberately not voting for President in the 2000 election was .34%.⁸ Other studies put the number of voters who do not intend to vote for President at approximately three quarters of one percent.⁹ Whatever the cause, discarded vote rates should not depend on the voting system used, machine failure, or ballot design. As this report shows, they do.

¹ *Voting: What Is, What Could Be*, Caltech-MIT Voting Technology Project, July 2001, p. 17 (available at www.vote.caltech.edu).

² *Id.*, p. 88.

³ *Id.*, p. 23.

⁴ *Id.*, p. 21. Paper ballots actually have an error rate as equally low as the optical scan system, but are not practicable to use in large population centers because of the slowness of the counting.

⁵ *Id.*

⁶ *Id.*, p. 23.

⁷ See, e.g., *The 2000 Election: A Wake-Up Call For Reform and Change* (“Cox Report”), Office of Georgia Secretary of State Cathy Cox, January 2001, p.3 (available at www.sos.state.ga.us).

⁸ United States General Accounting Office, *Elections: Statistical Analysis of Factors That Affected Uncounted Votes in the 2000 Presidential Election*, GAO-02-122, October 15, 2001, p. 16, n.1.

⁹ *To Assure Pride and Confidence in the Electoral Process*, The National Commission On Federal Election Reform, p. 53 (citing National Election Studies and Voter News Service).

APPENDIX B

Methodology of State Election Director Survey

The Advancement Project drafted an original survey containing several questions relating to election reform issues, such as state funding of election administration, the state role in training of election workers, state efforts to conduct voter education, and state implementation of the National Voter Registration Act. From late August through early October, Advancement Project staff members contacted the State election offices for every State and the District of Columbia,¹ and telephonically asked each representative of the State election office the questions contained in the survey. In all but six cases, Advancement Project staff members spoke with the chief election administrator for the State; in cases where that person was unavailable, Advancement Project staff members spoke with the appropriate assistant directors and/or staff members. The membership list from the National Association of State Election Directors (NASSED),² official websites for state governments, and telephone conversations with state officials provided the information necessary to identify the person or persons to speak with. For reasons relating mostly to time constraints, seven states did not to participate – Hawaii, Minnesota, Iowa, Kentucky, New Jersey, Florida, and Pennsylvania. Where information on these states could be found, particularly with regard to funding allocations for elections administration, it was included.

All fifty states were queried on the question of the racial background of the election director. For the remaining questions, telephonic surveys were conducted with 42 states and the District of Columbia.

It should be noted that many states have an elections division within the Secretary of State's office which administers election issues for the State in conjunction with county clerks. In other states, a bipartisan, independent State Elections Commission governs elections. In others, a State Election Commission works with the Secretary of State's office to conduct elections. Some states do not even have a Secretary of State position, while others are in the process of amending their structure.³

The relationship between state government and county/local governments differs from state to state as well. According to the General Accounting Office, forty states delegate election responsibilities primarily to counties; nine states delegate these responsibilities to sub-county minor civil divisions (MCDs) such as cities, towns, and townships; and one state, Alaska, is divided into four election regions. About 87 percent of the U.S. population lives in the forty states that delegate election responsibilities primarily to counties. In many of these states, elected clerks in each county work with the State Elections Division office to coordinate election issues, with the counties and the state sharing the cost evenly. In other states, election and financial responsibility is more centralized in state government. What is clear is that there is no uniform elections system

on the national level, and that each state has its own idiosyncrasies in the administration of elections.

¹ The State of Florida was not contacted due to ongoing litigation with the Secretary of State's office.

² Available at www.nased.org/Memberlist.html

³ In the State of Florida for example, the Secretary of State will no longer be an elected position beginning in January 2003. In Louisiana, the department of elections and registration, which oversees voting equipment and voter registration, will be folded into the Secretary of State's office, which handles ballots, certifying returns, and candidate qualification, by January 2004.

APPENDIX C

KEY FINDINGS SINCE NOVEMBER 2000

Several organizations have studied the nation's election system since November 2000 and provided a host of recommendations regarding technology and the administration of elections. For the purpose of providing important background information, we present brief summaries of the most comprehensive reports. This information serves as a frame of reference for the factual information contained in this Report. These studies include:

*The National Commission On Federal Election Reform:*¹ Chaired by former Presidents Ford and Carter, the Commission held four public hearings and released its findings and recommendations in August 2001. The recommendations included federal matching grants to the states to upgrade the technology of their voting systems, for states to set up a single computerized registration database, the creation of minimal voting system standards by the federal government, to allow provisional ballots for voters who believe they are registered but are not on the rolls at their polling places, and a national voting holiday. While the recommendations are comprehensive, the commission's suggestion on how to implement them reflects a very limited conception of the federal role in driving electoral reform. The recommendations fall short of requiring states to do anything if they decide to opt out, and they leave a huge amount of discretion to the states if they accept the matching grants. As six members of the Commission commented in a dissent: "'One person, one vote' is not a principle for local officials to trade off against potholes or jails, nor should it be conditioned on the willingness of Congress to appropriate an incentive in any given budget cycle."² That said, Congress has yet to act on any of the core recommendations.

*Constitution Project Election Reform Project:*³ Created by the prestigious non-profit Constitution Project, this broad-based study group (which included academics, state officials, and organizational heads) recommended that federal money be made available to improve voting technology, provide grants to states to invest in voting technology and a registration database, create laws to let voters determine that their vote was actually counted, and that the federal government assist states and local governments conduct voter education programs and otherwise bear the costs of elections. The purpose of the project was to create a national consensus around election reform, but few if any of the recommendations have been implemented at either the state or federal levels.

*Caltech-MIT Voting Technology Project:*⁴ Comprised largely of computer scientists and mechanical engineers, this commission focused extensively on technology issues. Its most important finding was that 4 million to 6 million votes of the 100 million cast in the November 2000 election were not counted due to a combination of faulty equipment, confusing ballot designs, long lines, short hours, and inconvenient hours at polling places. The report found that many of the mechanical and human problems could be solved if punch card technology (whose deficiencies are detailed in the Illinois and

Florida case studies) and lever machines (whose deficiencies are detailed in the New York case study) would be scrapped and replaced with more reliable optical scan equipment, where voters use pencils to fill in circles as on standardized tests. The study found the best such equipment counts ballots in the precinct and kicks them back to voters if they have been filled out incorrectly. The study found that their recommendations would cost about \$400 million additional per year to implement nationwide, or approximately \$4 per voter.

*UC Berkeley Voting Technology Study:*⁵ Several academics from UC-Berkeley analyzed data from more than 2,200 counties for the November 2000 election to determine which voting systems do the best job of recording and tabulating votes. Like the Caltech-MIT group, the Berkeley study team also found that punch card systems create the highest discarded vote rates and should be scrapped in favor of either optical scan or electronic voting systems. However, the study group differed with the Caltech-MIT group in that it suggested further study with respect to the relative performance of non-punch card systems before determining the suitability of one system over another. The study was funded by Sequoia Voting Systems in Oakland, a private company that sells punch card, optical scan, and electronic voting systems.

Minority Report From House Committee on the Judiciary:⁶ This report briefly surveyed every state in the country for problems in the November 2000 election. The investigation found reports of problems in the vast majority of states nationwide, leading to widespread disenfranchisement of minority voters. The report also found that the vast majority of states appear to have recount laws that likely would not pass constitutional muster under the Bush v. Gore decision that determined the outcome of the presidential race. The report also found that 19 states do not keep records of the number of discounted ballots, and that voters in 25 states found their names illegally purged from voters rolls or not added to those rolls on a timely basis. The committee also reported significant problems in access for disabled voters.

*U.S. Commission On Civil Rights:*⁷ This official body focused on voting irregularities in Florida during the 2000 election. After taking sworn testimony from more than 100 witnesses and reviewing thousands of documents, the Commission found that widespread voter disenfranchisement – rather than the Bush-Gore dispute over the election’s outcome -- was the most extraordinary feature of the Florida election. The report demonstrated that statewide, black voters were nearly ten times more likely than non-black voters to have their ballots discarded. The report found that the “purging” of voter lists also mistakenly knocked voters off the rolls. The report concluded that the findings provide a basis for a legal claim under Section 2 of the Voting Rights Act. As for blame, the report cited a lack of accountability by state officials responsible for administering the vote.

*United States General Accounting Office Study:*⁸ In perhaps the most comprehensive assessment of the nation’s elections system, the GAO found that more than half of the voting jurisdictions nationwide experienced problems conducting the November 2000 election. Problems were found with voting equipment, poll workers, and

procedures for overseas ballots. In many jurisdictions, officials say they still have polling places not accessible to people with disabilities; that a lack of money is the primary reason elections officials cannot expand voter education programs; and that resolving voter eligibility questions at polling sites represents a major challenge. The study also found that percentages of uncounted presidential votes were higher in high-minority areas than in other areas.

¹ *To Assure Pride and Confidence in the Electoral Process*, The National Commission On Federal Election Reform (available at www.reformelections.org).

² *Id.*, p. 78.

³ *Building Consensus for Election Reform*, The Constitution Project (available at www.constitutionproject.org).

⁴ *Voting: What Is, What Could Be*, Caltech-MIT Voting Technology Project, July 2001, p. 17 (available at www.vote.caltech.edu). See also Katharine Q. Seelye, “Study Says 2000 Election Missed Millions of Votes,” *New York Times*, July 17, 2001.

⁵ *Counting All the Votes: The Performance of Voting Technology in the United States* (available at http://ucdata.berkeley.edu/new_web/countingallthevotes.pdf).

⁶ *How To Make Over One Million Votes Disappear: Electoral Sleight Of Hand In The 2000 Presidential Election*, Democratic Investigative Staff, House Committee on the Judiciary, August 20, 2001.

⁷ U. S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election* (June 2001).

⁸ See United States General Accounting Office, *Elections: A Framework for Evaluating Reform Proposals*, GAO-02-90, October 15, 2001; *Elections: Perspectives On Activities And Challenges Across the Nation*, GAO-02-2, October 15, 2001; *Elections: Statistical Analysis of Factors that Affected Uncounted Votes in the 2000 Presidential Election*, GAO-02-122, October 15, 2001; *Elections: Status and Use of Federal Voting Equipment Standards*, GAO-02-52, October 15, 2001. All are available at www.gao.gov.