

**ELECTION REFORM: VOLUME 3**

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**HEARINGS**  
BEFORE THE  
**COMMITTEE ON**  
**RULES AND ADMINISTRATION**  
**UNITED STATES SENATE**  
**ONE HUNDRED SEVENTH CONGRESS**  
FIRST AND SECOND SESSIONS  
TOGETHER WITH  
ADDITIONAL STATEMENTS SUBMITTED FOR THE RECORD  
**VOLUME 1 OF 3**



MARCH 14, JUNE 27, JUNE 28, AND JULY 23, 2001

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Printed for the use of the Committee on Rules and Administration

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U.S. GOVERNMENT PRINTING OFFICE

82-483

WASHINGTON : 2003

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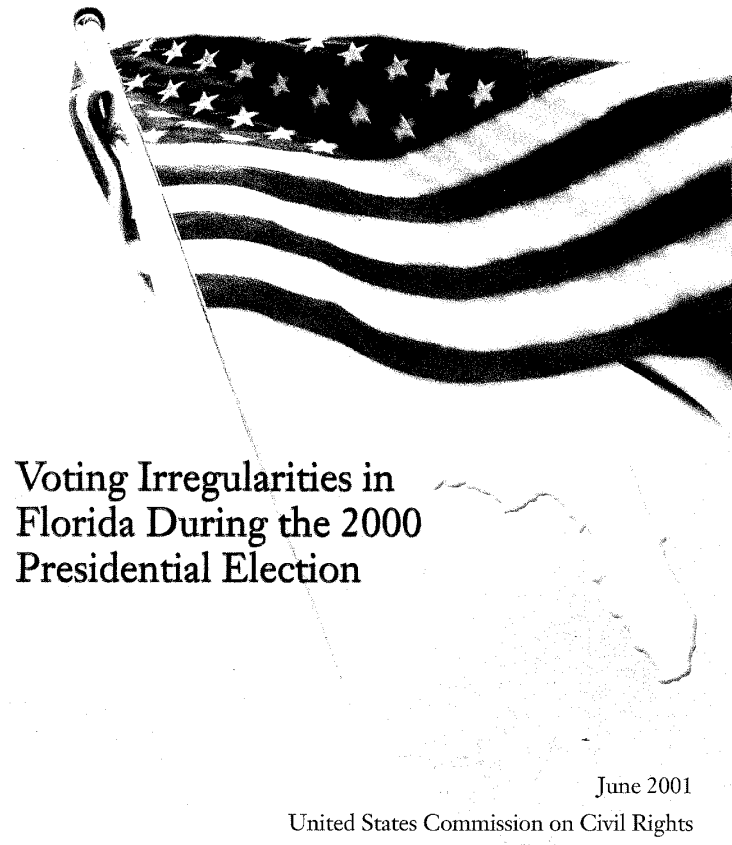
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The image features a stylized, high-contrast black and white illustration of the United States flag waving on a pole. Below the flag, a faint outline map of the state of Florida is visible. The text is overlaid on the lower portion of the flag and map.

**Voting Irregularities in  
Florida During the 2000  
Presidential Election**

June 2001

United States Commission on Civil Rights

**U.S. Commission on Civil Rights**

The U.S. Commission on Civil Rights is an independent, bipartisan agency first established by Congress in 1957 and reestablished in 1983. It is directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
- Submit reports, findings, and recommendations to the President and Congress.
- Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

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# Voting Irregularities in Florida During the 2000 Presidential Election

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ISBN 0-16-050927-0

**Letter of Transmittal**

The President  
The President of the Senate  
The Speaker of the House of Representatives

Sirs:

The U.S. Commission on Civil Rights held public hearings in Tallahassee on January 11–12, 2001, and in Miami on February 16, 2001. The purpose of the hearings was to investigate allegations that Florida voters were prevented from casting ballots or that their ballots were not counted in the November 2000 presidential election. The Commission initiated this investigation after it received allegations of widespread voter disenfranchisement in Florida. The Commission is authorized—and obligated—to investigate claims of deprivations that are “a result of any pattern or practice of fraud,” or that infringe on the right of citizens “to vote and have votes counted.”

The Commission’s investigation sought to determine whether isolated or systematic practices and/or policies by governmental entities denied eligible Florida citizens their right to vote. The investigation focused on who was responsible for making the critical decisions regarding resource allocations for Election Day activities, the reasons these decisions were made, and the effect these judgments had on specific communities.

During the hearings, the Commission received testimony from more than 100 witnesses, including the governor, the secretary of state, the attorney general, a representative of DBT Online (the company involved in state-sponsored removal of felons from Florida’s voter registration lists), the director of the Florida Division of Elections, the general counsel of the Florida Elections Commission, and the co-chairperson and executive director of the Select Task Force on Election Procedures, Standards and Technology established by the governor. Additional testimony was also heard from current and former Florida state and county officials, including county supervisors of elections, county commission officials, and law enforcement personnel as well as experts on election reform issues, election laws and procedures, and voting rights. Registered Florida voters also testified on the obstacles they encountered when attempting to participate in the November election. Both hearings included an open session in which the public was invited to testify about election procedures or personal voting experiences in the November election.

The report generated by the hearings, *Voting Irregularities in Florida During the 2000 Presidential Election*, concludes that many eligible Florida voters were, in fact, denied their right to vote, with the disenfranchisement disproportionately affecting African Americans. The report also contains recommendations, stressing that any electoral reform must include clear guidance, responsibility and accountability measures that include effective monitoring, and adequate resources to ensure meaningful implementation of these recommendations.

The report analyzes the Voting Rights Act of 1965, its subsequent amendments, and other applicable statutes. It evaluates the evidence of voter disenfranchisement, along with summaries of the testimony of people of color, individuals with disabilities, individuals with language needs, and election employees who witnessed first hand what occurred at Florida’s polling places.

The report contains an assessment of state election accountability and responsibility issues, including an examination of the state’s and counties’ allocation of financial resources, Election Day preparations and resources, and identifies who had the ultimate authority for ensuring full participation in the Florida election process.




The report also looks at Florida election law procedures for voting in two broad categories: the use of affidavits to resolve problems arising at the polling place and the use of absentee ballots. It also discusses the implementation of Florida's list maintenance obligations and its subsequent effect on voters. The report addresses the recent Florida electoral reform legislation signed by the governor after the Commission began its investigation. The Commission commends the legislation, including the elimination of punch cards, paper ballots, mechanical lever machines, and central-count voting systems as well as the addition of provisional balloting, but notes the legislation was deficient in several areas of concern and would only be effective if the implementation matches the legislature's intent to eliminate the problems.

To promote and protect the voting rights of Florida residents—as well as voters in all states—the Commission recommends that sufficient funding and expert assistance be made available to ensure adequate voter education and proper training for election officials, especially in those jurisdictions with new technology. Jurisdictions should be provided with the necessary funding to replace outdated voting technology and standards for new technology should be adopted. Election officials should also train precinct managers and poll workers on providing assistance to voters, especially individuals with disabilities and non-English-speaking voters. True provisional balloting must be enacted or expanded so that those denied the opportunity to vote on Election Day would have a right to appeal this determination prior to the canvassing of the election or the counting of ballots—eliminating, among other things, eligible voters being erroneously purged or absent from registration rolls. There must be meaningful measures to protect the integrity of the ballot box from fraud. The Commission, while making these and other recommendations to remedy the obstacles encountered by Florida voters, asks the Justice Department and the Civil Rights Division in the office of the Florida attorney general to investigate any official improprieties in the election and hold accountable those state election officials whose actions or failure to act violated relevant federal and/or state laws.

Voting is the language of our democracy. As the Supreme Court observed, “no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” It is clear that many people in Florida were denied this precious right. The Commission's investigation and report also demonstrate that although this denial in Florida fell most heavily on African Americans, it also affected many others, including, but not limited to, individuals with disabilities, people requiring language assistance, and former felons.

Some Americans, who wanted to vote, were eligible to vote, and who tried to vote, were nevertheless denied this precious right to vote. The error-plagued election in Florida must never be repeated. It is the duty of the federal government to promote the exercise of the right to vote when states fail to do so—thus making federal election reform measures essential. The Commission implores you to support appropriate legislation to ensure that the voices of all eligible voters are heard on Election Day.

Respectfully,  
For the Commissioners,

  
Mary Frances Berry  
Chairperson

**Acknowledgments**

The hearings were organized and the report was written under the supervision of General Counsel Edward A. Hales, Jr. The report was written by project team leaders Michael Foreman, Deborah Reid, Peter Reilly, and Audrey Wiggins, and attorney-advisors Barbara de La Viez, Jenny Kim Park, Bernard Quarterman, and Joyce Smith who also conducted the prehearing research, investigation, and planning and participated in the hearings. Legal secretary Pam Moye performed and coordinated an array of clerical tasks. Student intern Sheldon Fuller\* of the Office of Civil Rights Evaluation and Deric Newton\*\* of the Human Resources Division also provided assistance during the prehearing phase of the investigation. Staff Director Les Jin and Kimberley Alton, special assistant to the staff director, gave input and assistance throughout the project. Rebecca Kraus\* and the Office of Civil Rights Evaluation compiled statistical data, under the supervision of Assistant Staff Director for Civil Rights Evaluation Terri Dickerson. Terri Dickerson, Betty Edmiston, and Dawn Sweet performed the editorial policy review. Dawn Sweet prepared the report for publication with additional legal editorial assistance by attorney-advisor Barbara de La Viez.

Additionally, the Commission acknowledges with gratitude the contributions of the Office of Staff Director, the Administrative Services and Clearinghouse Division, and the Southern Regional Office. The Commission also thanks Allan J. Lichtman, Ph.D., for the services he rendered in support of this project.

\* No longer with the Commission

\*\* Deceased

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\* The Appendix is published as a second volume to this report.

## Executive Summary

Addressing voting rights issues has been a core responsibility for the U.S. Commission on Civil Rights since the Commission was founded in 1957. The Commission has broad authority over voting rights. It has general jurisdiction to examine allegations regarding the right of U.S. citizens to vote and to have their votes counted. These allegations may include, but are not limited to, allegations of discrimination based on race, color, religion, sex, age, disability, or national origin.

Pursuant to its authority, and fulfilling its obligations, members of the Commission staff conducted a preliminary investigation and discovered widespread allegations of voter disenfranchisement in Florida in the 2000 presidential election. The Commissioners voted unanimously to conduct an extensive public investigation into these allegations of voting irregularities. Toward that end, the Commission held three days of hearings in Miami and Tallahassee and, using its subpoena powers, collected more than 30 hours of testimony from more than 100 witnesses—all taken under oath—and reviewed more than 118,000 pages of pertinent documents.

The Commission carefully selected its subpoenaed witnesses to ensure that it heard testimony on the wide range of issues that had come to light during its preliminary investigation. The Commission also acted to ensure that it heard a broad spectrum of views. It subpoenaed a cross section of witnesses, including Florida Governor Jeb Bush, Florida Secretary of State Katherine Harris, members of Governor Bush's Select Task Force on Election Procedures, Standards and Technology, and Florida's attorney general. The Commission staff's research also led it to subpoena the state official responsible for oversight of motor voter registration, the general counsel for Florida's Elections Commission, the director of the Division of Elections (part of the secretary of state's office), the director of Florida's Highway Patrol, and numerous local elections officials, county supervisors, poll workers, and local sheriffs. Additionally, the Commission subpoenaed a number of witnesses who had problems or who had first-hand knowledge of problems during the election, especially those on Election Day.

The Commission attempted to ensure that it heard all points of view in a second way. At each of the hearings, it invited the general public to testify once the formal sessions had concluded. There were no time limits on how long these sessions lasted, and they ended only after all witnesses had made their statements and each of the Commissioners present had ample opportunity to ask any and all questions of the witnesses. The witnesses' statements and answers to Commissioners' questions were under oath.

During the three days of hearings, numerous witnesses delivered heartrending accounts of the frustrations they experienced at the polls. Potential voters confronted inexperienced poll workers, antiquated machinery, inaccessible polling locations, and other barriers to being able to exercise their right to vote. The Commission's findings make one thing clear: widespread voter disenfranchisement—not the dead-heat contest—was the extraordinary feature in the Florida election.

After carefully and fully examining all the evidence, the Commission found a strong basis for concluding that violations of Section 2 of the Voting Rights Act (VRA) occurred in Florida. The VRA was enacted in 1965 to enforce the 15th Amendment's proscription against voting discrimination. It is aimed at both subtle and overt state action that has the effect of denying a citizen the right to vote because of his or her race. Although the VRA originally focused on enfranchising African Americans, the law has been amended several times to also include American Indians, Asian Americans, Alaskan Natives, and people of Spanish heritage. Additionally, the VRA includes a provision that recognizes the need for multilingual assistance for non-English speakers.

The VRA does not require intent to discriminate. Neither does it require proof of a conspiracy. Violations of the VRA can be established by evidence that the action or inaction of responsible officials and other evidence constitute a “totality of the circumstances” that denied citizens their right to vote. For example, if there are differences in voting procedures and voting technologies and the result of those differences is to advantage white voters and disadvantage minority voters, then the laws, the procedures, and the decisions that produced those results, viewed in the context of social and historical factors, can be discriminatory, and a violation of the VRA.

The report does not find that the highest officials of the state conspired to disenfranchise voters. Moreover, even if it was foreseeable that certain actions by officials led to voter disenfranchisement, this alone does not mean that intentional discrimination occurred. Instead, the report concludes that officials ignored the mounting evidence of rising voter registration rates in communities. The state’s highest officials responsible for ensuring efficiency, uniformity, and fairness in the election failed to fulfill their responsibilities and were subsequently unwilling to take responsibility.

#### **Disenfranchised Voters**

Disenfranchised voters are individuals who are entitled to vote, want to vote, or attempt to vote, but who are deprived from either voting or having their votes counted. The most dramatic undercount in the Florida election was the uncast ballots of countless eligible voters who were wrongfully turned away from the polls. Statistical data, reinforced by credible anecdotal evidence, point to the widespread denial of voting rights. It is impossible to determine the extent of the disenfranchisement or to provide an adequate remedy to the persons whose voices were silenced by injustice, ineptitude, and inefficiency. However, careful analysis and some reasonable projections illustrate what happened in Florida.

The disenfranchisement of Florida’s voters fell most harshly on the shoulders of black voters. The magnitude of the impact can be seen from any of several perspectives:

- Statewide, based upon county-level statistical estimates, black voters were nearly 10 times more likely than nonblack voters to have their ballots rejected.
- Estimates indicate that approximately 14.4 percent of Florida’s black voters cast ballots that were rejected. This compares with approximately 1.6 percent of nonblack Florida voters who did not have their presidential votes counted.
- Statistical analysis shows that the disparity in ballot spoilage rates—i.e., ballots cast but not counted—between black and nonblack voters is not the result of education or literacy differences. This conclusion is supported by Governor Jeb Bush’s Select Task Force on Election Procedures, Standards and Technology, which found that error rates stemming from uneducated, uninformed, or disinterested voters account for less than 1 percent of the problems.
- Approximately 11 percent of Florida voters were African American; however, African Americans cast about 54 percent of the 180,000 spoiled ballots in Florida during the November 2000 election based on estimates derived from county-level data. These statewide estimates were corroborated by the results in several counties based on actual precinct data.

Poor counties, particularly those with large minority populations, were more likely to possess voting systems with higher spoilage rates than the more affluent counties with significant white populations. There is a high correlation between counties and precincts with a high percentage of African American voters and the percentage of spoiled ballots. For example:

- Nine of the 10 counties with the highest percentage of African American voters had spoilage rates above the Florida average.
- Of the 10 counties with the highest percentage of white voters, only two counties had spoilage rates above the state average.
- Gadsden County, with the highest rate of spoiled ballots, also had the highest percentage of African American voters.
- Where precinct data were available, the data show that 83 of the 100 precincts with the highest numbers of spoiled ballots are black-majority precincts.

The magnitude of the disenfranchisement, including the disparity between black and nonblack voters, is supported by the testimony of witnesses at the Commission's hearings. These witnesses include local election officials, poll workers, ordinary voters, and activists. Among the sworn testimony:

- One potential voter waited hours at the polls because of a registration mix-up as poll workers attempted to call the office of the supervisor of elections. The call never got through and the individual was not allowed to vote. A former poll worker herself, she testified that she never saw anything like it during her 18 years as a poll worker.
- A poll worker in Miami-Dade County with 15 years of experience testified, "By far this was the worst election I have ever experienced. After that election, I decided I didn't want to work as a clerk anymore."
- A poll worker in Palm Beach County testified that she had to use her personal cell phone to attempt to contact the election supervisor's office. Despite trying all day, she only got through two or three times over the course of 12 hours.
- A Broward County poll worker testified that in past elections it took about 10 minutes to get through to the elections supervisor. During the course of the November 2000 election, she turned away approximately 40–50 potential voters because she could not access the supervisor of elections.
- A Boynton Beach poll worker explained how his precinct workers turned away about 30–50 potential voters because they could not get through to the supervisor of elections. He was successful only once during an eight-hour period.
- Other persons testified about waiting in long lines only to be ultimately denied their right to vote.

The Commission calls upon the attorney general of the United States to immediately begin the litigation process to determine liability under the VRA and appropriate remedies. The Commission is a fact-finding body, authorized to investigate allegations of voting discrimination, fraud, and other irregularities. However, it does not adjudicate violations of the law, hold trials, or determine civil or criminal liability. It is within the jurisdiction of the U.S. Department of Justice and Florida law enforcement officials to seek appropriate sanctions and remedies. In addition to calling on the attorney general to initiate the litigation process on this issue, the Commission requests this action on a number of other issues as well, such as Florida's handling of its voter roll purge and its failure to accommodate voters with disabilities and limited English proficiency.

The Commission recommends that Florida retain knowledgeable experts to undertake a formal study to ascertain the reason for the racial disparities in vote rejection rates between white voters and persons of color. Once this is completed, the state should adopt and publi-



cize procedures to eliminate this disparity. As a start, the state could identify and promote the "best practices" of counties in Florida or around the nation that performed well during the 2000 presidential election.

#### **Missing Leadership**

Florida's governor insisted that he had no specific role in election operations and pointed to his secretary of state as the responsible official. After the election, however, the governor exercised leadership and responsibility in electoral matters in the commendable action of appointing a task force to make recommendations to fix the problems that occurred. The secretary of state, the state's chief elections officer, denied any responsibility for the problems in the election, claiming only a "ministerial" role, her clear statutory obligations notwithstanding. Rather, she asserted that county election officials are responsible for the conduct of the election, describing her role in the policies and decisions affecting the actual voting operations as limited. However, her claims of no responsibility sharply contrast to her actions in the immediate aftermath of Election Day, when she asserted ultimate authority in determining the outcome of the vote count. On the local level, supervisors of elections in the counties that experienced the worst problems failed to prepare adequately and demand necessary resources.

This overall lack of leadership in protecting voting rights was largely responsible for the broad array of problems in Florida during the 2000 election. Furthermore, state officials ignored the pleas of some supervisors of elections for guidance and help. Especially at the highest levels, officials must take responsibility for leading on matters for which they have authority and, to the extent they do not have sole authority, to take the initiative for working with other key officials. Specific examples of the areas in which Florida officials need to improve are discussed in other parts of the Executive Summary and throughout the report. However, the need for key officials to exercise leadership in protecting the right to vote is imperative. This was not a responsibility that officials were willing to accept during the 2000 election.

#### **Purging Former Felons from the Voter Rolls**

Individuals not legally entitled to vote should not be allowed to vote. Appropriate efforts to eliminate fraudulent voting strengthen the rights of legitimate voters. In fact, there are already laws in place in Florida that make it a crime to vote unlawfully. However, poorly designed efforts to eliminate fraud, as well as sloppy and irresponsible implementation of those efforts, disenfranchise legitimate voters and can be a violation of the VRA. Florida's overzealous efforts to purge voters from the rolls, conducted under the guise of an anti-fraud campaign, resulted in the inexcusable and patently unjust removal of disproportionate numbers of African American voters from Florida's voter registration rolls for the November 2000 election.

The purge system in Florida proceeded on the premise of guilty until proven innocent. In 1998, the Florida legislature enacted a statute that required the Division of Elections to contract with a private entity to purge its voter file of deceased persons, duplicate registrants, individuals declared mentally incompetent, and convicted felons without civil rights restoration, i.e., remove ineligible voter registrants from voter registration rolls. This purge process became known as list maintenance. Once on the list, the process places the burden on the eligible voter to justify remaining on the voter rolls. The ubiquitous errors and dearth of effective controls in the state's list maintenance system resulted in the exclusion of voters lawfully entitled and properly registered to vote.

African American voters were placed on purge lists more often and more erroneously than Hispanic or white voters. For instance, in the state's largest county, Miami-Dade, more than 65 percent of the names on the purge list were African Americans, who represented only 20.4 percent of the population. Hispanics were 57.4 percent of the population, but only 16.6 per-

cent of the purge list; whites were 77.6 percent of the population but 17.6 percent of those purged.

Florida easily could have, and should have, done much more to protect the voting rights of African Americans and other Floridians. What should have been done include the following:

- The governor, the secretary of state, or the director of the Division of Elections should have provided clear instructions to their subordinates on list maintenance strategies that would protect eligible voters from being erroneously purged from the voter registration rolls. Two key failings accounted for a large portion of the purge-related disenfranchisement:
  - The Division of Elections failed to recommend the same cautionary steps before the November 2000 presidential election that were taken before the 1998 election. At that time, supervisors of elections were asked to verify the exclusion lists with the greatest of care. They were asked to provide opportunities for persons to vote by affidavit ballot in those instances in which the voter made a credible challenge to his or her removal from the voter registration rolls.
  - Inadequate supervision of Division of Elections staff allowed irresponsible decisions to be made, including an official of the Division of Elections encouraging an error-laden strategy that resulted in the removal of a disproportionate number of eligible African American voters from the rolls.
- State officials should have provided adequate training to supervisors of elections in purge verification procedures.

The purposeful use of erroneous listings to promote the state's purging priorities and the permanent disenfranchisement of discharged felons raise important questions of fundamental fairness. The state's aggressive purging laws, policies, and practices disproportionately affect African Americans, who are disproportionately charged, convicted, and sentenced in the criminal justice system. The Commission questions Florida's onerous and infrequently rendered clemency process. Former offenders who have paid their debt to society should have citizenship rights restored, which is already done in 36 states. Further, the report expresses disappointment that the recently enacted legislation failed to address the issue of automatic restoration of voting rights for former felons and asks that the governor recommend reform in this area of state law.

#### **Accessibility**

Florida failed to provide adequate access to individuals with disabilities and to people who have limited English proficiency. Specific concerns pertaining to those with physical disabilities include:

- Persons who rely on wheelchairs were forced to negotiate steps and unreachable polling booths or undergo humiliation by relying on others to lift them into the polling places to exercise their right to vote.
- Some voters with visual impairments found that the precincts did not have proper equipment to assist them in reading their ballots and, therefore, they had to rely on others—often strangers—to cast their ballots, denying them their right to a secret ballot.
- Others precincts were not equipped, or otherwise failed altogether, to accommodate potential voters with disabilities. As a result, individuals with disabilities were simply turned away, and therefore disenfranchised.

Individuals who were not proficient in English faced comparable barriers, despite federal requirements that language assistance be provided for non-English-proficient voters. Thus, a large number of limited-English-speaking voters were denied assistance at polling places, greatly increasing the likelihood of disenfranchisement. In some parts of Florida, Spanish-speaking voters did not receive bilingual assistance or bilingual ballots. Some of these counties are required to provide language assistance under the VRA. The failure to provide language assistance resulted in widespread voter disenfranchisement of an estimated several thousand Spanish-speaking voters in Florida.

**Voter Education, Voter Registration, Training Poll Workers, and Election Day Problems**

Many of the obstacles that caused voter disenfranchisement in the November 2000 election were the result of inadequate voter education and insufficient poll worker training. Moreover, counties were grossly unprepared for the large voter turnout and scrambled, often unsuccessfully, to meet the needs of voters on Election Day. Despite the early signs of a large influx of new voters, Florida state election officials did not respond with the appropriate array of measures to avoid the chaos that occurred. The lack of sufficient and comparable resources and the absence of guidance from top state officials on matters such as voter education and effective poll worker training contributed to the incidence of spoiled and uncast ballots. Florida must take steps to remedy this, including:

- The secretary of state's office and local election officials must ensure that they have sufficient resources to engage in effective voter education.
- Local election officials who do not have sufficient resources for conducting a well-run election must have an adequate process to ensure they can obtain those resources.
- There must be better coordination between the secretary of state's office and local election officials. The Commission recommends that any future reforms include effective monitoring systems and adequate resources to ensure the meaningful implementation of the proposals.
- Florida officials need to do a better job of consulting people with disabilities, individuals with limited English proficiency, and groups representing these individuals to ensure that voters with access problems have a full and fair opportunity to cast their ballots and to have them accurately counted.

As a result of these shortcomings, some potential voters never got to cast ballots. For example:

- Some voters were barred from voting despite arriving at their polling places before closing time because poll workers did not understand the rule that if voters arrive before 7 p.m., they must be allowed to vote.
- Adequate notice was not always given to voters when polling places were moved.
- The failure to process in a timely manner motor voter registrants contributed to disenfranchising voters.
- Aside from the lack of consistency and uniformity in election operations, many election officials failed to use affidavits under appropriate circumstances and instituted few procedures to confirm voter lists.
- Poll workers were unable to reach central offices to certify voters.

**Conclusion**

The Commission found that the problems Florida had during the 2000 presidential election were serious and not isolated. In many cases, they were foreseeable and should have been prevented. The failure to do so resulted in an extraordinarily high and inexcusable level of disenfranchisement, with a significantly disproportionate impact on African American voters. The causes include the following: (1) a general failure of leadership from those with responsibility for ensuring elections are properly planned and executed; (2) inadequate resources for voter education, training of poll workers, and for Election Day trouble-shooting and problem solving; (3) inferior voting equipment and/or ballot design; (4) failure to anticipate and account for the expected high volumes of voters, including inexperienced voters; (5) a poorly designed and even more poorly executed purge system; and (6) a resource allocation system that often left poorer counties, which often were counties with the highest percentage of black voters, adversely affected.

Since the Commission began its hearings, Florida has enacted legislation to address many of the problems of the last election. The Commission publicly applauded this development as soon as it occurred, and even before the details of the legislative package were finalized. The Commission reiterates that Florida and its leaders deserve credit for the new election law.

However, the same leadership that effectively ensured passage of the recent legislation was missing in the years and months leading up to the November 2000 election. If the same level of leadership had been present, the Commission's investigation reveals that most of the problems during the past election would have been prevented, and the dire consequences documented in this report could have been avoided.

Unfortunately, the recent legislation fails to address several other important issues, including accessibility for persons with disabilities, language assistance, and other barriers to voter participation. Additionally, the new law permits provisional balloting only under limited circumstances. While provisional voting is a positive step, the legislation is too restrictive to adequately address possible situations that might require its use. The provision should be amended to ensure additional voters are not disenfranchised.

Moving forward, the Commission urges that the same leaders who worked to enact the recent election reforms work even more diligently to ensure they are implemented effectively. Moreover, the Commission encourages Florida's leaders to expeditiously take up the issues they did not address in the last legislative package, such as making rules on purging of former felons less punitive and more in line with the mainstream of other states.

## Introduction

*No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote under any provision of this [Voting Rights] Act or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.*<sup>1</sup>

### BACKGROUND

The 2000 presidential election and its aftermath became the focus of international attention on the application of America's election laws and policies. The state of Florida's electoral process took center stage as the world paused to observe the unfolding drama of identifying the next President of the United States.<sup>2</sup> During this time, many allegations of voting irregularities arose as to whether eligible voters were hindered and in some cases prevented from voting for the presidential candidate of their choice, and if votes that were cast were properly tabulated.

When the U.S. Commission on Civil Rights receives allegations of voting irregularities it is obligated to investigate.<sup>3</sup> Accordingly, the Commission initiated an investigation into these issues. In the area of voting rights, the Commission is specifically authorized to investigate allegations of deprivations "as a result of any pat-

tern or practice of fraud; of the right of citizens of the United States to vote and have votes counted."<sup>4</sup> The Commission's authority to conduct hearings emanates from 1957 legislation that established it as an independent bipartisan federal agency of the U.S. government. The Commission is charged by federal law:

- to appraise the laws and policies of the federal government;
- to serve as a national clearinghouse for information—all in connection with discrimination or the denial of equal protection of the laws of this nation, because of race, color, religion, sex, age, disability, national origin, or in the administration of justice.

The Commission's investigation in Florida was intended to determine if there were unequal allocations of election resources throughout Florida's counties, and whether there were isolated or systemic practices and/or policies that prevented Florida residents from voting. Moreover, the investigation focused on who was responsible for making the critical decisions regarding resource allocations for Election Day activities, the reason these decisions were made, and the effect these judgments had on specific communities. The investigation included public fact-finding hearings in Tallahassee on January 11–12, 2001, and in Miami on February 16, 2001. In total, hundreds of witnesses were interviewed by Commission staff, and more than 100 witnesses testified under oath before the Commission, including approximately 65 witnesses who were selected for the two hearings due to their knowl-

<sup>1</sup> 42 U.S.C. § 1973i(a) (2000).

<sup>2</sup> In Florida, the ballot for the 2000 presidential election included 12 candidates for President. The top vote-getters in Florida were George Bush and Albert Gore. Both candidates received 48.8 percent of the vote in Florida. On December 13, 2000, 36 days after the election—following a mandatory recount and amid a flurry of lawsuits, appeals, and two cases that reached the Supreme Court—Florida announced that its 25 electoral votes would be cast for George Bush. The final vote tally in Florida was 2,912,790 for Bush and 2,912,253 for Gore. In the end, Bush became the president-elect, winning the electoral college by a margin of 271–267; Gore won the popular vote with 50,158,094 over Bush's 49,820,518.

<sup>3</sup> 42 U.S.C. § 1975a(a)(1) ("The Commission *shall* investigate. . .") (emphasis added).

<sup>4</sup> 42 U.S.C. § 1975a(a)(1)(B) (2000). "The Commission shall investigate allegations in writing under oath or affirmation relating to deprivations—because of color, race, religion, sex, disability, or national origin." 42 U.S.C. § 1976a(a)(1).

edge of and/or experience with the issues under investigation. The Commission heard testimony from top elected and appointed state officials, including the governor, the secretary of state, the attorney general, the director of the Florida Division of Elections, the general counsel of the Florida Elections Commission, other current (and former) Florida state and county officials, and a representative of DBT Online (a Choice-Point company that was involved in the state-sponsored removal of felons from Florida's voter registration lists).

During the hearings, Florida citizens, registered voters, and experts on election reform issues, election laws, and procedures, and voting rights provided sworn testimony. The co-chairperson and executive director of the Select Task Force on Election Procedures, Standards and Technology, established by Florida Governor John Ellis (Jeb) Bush, testified before the Commission. Various county supervisors of elections, county commission officials, law enforcement personnel, and a state's attorney also presented their sworn statements. In addition to the scheduled witnesses, the Commission extended an opportunity for concerned persons, including members of the U.S. Congress and the Florida legislature, to submit relevant testimony under oath. Furthermore, the Commission subpoenaed documents from witnesses containing pertinent information that could assist with this investigation and augment submitted testimony. These witnesses produced more than 118,000 pages of relevant documents, computer discs, CD-ROMs, and tapes of data.

After the hearing phase of this investigation, the staff reviewed testimony, posed various interrogatories to a number of witnesses and examined their responses to these interrogatories, conducted a deposition of a hearing witness at the request of Commissioners, conducted supplemental research on areas of law and fact, and performed an extensive review of the subpoenaed documents.

During the course of this investigation, Chairperson Mary Frances Berry sent a letter to Governor Bush expressing her deep disappointment with his failure to "address the most serious problems that occurred in Florida during the 2000 elections."<sup>5</sup> Chairperson Berry was refer-

ring to a statement of priorities that Governor Bush presented during the opening of the Florida legislative session. She indicated that his support for voting technology reforms in Florida was necessary and a step in the right direction. She emphasized, however, that "[f]hese measures standing alone are insufficient to address the significant and distressing issues and barriers that prevented qualified voters from participating in the recent presidential election."<sup>6</sup>

At the Commission's March 9, 2001, meeting, Commissioners approved and released a statement on the status of this investigation. The Commissioners reported that "voter disenfranchisement appears to be at the heart of the issue."<sup>7</sup> The status report offered a preliminary assessment of the evidence by the Commissioners. It identified an array of problems including, but not limited to, differences in resource allocations "that may have operated so that protected groups may have had less of an opportunity to have their votes counted."<sup>8</sup> The statement expressed the hope of Commissioners that "Florida officials, as well as officials in other jurisdictions—where barriers existed, will promptly resolve these major problems that occurred on their watch, instead of hoping with the passage of time the public will forget."<sup>9</sup>

The Commissioners also agreed at this meeting to hold a future hearing in Florida to hear testimony from state and local officials to assess what legislative changes have been proposed or enacted at the state and local levels and to report to the public on what progress has been made.

The day before the Commission's May 4, 2001, meeting, the Florida legislature announced it agreed upon a legislative package that would overhaul the state's voting system. The Commission issued a statement commending the approval of Florida electoral reform legislation that "addresses many of the issues presented to the Commission during its investiga-

<sup>6</sup> Ibid.

<sup>7</sup> See U.S. Commission on Civil Rights, "Status Report on Probe of Election Practices in Florida During the 2000 Presidential Election," Mar. 9, 2001.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>5</sup> See Mary Frances Berry, chairperson, U.S. Commission on Civil Rights, letter to Governor Jeb Bush, Mar. 8, 2001.

tion."<sup>10</sup> Striking a cautionary note, Chairperson Berry, however, observed, "We are all cognizant of the fact that not all areas of concern are covered, such as the need for language and special needs assistance. We know also that this legislation can only be effective if the implementation matches the legislature's intent to eliminate the problems."<sup>11</sup> The Commission also renewed its commitment to "travel to Florida to assess the impact of the legislation and to encourage appropriate distribution of resources to eliminate the well-publicized difficulties that were experienced in the last election."<sup>12</sup> On May 9, 2001, the Florida Election Reform Act was signed into law by Governor Jeb Bush.

In the final stages of this investigation, the Commission followed its procedures by conducting legal sufficiency, defame and degrade, and editorial policy board reviews. Affected agencies were afforded an opportunity to review and respond to applicable portions of this report. These comments were then considered and where appropriate are reflected in this final report.

#### OBJECTIVE

The Commission's report analyzed the Voting Rights Act of 1965 (VRA), its subsequent amendments, and other applicable statutes. The objective of this investigation was not to determine if violations of these laws occurred, since the Commission does not have enforcement powers, but to provide a backdrop for an analysis of the civil rights implications of the Commission's factual findings. Obviously, some analysis of the rights afforded to U.S. citizens pursuant to the VRA was an important component of the investigation. Among other provisions, the VRA provides that:

- All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State . . . shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation

of any State or Territory, or by or under its authority, to the contrary notwithstanding.<sup>13</sup>

- No person acting under color of law shall in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.<sup>14</sup>

Based on a complete review of the record, and employing the appropriate statistical analysis, the Commission examined whether Florida's eligible voters experienced disenfranchisement during the 2000 presidential election as a result of disparate treatment or based on apparently neutral factors that resulted in denying the right to vote. Initially, under the VRA, a plaintiff could prove a violation by showing that government practices resulted in the denial of the right of any citizen to vote on the basis of race or color.<sup>15</sup> The Supreme Court subsequently ruled that establishing a violation of the VRA required proof of intentional discrimination, which diminished a voter's ability to challenge practices that disenfranchised African Americans.<sup>16</sup> Because of the unfortunate legacy and the lingering effects of race-based discrimination, Congress reacted immediately to reverse the Supreme Court and prevent the continuation of discriminatory practices in voting that served to disenfranchise African Americans and other persons of color.

In 1982, Congress passed an amendment to the VRA, providing provisions to further guarantee the sacred right to vote for all eligible citizens of the United States. Congress understood that the nearly impossible burden of proving discriminatory intent would preclude the elimination of policies that although neutral on their face had the effect of disenfranchising persons of

<sup>13</sup> 42 U.S.C. § 1971(a)(1) (2000).

<sup>14</sup> 42 U.S.C. § 1971(a)(2)(A).

<sup>15</sup> See *Zimmer v. McKeithen*, 485 F.2d 1297, 1305 (5th Cir. 1973).

<sup>16</sup> In *Mobile v. Bolden*, 446 U.S. 55 (1980), the U.S. Supreme Court determined that proof of discriminatory intent was required pursuant to the 14th and 15th Amendments and section 2 of the Voting Rights Act. As discussed, Congress subsequently rejected the *Mobile* decision. See chap. 1.

<sup>10</sup> See U.S. Commission on Civil Rights, "U.S. Commission on Civil Rights Commends Florida Leaders' Proposed Overhaul of Voting System," May 4, 2001.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

color. Thus, the VRA amendments of 1982 reversed the Supreme Court and clarified that discrimination could be established by either showing intentional discrimination or that the totality of the circumstances results in a violation of the VRA.

The essence of this change in the law was to make it clear that a "specific intent to discriminate" is not required to establish a violation of the VRA. Rather, the proper test is whether the "result" of the election practice is one that is not equally open to minority voters or whether the election practice gives minority voters less opportunity to participate in the electoral process.<sup>17</sup>

Additionally, the Commission recognizes that other factors could have contributed to voter disenfranchisement in Florida during the 2000 presidential election. For example:

- **The Western Florida Time Zone Controversy.** On the evening of November 7, 2000, various television networks and cable stations announced the closure of Florida's polls, exit poll outcomes, and/or the predicted results of the presidential and Florida senate races at 6 p.m. Central Standard Time (7 p.m. Eastern Standard Time), when polls in the western Florida panhandle did not officially close until 7 p.m. Central time.<sup>18</sup>
- **Absentee Military Ballots.** Florida absentee ballots from overseas members of the nation's military were delivered to the state via the U.S. mail service, but questions arose as to their validity because of their late arrival, improper certification, incomplete applications, illegible ballots, improper certification

by election officials, or the lack of required postmarks.<sup>19</sup>

- **Complaints of Voter Fraud.** There were allegations that some Florida residents voting in the November 2000 election were not eligible to vote.<sup>20</sup>

While recognizing that the above factors do raise concerns of voting irregularities, the Commission did not receive a significant number of complaints or sufficient evidence during its Tallahassee and Miami hearings pertaining to how these issues created possible voter disenfranchisement in Florida.<sup>21</sup>

Traditionally, the Commission has focused its attention on the expansion of voting rights issues and related litigation.<sup>22</sup> The Commission

<sup>19</sup> See, e.g., Tara Copp, "Congress to Eye Changes in Military Voting," Scripps Howard News Service, Apr. 3, 2001; Thomas B. Pfankuch, "Bill Revises Overseas Balloting Proposal; Would Ensure Absentee Votes Counted," *The Florida Times-Union* (Jacksonville), Apr. 3, 2001, p. B1.

<sup>20</sup> See Florida Department of State, Division of Elections, "Voter Fraud Notice" <<http://election.dos.state.fl.us/fraud/index.shtml>> (accessed May 15, 2001). The Division of Elections defines voter fraud as "intentional misrepresentation, trickery, deceit, or deception, arising out of or in connection with voter registration or voting, and the prescribed offenses set forth in chapter 104, Florida Statutes." *Ibid.*

<sup>21</sup> See generally Linda Ward, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, p. 351 (testifying about alleged voter fraud activity in Seminole and Miami-Dade counties); Enos Schern, president, Citizens of Dade United, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 529 (testifying about alleged voter fraud activity in Seminole and Miami-Dade counties); Raymond Jackson, president, North Florida branch of the NAACP, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 359 (expressing concerns that election officials did not count overseas military ballots delivered in Okaloosa and Walton counties); Senator Daryl Jones, Senate District 40, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 429 (suggesting permitting voting through use of the Internet for overseas military personnel to remedy overseas absentee ballot problems); June Littler, chairperson, Florida Advisory Committee to the U.S. Commission on Civil Rights, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 22 (testifying that Florida citizens have informed her they do not support Florida's polls closing at different times based on the state's two time zones); Katherine Harris, Florida secretary of state, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 249 (describing state's procedures for investigating voter fraud complaints).

<sup>22</sup> See generally U.S. Commission on Civil Rights, *Statutory Report for 1961, Volume I: Voting* (1961); U.S. Commission on Civil Rights, *Voting in Mississippi* (1965) (analyzing findings of field investigations and a hearing in Mississippi); U.S. Commission on Civil Rights, *The Voting Rights Act of*

<sup>17</sup> See chap. 1.

<sup>18</sup> See U.S. Congress, Senate, Committee on Governmental Affairs, *Federal Elections*, Testimony of Daniel B. Perrin, executive director, Committee for Honest Politics, Federal Document Clearing House, Inc., May 3, 2001; Jim Abrams, "No Intentional Bias in Early Calls," AP Online, Feb. 8, 2001. Florida's panhandle is located in the Central time zone, while the remaining portions of the state are in the Eastern time zone. Nevertheless, the CBS, ABC, NBC, FOX, and CNN networks made announcements that erroneously stated or implied that Florida's election was concluded at 6 p.m. Central time. As a result, there have been several accounts indicating that a number of western Florida voters in the panhandle did not vote during the evening of November 7, because they assumed their polling locations would not be open until the scheduled closing time of 7 p.m. Central time.



has historically played an important role in investigating these types of allegations and has made recommendations that contributed to the expansion of protections of the right to vote. Accordingly, in this report, the Commission continues in its traditional role by investigating voting irregularities in Florida during the 2000 presidential election.

Chapter 1 of this report, "Voting System Controls and Failures," provides a brief discussion of the Voting Rights Act. It also discusses evidence of voter disenfranchisement and how this disenfranchisement affected the rights of people of color to vote in the 2000 presidential election. Chapter 2, "First-Hand Accounts of Voter Disenfranchisement," provides summaries of the testimony of people who witnessed what occurred at polling places on November 7. This chapter includes details of such issues as poll workers' inability to contact county supervisors of elections, polling places being moved without notice, and police presence at or near polling places.

Chapter 3, "Responsibility Without Accountability?" focuses on state election accountability and responsibility issues and discusses who has the ultimate authority for ensuring full participation in the Florida election process. This chapter discusses the requirements of voting eligibility list maintenance. Chapter 4, "Resource Allocation," examines the following election topics: financial election resources for the state of Florida, the state's allocation of financial resources, counties' allocation of financial resources, the state's efforts to establish election uniformity throughout Florida, Election Day preparations, and Election Day resources.

Chapter 5, "The Reality of List Maintenance," discusses the implementation of Florida's voter list maintenance obligations and how it affected voters. Chapter 6, "Accessibility Issues," examines special needs assistance concerns and how individuals with disabilities and those with language needs were affected during the November 2000 election.

Chapter 7, "Casting a Ballot," focuses on Florida election law procedures for voting in two broad categories: the use of affidavits to resolve problems arising at the polling place and the use of absentee ballots. Chapter 8, "The Machinery of Elections," provides information on the types of equipment used on Election Day, the effectiveness of this voting machinery, a contextual framework for election technology improvements, and voting machinery experts' perspectives. Findings and recommendations of the Commission are presented in chapter 9. The Epilogue provides a brief overview of the pertinent legislative and other governmental actions that have occurred since the Commission began its investigation.

This report is the final step in the Commission's examination of the testimonial and documentary evidence, laws, processes, procedures, and methods of resource allocation in Florida that may have resulted in a significant number of voters who were either denied the right to vote or did not have their vote counted in the 2000 presidential election. Additionally, this report includes an analysis of relevant evidence that contributes to the Commission's findings and policy recommendations.

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1965: *The First Months* (1965); U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (1975); U.S. Commission on Civil Rights, *The Voting Rights Act: Unfulfilled Goals* (1981) (examining the status of minority voting rights in jurisdictions covered by the original provisions of the 1965 act); U.S. Commission on Civil Rights, *A Citizen's Guide to Understanding the Voting Rights Act* (1984); Louisiana Advisory Committee to the U.S. Commission on Civil Rights, *Voter Registration in Louisiana Parishes* (1989); South Carolina Advisory Committee to the U.S. Commission on Civil Rights, *Reversing Political Powerlessness for Black Voters in South Carolina: Will Single-Member Election Districts Lead to Political Segregation?* (1991).

## CHAPTER 1

## Voting System Controls and Failures

*No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.*<sup>1</sup>

To ensure that every eligible citizen in Florida has an opportunity to exercise his or her right to vote, the state established a system of checks and balances that extends from the governor to the local poll worker. This system of control is codified in many of the provisions of the election laws of the state of Florida and, in part, is intended to help guarantee the rights granted to voters by the Voting Rights Act of 1965 will be protected. During the November 2000 election, a wide range of errors, including the insufficient provision of adequate resources, caused a significant breakdown in the state's plan, which resulted in a variety of problems that permeated the election process in Florida. Large numbers of Florida voters experienced frustration and anger on Election Day as they endured excessive delays, misinformation, and confusion, which resulted in the denial of their right to vote or to have their vote counted. While some maintain that what occurred in Florida was nothing out of the ordinary, but rather was simply amplified by the closeness of the election, the overwhelming evidence provided to the Commission proves otherwise.

It is impossible to determine the total number of voters turned away from the polls or deprived of their right to vote. It is clear that the 2000 presidential election generated a large number of complaints about voting irregularities in Florida. The Florida attorney general's office alone received more than 3,600 allegations—

2,600 complaints and 1,000 letters.<sup>2</sup> In addition, both the Democratic and Republican parties received many complaints from Floridians who either could not vote or experienced difficulty when attempting to vote.<sup>3</sup> These widespread complaints prompted Florida's governor to sign an executive order creating the Select Task Force on Election Procedures, Standards and Technology.<sup>4</sup> The task force was formed to examine the concerns that had been raised about Florida's election process and to recommend reforms where necessary.<sup>5</sup>

Several advocacy group representatives testified about the disproportionate number of complaints they received from their constituents in Florida. Jackson Chin, associate counsel at the Puerto Rican Legal Defense and Education Fund in New York City, explained that his group's preliminary investigation revealed that certain election practices in central Florida might have

<sup>2</sup> Robert A. Butterworth, Florida attorney general, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, pp. 193-94. See also "Complaints of Voting Irregularities in the 2000 Election," Bates Nos. 8204-8257.

<sup>3</sup> Copies of these complaints were provided to the Commission pursuant to subpoenas *duces tecum* served on the headquarters of the Democratic and Republican parties in Florida. See "Complaints of Voting Irregularities in the 2000 Election," Bates Nos. 1-612.

<sup>4</sup> John Ellis Bush, governor of Florida, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 11, 2001, Verified Transcript, pp. 98-99, 105-09. See also the Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, Mar. 1, 2001 (hereafter cited as Governor's Task Force, *Revitalizing Democracy*).

<sup>5</sup> John Ellis Bush, governor of Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 105-09. On March 1, 2001, the Governor's task force released its findings and recommendations, which focused largely on reforming and updating Florida's election technology. See Governor's Task Force, *Revitalizing Democracy*.

<sup>1</sup> *Burdick v. Takushi*, 504 U.S. 428, 441 (1992) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)).

led to the widespread voter disenfranchisement of up to several thousand Latino voters.<sup>6</sup> D.P. Misra, former president of the Association of Indians in America, and Venghan Winnie Tang, president of the South Florida chapter of the Organization of Chinese Americans, both testified that immigration and language assistance problems prevented many East Indians and Asians from being able to vote in Florida.<sup>7</sup>

Other advocacy groups formed coalitions to investigate or to take action against the election problems that surfaced in Florida. For example, the NAACP filed a federal class-action lawsuit on behalf of voters in Florida who allege their right to vote in the election was unlawfully denied or abridged.<sup>8</sup> The Florida Justice Institute joined with the ACLU of Florida and Florida Legal Services to develop statewide electoral reform that focuses on the concerns of Florida's racial and language minorities and those who live in poverty, "considerations that are probably long overdue in this state."<sup>9</sup> According to JoNel Newman of the Florida Justice Institute, "[w]hen new or vulnerable voters from traditionally disenfranchised groups are wrongly prevented from going to the polls and from voting, they feel often a humiliation and a stigma or a disaffection that has the effect in many cases of causing them never to return to the voting booth."<sup>10</sup>

The complaints from those denied the right to vote during the 2000 Florida presidential election were anything but isolated or episodic. Credible evidence shows many Floridians were denied the right to vote. Analysis of the testimony and evidence gathered by the Commission show that these denials fell most squarely on persons of color. To place this discussion in a

legal context it is important to briefly discuss some of the nondiscrimination provisions of the Voting Rights Act of 1965.

#### THE VOTING RIGHTS ACT OF 1965

The United States has an ugly history of voter exclusion and disenfranchisement. The original attempt to enfranchise African Americans occurred after the Civil War. Prior to the Civil War, voting was usually limited to white male property owners over the age of 21. After the war, the First Reconstruction Act of 1867 mandated that to re-enter the Union, Confederate states had to adopt new constitutions guaranteeing male suffrage without regard to race. Subsequently, Congress adopted the 15th Amendment in 1870, which guaranteed, in theory, the equal right to vote regardless of "race, color, or previous condition of servitude."

Despite what appeared to be a clear prohibition on race discrimination in voting, most states had adopted barriers, including poll taxes and literacy tests, which while appearing neutral on their face prevented many African Americans from voting. Notwithstanding the 15th Amendment, countless barriers kept voting a white male privilege and left people of color without a meaningful franchise consonant with the intent of the amendment.<sup>11</sup>

The passage of the Voting Rights Act of 1965<sup>12</sup> (VRA) was Congress' reaction to the abhorrent racial discrimination in voting rights in the United States and an attempt to finally enfranchise the majority of African American citizens. The VRA was a response to the growing civil rights movement that occurred almost 100 years after the passage of the 15th Amendment. Congress enacted the VRA to bar discriminatory voting laws in any form on the basis of race or color. The original VRA was aimed at eliminating persistent discrimination in voting, and the intent was to abolish the use of voter exclusionary procedures or processes, such as literacy tests, poll taxes, grandfather clauses,<sup>13</sup> dur-

<sup>6</sup> Jackson Chin Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 198.

<sup>7</sup> D.P. Misra Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 443; Venghan Winnie Tang Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 446-51.

<sup>8</sup> See National Ass'n for the Advancement of Colored People v. Harris, No. 01-CIV-120-GOLD (Fla. Dist. Ct., filed Jan. 10, 2001). See also Bradford Brown, first vice president, Miami-Dade branch of the NAACP, Testimony before the U.S. Commission on Civil Rights, Miami, FL, Feb. 16, 2001, Verified Transcript, p. 437.

<sup>9</sup> JoNel Newman, attorney, Florida Justice Institute, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 128-29.

<sup>10</sup> *Ibid.*, pp. 129-30.

<sup>11</sup> Women were also excluded from the franchise until the 19th Amendment was ratified on August 18, 1920.

<sup>12</sup> 42 U.S.C. §§ 1973 *et seq.*

<sup>13</sup> "Grandfather" and "old soldier" clauses made it easier to disenfranchise blacks without similarly disenfranchising whites by exempting from the application of literacy tests and other voting restrictions anyone who had served in the United States or Confederate army or navy, their descendants, and anyone who had himself voted, or whose father

ational residency requirements, registration harassment, and other intimidation tactics.<sup>14</sup> The VRA also intended to prevent the introduction of new devices or processes that might dilute the voting rights of African American citizens.<sup>15</sup>

The VRA was enacted under Congress' authority to enforce the 15th Amendment's proscription against voting discrimination. Although voting rights legislation was first enacted in 1870 to enhance the effectiveness of the 15th Amendment, voting rights continued to be a legal fiction for people of color—particularly African Americans—until the passage of the VRA, which was signed into law on August 6, 1965.<sup>16</sup>

had voted, or whose grandfather had voted before January 1, 1867.

<sup>14</sup> Many of the voter qualifications/regulations found unconstitutional in the past were indeed facially discriminatory along such lines as wealth, race, occupation, property ownership, and geography. See, e.g., *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966) (holding poll tax prerequisite to voting violates equal protection); *Smith v. Allwright*, 321 U.S. 649 (1944) (banning white primary laws); *Guinn v. United States*, 238 U.S. 347 (1915) (striking down grandfather clause that exempted descendants of people who voted prior to 1865 from literacy test voting prerequisite); *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621 (1969) (holding that excluding non-property owners from school district election violates equal protection); *Reynolds v. Sims*, 377 U.S. 533 (1964) (discussing legislative reapportionment).

<sup>15</sup> The previous efforts to enfranchise African American citizens were unsuccessful. The first attempt was the Civil Rights Act of 1870, ch. 114, 16 Stat. 140, amended by Act of February 28, 1871, ch. 22, 17 Stat. 13 (codified as amended at 18 U.S.C. §§ 241–242 and 42 U.S.C. §§ 1971, 1983 (1988)) (establishing penalties for racially motivated interference with voting).

It was not until the 1950s that Congress tried again. See, e.g., Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (codified as amended at 42 U.S.C. § 1975 (1988)) (establishing the U.S. Commission on Civil Rights with responsibility for investigating and reporting on voting procedures and devices used by jurisdictions to discriminate against racial minorities); Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 86 (codified as amended at 42 U.S.C. § 1974 (1988)) (requiring state and local officials to retain federal election records and authorizing the attorney general to inspect such records at his discretion); Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 1971(c) (1988)) (prohibiting local election officials from applying registration tests or standards different from those administered to already registered voters and establishing a presumption of literacy for registrants who had completed a sixth-grade education).

<sup>16</sup> One of the legal issues the enactment of the Voting Rights Act of 1965 addressed was the restrictive reading of constitutionally protected voting rights in a 1959 U.S. Supreme

The VRA prohibited, among other things, the use of literacy tests and other discriminatory “tests and devices” in states where less than 50 percent of the voting-age population was registered to vote or had voted in the November 1964 elections. These tests and devices had, for generations, effectively disenfranchised African Americans in the South. In 1965, people of color still met many obvious barriers that prevented them from exercising their right to the franchise, such as poll taxes, literacy tests, and intimidation tactics.

Congress passed the VRA in hopes of effectively combating the discriminatory voting practices that were used against nonwhites.<sup>17</sup> Initially, the VRA focused on voter registration.<sup>18</sup> The act was aimed at subtle, as well as obvious, state action that had the effect of denying citizens their right to vote because of their race.

### Section 2 of the Voting Rights Act

Section 2 of the Voting Rights Act is a codification of the intent of the 15th Amendment and forbids racial discrimination with respect to voting rights. It provides:

No voting qualifications or prerequisites to voting, or standard, practice, or procedure, shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of

Court decision. See *Lassiter v. Northampton County Bd. of Election*, 360 U.S. 45 (1959). In *Lassiter*, the Supreme Court upheld the use of English literacy tests in North Carolina as a means of qualifying voters, despite that literacy tests effectively disenfranchised a sizeable portion of African American voters. In haunting language, the Court held that absent invidious discrimination the states could limit the franchise to literate persons “to promote intelligent use of the ballot.” *Id.* at 51.

<sup>17</sup> Although the Voting Rights Act of 1965 was intended to enfranchise African Americans, the statute has been amended several times since its enactment. In 1975, Congress amended section 2 to specifically include within the scope of the statute other ethnic minorities. The statute is now also applicable to American Indians, Asian Americans, Alaskan Natives, and people of Spanish heritage. 42 U.S.C. § 1973(b)(1)(2).

<sup>18</sup> Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 42 U.S.C. §§ 1971, 1973–1973b-1 (1982)). The 1965 Voting Rights Act also included a provision that recognized the need for multilingual assistance for non-English speakers. It barred language discrimination at the polls for literate Spanish-speaking Puerto Rican voters who emigrate to the mainland. 42 U.S.C. § 1973b(e) (1982).

the United States to vote on account of race or color.<sup>19</sup>

Since its enactment in 1965, the VRA has been instrumental in providing people of color with access to the political process and in overcoming more than a century of racially discriminatory election laws and policies. Specifically, section 2 outlaws practices that deny people of color electoral participation by diluting the effectiveness of their votes.<sup>20</sup>

Until 1980, a party alleging a section 2 violation could establish a claim by demonstrating, based on the totality of the circumstances, that the challenged electoral procedure had the result of denying a minority group equal opportunity to participate in the political process and to elect their preferred candidates.<sup>21</sup> There was no requirement that disenfranchised voters prove a specific intent to deny them the right to vote because of their race.

In 1980, the Supreme Court held in *Mobile v. Bolden*<sup>22</sup> that a plaintiff must show discriminatory intent to prove a section 2 violation of vote dilution based on constitutional claims.<sup>23</sup> Congress immediately responded to this decision by amending section 2 in 1982.<sup>24</sup> The amendment provides in pertinent part:

A violation . . . of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the elec-

torate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.<sup>25</sup>

Congress intended the amendment to "clarify the standard of proof in establishing violations of the Voting Rights Act."<sup>26</sup> While debating the amendment, Congressman Don Edwards of California argued that in *Bolden* the Supreme Court—

was interpreting an act of Congress and interpreted [it] in a way that [Congress] did not intend in 1965. It said that there must be direct proof of a discriminatory intention to establish a violation of section 2. . . . Now, the problem with this ruling, contrary to what Congress intended, is that it is an impossible burden to prove intent to discriminate, even where the system clearly discriminates.<sup>27</sup>

Congressman John Conyers of Michigan said if the intent requirement was not eliminated, "the most important sentence in the Voting Rights Act would be made a nullity."<sup>28</sup> Said Congressman Conyers:

Here is the one sentence that requires that we look at the effect, the result, or the purpose, and not the intent. . . . We do not need specific criminal intent on the part of any local or State officials to determine that a violation has occurred.<sup>29</sup>

The 1982 amendments do not preclude plaintiffs from introducing evidence of discriminatory intent, but rather properly afford plaintiffs the option of demonstrating that the challenged

<sup>19</sup> Pub. L. No. 89-110, 79 Stat. 445 (codified as amended at 42 U.S.C. §§ 1971, 1973-1973bb-1 (1994)).

<sup>20</sup> Although the focus of this chapter is section 2 of the Voting Rights Act (VRA), section 5 is important to mention. Once there is a determination that a state or political subdivision has violated the VRA, the state or political subdivision is required, under section 5 of the VRA, to obtain preclearance (approval) from the United States District Court for the District of Columbia or the United States attorney general whenever it enacts or seeks to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. 42 U.S.C. § 1973c (1994).

<sup>21</sup> See *Whitcomb v. Chavis*, 403 U.S. 124, 149-50 (1971); *White v. Regester*, 412 U.S. 755, 765-66 (1973).

<sup>22</sup> 446 U.S. 55 (1980).

<sup>23</sup> *Id.* at 66-67.

<sup>24</sup> 42 U.S.C. § 1973(a) (1984).

<sup>25</sup> 42 U.S.C. § 1973(b).

<sup>26</sup> 127 CONG. REC. 23,175 (1981) (statement of Rep. Sensenbrenner).

<sup>27</sup> 127 CONG. REC. 23,176-77 (1981) (statement of Rep. Edwards).

<sup>28</sup> 127 CONG. REC. 23,177 (1981) (statement of Rep. Conyers). Representative Conyers referred to § 1973(a), which reads: "No voting qualifications or prerequisite to voting or standard or standard practice or procedure shall be imposed or applied . . . to deny or abridge the right of any citizen to vote on account of race, color. . . ."

<sup>29</sup> 127 CONG. REC. 23,177 (1981) (statement of Rep. Conyers).

electoral procedure has the effect of denying a protected class equal access to the political process and electing representatives of their choice.

In its amendment of section 2, Congress reaffirmed that discrimination could be established using a results test and that under this test there was no requirement to prove discriminatory intent. Congress described factors to be considered in determining whether, under the results test, discrimination has occurred.<sup>30</sup> The results test, also known as the "totality of the circumstances" test, only requires the plaintiff to prove that a challenged election process results in a denial or an abridgment of the right to vote.<sup>31</sup> This amendment restored previous Supreme Court precedent, allowing violations of

section 2 to be established by demonstrating abridgment of voting rights by totality of the circumstances or intentional discrimination.

Under the VRA, as amended, a violation of section 2 may be established by either showing intentional discrimination or that the totality of the circumstances "results" in a section 2 violation. Evidence of discriminatory intent is not limited to direct evidence; intent may be demonstrated by the impact of the challenged action on minorities, the ability to foresee that impact, the historical background of the challenged action, the sequence of events leading up to the challenged action, and the legislative history.<sup>32</sup> "The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by African American and white voters to elect their preferred representatives."<sup>33</sup> A person attempting to prove a violation of the VRA "must either prove [discriminatory] intent or alternatively, must show that the challenged system or practice, in the context of all the circumstances in the jurisdiction in question, results in minorities being denied equal access to the political process."<sup>34</sup>

Under the totality of the circumstances standard, success does not depend on an algorithm; rather, a violation may be established by the court's weighing of the factors outlined by Congress. "There is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other."<sup>35</sup>

<sup>30</sup> The Senate report delineated seven factors for courts to use to determine whether there is *dilution* in voting rights discrimination claims. The report, however, did not define how courts should, in fact, weigh these factors. The factors are:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of members of the minority group to register, vote, or otherwise participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process;
6. whether political campaigns have been characterized by overt or subtle racial appeals; and,
7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

S. REP. NO. 97-417, at 206-07 (1982), *reprinted in* 1982 U.S.C.C.A.N. 375-76.

The report added that "[a]dditional factors that courts may consider include 'whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group' and 'whether the policy underlying the state or political subdivision's use of such voting qualifications, prerequisite to voting, standard, practice or procedure is tenuous.'" *Id.* at 207.

<sup>31</sup> A plaintiff alleging a violation under the act need only prove that a practice or procedure has a discriminatory effect and is no longer required to prove that the practice was motivated by discrimination.

<sup>32</sup> S. REP. NO. 97-417, at 206-07 (1982), *reprinted in* 1982 U.S.C.C.A.N. 375-76. It is important to note that an election official's ability to foresee the impact of an election practice or procedure, alone, is not sufficient to establish intentional discrimination. The 1982 amendment specifically states that foreseeability can be used to determine intentional discrimination: "The plaintiff may establish discriminatory intent for purposes of this section through direct or indirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of defendant's actions which 'is one type of quite relevant evidence of racially discriminatory purpose.'" *Dayton Bd. of Educ. v. Brinkman*, 443 U.S. 526, 536, n.9 (1979).

*See also* Testimony of Irving Younger, Senate Hearings, at 5. *Village of Arlington Heights v. Metro. Hous. Develop. Corp.*, 429 U.S. 252, 264-68 (1977). S. REP. NO. 97-417, at 28 (1982), *reprinted in* 1982 U.S.C.C.A.N. 205.

<sup>33</sup> *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

<sup>34</sup> S. REP. NO. 97-417, at 27 (1982), *reprinted in* 1982 U.S.C.C.A.N. 204.

<sup>35</sup> S. REP. NO. 97-417, at 29 (1982), *reprinted in* 1982 U.S.C.C.A.N. 206.

Accordingly, as the evidence presented to the Commission is discussed, the proper analysis is not to look at individual facts or witnesses and attempt to draw conclusions from these isolated facts but rather, as the law requires, these facts must be analyzed to determine whether there was intentional discrimination or whether under the totality of the circumstances the state's actions resulted in racial minorities being denied the right to vote.

The Commission heard from several experts regarding potential violations of the VRA during the Florida presidential election, including Professors Allan Lichtman and Darryl Paulson.

Professor Lichtman, applying the results test, said, "The key is whether a system, regardless of why it was adopted or why it was held in place, has the effect of diminishing minority voting opportunities."<sup>36</sup> Professor Lichtman explained:

We do not have to demonstrate an intent to discriminate. We do not have to demonstrate that there was some kind of conspiracy against minorities or that anyone involved in the administration of elections today or yesterday had any intent whatever to discriminate against minorities, because indeed under the Voting Rights Act, practices can be illegal so long as they have the effect of diminishing minority opportunities to participate fully in the political process and elect candidates of their choice.<sup>37</sup>

Professor Lichtman testified that a violation occurs if the following two criteria are satisfied:

- if there are "differences in voting procedures and voting technologies between white areas and minority areas"; and

<sup>36</sup> Allan Lichtman, professor of history, American University, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 190. In *Alexander v. Sandoval*, No. 99-1908, 121 S. Ct. 1151 (2001), the Supreme Court held that a private citizen has no right to enforce the disparate impact regulations promulgated by the U.S. Department of Justice under Title VI of the Civil Rights Act of 1964. While the news media have correctly reported this as a decision limiting individuals' ability to sue "over policies that allegedly have a discriminatory effect on members of a minority group," this decision in no manner affects a person's ability to use an effects test under the VRA. Charles Lane, "Justices Limit Bias Suits under Civil Rights Act," *The Washington Post*, Apr. 23, 2001, p. A1. The VRA in unequivocal language authorizes the use of the effects test.

<sup>37</sup> Allan Lichtman Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 189-90.

- if voting procedures and voting technologies used in minority areas "give minorities less of an opportunity to have their votes counted."<sup>38</sup>

Referring to a *New York Times* study showing that voting systems in Florida's poorer, predominantly minority areas are less likely to allow a voter to cast a properly tallied ballot, Professor Lichtman testified:

In other words, minorities perhaps can go to the polls unimpeded, but their votes are less likely to count because of the disparate technology than are the votes of whites. . . . That is the very thing the Voting Rights Act was trying to avoid—that for whatever reason and whatever the intent, the Voting Rights Act is trying to avoid different treatment of whites and minorities when it comes to having one's vote counted. . . . If your vote isn't being tallied, that in effect is like having your franchise denied fundamentally.<sup>39</sup>

Professor Lichtman testified that one remedy in such a case would be to equalize the technology across all voting places in the state of Florida—"to have technologies equalized such that there are no systematic correlations between technologies and whites and minorities, and a minority vote is as likely to be tallied as a white vote."<sup>40</sup> The professor acknowledged this would require spending additional funds in certain parts of the state.

Darryl Paulson testified he did not believe *intentional* discrimination occurred in Florida against people of color during the 2000 vote—meaning "some sort of collusion among public officials, some sort of agreement in principle, some sort of mechanism to impose" discrimination.<sup>41</sup> However, Professor Paulson agreed with

<sup>38</sup> *Ibid.*, p. 192.

<sup>39</sup> *Ibid.*, p. 193. Professor Lichtman added that a finding of a violation of the Voting Rights Act would not be vitiated merely by a substantial participation of African Americans in a given election "if there is a higher hurdle for minority ballots to be counted than for white ballots to be counted that operates independently of levels of turnout and the violation of the Voting Rights Act would still be present." *Ibid.*, p. 196.

<sup>40</sup> *Ibid.*, pp. 193-94.

<sup>41</sup> Darryl Paulson, professor of government, University of South Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 185. See also testimony of Ion Sancho, who discussed discriminatory intent versus effect: "I don't think there was any conscious targeting or racial discrimination on

Professor Lichtman on the voter spoilage issue, testifying that the "real scandal" in Florida was "the inequities that existed from county to county. Disparities between wealthy and poor counties were reflected in the types of voting machinery used. Poor counties, whether in Florida or elsewhere, have always had a disproportionate number of votes not counted."<sup>42</sup>

#### TRENDS OF WIDESPREAD VOTE DILUTION

Not every denial of the right to vote or the abridgement of this right requires an analysis under the "results" test. For example, if the only evidence of the denial of the right to vote is a person being told by an election official that he or she could not vote because of the color of his or her skin, such evidence would not require a results analysis, but obviously would be compelling evidence of intentional discrimination.

Quantitative evidence reflecting the actual number of voters and the race of all the voters who were denied the right to vote does not exist. The only evidence that exists is the testimony of those who have stated publicly that they were denied the right to vote and the credibility of their testimony. This is precisely the type of testimonial evidence that courts usually hear in discrimination claims.

In other instances there is quantitative evidence that shows a disturbing trend of disenfranchisement related to race. Two clear examples of this evidence are the number of spoiled ballots in counties with substantial minority populations and the state's use of purge lists.<sup>43</sup>

the part of supervisors. I think some of the effects of not having the kinds of monies necessary to do ongoing voter education programs has the effect of in fact impacting on minorities and young people and senior citizens because this was an election that brought out voters that voted maybe only one time in the last 10 years." Ion Sancho, supervisor of elections, Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 52.

<sup>42</sup> Darryl Paulson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 187. After hearing the testimony of Professors Lichtman and Paulson, the Commission was heartened to read the statement in the report issued by Governor Bush's Select Task Force on Election Procedures, Standards and Technology that "the substantial difference in error or reliability rates for different kinds of voting systems argues strongly for installing a uniform, standardized voting system for use by all voters in the [Florida] statewide 2002 election cycle." See Governor's Task Force, *Revitalizing Democracy*, p. 37.

<sup>43</sup> The term "purge lists" refers to the lists of names of people to be removed from voter rolls, as provided by the Division of

#### Spoiled Ballots

An analysis of the incidence of spoiled ballots (votes cast but not counted) shows a correlation between the number of registered African American voters and the rate at which ballots were spoiled. The higher the percentage of African American residents and of African American voters, the higher the chance of the vote being spoiled.

To make comparisons across counties and to determine the relationship between spoiled ballots, race, and ethnicity, the Commission calculated correlations.<sup>44</sup> Data on spoiled ballots—which include both overvotes and undervotes for president<sup>45</sup>—were collected by the *Orlando Sentinel* and updated by the Collins Center for Public Policy.<sup>46</sup> Information on registered voters and voters by race (white, African American, other, and unknown) was provided for each county by its elections supervisor and the secretary of state of Florida.<sup>47</sup> For ease of comparison, race and ethnicity were analyzed as percentages of the total population.

Correlations are used to determine relationships among variables. The stronger the correlation, the more likely the association between two variables does not occur by chance. However, correlations cannot indicate cause and effect. To further explore the relationship between race and voter disenfranchisement, and to control for spuriousness and effects of other variables, additional analyses, such as regression analyses, can more fully explain how the variables interact.

Elections. While some object to the use of the term "purge," that is in fact what occurs. A person's name is removed from the active list and placed on the inactive list. He or she is purged from the list of active voters. See chap. 5.

<sup>44</sup> These correlations were calculated using SPSS for Windows, version 10.0. Population data (for total population, median income, percentage living in poverty, and percentage white, African American, Hispanic, and minority) are Census Bureau estimates for 1999. Data from the 2000 census were not available on the county level for the state of Florida at the time of this analysis. Estimates are expected to be published. The data used for this analysis are set forth in appendix I to this report.

<sup>45</sup> An overvote occurs when the voter selects more than one candidate. Undervotes include those votes in which the voter purposely did not select a candidate as well as votes that were not registered by the machine.

<sup>46</sup> See Governor's Task Force, *Revitalizing Democracy*.

<sup>47</sup> The Division of Elections, pursuant to a subpoena, provided this information. Florida Department of State, Division of Elections, "Registered Electors by Party: County Totals" Oct. 10, 2000, Bates Nos. 16764-16872.



**TABLE 1-1**

**Top 10 Counties with Various Population Characteristics and Ballot Rejection Rates**  
(counties in bold/italics have spoilage rates higher than the statewide average)

Highest % of white residents	Highest % of black residents	Highest % of minority residents	Highest % of black voters	Highest % of minority voters	Highest % of white voters	Highest % living in poverty
Pasco	<i>Gadsden</i>	<i>Miami-Dade</i>	<i>Gadsden</i>	<i>Gadsden</i>	Holmes	<i>Hardee</i>
Citrus	<i>Jefferson</i>	<i>Gadsden</i>	<i>Jefferson</i>	<i>Miami-Dade</i>	<i>Dixie</i>	<i>Hamilton</i>
Hernando	<i>Madison</i>	<i>Jefferson</i>	<i>Madison</i>	<i>Jefferson</i>	<i>Gilchrist</i>	<i>Gadsden</i>
<i>Charlotte</i>	<i>Hamilton</i>	<i>Hendry</i>	<i>Hamilton</i>	<i>Madison</i>	Martin	Holmes
Sarasota	<i>Jackson</i>	<i>Madison</i>	<i>Duval</i>	Leon	Sarasota	<i>Lafayette</i>
<i>Collier</i>	<i>Duval</i>	<i>Hamilton</i>	Leon	Osceola	Citrus	<i>Dixie</i>
Santa Rosa	Leon	<i>Hardee</i>	<i>Jackson</i>	<i>Hamilton</i>	Pasco	<i>De Soto</i>
Monroe	<i>Union</i>	<i>Duval</i>	<i>Miami-Dade</i>	<i>Duval</i>	Santa Rosa	<i>Madison</i>
Holmes	<i>Gulf</i>	Hillsborough	<i>Escambia</i>	<i>Hendry</i>	Lafayette	<i>Union</i>
Martin	<i>Bradford</i>	<i>Jackson</i>	<i>Taylor</i>	Orange	Hernando	Calhoun

NOTE: For the category "Highest % of minority residents," for the purposes of this analysis, the population of persons who are members of minority groups is defined as the total population minus the white, non-Hispanic population. For the category "Highest % of black voters," the percentage of African American voters is based on the number of registered voters in a county who are African American.

SOURCE: (1) population data based on Census Bureau estimates for 1999—U.S. Bureau of the Census, "Quick Facts," accessed at <<http://www.quickfacts.census.gov>> and (2) data on registered voters by race as provided by the secretary of state for Florida. See app. 1.

Nonetheless, correlation coefficients provide a useful estimate of the interdependence among the data presented in this report.

The relationship between race and voter disenfranchisement is particularly evident when looking at the issue of spoiled ballots. The Commission's statistical analysis shows that the percentage of spoiled ballots<sup>48</sup> is positively correlated with both the percentage of the population that is African American and the percentage of the population that is a member of a minority group. Thirty-four percent of the variation in the percentage of spoiled ballots across counties can be explained by the size of the African American population in the counties.<sup>49</sup> Twenty-eight per-

cent of the variation in the percentage of spoiled ballots is explained when considering the percentage of the population that is a member of a minority group.<sup>50</sup> Further, the percentage of the population that is white is negatively correlated with the percentage of spoiled ballots.<sup>51</sup> In other words, race may be one factor in explaining why ballots were spoiled in Florida counties.<sup>52</sup>

These relationships can best be seen when comparing the counties with the highest percentage of spoiled ballots to counties with the highest minority populations (see table 1-1). For

being observed occurring by chance. Stated alternatively, a significance level of .01 can be interpreted as meaning that there is a 99 percent confidence level that the relationship observed did not occur by chance. See, e.g., Richard A. Zeller and Edward G. Carmine, *Statistical Analysis of Social Data* (Chicago: Rand McNally, 1978), p. 202.

<sup>48</sup> The correlation coefficient is .526 and is significant at the .01 level.

<sup>49</sup> The correlation coefficient is .537 and is significant at the .01 level. The closer the correlation coefficient is to 1 or -1, the stronger the relationship between the two variables; the higher the coefficient, the more likely it is that the relationship between the two variables does not occur by chance. Correlation coefficients between 0.4 and 0.7 suggest a medium to strong relationship between the variables. Correlations above 0.7 are considered highly correlated. Conventionally, social scientists accept as statistically significant results of either a 0.5 level of confidence, which means there is a 5 in 100 probability of the results being observed occurring by chance, or the more stringent 0.1 level of confidence, which means there is a 1 in 100 probability of the results

<sup>50</sup> The correlation coefficient is .526 and is significant at the .01 level.

<sup>51</sup> The correlation coefficient is -.574 and is significant at the .01 level.

<sup>52</sup> Correlations are used to determine interdependence among variables but cannot indicate causality. For a discussion of the use of statistics as evidence in discrimination cases, see Ramona Paetzold and Steven L. Willborn, *The Statistics of Discrimination: Using Statistical Evidence in Discrimination Cases* (Colorado Springs: Shephard's/McGraw-Hill, 1994). Regression analysis may be used to further explore the relationship between variables.

<sup>48</sup> Spoiled ballots include both overvotes and undervotes for president.

<sup>49</sup> The correlation coefficient is .537 and is significant at the .01 level. The closer the correlation coefficient is to 1 or -1, the stronger the relationship between the two variables; the higher the coefficient, the more likely it is that the relationship between the two variables does not occur by chance. Correlation coefficients between 0.4 and 0.7 suggest a medium to strong relationship between the variables. Correlations above 0.7 are considered highly correlated. Conventionally, social scientists accept as statistically significant results of either a 0.5 level of confidence, which means there is a 5 in 100 probability of the results being observed occurring by chance, or the more stringent 0.1 level of confidence, which means there is a 1 in 100 probability of the results

example, Gadsden County, which had the highest spoilage rate of 12.4 percent, also has the largest African American population, at 63 percent. Indeed, considering the top 10 counties with the highest percentage of African American residents, or the top 10 counties with the highest percentage of African American voters, nine out of 10 of the counties have spoilage rates higher than the Florida average of 2.93 percent.<sup>53</sup> The only county with a substantial minority population that did not have a spoilage rate above the Florida average is Leon County.<sup>54</sup> Conversely, with respect to the 10 counties with the highest percentage of white residents and those with the highest percentage of white voters, only two counties have spoilage rates higher than the Florida average.

On a practical level this means that persons living in a Florida county with a substantial African American or people of color population are more likely to have their vote spoiled or discounted than the average Florida resident. Conversely, persons living in a county with a substantial white population have less chance of having their vote discounted than the average Florida resident. These data alone do not prove unlawful discrimination. They provide one piece of evidence, considering the "totality of the circumstances," which supports the finding that the Florida election was not equally open to participation by all.

#### Refined Statistical Analysis of Vote Dilution

Based on the Commission's initial statistical analysis showing a correlation between race and the rate at which ballots were rejected, it was determined that a more refined statistical analysis was warranted. The Commission requested that Allan Lichtman, a voting rights expert who testified at the Commission's Miami hearing,<sup>55</sup> examine this issue and perform ap-

propriate statistical analyses. Professor Lichtman was to determine whether the rejection of ballots during the 2000 Florida presidential election had a disparate impact on the votes cast by African Americans. In doing this examination, Professor Lichtman was asked to consider all unrecorded ballots—both undervotes (ballots not recorded for the lack of a recognized vote) and overvotes (ballots not recorded for including more than one recognized vote).<sup>56</sup> The focus of his analysis was whether African Americans were more likely than other voters to have their ballots invalidated during the 2000 presidential election.<sup>57</sup>

#### Methodology and Data

The database for this study included county-level election returns for the presidential election of 2000 in Florida, including the number of ballots cast, undervotes, overvotes, and unrecorded votes. Fifty-four of Florida's 67 counties, encompassing 94 percent of ballots cast in 2000, separately recorded undervotes and overvotes. The database included identification of voting system by county and county-level statistics for a variety of social, economic, and political variables, including race and education. The racial data included the percentage of African Ameri-

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bein, *Ecological Inference*, a standard text on the subject of inferring the behavior of population groups from data collected for political units. His scholarship also includes the use of quantitative and qualitative techniques to perform political and historical studies of voting. He has published articles on the application of social science analysis to the Voting Rights Act.

Dr. Lichtman has worked as a consultant or expert witness for both plaintiffs and defendants in more than 60 federal voting rights cases. This experience includes several cases in the state of Florida. He has been recognized as an expert witness in voting rights, political history, political systems, statistical methodology, quantitative analysis of voting, and socioeconomic analysis, among other matters, in more than 50 federal court cases in which he has presented oral or written testimony. A copy of his complete curriculum vitae is included in the report prepared by Dr. Allan Lichtman titled "Report on the Racial Impact of the Rejection of Ballots Cast in the 2000 Presidential Election in the State of Florida" (hereafter cited as Lichtman Report). The Lichtman Report is attached as appendix VII.

<sup>56</sup> For counties that separately record undervotes and overvotes, the total number of unrecorded votes is slightly higher than the sum of undervotes and overvotes.

<sup>57</sup> This discussion of refined statistical analysis of voter dilution is a summary of the detailed statistical analyses performed by Dr. Lichtman and is in large part taken from the Lichtman Report. See app. VII.

<sup>53</sup> See app. I.

<sup>54</sup> Leon County, home to the state capital, has a state-of-the-art election system. See Ion Sancho, supervisor of elections, Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 48.

<sup>55</sup> Allan Lichtman is a professor of history at American University in Washington, D.C. At the time of the hearing, he was chair of the Department of History at American University. His areas of expertise include political history, voting analysis, and historical and quantitative methodology. He is the author of numerous works on quantitative methodology in social science. He has coauthored with Dr. Laura Lang-

can registered voters, based on 2000 voter registration data. The database also included precinct-level data for three of Florida's largest counties: Miami-Dade, Duval, and Palm Beach. This precinct-level data included unrecorded votes, undervotes, overvotes, and voter registration by race, based on 1998 voter registration data.<sup>58</sup>

Florida election returns, voting registration data, and county-by-county lists of voting technology were obtained from the Web site of the Florida Division of Elections, Department of State. Information on unrecorded votes was obtained from the governor of Florida's task force report on the Florida 2000 presidential election, *Revitalizing Democracy in Florida*.<sup>59</sup>

Professor Lichtman used simple descriptive statistics as well as the standard statistical method of regression analysis<sup>60</sup> to compare the racial composition of counties and precincts with rates of overall unrecorded votes, overvotes, and undervotes. He also used ecological regression<sup>61</sup>

that provides county-level and precinct-level estimates of the percentage of African Americans and non-African Americans casting unrecorded votes as well as either overvotes or undervotes.<sup>62</sup> Ecological regression procedures were recognized as appropriate for voter analysis by the Supreme Court in *Thornburg v. Gingles*.<sup>63</sup>

For the precinct-level data of Duval, Miami-Dade, and Palm Beach counties, rates of ballot rejection for African Americans and non-African Americans can also be examined through a technique termed "extreme case" analysis,<sup>64</sup> which examines the rejection rates of ballots including both undervotes and overvotes in precincts that are heavily composed of registrants who are either African American or non-African American. The extreme case results will not correspond exactly to the results of ecological regression analysis, because it applies only to some of the precincts within a jurisdiction and those precincts examined include at least some members of other ethnic groups. While not nec-

<sup>58</sup> The county-level correlation between the percentage of African American registrants for 1998 and 2000 is a near-perfect .996.

<sup>59</sup> Additional data on undervotes and overvotes were obtained from the data tables in *Siegel v. LePore*, 234 F.3d 1163 (11th Cir. 2000) and from CNN and the Associated Press, <<http://www.cnn.com/election/2000/resources/ballot1.htm>>. Precinct-level data for Duval, Miami-Dade, and Palm Beach counties were obtained from the Web site of Bruce E. Hansen, Stockwell professor of economics, University of Wisconsin-Madison: <<http://www.ssc.wisc.edu/~bhansen/vote/data.html>>. Socioeconomic data were obtained from the 1990 census (such data are not yet available for 2000). Estimates of literacy rates were obtained from CASAS, "Synthetic Estimates of Literacy, Percent Level 1, National Adult Literacy Survey."

<sup>60</sup> Regression analysis measures the influence of one or more variables, known as independent variables, on another variables known as the dependent variable. When used for political units such as the counties of Florida or the precinct within a county, regression analysis measures the extent to which the value of the dependent variable changes from one unit to another in response to changes in the value of the dependent variable. For a brief description of regression analysis, see Hubert M. Blalock, *Social Statistics* (New York: McGraw-Hill, 1979), pp. 382-86.

<sup>61</sup> Ecological regression is a standard method for inferring the behavior of population groups from data collected for aggregate units such as counties or precincts. It produces such estimates by comparing the racial composition of the various voting precincts with the division of the vote among competing candidates in each precinct. The ecological regression procedure for analyzing the behavior of population groups is set forth in Dr. Lichtman's book, *Ecological Inference* (Sage Series on Quantitative Applications in Social Science, 1978, with Laura Irwin Langbein). Other references on

the use of ecological regression for voting analysis include Richard Engstrom, "Quantitative Evidence in Vote Dilution Litigation: Political Participation and Polarized Voting," *Urban Lawyer*, 1985; Bernard Grofman and Chandler Davidson, eds., *Controversies in Minority Voting: The Voting Rights Act in Perspective* (Cambridge: Cambridge University Press, 1992); Bernard Grofman, Lisa Handley, and Richard G. Niemi, *Minority Representation and the Quest for Voting Equality* (Cambridge: Cambridge University Press, 1992); Allan J. Lichtman, "Passing the Test: Ecological Regression in the Garza Case and Beyond," *Evaluation Review*, 1991.

<sup>62</sup> Nonblacks include non-Hispanic whites as well as Hispanics and members of other races. Because of limitations in the data available, no attempt was made to distinguish the components of the non-African American group; although, racial disparities might be even greater if African Americans and non-Hispanic whites were isolated for analysis.

<sup>63</sup> 478 U.S. 30 (1986).

<sup>64</sup> Extreme case analysis is designed to isolate nearly homogeneous groups of African Americans and non-African Americans by examining precincts within each county studied that are either 90 percent or more African American or 90 percent or more non-African American in their voter registration. The analysis simply reports the actual ballot rejection rates in these precincts that are composed overwhelmingly of African American or non-African American registrants. Extreme case analysis provides a very useful check on the results of ecological regression analysis. It provides a comparison of actual rejection rates in nearly homogeneous African American and non-African American precincts with estimated rejection rates for African Americans and non-African Americans in all precincts derived from ecological regression analysis. For descriptions of extreme case analysis and its relation to ecological regression analysis, see Lichtman, "Passing the Test," and Grofman, et al., *Minority Representation*, pp. 85-90.

essarily identical, extreme case results should closely mirror the pattern of results found in ecological regression. Extreme case analysis involves no inferential procedures. It simply tallies the actual rejection rates, as well as rates of overvoting and undervoting, in the precincts chosen for the analysis. The technique of extreme case analysis is applied to precinct-level data in Duval, Miami-Dade, and Palm Beach counties with a cutoff rate of precincts that are either 90 percent or more African American in their voter registration or 90 percent or more non-African American in their voter registration.

#### Summary of Detailed Statistical Analysis

In Florida's 2000 election, about 2.9 percent of all ballots cast (about 180,000 ballots out of slightly more than six million ballots cast) did not contain a vote that could be counted as a vote for president. Most of these invalid ballots were recorded as either overvotes or undervotes, with overvotes outnumbering undervotes by nearly two to one.<sup>65</sup> Counties that separately recorded overvotes and undervotes rejected about 107,000 ballots as overvotes and about 63,000 ballots as undervotes.

Looking at the entire state using county-level data and at Duval, Miami-Dade, and Palm Beach counties using precinct-level data, both sets of data demonstrated that African Americans were far more likely than non-African Americans to have their ballots rejected in the 2000 Florida presidential election.<sup>66</sup> As illustrated by appendix II-A, statewide there is a strong positive correlation between the percentage of African American registrants in a county and the percentage of rejected ballots. The linear correlation (termed  $R$ ) between the percentage of ballots rejected in the presidential election and the percentage of African Americans among voters is .50, with a squared correlation of ( $R^2$ ) of .25. This means that when one looks at the variation in the ballot rejection rates for each county in Florida, about one-quarter of that variation can be explained solely by knowing the

percentage of African Americans who were registered to vote in that county. This relationship is statistically significant at levels far beyond the conventional standards used in social science.<sup>67</sup>

One obvious question is presented by this data: Is there some other factor that better explains this disparity in ballot rejection rates? In short, the answer is no. This statistically significant county-level correlation between race and ballot rejection rates cannot be attributed to the educational level of African Americans in Florida. A multiple regression analysis that controlled for the percentage of high school graduates and the percentage of adults in the lowest literacy category failed to diminish the relationship between race and ballot rejection or to reduce the statistical significance of the relationship.

In a very small part, the county-level relationship between race and rates of ballot rejection can be attributed to the fact that a greater percentage of African American registered voters live in counties with technologies that produce the greatest rates of rejected ballots.<sup>68</sup> About 70 percent of African American registrants resided in counties using technology with the highest ballot rejection rates—punch cards and optical scan systems recorded centrally—compared with 64 percent of non-African American registrants. Counties using punch card or optical scan methods recorded centrally rejected about 4 percent of all ballots cast, compared with about 0.8 percent for counties using optical scan methods recorded by precinct. The vast majority of rejected votes were recorded in counties using punch cards or optical scan methods recorded centrally. Such counties included about 162,000 out of 180,000 unrecorded votes in Florida's 2000 presidential election. These counties that used punch cards or optical scan technology recorded centrally included 65 percent of all ballots cast in Florida's 2000 presidential election, but 90 percent of rejected ballots.

<sup>65</sup> As noted above, not every rejected ballot in Florida was separately classified as either an undervote or an overvote.

<sup>66</sup> The analysis first used ecological regression to estimate the turnout rates of African Americans and non-African Americans (which were approximately equal) and then applied those rates to estimate the percentage of African Americans among voters.

<sup>67</sup> These correlations are consistent with those found by the Commission in its own preliminary analysis of rejected ballots as discussed in this chapter.

<sup>68</sup> An analysis of the voting systems used in the 2000 Florida presidential election showed that counties using punch card systems and optical scan systems with central tabulation had much higher rates of ballot spoilage than those using optical scan precinct count systems. See chap. 8.

**TABLE 1-2**

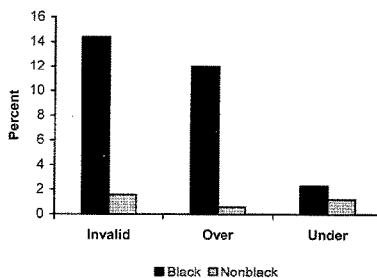
**Ecological Regression Estimates of Statewide Ballot Rejection Rates by Race**

	Invalid votes*		Overvotes		Undervotes	
	Black voters	Nonblack voters	Black voters	Nonblack voters	Black voters	Nonblack voters
Punch card & central-record counties	19.4%	2.2%	17.1%	0.8%	2.4%	1.3%
Precinct-record counties	5.2%	0.4%	2.5%	0.2%	2.1%	0.1%
All counties combined	14.4%	1.6%	12.0%	0.6%	2.3%	1.2%

\* The rates for rejected votes are not exactly equal to the sum of rates for overvotes and undervotes. Some invalid votes were not subdivided into either of these two categories. Also, 13 counties do not separate recorded overvotes and undervotes. Estimates for all counties are weighted means of estimates for punch card and central-record counties and for precinct-record counties.  
 SOURCE: Data provided by Allan J. Lichtman, professor, Department of History, American University, June 2001.

**CHART 1-1**

**Ballot Rejection Rates by Race, State of Florida**



SOURCE: Data provided by Allan J. Lichtman, professor, Department of History, American University, June 2001.

As illustrated in appendix II-B, within the group of counties using punch card or optical scan technology recorded centrally there is a strong, statistically significant relationship between race and rejected ballots. This correlation between race and ballot rejection is even stronger than the correlation between race and ballot rejection for all counties. The linear correlation between the percentage of ballots rejected in the presidential election and the percentage of African Americans among voters within the counties using punch cards or optical scan machinery recorded centrally is .56, with a squared correlation of ( $R^2$ ) of .31, a stronger relationship between race and rejected ballots than for the state overall. This means that nearly one-third of the county-by-county variation in the rates of rejected ballots within this group of counties can be predicted solely by knowing the racial composition of the counties. This relationship is statistically significant at levels far beyond the conventional standards used in social science.<sup>69</sup>

When the counties using the technology with the lowest ballot rejection rates are examined, the correlation between race and ballot spoilage is substantially reduced but not eliminated. There remains a statistically significant relationship between race and the rate at which ballots are spoiled even when the best technology is used. The linear correlation between the percentage of ballots rejected in the presidential election and the percentage of African Americans among registrants within the counties using optical scan machinery recorded by precinct is .28, with a squared correlation of ( $R^2$ ) of .08, a weaker relationship between race and rejected ballots than for the state overall. This means that slightly less than one-tenth of the county-by-county variation in the rates of rejected ballots within this group of counties can be predicted solely by knowing the racial composition of the counties. The relationship is not statistically significant at conventional standards used in social science. In summary, while the type of

technology used accounts for some of the relationship between race and the rate at which ballots are rejected, there remains a statistically significant relationship even after education is considered and the type of voting system is taken into account.

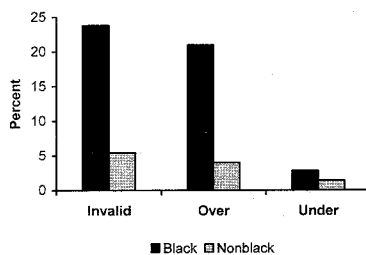
These correlations, although suggestive of a strong relationship between race and ballot rejection, pertain only to county-level relationships. They do not by themselves provide estimates of the ballot rejection rates for African American and non-African American voters included for the entire state. The ecological regression technique does provide these estimates for the state overall. As reported in chart 1-1 and table 1-2, the results are striking. For the entire state, the rate of rejection for votes cast by African Americans was an estimated 14.4 percent, compared with a rate of 1.6 percent for votes cast by non-African Americans. The greatest discrepancy is for overvotes with an estimated rejection rate of 12 percent for votes cast by African Americans, compared with an estimated rate of 0.6 percent for votes cast by non-African Americans.

To further refine this analysis, precinct data for Duval, Miami-Dade, and Palm Beach counties were examined. These counties have substantial numbers of African Americans. Duval County, with a 9.2 ballot rejection rate, had a much higher rate than the 4.0 average for punch card counties. Miami-Dade County had a rejection rate of 4.4 percent—close to the punch card average. Palm Beach County had an intermediate rejection rate of 6.4 percent. Taken together, the three counties included about 85,000 rejected ballots, about 47 percent of the statewide total. Precinct-by-precinct rejection rates and African American percentages for each county are reported in appendices II-C, II-D, and II-E. For these counties, with large numbers of precincts, the graphs also include the linear regression line to portray with clarity the relationship between race and ballot rejection.

<sup>69</sup> As for the state overall, within this group of counties that account for most rejected ballots, a multiple regression analysis that controlled for the percentage of high school graduates and the percentage of adults in the lowest literacy category failed to diminish the relationship between race and ballot rejection or to reduce the statistical significance of the relationship.

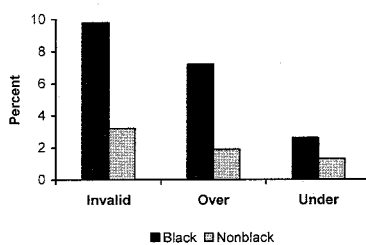
**CHART 1-2**

**Ballot Rejection Rates by Race, Duval County: Ecological Regression Estimates**



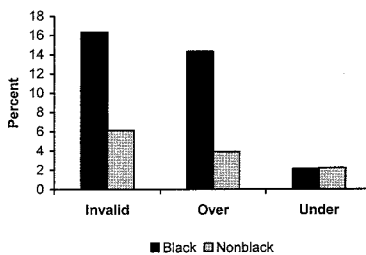
**CHART 1-3**

**Ballot Rejection Rates by Race, Miami-Dade County: Ecological Regression Estimates**



**CHART 1-4**

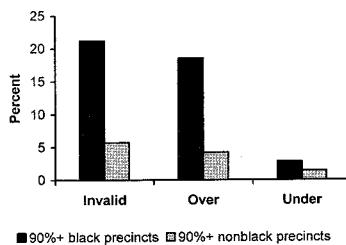
**Ballot Rejection Rates by Race, Palm Beach County: Ecological Regression Estimates**



SOURCE: Data provided by Allan J. Lichtman, professor, Department of History, American University, June 2001.

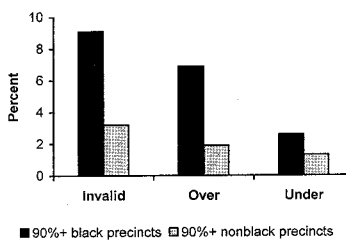
**CHART 1-5**

**Ballot Rejection Rates by Race, Duval County: 90%+ Black and 90%+ Nonblack Precincts**



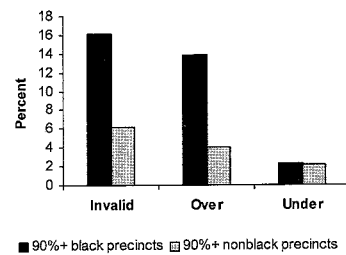
**CHART 1-6**

**Ballot Rejection Rates by Race, Miami-Dade County: 90%+ Black and 90%+ Nonblack Precincts**



**CHART 1-7**

**Ballot Rejection Rates by Race, Palm Beach County: 90%+ Black and 90%+ Nonblack Precincts**



SOURCE: Data provided by Allan J. Lichtman, professor, Department of History, American University, June 2001.



**TABLE 1-3****Ecological Regression and Extreme Case Analysis of Duval, Miami-Dade, and Palm Beach Counties' Ballot Rejection Rates by Race**

	<u>Ecological regression results</u>					
	Invalid votes		Overvotes		Undervotes	
	Black voters	Nonblack voters	Black voters	Nonblack voters	Black voters	Nonblack voters
Duval	23.6%	5.5%	20.8%	4.1%	2.8%	1.4%
Miami-Dade	9.8%	3.2%	7.2%	1.9%	2.6%	1.3%
Palm Beach	16.3%	6.1%	14.3%	3.9%	2.2%	2.1%

	<u>Extreme case results</u>					
	Invalid votes		Overvotes		Undervotes	
	90%+ black precincts	90%+ nonblack precincts	90%+ black precincts	90%+ nonblack precincts	90%+ black precincts	90%+ nonblack precincts
Duval	22.1%	5.8%	19.2%	4.3%	2.9%	1.4%
Miami-Dade	9.1%	3.2%	6.6%	1.9%	2.5%	1.3%
Palm Beach	16.1%	6.2%	13.8%	4.0%	2.3%	2.2%

SOURCE: Data provided by Allan J. Lichtman, professor, Department of History, American University, June 2001.

As indicated by the results of ecological regression analysis reported in charts 1-2, 1-3, and 1-4 and table 1-3, the estimated rejected rates derived from precinct-level data in these three counties confirm the findings derived from county-level data for the entire state. In Duval, Miami-Dade, and Palm Beach counties, as in the state overall, African Americans were far more likely than non-African Americans to have their ballots rejected.

For Duval County, as demonstrated in chart 1-2, the overall rate of rejection for votes cast by African Americans was an estimated 23.6 percent, compared with a rate of 5.5 percent for votes cast by non-African Americans. The greatest discrepancy is for overvotes, with an estimated rejection rate of 20.8 percent for votes cast by African Americans, compared with an estimated rate of 4.1 percent for votes cast by non-African Americans. For Miami-Dade County, as demonstrated by chart 1-3, the overall rate of rejection for votes cast by African Americans was an estimated 9.8 percent, compared with a rate of 3.2 percent for votes cast by non-African Americans. The greatest discrepancy is again for overvotes, with an estimated rejection rate of 7.2 percent for votes cast by African Americans, compared with an estimated rate of 1.9 percent for votes cast by non-African Americans. For

Palm Beach County, as demonstrated in chart 1-4, the overall rate of rejection for votes cast by African Americans was an estimated 16.3 percent, compared with a rate of 6.1 percent for votes cast by non-African Americans. The greatest discrepancy is for overvotes, with an estimated rejection rate of 14.3 percent for votes cast by African Americans, compared with an estimated rate of 3.9 percent for votes cast by non-African Americans.<sup>70</sup>

As demonstrated by charts 1-5, 1-6, and 1-7 and table 1-3, the results of extreme case analysis for 90 percent plus African American and non-African American precincts confirm the findings of ecological regression analysis. For Duval County, as demonstrated by chart 1-5, in precincts that were 90 percent or more African American in their voter registration the overall rate of rejection was 22.1 percent, compared with a rate of 5.8 percent for precincts that were 90 percent or more non-African American in their voter registration. For Miami-Dade County, as demonstrated by chart 1-6, the overall rate of rejection for votes cast by African

<sup>70</sup> Duval County is 24 percent African American, Miami-Dade County is 20 percent African American, and Palm Beach County is 9 percent African American based on 1998 voter registration information. All three used punch card technology.

Americans was an estimated 9.1 percent, compared with a rate of 3.2 percent for votes cast by non-African Americans. As reflected in chart 1-7, in Palm Beach County the overall rejection rate for votes cast by African Americans was an estimated 16.1 percent, compared with 6.2 percent in the non-African American precincts.

In the 2000 presidential election, for Duval, Miami-Dade, and Palm Beach counties, as well as for the state overall, the percentage of African Americans among voters with rejected ballots was far greater than the African American percentage of all voters. Although the statewide results are estimates derived from county-level data that should be interpreted with caution, the wide disparity they reveal between rejection rates for African Americans and non-African Americans are confirmed by the precinct-level analysis for Duval, Miami-Dade, and Palm Beach counties.<sup>71</sup> The greatest disparities were found not for the undervotes that have been the focus of media attention, but for overvotes—voting for more than one candidate. Overall, about twice as many Florida ballots were rejected in the 2000 presidential election as overvotes than as undervotes.

These discrepancies in small part reflect the greater concentration of African Americans compared with non-African Americans in counties using the technologies that produce the greatest percentage of rejected ballots. The evidence from Duval, Miami-Dade, and Palm Beach counties indicates that major racial disparities in ballot rejection rates remain with counties using punch card technologies. Based on precinct-level information, in Duval County statistical estimates show that African American voters were over four times more likely than white voters to have their ballots rejected in the 2000 election; in Miami-Dade County, African American voters were over three times more likely than white voters to have their ballots rejected; and in Palm Beach County, they were nearly three times more likely than white voters to have their ballots rejected. In the three counties, the rate of rejected ballots by African Americans ranged from about 10 percent to about 24 percent. For all three counties combined, the rate of rejected ballots averaged about 15 percent—

meaning that one out of every seven African Americans who entered the polling booth in these counties had his or her ballot rejected as invalid. These results closely mirror the county-level findings for the state overall.

Part of the problem of ballot rejection for African Americans in Florida can be solved by requiring the adoption of precinct-based optical scan systems for all counties in the state. Based on the 2000 experience, a uniform system of technology, like precinct-based optical scan systems, would reduce the number of invalid ballots for both African Americans and non-African Americans.<sup>72</sup> However, the use of this technology would not eliminate the disparity between the rates at which ballots cast by African Americans and whites are rejected. County-level estimates indicate that even in counties using optical scan methods recorded by precinct, the rejection rate for ballots cast by African Americans was still about 5 percent, compared with well under 1 percent for non-African Americans as shown in table 1-2.

#### Impact of the Purge List

A similar effect upon African Americans is presented based on an analysis of the state-mandated purge list.<sup>73</sup> In 1998, the Florida legislature enacted a statute that required the Division of Elections to contract with a private entity to purge its voter file of any deceased persons, duplicate registrants, individuals declared mentally incompetent, and convicted felons without civil rights restoration, i.e., remove ineligible voter registrants from voter registration rolls. What occurred in Miami-Dade County provides

<sup>72</sup> Optical scan precinct tabulation voting systems work best to prevent ballot rejections when all features, including the “kick out” feature, are used in each polling place. In the November 2000 election, some precincts reportedly disabled the kick out feature, which prevented correction of voting errors. See chap. 8, “Optical Scan Precinct Tabulation.”

<sup>73</sup> It is important to note that this investigation did not include an examination of the rates of ineligible voters who did vote on Election Day as compared with eligible voters in Florida who were prevented from voting in this election. The scope of the investigation focused on allegations that eligible persons were denied the right to vote by errant policies and practices. The Commission heard sworn testimony and received subpoenaed documents that provided detailed information about these policies and practices. The Commission did not receive adequate information about allegations that felons ineligible to vote voted in the election to present any conclusions, findings, or recommendations about the issue into this report.

<sup>71</sup> Databases for the three individual counties and for the county-level analysis are attached to the Lichtman Report. See app. VII.

a vivid example of the use of these purge lists. According to the supervisor of elections for Miami-Dade County, David Leahy, the state provides his office with a list of convicted felons who have not had their rights restored.<sup>74</sup> It is the responsibility of Mr. Leahy's office to verify such information and remove those individuals from the voter rolls "[i]f the supervisor *does not* determine that the information provided by the division is *incorrect*. . . ."<sup>75</sup> In practice, this places the burden on voters to prove that they are incorrectly placed on the purge list. Mr. Leahy's office sends a notice to the individuals requiring them to inform the office if they were improperly placed on the list.<sup>76</sup>

Many people appear on the list incorrectly.<sup>77</sup> For example, in the 2000 election, the supervisor of elections office for Miami-Dade received two lists—one in June 1999 and another in January 2000—from which his office identified persons to be removed from the voter rolls. Of the 5,762 persons on the June 1999 list, 327 successfully appealed and, therefore, remained on the voter rolls (see table 1-4). Another 485 names were later identified as persons who either had their rights restored or who should not have been on the list.<sup>78</sup> Thus at least 14.1 percent of the per-

sons whose names appeared on the Miami-Dade County list appeared on the list in error.<sup>79</sup> Similarly, 13.3 percent of the names on the January 2000 list were eligible to vote. In other words, almost one out of every seven people on this list were there in error and risked being disenfranchised.

In addition to the possibility of persons being placed on the list in error, the use of such lists has a disparate impact on African Americans. African Americans in Florida were more likely to find their names on the list than persons of other races. African Americans represented the majority of persons—over 65 percent—on both the June 1999 and the January 2000 lists (see table 1-4). This percentage far exceeds the African American population of Miami-Dade County, which is only 20.4 percent. Comparatively, 77.6 percent of the persons residing in Miami-Dade County are white; yet whites accounted for only 17.6 percent of the persons on the June 1999 convicted felons list. Hispanics<sup>80</sup> account for only 16.6 percent of the persons on that list, yet comprise 57.4 percent of the population. The proportions of African Americans, whites, and Hispanics on the January 2000 list were similar to the June 1999 list.<sup>81</sup>

This discrepancy between the population and the percentage of persons of color affected by the list indicates that the use of such lists—and the fact that the individuals bear the burden of having their names removed from the list—has a disproportionate impact on African Americans.

Indeed, the persons who successfully appealed to have their names removed from the list provided to Miami-Dade County by the Florida Division of Elections are also disproportionately African American. One hundred fifty-five African Americans (47.4 percent of the total) successfully appealed in response to the June 1999 list, and 84 African Americans (59.2 percent of the total) successfully appealed in response to the January 2000 list. Hispanics ac-

<sup>74</sup> David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 315–16.

<sup>75</sup> FLA. STAT. ch. 98.0975(4) (1999) (emphasis added).

<sup>76</sup> David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 315–16.

<sup>77</sup> See chaps. 2 and 5.

<sup>78</sup> David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 316–17. The Division of Elections forwarded a list to Mr. Leahy that identified 485 people as incorrectly included in the previous felon exclusion list. An excerpt from the Miami hearing transcript follows:

"MR. QUARTERMAN: Of the individuals who challenged the determination by DBT or by the Florida Law Department that they were convicted felons, how many were found not to be convicted felons?"

MR. LEAHY: We had two different lists applied. One was in June of 1999 and one was in January 2000. On the June 1999 list, let me start, there was a total of 5,762 names provided to us. Of that, there were 327 who responded with appeal forms who eventually we were told by either Florida Department of Law Enforcement or the Office of Executive Clemency that they were not convicted felons. That's 327 out of 5,762.

We were also sent a subsequent list to that June 1999 list, which informed us that 485 people that were on the original list in fact had their rights restored and should not have been on the list to begin with. So you've got to add up the 485

plus the 327 that were not convicted felons or had their rights restored out of the 5,762." Ibid.

<sup>79</sup> It is important to emphasize the "at least." These data only capture those who actually appealed. They do not capture those who never received notice until they were denied the right to vote on Election Day or for whatever reason did not appeal.

<sup>80</sup> Hispanics may be of any race.

<sup>81</sup> See app. I.

**TABLE 1-4**  
**Convicted Felons List, Miami-Dade County, 1999 and 2000**

	<u>June 1999</u>		<u>January 2000</u>		<u>Combined totals</u>	
	Number	Percent	Number	Percent	Number	Percent
Names on list	5,762	100%	1,388	100%	7,150	100%
Appealed & removed	327	5.7%	142	10.2%	469	6.6%
Names on list in error	485	8.4%	N/A	N/A	485	6.8%
Total names removed	812	14.1%	N/A	N/A	954	13.3%
White	1,013	17.6%	251	18.1%	1,264	17.7%
Black	3,794	65.8%	884	63.7%	4,678	65.4%
Hispanic	955	16.6%	253	18.2%	1,208	16.9%
Total	5,762	100%	1,388	100%	7,150	100%
<i>Successful appeals</i>						
White	98	30.0%	27	19.0%	125	26.7%
Black	155	47.4%	84	59.2%	239	51.0%
Hispanic	74	22.6%	31	21.8%	105	22.4%
Total	327	100%	142	100%	469	100%

SOURCE: Data collected by Rebecca Kraus, senior social scientist, U.S. Commission on Civil Rights, June 2001.

counted for approximately 22 percent of those who appealed in response to both lists. White Americans accounted for 30 percent of those who appealed in 1999 and 26.7 percent of those who appealed in 2000 (see table 1-4). Based on the experience in Miami-Dade County, the most populous county in the state, it appears as if African Americans were more likely than whites and Hispanics to be incorrectly placed on the convicted felons list.

#### CONCLUSION

The Voting Rights Act prohibits both intentional discrimination and "results" discrimination. It is within the jurisdictional province of the Justice Department to pursue and a court of competent jurisdiction to decide whether the facts prove or disprove illegal discrimination under either standard. The U.S. Commission on Civil Rights does not adjudicate violations of the law. It does not hold trials or determine civil or criminal liability. It is clearly within the mandate

of the Commission, however, to find facts that may be used subsequently as a basis for legislative or executive action designed to protect the voting rights of all eligible persons.

Accordingly, the Commission is duty bound to report, without equivocation, that the analysis presented here supports a disturbing impression that Florida's reliance on a flawed voter exclusion list, combined with the state law placing the burden of removal from the list on the voter, had the result of denying African Americans the right to vote. This analysis also shows that the chance of being placed on this list in error is greater for African Americans. Similarly, the analysis shows a direct correlation between race and having one's vote discounted as a spoiled ballot. In other words, an African American's chance of having his or her vote rejected as a spoiled ballot was significantly greater than a white voter's. Based on the evidence presented to the Commission, there is a strong basis for concluding that section 2 of the VRA was violated.

## CHAPTER 2

## First-Hand Accounts of Voter Disenfranchisement

*Who are to be the electors of the Federal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States.<sup>1</sup>*

Although statistics on spoiled ballots and voter purge lists point to problems in Florida's election, perhaps the most compelling evidence of election irregularities the Commission heard was the first-hand accounts by citizens who encountered obstacles to voting. The following chapter presents individual accounts of voting system failures.

#### VOTERS NOT ON THE ROLLS AND UNABLE TO APPEAL

On November 7, 2000, millions of Florida voters arrived at their designated polling places to cast their votes. Unfortunately, countless voters were denied the opportunity to vote because their names did not appear on the lists of registered voters.<sup>2</sup> When poll workers attempted to call the supervisors of elections offices to verify voter registration status, they were often met with continuous busy signals or no answer.<sup>3</sup> In

accordance with their training, most poll workers refused to permit persons to vote whose names did not appear on the rolls at their precinct. Thus, numerous Floridians were turned away from the polls on Election Day without being allowed to vote and with no opportunity to appeal the poll workers' refusal. The following are a few examples of experiences that Floridians had who were turned away from their polling places.

#### Citizens Who Were Not Permitted to Vote

Cathy Jackson, an African American woman, has been a registered voter in Broward County since 1996. Upon registering in Broward County, Ms. Jackson was told that if she ever experienced a problem with her voter registration card, she would be allowed to vote if she could produce a valid driver's license. Ms. Jackson voted in Broward without any incident using her driver's license since 1996. However, when she went to her polling place, Precinct 52Z, on November 7, 2000, she was told that her name was not on the list. The poll workers suggested that she travel back to her old precinct in Miami-Dade County to vote. Ms. Jackson did as she was advised even though she had voted in Broward County since she moved from Miami-Dade County in 1996. After waiting 45 minutes at her old precinct, the poll workers in Miami-Dade told Ms. Jackson that her name was not on the rolls and referred her back to Broward to vote.

When Ms. Jackson returned to the Broward precinct, the poll workers advised her to wait while they checked her registration status. While she waited, Ms. Jackson observed a poll worker from another precinct within the same polling place allow an elderly white voter, whose

<sup>1</sup> THE FEDERALIST NO. 57 (James Madison).

<sup>2</sup> Numerous complaints received by the attorney general's office and the Florida Democratic Party confirm that voters were turned away from their precincts. See "Complaints Received by Attorney General's Office," Bates Nos. 0008948, 0009170, 0009173, 0009279.

<sup>3</sup> Ava Zamites of Tampa waited for one and a half hours but could not get through to the supervisor of elections office. "Complaint Received by Attorney General's Office," Bates No. 0009277. In another instance, when Lynette Johnson was told that her name was not on the voter list, poll workers attempted to call the supervisor of elections office. When they could not get through for an hour, she had to return to work. She continued to call on her own with no success.

"Complaint Received by Attorney General's Office," Bates No. 0009882.

name did not appear on the rolls, to fill out an affidavit and vote. When Ms. Jackson asked if she could do the same, the poll workers explained that she could fill out an affidavit, but that she could not vote until they had verified her registration. The phone lines to the supervisor of elections office, however, remained busy for several hours. Ms. Jackson became upset and eventually left to go to work. Undeterred by these delays, Ms. Jackson returned to her precinct after work to try to vote again, but the poll workers were never able to verify her registration status and refused to allow her to vote.<sup>4</sup>

**Donnise DeSouza**, an African American, has been registered to vote since 1982 in Miami-Dade County. When she entered the Richmond Fire Station in Miami-Dade County at 6:50 p.m. and showed her identification to the poll worker, Ms. DeSouza was told that her name was not on the rolls. The poll worker directed her to the "problem line," so that her registration status could be verified with the supervisor of elections office. Ms. DeSouza recalled that the line of about 15 people did not move, but at 7 p.m. when the poll began to close, a poll worker announced to the group "if our name was not on the roll that she could not let us vote and that there was nothing she could do." The poll workers stopped their attempts to verify the registration status of the voters who had been standing in line. When Ms. DeSouza asked if there was an absentee ballot that would allow her to cast her vote, the poll worker explained that there was nothing he could do.

Ms. DeSouza testified to the Commission that she was "very agitated" and the next day began to register complaints with various sources about her experience. Upon further investigation with the office of the supervisor of elections, she discovered that the poll workers should have continued their efforts to resolve the problems of those voters who were in the precinct prior to the 7 p.m. closing time. Furthermore, Ms. DeSouza learned that her name was actually on the rolls of registered voters, because subsequently a worker at the elections office showed

<sup>4</sup> Cathy Jackson, Testimony before the U.S. Commission on Civil Rights, Miami, FL, Feb. 16, 2001, Verified Transcript, pp. 80-87. Ms. Jackson explained that her polling place's building was being used by two different "districts," which apparently refer to precincts. Ms. Jackson belonged to the first, while the elderly white voter belonged to the second. *Ibid.*

her the sheet that contained her name where she should have been allowed to sign. But Ms. DeSouza explained, "at that point [the election was over so] there was nothing they could do and I was deprived of my right to vote."<sup>5</sup>

**Angenora Ramsey**, an African American former poll worker with 18 years' experience, had changed her address prior to November 7. Based on her familiarity with election procedures, when Ms. Ramsey went to vote at Precinct 62 in Palm Beach County, she completed a change of address affidavit. But when the poll worker tried to call the office of the supervisor of elections to verify Ms. Ramsey's registration status, she was unable to get through. According to Ms. Ramsey, the phone lines remained busy for three and a half hours—a delay she had never experienced during her time as a poll worker. Ultimately, the poll workers refused to allow her to vote because they could not verify her voter status.<sup>6</sup>

**Margarita Green**, a 75-year-old Cuban American woman, went to vote at the same precinct in Miami-Dade County where she had always voted since becoming a citizen in 1966. When Mrs. Green showed her registration card to the poll worker, she was told that her name was not on the rolls and that she must speak with another poll worker who would look into the problem. Mrs. Green recalled that it took a long time for the poll worker to reach the supervisor of elections because the phone line was busy. When she finally got through, the worker explained that according to their records Mrs. Green had called in 1998 and "erased" herself from the voter list. Although Mrs. Green insisted that she had not called and showed the poll worker her registration card, the poll worker refused to allow her to vote.<sup>7</sup>

**R. Jai Howard**, vice president of the Florida Agricultural and Mechanical University Student

<sup>5</sup> Donnise DeSouza Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 54-58.

<sup>6</sup> Angenora Ramsey Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 87-96.

<sup>7</sup> Margarita Green Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 65-68. The supervisor of elections for Miami-Dade, however, provided a form signed by a Margarita C. Green purporting to indicate that she no longer lived in Miami-Dade County. Mrs. Green does not recall signing any such form. David Leahy, supervisor of elections, Miami-Dade County, letter to Edward A. Hailes, Jr., general counsel, U.S. Commission on Civil Rights, June 1, 2001, pp. 2-3.

Government Association, testified on behalf of more than 12,000 predominantly African American students. She described the massive voter registration efforts that took place at the school in the months preceding the November 2000 election. The association's efforts continued until October 10, 2000 (the last day to register before the election) and included a rally in which Reverend Jesse Jackson and Ion Sancho, the Leon County supervisor of elections, participated. Despite its efforts, the Student Government Association learned in the days following the election that large numbers of students had problems voting, "including one student who had two voter registration cards with two different precincts, some students who received no voter registration cards, switching of precincts without prior notification, misinformation at precincts, and students who had attempted to register numerous times and never received registration [cards] and were never entered into the system." As a result of these combined problems, many students who believed they had been properly registered were not allowed to vote.<sup>8</sup>

#### **Poll Workers Confirm Widespread Voter Disenfranchisement**

The experiences of these Floridians who were denied their opportunity to vote were corroborated by poll workers who testified at the Commission hearing in Miami. Many poll workers attempted to follow the procedures they had been taught in their training, such as verifying voter registration with the supervisor of elections, but their efforts were largely futile because of the inadequacies and obstacles they faced throughout the voting system.

**Marilyn Nelson**, a poll worker with 15 years of experience in Miami-Dade County, testified, "By far this was the worst election I have ever experienced. After that election I decided I didn't want to work as a clerk anymore." At North Dade Elementary School, Precinct 232, she observed several voters who had presented their voter registration cards showing they were properly registered, but the poll workers did not allow them to vote because their names did not appear on the rolls. Ms. Nelson also saw voters

with their "orange cards," which meant that the voter had registered on time and should be allowed to vote, provided that the poll worker could verify the voter's registration status with the supervisor of elections office. Many of these voters, however, were not permitted to vote because the poll workers could not get through on the phone line to the supervisor's office.<sup>9</sup>

**Maria DeSoto**, a poll worker in Palm Beach County, testified that she used her personal cellular phone to call the supervisor of elections office all day, but was only able to get through two or three times over the course of 12 hours. Ms. DeSoto added that if voters' names did not appear on the rolls, they were not allowed to vote, even if they presented valid identification.<sup>10</sup>

**Barbara Phoele**, a poll worker in Broward County at Precinct 6C, observed mostly African American and Hispanic voters being turned away because their names did not appear on the rolls. The precinct clerk at her site was unable to get through to the central election office to give affidavits to those voters whose names did not appear. According to Ms. Phoele, the clerk did not communicate with the voters and did nothing to encourage them to vote. In fact, Ms. Phoele noticed later that afternoon that the sign informing voters where they should call if they experienced problems had never been posted. She brought this to the attention of the precinct clerk who explained, "I didn't have time to put it up." Ms. Phoele recalled that in past elections it took only about 10 minutes to reach the elections supervisor, but on November 7, 2000, she turned away approximately 40 or 50 people because she could not access the supervisor of elections.<sup>11</sup>

**Marvin Rickles, Jr.**, a deputy at Precinct 74B in Palm Beach County, observed an African American school principal turned away, after waiting for two hours, because her name did not appear on the rolls and poll workers could not reach the supervisor of elections office. She returned to the precinct later that afternoon and was allowed to vote only after she discovered

<sup>8</sup> Marilyn Nelson Testimony, poll worker, Precinct 232 in Miami-Dade County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 129-38.

<sup>9</sup> Maria DeSoto Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 142.

<sup>11</sup> Barbara Phoele Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 126-27, 136, 156. Ms. Phoele eventually posted the sign herself. *Ibid.*, pp. 126-27.

<sup>8</sup> R. Jai Howard, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 11, 2001, Verified Transcript, p. 84. Florida A&M University houses a voting precinct on its campus.

that her name had been misspelled on the rolls.<sup>12</sup>

**Millard Suid**, a poll worker at the Water Works Department in Boynton Beach, testified he was not able to get through to the office of the supervisor of elections. He recalled helping only one voter over the course of about eight hours. Mr. Suid stated that the precinct deputy estimated that poll workers “[m]ust have turned away maybe 30 or 50 people that could not vote.”<sup>13</sup>

**Randall Benston** worked as an area chair overseeing three precincts in Broward County. Mr. Benston observed poll workers who were unaware that voters not on the rolls were allowed to fill out affidavits and vote. He eventually persuaded the poll workers to allow voters to fill out affidavits in accordance with Florida election law.<sup>14</sup>

#### POLLING PLACES CLOSED EARLY OR MOVED WITHOUT NOTICE

Many Floridians experienced extreme frustration on November 7 when they reported to the precincts where they had been voting regularly, in some cases for many years, and discovered that their precincts were no longer being used or had moved to another location without notice from the county supervisor of elections.<sup>15</sup> In other instances, some voters who had been standing in line to vote at their precincts prior to 7 p.m. were told that they could not vote because the poll was closed.<sup>16</sup> Under these circum-

stances, the patience of many Floridians was exhausted.

#### Polling Places Closed Early

When **Lavonna Lewis**, an African American first-time voter, went to her polling place to vote, she was told by a white poll worker standing outside that the poll was closed. As she turned to leave, the poll worker allowed a white gentleman to walk in and get in line to vote.<sup>17</sup>

**Donnise DeSouza** arrived at her assigned precinct at 6:30 p.m., but she could not enter until 6:50 p.m., due to the long line of cars parked on the street waiting to gain access to the polling place. Once Ms. DeSouza was finally able to enter the polling place, she waited for another 10 minutes while poll workers verified her registration status. At 7 p.m., however, the poll workers announced to Ms. DeSouza and about 15 other voters who were waiting to be helped that they could not vote because the poll was closed.<sup>18</sup>

**Susan and Joel Newman** arrived at the Water Works Department in Palm Beach to vote at approximately 6:15 p.m. Upon their arrival, they noticed:

[T]he iron gates at the entrance were closed, preventing entrance . . . Several cars pulled into the entrance lane and tried to attract attention by honking horns and ringing an intercom. We waited 5–10 minutes but no one showed up and the gates remained locked. We drove off thinking we were wrong about the closing time—that the polls must have closed at 6:00. A few blocks away we spotted a police car and pulled up to check. He verified that the polls were open until 7:00. We complained about the situation we had just experienced and he told us to go to the Board of Elections (some 20 minutes away). We drove there and met a policeman as we entered the building. He listened to our complaint and politely told us there was nothing he could do. We would have to register our complaint with the [supervisor] of elections, Theresa LePore. Unfortunately, he told us her office had closed at 5 p.m. and her staff went home [and] we would have to complain the following day. We left,

<sup>12</sup> Marvin Rickles, Jr., Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 134.

<sup>13</sup> Millard Suid Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 123, 132.

<sup>14</sup> Randall Benston, precinct area chair, Precincts 6Z, 5Z, and 7B, Broward County, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 457. See chap. 7 (Florida law does permit an individual to be issued a ballot in limited circumstances, upon execution of an affidavit).

<sup>15</sup> John McGuire of Pinellas County, for example, complained that his polling place, Precinct 509, moved without prior notice. See “Complaint Received by Attorney General’s Office,” Nov. 8, 2000, Bates No. 0009246.

<sup>16</sup> Denise Ballard of Palm Beach County observed poll workers turn away voters at her precinct at 7 p.m., even though they had been in line prior to 7 p.m. See “Complaint Received by Attorney General’s Office,” Bates No. 0009778. Similarly, Ted Dominick of Broward County complained that he arrived at the poll at 6:55 p.m. and was turned away. See “Complaint Received by Attorney General’s Office,” Bates No. 0009253.

<sup>17</sup> Lavonna Lewis Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 102–06.

<sup>18</sup> Donnise DeSouza Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 54–56.



realizing that we would have no opportunity to vote this year.<sup>19</sup>

Millard Suid, a poll worker at the Water Works Department on John Road in Boynton Beach, confirmed the above poll closing. He explained that the gates to the property are on an automatic timer that shuts them every day at 6:15 p.m. When the automatic timer shut the gates at 6:15 p.m. on Election Day, however, Mr. Suid stated, "It was a disaster. The people at the Water Works Department should have known about it or the people, Theresa LePore, who runs that particular district, should have known about that." When asked if he called the supervisor of elections to report that the gates had closed, Mr. Suid testified, "That wouldn't do any good, couldn't get in. I had called 911 and told the police. Now there was a young lady at the Water Works Department who worked there all day and she left at like 5:30 and she said, 'I'll be back at 7:30 to lock up.' Now she should have known this gate's going to lock automatically. . . . That wasn't the first time they used that. So somebody screwed up."<sup>20</sup>

Robert Weisman, the county administrator for Palm Beach County, stated in a response to an interrogatory issued by the Commission after the February 16, 2001, hearing, that he did not know about the gate-closing incident until the Commission hearing. He further acknowledged that a subsequent investigation by representatives of the supervisor of elections office determined that the gate indeed had closed. Mr. Weisman did not dispute that the automatic locking of the gate blocked access to the Palm Beach County polling place before the official closing.<sup>21</sup>

#### Polling Places Moved Without Notice

If a supervisor of elections determines that a polling place must be moved, the supervisor must "not more than 30 days or fewer than seven days prior to the holding of an election,

give notice of the change."<sup>22</sup> Such notice is to be published in a newspaper of general circulation within the county, and notices must be mailed to each registered voter at least 14 days prior to the election.<sup>23</sup> In case of an emergency, the supervisor of elections must post a notice at the old polling place advising voters of the new location.<sup>24</sup> Regardless of the reasons for the change, the new polling place must be accessible to all voters and conspicuously identified by a sign. On November 7, 2000, however, these requirements of Florida election law were not strictly followed.<sup>25</sup>

Felix Boyle, a registered voter in Miami-Dade County, described his polling place as a "medieval labyrinth." There were "sulfuric odors from standing water, orange cones, barriers, deep pits, broken concrete. It was a real problem getting there." Although Mr. Boyle's polling place during the primary was very busy, the new location was "deserted" on November 7, 2000. He surmised that the appearance of the site might have resulted in fewer people voting there on Election Day.<sup>26</sup>

#### NATIONAL VOTER REGISTRATION ACT: THE MOTOR VOTER LAW

In 1993, Congress enacted the National Voter Registration Act<sup>27</sup> in an effort to increase participation in federal elections.<sup>28</sup> Congress gave states three years to implement its provisions. To implement the act, Florida enacted the Florida Voter Registration Act<sup>29</sup> to "provide the opportunity to register to vote or update a voter

<sup>19</sup> FLA. STAT. ch. 101.71(2) (1999).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> See Complaint of John McGuire of Pinellas County, "Complaints Received by Attorney General's Office," Nov. 8, 2000, Bates No. 0009246.

<sup>23</sup> Felix Boyle Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 78-79, 90-91. Photographs of Mr. Boyle's polling place are attached as app. III.

<sup>24</sup> 42 U.S.C. § 1973 (1988).

<sup>25</sup> Attempts to enact legislation to allow individuals to register to vote during driver's license registration date back to the 1970s. In 1992, President George Bush vetoed a "motor voter" bill. In 1993, the National Voter Registration Act was passed, despite severe opposition. Those opposing the motor voter registration regulation maintained that it unjustly interfered with state sovereignty—even for federal elections—and imposed unreasonable costs on states.

<sup>26</sup> FLA. STAT. ch. 97.032 (1999).

<sup>19</sup> Susan Newman, affidavit submitted to U.S. Commission on Civil Rights, Jan. 31, 2001, p. 3.

<sup>20</sup> Millard Suid Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 123.

<sup>21</sup> Robert Weisman, county administrator, Palm Beach County, Response to Commission's Interrogatory 1, Apr. 11, 2001, p. 2.

registration record to each individual who comes to an office of [the Department of Highway Safety and Motor Vehicles]<sup>30</sup> to apply for or renew a driver's license, apply for a new identification card, or change an address on an existing driver's license or identification card.<sup>31</sup> Since the Florida Voter Registration Act was enacted, more than 3,500,000 voter registration applications have been filed.<sup>32</sup> There were 609,389 applications filed with the Department of Highway Safety and Motor Vehicles (DHSMV) in the calendar year 2000.<sup>33</sup>

The DHSMV does not, in fact, register voters; rather, it provides a method for persons to apply to the county supervisors of elections to register while conducting license or identification card transactions. This process is commonly referred to as the "motor voter" process.

In 1995, training for the motor voter process began and was conducted by the Florida Division of Elections. Sandra Lambert, director of the Division of Driver Licenses, described the motor voter process at the Commission's Miami hearing:

When a customer comes into a driver license office to have any kind of driver license or identification card transaction, all basic information is initially processed. The customer is then asked if they would like to apply to register to vote. If that customer answers in the affirmative all the basic information is transferred from the computer screen on to an additional motor voter screen, so no additional information at that point has to be asked in duplication.

<sup>30</sup> FLA. STAT. ch. 97.057 (1999).

<sup>31</sup> FLA. STAT. ch. 97.057(1)(a) (1999).

<sup>32</sup> Sandra Lambert, director, Division of Driver Licenses, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 172-73. Ms. Lambert testified, "Of the seven organizations that do take applications, the Division of Driver Licenses has taken approximately 45 percent of all applications." The testimony of Ms. Lambert regarding the dramatic increase in voter registration in the state of Florida was echoed by a member of the Election Canvassing Commission. See Robert Crawford, commissioner of agriculture, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, p. 186.

<sup>33</sup> Sandra Lambert, director, Division of Driver Licenses, letter to Edward A. Hales, Jr., Mar. 14, 2001, p. 1. The division has a disciplinary system for employees who violate requirements of the motor voter process. Records indicate that in the year 2000 two employees received counseling, six employees received oral reprimands, and one employee received a written reprimand regarding violations of agency procedures for the motor voter process.

Some additional information does have to be gathered, such as party affiliation, homestead exemption address, [and] a few additional things by law. Once that is completed, the application is printed, it is given to the customer to verify for accuracy, the oath is administered, and the application is signed. If a person declines to apply to register to vote or to change their address, it is so noted on our computer files.

If a person is not in the office, but rather making a transaction by mail, having their renewal done by mail, there is information in that envelope which they receive and an application so that they can make any kind of changes to their voter registration or to make application to vote at that time. All of that information is mailed directly to the local supervisor of elections. And there is a list with all the addresses enclosed in their renewal information.

At the end of each day, in one of our offices, an end-of-the-day motor voter report is compiled, along with all of the applications, and then all of that information is forwarded within five days to the local supervisor of elections. It's pretty much of an electronic process up until this point, and then forwarded on to the local supervisor of elections.<sup>34</sup>

Despite this effort to increase citizen participation through motor voter registration, problems exist in the implementation of the registration process. Curtis Gans, director of the Committee for the Study of the American Electorate, testified, "In this election, thousands of people, not only in Florida, but in other places, who registered at motor voter places, motor vehicle license bureaus, and in social service agencies were not on the rolls when they came to vote."<sup>35</sup> A poll worker who testified at the Commission's Miami hearing corroborated this observation:

[T]here were people who had registered to vote through motor voter and somehow their registration was not transmitted to the supervisor of elections office. I saw that with married couples in my own precinct. One person would be registered to vote, the other person would not. The person who was not registered to vote couldn't vote unless they physically went to the supervisor of elections office and picked up a piece of paper, which they then

<sup>34</sup> Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 173-75.

<sup>35</sup> Curtis Gans Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 135.

brought back to me, because we couldn't reach them on the telephone.<sup>36</sup>

Congresswoman Corrine Brown also noted the failure of proper processing of motor voter registration, stating that "thousands of people went and got their driver's license, but to this date they did not . . . receive their voter card."<sup>37</sup>

Despite these allegations, according to Ms. Lambert, the fault should not be assigned to the motor voter registration system set up by Florida. Ms. Lambert testified that although she did "receive a number of complaints after the November election," she investigated all complaints and "found a variety of reasons why the person was not on the list."<sup>38</sup> Ms. Lambert asserted that all complaints were resolved, and there was no failure on the part of the DHSMV.<sup>39</sup> In several cases, Ms. Lambert noted, "people said they registered to vote at the motor vehicle office when in fact they had renewed by mail and they had received the application in the mail."<sup>40</sup> In this instance, the individual is responsible for mailing the form to the applicable supervisor of elections office. In another instance, a voter did, in fact, visit a driver license office; he registered, however, after the closing date and was thus not eligible to vote in the November election.<sup>41</sup>

Finally, according to Ms. Lambert, there were several instances when the supervisor of elections never received the mail. In this instance, a supervisor of elections would call to notify her office of a complaint. Ms. Lambert said her office then "would check and discover that we mailed . . . a batch that day."<sup>42</sup> If the supervisor of elections office had not received that registration, Ms. Lambert said her office "then recreated that day's report for the supervisor of elections."<sup>43</sup> Ms. Lambert claimed, however, that it is the supervisor of elections' "responsibility then to have

to make contact with that customer, or all those people, to get them to be on the rolls."<sup>44</sup>

Many Floridians alleged that they registered to vote through the Department of Highway Safety and Motor Vehicles and learned later that they were not registered. Many of these disappointed citizens filed complaints with the attorney general's office and/or the Democratic Party. The following are some examples of individuals who used the motor voter provisions to register, but were denied the right to vote.

**Marcia and George Seamans** of Boynton Beach registered to vote at the DHSMV on two occasions and were told at the polls that their names were not on the voter rolls. While at the DHSMV to obtain their driver's licenses, they were asked to register to vote. They were directed to fill out a separate registration application and, upon its completion, were told they were registered. When they went to the polling place, however, their names were not on the rolls. When the poll worker called the central office to verify their registration status, they learned that their names were not on the central voter file, and they were not allowed to vote.<sup>45</sup>

In response to the Commission's interrogatory regarding the Seamans' registration, Ms. Lambert stated that the Division of Driver Licenses' records confirmed that Mr. and Mrs. Seamans submitted their voter registration applications at the time of obtaining their driver's licenses.<sup>46</sup> The division's records also indicated that their voter registration applications and the transmittal reports were forwarded to the applicable supervisor of elections office. Ms. Lambert, however, was not able to explain the status of their voter registration. She reiterated that all voter registration applications and transmittal reports are forwarded to the supervisor of elections within five days of receipt.<sup>47</sup> With regard to the Seamans, Ms. Lambert explained that voter registration applications are forwarded to Palm Beach County by U.S. mail and that copies of the applications are not maintained in their file

<sup>36</sup> Maria Desoto, poll worker, Palm Beach County. Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 146.

<sup>37</sup> Corrine Brown Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 315.

<sup>38</sup> Sandra Lambert Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 231.

<sup>39</sup> *Ibid.*, p. 232.

<sup>40</sup> *Ibid.*, p. 231.

<sup>41</sup> *Ibid.*, p. 232.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> Marcia Seamans Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 110-13.

<sup>46</sup> Sandra Lambert, director, Division of Driver Licenses, Response to Commission's Interrogatory 1-4, Apr. 16, 2001, pp. 3-5.

<sup>47</sup> *Ibid.*

driver license offices due to confidentiality.<sup>48</sup> Based on this response, it is impossible to determine whether the voter registration applications were actually transmitted to the supervisor of elections office or whether that office misplaced the applications once they were received. Nevertheless, Mr. and Mrs. Seamans properly registered to vote at their driver license office and were deprived of their right to vote on Election Day.

**Bill Zannie** of Palm Beach County registered to vote at the DHSMV when he went to obtain his Florida driver's license. He requested a confirmation to ensure that he was registered to vote. The DHSMV staff assured him that he was registered. He did not, however, obtain a confirmation. When he went to vote on the day of the election, he was told that his name was not on the voter rolls. He also learned that there was no record of his registration. Since he registered to vote at a governmental agency, he assumed he was registered properly and to his disappointment, he was not registered.<sup>49</sup>

When asked about the voter registration status of Mr. Zannie, Sandra Lambert responded that according to the division's electronic transaction file for December 7, 1998, the date Mr. Zannie obtained his driver's license for the first time in Florida, the record indicated that he was currently registered to vote; therefore, DHSMV staff did not forward any forms to the supervisor of elections.<sup>50</sup> According to Mr. Zannie, December 7, 1998, was the first time he had obtained a driver's license in Florida and was the first time he requested to register to vote in the state of Florida. Because the Division of Driver Licenses' records indicated that he was already registered, it took no action to register him to vote.<sup>51</sup>

Ms. Lambert explained in an answer to the Commission's interrogatory that in the two times that Mr. Zannie moved in Florida and changed his address on his driver's license, his identification card/voter registration application indicated that he was currently registered to

vote,<sup>52</sup> raising another serious issue. The fact that Mr. Zannie changed his address twice in Florida and the driver license office file seemed to be current indicates that his voter registration should have also reflected his change in address. However, the driver license office failed to forward these address change forms to the local supervisor of elections office despite Mr. Zannie's repeated requests.

**Maria DeSoto**, a poll worker in Palm Beach County, testified that many eligible voters who registered through the DHSMV found their registrations were not transmitted to the supervisor of elections office. She witnessed a couple that registered together at the DHSMV but only one person's name was on the voter rolls on Election Day.<sup>53</sup>

The testimony of the witnesses who experienced problems voting after they had applied with the Division of Driver Licenses seems to run counter to contentions made by Ms. Lambert that its motor voter registration process is "very simple" and "very good." Despite some voters being disenfranchised by failures in the motor voter process, the division nevertheless maintains that it should not be blamed for the numbers of citizens who were deprived of their right to vote on Election Day.

#### ABSENTEE BALLOTS

Florida voters had various absentee ballot related complaints. The Commission heard testimony alleging there was an effort by organized groups to encourage their constituents to vote absentee for the November election. In other instances, voters complained that they had requested absentee ballots, but never received them. Still other voters complained that when they went to the polling place, they were denied ballots because the election records indicated they were sent absentee ballots. And some voters said they received absentee ballots even though they never requested them.

At the Tallahassee hearing, Alvin Peters, an attorney from Panama City, testified that Governor Bush sent out a letter encouraging selected citizens to vote by mail. Mr. Peters claimed that this "vote by mail letter" offered

<sup>48</sup> Ibid.

<sup>49</sup> Bill Zannie Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 466-71.

<sup>50</sup> Sandra Lambert, director, Division of Driver Licenses, Response to Commission's Interrogatory 5-6, Apr. 16, 2001, pp. 5-6.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Maria DeSoto Testimony Miami Verified Transcript, Feb. 16, 2001, p. 46.

selected citizens the opportunity to vote by mail, which is not allowed in Florida. He further pointed out the letter had the seal of the state of Florida and was signed by Governor Bush.<sup>54</sup>

Governor Bush disagreed with the above characterization of the letter referred to by Mr. Peters. He indicated to the Commission that the letter did not bear the current state seal, but rather the state seal as it first appeared in 1868.<sup>55</sup>

Following Mr. Peters' testimony and presentation of his supporting documents, Moya Burgess responded with outrage. She explained, "It makes me sick to think that . . . our governor basically sent out an infomercial to his party."<sup>56</sup> She added that she is registered with "the other party" and she never received any information from the governor. In Ms. Burgess' opinion, this letter should have been addressed to all voters.<sup>57</sup>

#### POLICE PRESENCE AT OR NEAR POLLING SITES

Several Florida voters reported seeing Florida Highway Patrol (FHP) troopers in and around polling places. Troopers conducted an unauthorized vehicle checkpoint within a few miles of a polling place in a predominantly African American neighborhood. In another area, trooper vehicles were reportedly parked within sight of at least two polling places, which one resident characterized as "unusual." The FHP reported that troopers only visited polling places to vote on Election Day. In light of the high voter turnout that was expected during the 2000 presidential election, particularly among communities of color that may have a strained relationship with law enforcement, some Floridians questioned the timing of and the motivation for the FHP's actions.

The Florida Election Code provides:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce, any other person for the purpose of interfering with

the right of such other person to vote or not to vote as that person may choose.<sup>58</sup>

The state of Florida also restricts the presence of law enforcement officers at polling places. Specifically, unless he or she enters the polling place to cast a ballot, no law enforcement officer may enter a polling place without the permission of the clerk or a majority of the inspectors.<sup>59</sup> The clerk or inspectors are required to make an affidavit for the arrest of any law enforcement officer who does not comply with the law.<sup>60</sup> Sheriffs also have a duty under Florida election law to "exercise strict vigilance in the detection of any violations of the election laws and in apprehending the violators."<sup>61</sup>

Charles Hall, director of the Florida Highway Patrol, testified at the Commission's Tallahassee hearing. He explained that the history of increased checkpoints by the FHP began in the early 1980s, when the vehicle inspection laws were repealed. The FHP determined that the most effective way to inspect a large number of vehicles was through driver's license/faulty vehicle equipment checkpoints.<sup>62</sup> He also noted that he had no conversations with the office of the governor, the office of the attorney general, or the office of the secretary of state in preparation for the 2000 presidential election.

Colonel Hall admitted that on November 7, 2000, the FHP established a checkpoint on Oak Ridge Road in Southern Leon County between the hours of 10 a.m. and 11:30 a.m.<sup>63</sup> The demographic makeup of the precincts surrounding the Oak Ridge Road checkpoint are as follows: (1) Precinct 107 is 82 percent Caucasian and 13 percent African American; (2) Precinct 109 is 37 percent Caucasian and 57 percent African

<sup>58</sup> FLA. STAT. ch. 104.0515(3) (1999).

<sup>59</sup> FLA. STAT. ch. 102.101 (1999).

<sup>60</sup> *Id.*

<sup>61</sup> FLA. STAT. ch. 102.091 (1999).

<sup>62</sup> Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 119. Colonel Hall said, "Motorists who approach one of these checkpoints can expect to have their license, registration, insurance papers, tires, brake lights, and other safety equipment examined. And those with vehicles in good working order and have all their required paperwork normally will be delayed for less than a minute." *Ibid.*

<sup>63</sup> *Ibid.*, pp. 119-20. In addition to the Oak Ridge Road checkpoint, the FHP established checkpoints in Bay and Escambia counties on November 7, 2000.

<sup>54</sup> Alvin Peters Testimony Tallahassee Verified Transcript, Jan. 12, 2001, p. 370.

<sup>55</sup> See app. VI, Charles T. Canady, general counsel, Office of the Governor for the State of Florida, letter to Edward A. Hales, Jr., June 6, 2001, p. 6.

<sup>56</sup> Moya Burgess Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 381.

<sup>57</sup> *Ibid.*

American; and (3) Precinct 110 is 70 percent Caucasian and 24 percent African American.<sup>64</sup> Approximately 150 vehicles were stopped as a result of the Oak Ridge Road checkpoint that day. According to FHP records, of the 16 citizens who received notices of faulty equipment, six (37 percent) were people of color.<sup>65</sup>

On the afternoon of Election Day, the FHP received notice of a complaint to the attorney general's office that FHP troopers had hindered people of color from arriving at polling places due to the Oak Ridge Road checkpoint. Colonel Hall indicated that "the FHP was the first statewide law enforcement agency in the county to voluntarily begin collecting data concerning traffic stops in response to the racial profiling issue."<sup>66</sup> The racial breakdown of the 150 drivers stopped at that checkpoint on Election Day, however, is not available.

As a result of its investigation, the FHP found that some policy violations had occurred, but concluded that no citizen was unreasonably delayed or prohibited from voting as a result of the Oak Ridge Road checkpoint.<sup>67</sup> The policy violations cited by FHP's investigators included the fact that the checkpoint site was not on the monthly preapproved list and the media notification policy was not followed.<sup>68</sup> The investigators recommended "counseling" for the sergeant in charge of the checkpoint and the district commander in charge of the media notification.<sup>69</sup>

Colonel Hall stated the FHP was "very concerned about the perception people may have

about what the patrol did that day."<sup>70</sup> The Commission heard testimony from voters in Tallahassee regarding their reaction to the FHP's actions on Election Day. Roberta Tucker, an African American woman and a longtime resident of Tallahassee, was driving along Oak Ridge Road on her way to vote. Before Ms. Tucker could reach her polling place, she was stopped at an FHP vehicle checkpoint conducted by approximately five white troopers. According to Ms. Tucker, the checkpoint was located at the only main road leading to her assigned polling place. One of the troopers approached Ms. Tucker's car, asked for her driver's license, and after looking at it, returned it to her and allowed her to proceed. Ms. Tucker considered the trooper's actions to be "suspicious" because "nothing was checked, my lights, signals, or anything that [the state patrol] usually check."<sup>71</sup> She also recalled being "curious" about the checkpoint because she had never seen a checkpoint at this location. Ms. Tucker added that she felt "intimidated" because "it was an Election Day and it was a big election and there were only white officers there and like I said, they didn't ask me for anything else, so I was suspicious at that."<sup>72</sup>

In response to the allegations of voter intimidation surrounding this checkpoint, Colonel Hall stated that "the checkpoint was properly conducted, and it was not anywhere near a polling facility, and I don't see how that could affect anybody's ability to vote."<sup>73</sup> He added that he was "not really" surprised to learn that a trooper may have asked for a driver's license and not registration. He explained that such an action could occur if vehicles had begun to back up.<sup>74</sup> Moreover, Colonel Hall stated he was "disappointed" that the FHP could not speak with Ms. Tucker because she refused to cooperate with their investigation.<sup>75</sup> Ms. Tucker testified, however, that she reported the incident to her local NAACP and never returned the FHP's calls be-

<sup>64</sup> *Ibid.*, p. 145.

<sup>65</sup> *Ibid.*, pp. 178-79. Colonel Hall added that the district commander, Captain Speers, did a "post survey of [the area surrounding the checkpoint] and out of the 100 cars that he checked during that period of time, I believe it was 82 percent were white . . . 18 percent minority in that area." *Ibid.*, p. 179.

<sup>66</sup> *Ibid.*, p. 32.

<sup>67</sup> *Ibid.*, p. 121. Colonel Hall was unable to confirm if the conversation with the attorney general's office was memorialized in any way other than in the FHP's investigative report of the Oak Ridge Road checkpoint. *Ibid.*, p. 138.

<sup>68</sup> *Ibid.* Colonel Hall referenced Florida Highway Patrol Policy Manual Section 17.07. According to Colonel Hall, the Oak Ridge Road checkpoint appeared on previous approved lists, but he did not believe the media notification procedures were avoided in order to prevent protests from civil rights organizations. *Ibid.*, pp. 179-80.

<sup>69</sup> Colonel Hall further clarified that the counseling received by the troopers did not constitute a formal reprimand. *Ibid.*, p. 141.

<sup>70</sup> *Ibid.*, p. 140.

<sup>71</sup> Roberta Tucker Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 36-37.

<sup>72</sup> *Ibid.*, p. 37.

<sup>73</sup> Charles Hall Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 140.

<sup>74</sup> *Ibid.*, p. 137.

<sup>75</sup> *Ibid.*, p. 142.

cause "I felt it was a civil rights issue . . . I felt like it was sort of discriminatory."<sup>76</sup>

When John Nelson, an African American resident of Jefferson County in Tallahassee, went to his assigned polling place, Precinct 6, to vote, he saw an unoccupied FHP vehicle parked across the street. He considered this to be "unusual" because he has voted a number of times at the same precinct, but was not accustomed to seeing a law enforcement vehicle at the precinct.<sup>77</sup> Moreover, Mr. Nelson stated he did not see any FHP troopers voting inside the precinct or leaving the precinct. Mr. Nelson added that his precinct is usually frequented by a large number of African American voters.<sup>78</sup> The FHP vehicle's presence piqued Mr. Nelson's curiosity, and after voting, he drove to a precinct in the downtown area on North Washington Street and saw another FHP vehicle parked outside the precinct.<sup>79</sup>

In response to Mr. Nelson's allegations, Colonel Hall explained that those troopers only visited polling places to vote, and no parking tickets were written in the parking lots of voting precincts.<sup>80</sup> He added that law enforcement personnel use a service station close to the polling place, which may have explained their presence.<sup>81</sup> Furthermore, according to Colonel Hall, the FHP has "no policy that specifically excludes polling places from any law enforcement function."<sup>82</sup> There is also no FHP policy against troopers wearing their uniforms or using their vehicles while voting at any election. At the request of supervisors of elections, the FHP has assisted in traffic control at polling places in the past, but the FHP received no such request for the November 2000 election.<sup>83</sup>

Florida Attorney General Robert A. Butterworth summarized his position on the use of law enforcement checkpoints on Election Day:

What we do know is that a checkpoint on that date, Election Day, was absolutely not necessary for law enforcement purposes and similar checkpoints should never again be implemented on Election Day . . . No law enforcement barriers should be placed on Florida's roadways when people are going to and from voting.<sup>84</sup>

Regardless of the motivation for the Florida Highway Patrol's actions on Election Day, it appears that a number of voters perceived, at minimum, that they were negatively affected by the proximity of law enforcement officers to the precincts around Tallahassee.

#### CONCLUSION

A wide variety of concerns have been raised regarding the use and effectiveness of Florida's voting system controls during the 2000 presidential election. Many Floridians were denied their opportunity to vote, in what proved to be a historic general election because of the narrow vote margin separating the candidates. Some voters were turned away from their designated polling places because their names did not appear on the lists of registered voters. Other voters discovered that their precincts were no longer being used or had moved to another location, without notice from the supervisor of elections office. In other instances, voters who had been standing in line to vote at their precincts prior to closing, were told that they could not vote because the poll was closed. In addition, thousands of voters who had registered at motor vehicle licensing offices were not on the rolls when they came to vote. The Commission also heard from several voters who saw Florida Highway Patrol troopers

<sup>76</sup> Roberta Tucker Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 64-65.

<sup>77</sup> John Nelson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 26-27.

<sup>78</sup> *Ibid.*, p. 28. Mr. Nelson added that for the first time in his voting experience at his precinct, rather than simply showing his voter registration card, he was asked for two pieces of identification, which he considered to be "unusual." *Ibid.*, p. 29.

<sup>79</sup> *Ibid.*, p. 28.

<sup>80</sup> Charles Hall, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 147-48.

<sup>81</sup> *Ibid.*, p. 148.

<sup>82</sup> *Ibid.*, p. 143.

<sup>83</sup> *Ibid.*, pp. 143-44.

<sup>84</sup> Robert A. Butterworth Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 199. Attorney General Butterworth also testified: "Therefore, I have prepared the legislation that I am forwarding to the Florida legislature that would prevent routine safety traffic checkpoints on Election Days anywhere within the state of Florida. There would be exceptions for roadblocks dictated by fleeing felons or other extreme circumstances." *Ibid.*

in and around polling places, while other troopers conducted an unauthorized vehicle checkpoint within a few miles of a polling place in a predominantly African American neighborhood.

The Commission's investigation demonstrated an urgent need for attention to this issue by

Florida's state and local officials, particularly as it relates to the implementation of statewide election reforms. Without some effective redress, the pervasive problems that surfaced in the 2000 election will be repeated.



## CHAPTER 3

## Responsibility Without Accountability?

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*In the first paragraph of the Declaration [of Independence], is the assertion of the natural right of all to the ballot: for how can the "consent of the governed" be given, if the right to vote be denied?*<sup>1</sup>

Article I, section 1, of the Florida Constitution provides that "[a]ll political power is inherent in the people."<sup>2</sup> The right to vote is the most obvious exercise of this inherent power. The Florida state election laws should be guided by this constitutional mandate. Further buttressing this constitutional mandate is the National Voter Registration Act of 1993 in which Congress emphasized "the right of citizens of the United States to vote is a fundamental right [and] it is the duty of the federal, state and local governments to promote the exercise of that right."<sup>3</sup> State election laws should be drafted and interpreted in such a manner that every citizen's right to vote is cherished and protected. Instead, there are several provisions of the Florida election law that appear to impede rather than foster this precious right.<sup>4</sup>

Provisions impeding the right to vote include those that permit top government officials to plead an alleged "lack of authority" to evade any responsibility to ensure that elections are fairly and uniformly conducted. The governor of Florida claims moral authority over election matters but claims the legal authority rests with the secretary of state. The secretary of state, who has obvious legal power, claims no practical author-

ity stemming from a lack of enforcement authority, limited power to promulgate administrative regulations, and shared constitutional authority with county supervisors of elections in overseeing elections. The supervisors of elections have the constitutional authority to conduct elections, but maintain they are not given the resources necessary to ensure that every legal voter can exercise that right should he or she choose to vote. In addition, supervisors of elections, by default, perform responsibilities assigned by law to the governor and the secretary of state.

**WHO'S IN CHARGE?**

Florida's governor is the state's chief executive officer who "shall take care that the laws be faithfully executed."<sup>5</sup> Florida's secretary of state is the chief election officer and oversees the Division of Elections.<sup>6</sup> Each county has an elected supervisor of elections, except one.<sup>7</sup> Together, the secretary of state and the county supervisors of elections preside over Florida's elections.

**Governor John Ellis Bush**

When asked about his responsibilities to ensure the election laws of Florida were faithfully executed during the November 2000 election, Governor Bush testified before the U.S. Commission on Civil Rights that he had no real legal authority over election matters except for certifying the election and serving as a member of the state canvassing board. He indicated that he recused

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<sup>1</sup> Susan Brownell Anthony, *Is It a Crime for a Citizen of the United States to Vote*, speech given in 1873 prior to her trial for voting. At that time, laws prohibited women from voting.

<sup>2</sup> FLA. CONST. art. § 1 (1968).

<sup>3</sup> 42 U.S.C. § 1973gg (2001).

<sup>4</sup> This is not an exhaustive analysis of all Florida election law provisions that may serve to disenfranchise voters. Those discussed here were the subject of significant testimony during the Commission hearings.

<sup>5</sup> FLA. CONST. art. IV, § 1(a).

<sup>6</sup> FLA. STAT. ch. 97.012 (1999). See FLA. CONST. art. IV, § 5(a). Florida's secretary of state is an elected cabinet position.

<sup>7</sup> FLA. CONST. art. VIII, § 1(d); FLA. STAT. ch. 98.015(1) (1999). There are 67 supervisors of elections; 66 are elected. The Miami-Dade County supervisor of elections is appointed under a county charter.

himself from participating on the state canvassing board because his brother was one of the presidential candidates.<sup>8</sup> Governor Bush testified that “governors have the moral authority . . . to make sure that the laws, not only the state laws, but . . . also federal laws are upheld. . . .”<sup>9</sup> When asked what authority and responsibility he had regarding preparation for the 2000 presidential election, Governor Bush testified that he had none and that “the secretary of state and the 67 supervisors of elections were responsible for that, and they carried out their duties.”<sup>10</sup>

Under the Florida Constitution, the governor is charged with ensuring that “the laws be faithfully executed,”<sup>11</sup> a responsibility Governor Bush apparently delegated to others with respect to elections.<sup>12</sup> Under Florida election law, the governor is also specifically empowered to “appoint special officers to investigate alleged violations of the election laws . . .”<sup>13</sup> Governor Bush testified that he had not appointed any officers to do any investigation of alleged irregularities surrounding the November 2000 election but would “[i]f there was a reason to do so.”<sup>14</sup> As of the date of this report there is no indication that the governor has exercised this authority by appointing special officers to investigate the widespread allegations of violations of the Florida election law.<sup>15</sup>

#### Secretary of State Katherine Harris

The Florida legislature was unequivocal and specific when it defined the responsibilities of the secretary of state in the Florida Election

Code.<sup>16</sup> The secretary of state is obligated by Florida law to:

- obtain and maintain uniformity in the application, operation, and interpretation of the election laws;
- provide uniform standards for the proper and equitable implementation of the registration laws;
- actively seek out and collect the data and statistics necessary to knowledgeably scrutinize the effectiveness of election laws;
- provide technical assistance to the supervisors of elections on voter education and election personnel training services;
- provide technical assistance to the supervisors of elections on voting systems;
- provide voter education assistance to the public;
- coordinate the state’s responsibilities under the National Voter Registration Act of 1993;
- provide training to all affected state agencies on the necessary procedures for proper implementation of this chapter;
- ensure that all registration applications and forms prescribed or approved by the department are in compliance with the Voting Rights Act of 1965;
- coordinate with the United States Department of Defense so that armed forces recruitment offices administer voter registration in a manner consistent with the procedures set forth in this code for voter registration agencies;
- create and maintain a central voter file; and
- maintain a voter fraud hotline and provide election fraud education to the public.<sup>17</sup>

Despite these explicit statutory powers, Secretary of State Katherine Harris testified that the Florida Constitution created an election system founded upon local control.<sup>18</sup> She testified, “[N]either I nor my staff are authorized to direct the conduct of these supervisors of elections.”<sup>19</sup>

Secretary Harris, detailing her official responsibilities, stated that within the framework

<sup>8</sup> John Ellis Bush, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 11, 2001, Verified Transcript, pp. 97–100, 106.

<sup>9</sup> *Ibid.*, p. 98.

<sup>10</sup> *Ibid.*, pp. 99–100. Governor Bush testified he was aware of an increase in voter registration. He did not, however, think that the increase in voter registration was greater than in previous years. *Ibid.*, p. 100. Governor Bush also believed he should “show leadership” with respect to the felony purge issue, although he had “no direct responsibility” to do so. *Ibid.*, p. 116.

<sup>11</sup> FLA. CONST. art. IV, § 1(a).

<sup>12</sup> John Ellis Bush Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 99–100.

<sup>13</sup> FLA. STAT. ch. 102.091 (1999).

<sup>14</sup> John Ellis Bush Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 117.

<sup>15</sup> See chaps. 1, 2, and 6.

<sup>16</sup> FLA. STAT. ch. 97.012 (1999).

<sup>17</sup> *Id.*

<sup>18</sup> Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 244.

<sup>19</sup> *Ibid.*, p. 241.

provided by the Florida Constitution and the laws of the state, "the Department of State is responsible for the qualification of candidates for state and federal office and for district offices where the district comprises more than one county; for campaign finance reporting for candidates who qualify with the division; and for maintaining a central voter file."<sup>20</sup> Secretary Harris characterized her authority over the administration of elections as "ministerial" and stated, "[W]e attempt to achieve uniformity in the interpretation of the election code, but we are without authority to direct the conduct of county supervisors of elections."<sup>21</sup>

It is obvious that the county supervisors do not have unilateral authority over the administration of elections and that the secretary of state has substantial authority over the process. For example, the secretary of state is required to adopt rules establishing standards for voting systems, but the county supervisors are to establish written procedures to ensure the accuracy and security of voting systems and procedures used in their county.<sup>22</sup> The voting systems must be certified by the secretary of state, but decisions about which system to use are made by the supervisors of elections.

The secretary of state's testimony before the Commission describing her authority over election matters as "ministerial" and, therefore, limited, is in sharp contrast to the position she took before the Supreme Court. The secretary of state's view of her role as limited in election matters also seems to be in conflict with the legal power given to her and as enunciated by the Supreme Court. Finally, her views expressed at the Commission hearing contrast with the power she wielded over election matters when she chose to exercise her authority.

In *Bush v. Gore*,<sup>23</sup> the secretary of state, in arguing against further manual recounts, rather than downplaying her authority over election matters as limited or merely ministerial, maintained that it was her office's Division of Elections that was "charged with interpreting and enforcing the Florida Election Code."<sup>24</sup> In effect,

the secretary of state argued that because the legislature gave the secretary of state such broad authority over election matters, her office's interpretations of the Florida election law should be given deference.

The Supreme Court repeatedly emphasized in *Bush v. Gore* that the secretary of state has tremendous authority over Florida election matters. "Importantly, the legislature has delegated the authority to run the elections and to oversee election disputes to the Secretary of State."<sup>25</sup> "The legislature has designated the secretary of state as the 'chief election officer,' with the responsibility to '[o]btain and maintain uniformity in the application, operation, and interpretation of the elections law.'"<sup>26</sup> The Supreme Court agreed, finding the secretary of state is the "state official charged by the legislature with 'the responsibility to' . . . obtain and maintain uniformity in the application, operation, and interpretation of the election laws. . . ."<sup>27</sup>

There is no doubt that the secretary of state has power over election matters. Indeed, the secretary of state's actions over the past election demonstrate this authority. Her office issued binding mandates as to when vote totals were to be submitted, whether they could be amended after submission, and what would constitute "[a]n error in the vote tabulation" that could trigger a manual recount of the votes.<sup>28</sup>

The Florida Election Code gives the secretary of state broad authority over election matters. However, the secretary of state has the discretion to exercise this authority. Jim Smith, co-chairperson of the Governor's Select Task Force on Election Procedures, Standards and Technology, and former attorney general and secretary of state for Florida, provided examples of acting in a proactive manner to attempt to ensure that all citizens of the state could be in a position to vote. His number one priority as secretary of state was election reform.<sup>29</sup> While in office, he pushed for initiatives on voter education and voter registration, e.g., same day registration.<sup>30</sup>

<sup>20</sup> *Ibid.*, p. 242.

<sup>21</sup> *Ibid.*, p. 243.

<sup>22</sup> FLA. STAT. ch. 101.015(4)(a-b) (1999).

<sup>23</sup> 531 U.S. 98 (2000).

<sup>24</sup> Brief of Florida Secretary of State at 10, *Bush v. Gore*, No. 00-949.

<sup>25</sup> *Bush v. Gore*, 121 S. Ct. 525, 534 (2000).

<sup>26</sup> *Id.* at 535-36.

<sup>27</sup> *Id.* at 536.

<sup>28</sup> *Id.*

<sup>29</sup> Jim Smith Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 138.

<sup>30</sup> *Ibid.*, pp. 164, 169-70, 179.

There is no evidence that in preparation for the November 2000 election the secretary of state focused on similar initiatives. Rather, the evidence leads to the disturbing conclusion the secretary of state chose to exercise authority to ensure the vote count was discontinued and the vote was canvassed after the election, but did little to ensure that eligible Floridians were able to access the polls, be permitted to vote, or have their votes counted.<sup>31</sup>

#### Division of Elections

When asked about her responsibilities as chief election officer, Secretary Harris testified that she delegated, in a standard delegation authority letter, her statutory duties as chief election officer to the director of the Division of Elections.<sup>32</sup> She stated:

I have delegated to Mr. Roberts [director of the Division of Elections] a high level of authority to operate the Division of Elections and to implement the statutory duties of the Division of Elections and the chief election office. Historically and at present, the day-to-day responsibilities for implementing the duties outlined in the Florida Election Code are assumed by the elections division director.<sup>33</sup>

To meet his or her statutory duties, the secretary of state, through the Division of Elections, is to provide statewide coordination and direction for interpretation and enforcement of election laws. The Division of Elections issues advi-

sory opinions to supervisors of elections and prescribes rules and regulations in the Florida Administrative Code.<sup>34</sup> In practice, the Division of Elections carries out the secretary of state's statutory responsibility as chief election officer.

The ultimate responsibility for ensuring that the secretary of state's statutory obligations are fulfilled remains with the secretary of state and cannot be delegated. At the Tallahassee hearing, Commission Chairperson Mary Frances Berry asked, "You understand that you are the one that's responsible? Delegation takes no responsibility off your shoulders," to which Secretary Harris responded, "I couldn't agree more."<sup>35</sup>

#### County Supervisors of Elections

The county supervisors of elections' statutory responsibilities are specified throughout the election code.<sup>36</sup> Unlike the secretary of state, county supervisors' statutory duties are not set forth in one statute. County supervisors are guided by various statutes in the election code and opinions issued by the Division of Elections. Opinion DE 98-11 entitled "Voting Systems and Standards for Ballots Used with Such Systems" advises that supervisors are allowed to use their discretion on matters not covered by the election code or the administrative code, as long as their elections are conducted in an efficient manner with "controls, procedures, and audit parameters" in place so the election is "accurate, fair, and capable of being reconstructed in the face of a protest or contest."<sup>37</sup> County supervisors may also enact election-related county ordinances provided the ordinances do not conflict with the election code.<sup>38</sup>

<sup>31</sup> An example of what could have been done to attempt to ensure that all legal voters would be permitted to vote is illustrated by the actions of the previous secretary of state and director of the Division of Elections. When confronted with inaccuracies in the voter purge lists being prepared by a private contractor that were used by some county supervisors of elections to remove voters, the then director of the Divisions of Elections in a memorandum to all supervisors of elections said, "In short, if there is a reasonable doubt as to the accuracy of the information, you should allow a person to vote." Ethel Baxter, director, Division of Elections, "Central Voter File Update," memorandum, Aug. 14, 1998. Despite continuing problems with the accuracy of these lists, discussed in detail in chapter 5 of this report, there is no evidence of any comparable attempt made by the secretary of state or the director of the Division of Elections during the 2000 presidential election to ensure that supervisors of elections were aware of continuing problems with these lists and to permit individuals to vote if there were reasonable doubts as to the accuracy of the information on the lists.

<sup>32</sup> Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 240.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, p. 243. See also Florida Department of State, Division of Elections, "Director's Office," n.d., <<http://election.dos.state.fl.us/about/director.shtml>> (accessed May 24, 2001) (providing a description of the director's responsibilities in the Division of Elections).

<sup>35</sup> Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 64-65.

<sup>36</sup> See generally FLA. STAT. ch. 98-106 (1999).

<sup>37</sup> Opinion of Florida Division of Elections "DE 98-11: Voting Systems and Standards for Ballots Used with Such Systems," Formal Opinions of the Division of Elections, July 31, 1998, <<http://election.dos.state.fl.us/opinions/de1998.shtml#9811>> (accessed May 24, 2001).

<sup>38</sup> Opinion of Florida Division of Elections, "DE 00-07: The Florida Elections Commission's Duty to Enforce Violations of Election-related Provisions of Local Charters and Ordinances," Formal Opinions of the Division of Elections, Sept.

Several supervisors of elections testified before the Commission about their responsibilities concerning the administration of elections and the actions they took to fulfill their duties. Linda Howell of Madison County testified that "the authority for the proper conduct of the elections in our county rests solely on me . . . I have a grave responsibility and duty to every citizen because I am employed by them, and this responsibility is taken seriously by me and I believe it's taken seriously by the other 66 supervisors in the state."<sup>39</sup>

Although state law charges the secretary of state to "[p]rovide voter education assistance to the public,"<sup>40</sup> Ion Sancho, supervisor of elections for Leon County, testified that it falls on the supervisors to educate voters. He stated:

Efforts to educate voters are left totally up to the counties, with some supervisors of elections doing great jobs if they can get funding from their county commissioners, but with the great majority of supervisors of elections doing the minimum required under the law, buying one newspaper ad the Sunday before the election, which is all that Florida law requires that a supervisor of elections do to educate the voters as to the voting process on Election Day.<sup>41</sup>

When asked what guidance the Division of Elections or the state of Florida provided to the county for training election officials and poll workers on voting requirements and procedures, the supervisor of elections for Monroe County answered "None."<sup>42</sup> When asked whether the state of Florida or its Division of Elections provided any guidance or funding regarding voter education, the Monroe County supervisor of elections' response was equally direct, "No."<sup>43</sup>

Under Florida law, supervisors of elections and the secretary of state have different respon-

sibilities for administration of elections. The election code requires the secretary of state's office to provide technical assistance to supervisors of elections.<sup>44</sup> Ms. Howell testified she "kind of" received the technical assistance she requested from the state.<sup>45</sup> She said it is difficult to get technical assistance because there are so many different voting systems in the state.<sup>46</sup> The supervisor of elections for Monroe County testified that the only guidance his county received from the state of Florida or the Division of Elections in accordance with the secretary of state's statutory obligation to ensure election uniformity was that it must "provide the names of qualified state candidates, and a ballot layout prior to elections."<sup>47</sup>

When asked about funding from the state for voter education, advertising, or expected problems, Denny Hutchinson, the supervisor of elections for Gadsden County from 1980 through 2000, testified that "there's an assumption that you're pretty much operating on your own on an individual county basis."<sup>48</sup> Mr. Sancho testified he raised money from the private sector to fund voter education in his county because "as supervisor of elections, you're sort of left on your own to do this without county resources or state resources, and there are no federal resources available at all."<sup>49</sup>

Mr. Sancho noted that "the secretary of state's office asked for in their budget to the Florida legislature \$100,000 for a media budget [for elections], and the governor zero funded that and refused to fund it in his budget."<sup>50</sup> L. Clayton Roberts, director of the Florida Division of Elections, concurred that \$100,000 was requested to help advertise and educate the public on voting but that the request did not make it

14, 2000, <<http://election.dos.state.fl.us/opinions/de2000/de00-07.shtml>> (accessed May 24, 2001).

<sup>39</sup> Linda Howell, supervisor of elections, Madison County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 25.

<sup>40</sup> FLA. STAT. ch. 97.012(6) (1999).

<sup>41</sup> Ion Sancho, supervisor of elections, Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 18.

<sup>42</sup> Harry Sawyer, supervisor of elections, Monroe County, Response to Commission's Interrogatory 13, Apr. 13, 2001.

<sup>43</sup> Harry Sawyer, supervisor of elections, Monroe County, Response to Commission's Interrogatory 14, Apr. 13, 2001.

<sup>44</sup> FLA. STAT. ch. 97.012(5) (1999).

<sup>45</sup> Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, Jan. 12, 2001, p. 32.

<sup>46</sup> *Ibid.*

<sup>47</sup> Harry Sawyer, supervisor of elections, Monroe County, Response to Commission's Interrogatory 12, Apr. 13, 2001.

<sup>48</sup> Denny Hutchinson Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 22, 102. Mr. Hutchinson was the supervisor of elections during the November 2000 election; his term expired in January 2001. *Ibid.*, pp. 9, 21-24.

<sup>49</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 35.

<sup>50</sup> *Ibid.*, p. 34.

through the governor's office to the legislature.<sup>51</sup> Contrary to the sworn testimony of Mr. Roberts, the governor's office maintains "the Governor's Office of Policy and Budget has reviewed this matter and, in consultation with budget officials from the Department of State, has determined that the Department of State never made any such request."<sup>52</sup>

Supervisors suggested simplifying and standardizing the Florida ballot and called for better guidance from the secretary of state's office on election matters.<sup>53</sup> The supervisors of elections are charged with the election in their counties, but their legal requirements do not mandate that they be provided with the resources necessary to meet these obligations.

#### MAINTAINING THE VOTER LISTS

##### The State's Obligations

The Florida voter list maintenance requirement places the burden on voters to remove themselves from a statutorily required purge list in order to be eligible to vote. This is a second way the Florida election law fosters disenfranchisement through the lack of specific accountability. The Florida election law requires the Division of Elections develop and maintain a "self-sustaining," "centrally maintained database" that contains voter registration information of all counties in the state.<sup>54</sup> Additionally, the Division of Elections must provide supervisors of elections with a list identifying each person included in the central voter file as a registered voter in the supervisors' county who—

- is deceased;
- has been convicted of a felony and *has not had his or her civil rights restored*; or

- has been adjudicated mentally incompetent and whose mental capacity with respect to voting has not been restored.<sup>55</sup>

The Division of Elections updates its list annually and forwards the revised list to the county supervisors of elections by June 1 of each year. In fulfilling this duty, the division was required to contract with a private entity "to compare information in the central voter file with available information in other computer databases, including, without limitation, databases containing *reliable* criminal records and records of deceased persons."<sup>56</sup>

Other state agencies have obligations regarding voter list maintenance requirements. The Department of Highway Safety and Motor Vehicles must annually provide a list of individuals who have been "purged from its driver's license database because they have been licensed in another state" to the appropriate supervisor of elections.<sup>57</sup> On a monthly basis, the Department of Health must provide each supervisor of elections with a list of all deceased persons 17 years of age and older who were residents of the supervisor's county.<sup>58</sup>

##### The Supervisor of Elections' Obligations

Under the Florida statutory scheme in place in 2000, once supervisors of elections received the list from the state, they were required to "attempt to verify the information provided."<sup>59</sup> The statute continued, "If the supervisor *does not* determine that the information provided by the division is *incorrect*, the supervisor *must remove* [the voter's name] from the registration books by the next subsequent election . . ."<sup>60</sup>

Without providing funding or appropriate assistance, the state of Florida placed the burdens of list maintenance squarely on the supervisors of elections.<sup>61</sup> The obligations of supervisors of

<sup>51</sup> L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 269–70.

<sup>52</sup> See app. VI, Charles T. Canady, general counsel, Office of the Governor for the State of Florida, letter to Edward A. Hailles, Jr., general counsel, U.S. Commission on Civil Rights, June 6, 2001, pp. 6–7.

<sup>53</sup> See Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 23.

<sup>54</sup> FLA. STAT. ch. 98.097 (1999).

<sup>55</sup> FLA. STAT. ch. 98.0975(1) (1999) (emphasis added). The list contains the name, address, date of birth, race, gender, and any other information identifying the voter. *Id.*

<sup>56</sup> FLA. STAT. ch. 98.0975(2)–(3)(a) (1999) (emphasis added). This provision of the law was changed by the Florida Election Reform Act of 2001. See Epilogue.

<sup>57</sup> FLA. STAT. ch. 97.057(7)(1) (1999).

<sup>58</sup> FLA. STAT. ch. 98.093(1) (1999).

<sup>59</sup> FLA. STAT. ch. 98.0975(4) (1999).

<sup>60</sup> *Id.* (emphasis added).

<sup>61</sup> See chap. 4.

elections include receiving information from numerous sources and using it to purge the voter lists. According to Florida laws, supervisors of elections are obligated to do the following:

- Use registration list maintenance forms prescribed by the Department of State that allow voters to confirm their addresses and receive information on how to register in their new jurisdiction(s) if they moved.<sup>62</sup> Voters who do not return an address confirmation final notice and do “not offer to vote by the second general election thereafter . . . will be removed from the voter registration books.”<sup>63</sup>
- Conduct a biennial “general registration list maintenance program to protect the integrity of the electoral process by ensuring the maintenance of accurate and current voter registration records.”<sup>64</sup> The U.S. Postal Service may supply change-of-address information.<sup>65</sup> Supervisors may determine change-of-address information from “returned nonforwardable return-if-undeliverable” mail sent to registered voters in the county, and “returned nonforwardable return-if-undeliverable” mail sent to voters who have not participated in two years or from jury notices signed by the voter indicating a new address.<sup>66</sup> Voters who have not responded to an address confirmation final notice within 30 days are placed on an inactive list.<sup>67</sup>
- Require Floridians to produce evidence at a show cause hearing if the supervisor believes that the individual is under 18 years of age, not a U.S. citizen, is a fictitious person, or has listed an address other than his or her legal residence.<sup>68</sup>
- Receive from each clerk of circuit court a list of persons convicted of a felony and a list of persons adjudicated mentally incapacitated with respect to voting during the previous month.<sup>69</sup>
- Receive from the Department of State any listing of persons convicted of a felony in federal court upon receipt of the information from the United States attorney.<sup>70</sup>

#### The Voter's Burden to Prove Innocence

The use of the purposefully crafted double negative in the list maintenance provision of the Florida Election Code created an obvious impact on the voter.<sup>71</sup> It is noteworthy that inaction by an eligible voter triggers his or her removal from the registration list. Once a voter's name appeared on this list, even if by gross error, the burden was shifted to the voter to prove his or her right to vote.<sup>72</sup> In some cases this could result in the voter being subject to fingerprinting in order to prove that he or she was erroneously placed on this list.<sup>73</sup> Even without considering the practical impact of how these lists are compiled, the statute on its face renders the eligible voter vulnerable to disenfranchisement because it placed the burden of attempting to verify proper placement on the purge list on already underfunded county supervisors.<sup>74</sup>

<sup>62</sup> FLA. STAT. ch. 98.093(2) (1999).

<sup>70</sup> FLA. STAT. ch. 98.093(3) (1999).

<sup>71</sup> The double negative was found in the Florida Election Code language that provided, “If the supervisor *does not* determine that the information provided by the division is *incorrect*, the supervisor must remove from the registration books by the next subsequent election [the voter's name].” FLA. STAT. ch. 98.0975(4) (1999) (emphasis added). This provision was changed by the Florida Election Reform Act of 2001. See Epilogue.

<sup>72</sup> See David Leahy, supervisor of elections, Miami-Dade County, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 315. David Leahy has been the supervisor of elections for Miami-Dade County since 1981. *Ibid.*, pp. 312–13. See also David Leahy, supervisor of elections, Miami-Dade County, Response to Commission's Interrogatory 8, Apr. 10, 2001 (explaining that if name is on the felon list erroneously, voter must provide response or proof).

<sup>73</sup> Linda Howell Testimony, Tallahassee Verified Transcript Jan. 12, 2001, p. 43. David Leahy, Response to Commission's Interrogatory 8.

<sup>74</sup> See chap. 5.

<sup>62</sup> FLA. STAT. ch. 98.055(2)(c)(1) (1999).

<sup>63</sup> FLA. STAT. ch. 98.055(2)(b) (1999).

<sup>64</sup> FLA. STAT. ch. 98.065(1)–(3) (1999). The registration list program must be conducted in each odd-numbered year and no later than 90 days prior to any federal election.

<sup>65</sup> FLA. STAT. ch. 98.065(2)(a) (1999).

<sup>66</sup> FLA. STAT. ch. 98.065(2) (1999); FLA. STAT. ch. 98.065(4) (1999). See also FLA. STAT. ch. 98.075(2) (1999) (providing that supervisors may send address confirmation requests to voters believed to have moved from their legal residences).

<sup>67</sup> FLA. STAT. ch. 98.065(5) (1999). Voters on the inactive list should be allowed to vote and change their names and addresses at the polls. *Id.*

<sup>68</sup> FLA. STAT. ch. 98.075(3) (1999).

### CONCLUSION

The ability of any state's citizens to participate fully and fairly in elections, without discrimination, is driven by the state's election laws and those laws' ability to ensure some uniformity in the election processes and procedures. Florida is no exception. In theory the Florida Election Code provides that authority. The governor is to ensure that all laws, including election laws, are faithfully executed.<sup>75</sup> The secretary of state is designated as the "chief election officer of the state" whose express statutory obligation is to "[o]btain and maintain uniformity in the application, operation, and interpretation of the election laws."<sup>76</sup>

In practice, this authority can be either delegated to the point of constructive nonexistence or exercised on such a discretionary basis as to be arbitrary. The end result is a system that delegates to the county supervisors of elections, who are subject to the budgetary and political constraints placed upon them by 67 separate county governments, the duty to ensure statewide uniformity in election matters—a system that was so devoid of effective checks and balances that it failed many voters in the 2000 presidential election.

Similarly, while the duty for developing and maintaining a "centrally maintained database"

containing voter registration information for the entire state is placed upon the state, the responsibility for verifying that the database is accurate is delegated.<sup>77</sup> Florida state law shifted the responsibility for identifying individuals to be purged from this list initially to a private contractor<sup>78</sup> and then placed it on the shoulders of the county supervisors of elections.<sup>79</sup> Yet, this law provided no requirement to ensure the accuracy of the data provided in these purge lists.<sup>80</sup> Florida state law ultimately placed the burden of ensuring the accuracy of these purge lists on the voter.<sup>81</sup>

Chapter 1 demonstrates that persons of color stand a greater chance of appearing on the purge list than other persons and, more disturbingly, persons of color stand a greater chance of appearing on the purge list in error.

The Florida process ensures that some voters will be wrongfully placed on the purge list and, ultimately, denied their right to vote. Further, it provides that these denials of the right to vote will fall most squarely on persons of color. These statutory provisions that mandate responsibility without accountability are obviously key ingredients in a statutory recipe for voter disenfranchisement.

<sup>75</sup> FLA. CONST. art. IV, § 1(a).

<sup>76</sup> FLA. STAT. ch. 97.012 (1999).

<sup>77</sup> FLA. STAT. ch. 98.097 (1999).

<sup>78</sup> FLA. STAT. ch. 98.0975(3)(a) (1999).

<sup>79</sup> FLA. STAT. ch. 98.0975(4) (1999).

<sup>80</sup> FLA. STAT. ch. 98.0975 (1999).

<sup>81</sup> FLA. STAT. ch. 98.0975(4) (1999).



## CHAPTER 4

## Resource Allocation

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*I do know how to shop and bring home the bacon, but again, my concern is having the resources so that I can get my job done.<sup>1</sup>*

The state of Florida annually provides funds for the state's election needs. The county supervisors of elections are responsible for providing citizens with election services; however, they receive limited state funding and depend primarily on appropriations from their respective boards of county commissioners for resources. As a result, factors such as varying county budgetary limits and the lack of state funding initiatives to supervisors of elections offices result in unequal election resources and the possibility of voter disenfranchisement.

**WHO PAYS?****The State Budget Process**

Financial resources are allocated for public needs through Florida's budget process. The state's budgetary fiscal year begins in July, while its legislature convenes annually from March to May.<sup>2</sup>

The budgetary process begins when Florida's state agencies present their appropriation requests to the governor each September. These requests are based on agencies' perceptions of their expected long-term program planning needs. The Governor's Office of Policy and Budget analyzes these requests and sends its

<sup>1</sup> Miriam M. Oliphant, supervisor of elections, Broward County, Testimony before the U.S. Commission on Civil Rights, Miami, FL, Feb. 16, 2001, Verified Transcript, p. 287.

<sup>2</sup> American Chemical Society, Office of Legislative and Government Affairs, "Florida Budget Process," n.d., <<http://www.acs.org/government/stateinfo/flbg.pdf>> (accessed Mar. 20, 2001) (hereafter cited as ACS, "Florida Budget Process"). Although the legislative session is limited to 60 calendar days, the duration of the session may be extended by a three-fifths vote in the state House of Representatives and the Senate.

findings to the governor.<sup>3</sup> The governor then compares the proposed budgets with the state's available financial resources and program priorities and submits his fiscal recommendations to the Florida legislature in January.<sup>4</sup> During the next phase of the budget development process, the legislature reviews the governor's proposed budget and receives feedback from members of the public and agency officials in reference to anticipated fiscal allocations.<sup>5</sup> Lastly, as part of Florida's legislative session, the state House of Representatives and the Senate each vote on general appropriations bills for the state.<sup>6</sup> The speaker of the House of Representatives and the president of the Senate ultimately sign the new General Appropriations Act.<sup>7</sup> The budgetary process is not completed until the governor signs the act.<sup>8</sup> Although the governor of Florida has the authority to veto funding for line item budgetary requests, a majority vote in Florida's House of Representatives and the Senate is still required to pass the state's budget.<sup>9</sup>

<sup>3</sup> My Florida.com, "Budget Process Overview," Florida e-Budget, n.d., <<http://www.ebudget.state.fl.us/overview.asp>> (accessed Mar. 20, 2001).

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid. (providing, "Differences between the Senate and the House budgets are resolved in a joint conference committee").

<sup>7</sup> Ibid.

<sup>8</sup> Ibid. Once the legislature passes the budget, the new appropriation becomes valid beginning each July 1.

<sup>9</sup> ACS, "Florida Budget Process"; see also My Florida.com, "Budget Process Overview"; L. Clayton Roberts, director, Division of Elections, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 269. Mr. Roberts cited the example of Governor Bush not approving the division's request for voter education funding. As a result, the request was not presented to the Florida legislature for approval.

### Appropriations to the Division of Elections

According to Secretary of State Katherine Harris, the Division of Elections submits its budget requests to Florida's legislature and the governor's office, in accordance with the state's appropriations process. Although the secretary of state does not directly communicate with the governor on budgetary issues, the division directors of her office interact with the governor's staff on fiscal concerns.<sup>10</sup> The secretary of state also has the opportunity to submit a supplemental budget that can include requests for additional funding to Florida's counties.<sup>11</sup>

In terms of overall fiscal authority, Governor Bush testified before the Commission that he is responsible for funding election needs in the state, while the secretary of state is directly accountable for the Division of Elections. He explained that "funding to provide adequate training or for the [voting] machinery is determined by local county commissioners."<sup>12</sup> However, Governor Bush anticipated that this policy might be changed with the advent of recommendations from the Governor's Select Task Force on Election Procedures, Standards and Technology, "recognizing that some counties handled this job, because of their machines, in a way that yielded a dramatically different result than others."<sup>13</sup>

Secretary Harris testified that her office is divided into seven divisions, including one for elections. This division is managed by a director—L. Clayton Roberts—who is responsible for implementing the secretary of state's mandates. Ms. Harris is then accountable for supervising the operations and delegating daily operational functions to the division directors.<sup>14</sup> The director's office of the Division of Elections serves as

the secretary of state's designee for functions pertaining to elections, such as:

- offering voter education assistance to the public;
- coordinating statewide workshops for supervisors of elections on election law updates;
- supervising and approving continuing education training courses for supervisors of elections;
- maintaining the state's voter fraud hotline;
- educating the public on voter fraud; and
- providing technical assistance on voter education and election training services for county supervisors of elections.<sup>15</sup>

In terms of resources allocated to the secretary of state's office, in 2001, the office employs 709 full-time-equivalent employees (FTEs), with a \$161 million budget.<sup>16</sup> Her office generates approximately \$171 million in revenue.<sup>17</sup>

The following tables portray the Division of Elections' budget appropriations from fiscal year 1997 through fiscal year 2001. According to the data provided to the Commission, the division was appropriated the greatest amount of funding of approximately \$6.1 million in FY 1999–2000. The data also indicate that during the period of FY 1997 through FY 2001, the division employed the most full-time-equivalent employees (47) in FY 1997–FY 1998.<sup>18</sup>

<sup>10</sup> Katherine Harris, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, pp. 280–81.

<sup>11</sup> *Ibid.*, p. 281.

<sup>12</sup> John Ellis Bush, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 11, 2001, Verified Transcript, pp. 98–99.

<sup>13</sup> *Ibid.*, p. 99. See the Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, Mar. 1, 2001. The task force noted that the state of Florida should provide its counties with adequate funding in order to develop new voting systems and high standards to ensure that voters understand how to use these systems.

<sup>14</sup> Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 239–40.

<sup>15</sup> Florida Department of State, Division of Elections, "About Us—Director's Office," n.d., <<http://www.election.dos.state.fl.us/about/director.shtml>> (accessed May 9, 2001). The office also interprets Florida's election laws, provides technical assistance to supervisors of elections on voting systems, offers procedural training to all relevant state agencies on implementing the National Voter Registration Act of 1993, collects statistics on the effectiveness of Florida's election laws, ensures that voter registration applications and forms comply with the parameters of the Voting Rights Act of 1965, and establishes rules to execute the state's election law provisions. *Ibid.*

<sup>16</sup> Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 267, 277–78.

<sup>17</sup> *Ibid.*, pp. 277–78.

<sup>18</sup> *Ibid.* see L. Clayton Roberts, director, Division of Elections, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 269. Mr. Roberts testified that previously the Division of Elections had 70 full-time-equivalent employees.

**TABLE 4-1**  
**Division of Elections Appropriations for**  
**Fiscal Years 1999–2000 and 2000–2001**

Fiscal year	Agency's requested budget	State appropriation	Total FTEs
2000–2001	\$5,871,581	\$4,600,000	39
1999–2000	\$6,616,019	\$6,108,016	43

NOTE: According to Secretary Harris's testimony at the Commission hearing, however, in 2001, the Division of Elections has 30 full-time-equivalent employees and is allocated approximately \$5.4 million.

SOURCES: State of Florida, BPEADL01 LAS/PBS System, Budget Period 1989–2000, Appropriation Category Summary, Exhibit A—"Issue Summary," May 14, 1999 (excerpt); State of Florida, BPEAD L01 LAS/PBS System, Budget Period 1990–2001, Exhibit D-3A—"Expenditures by Issue and Appropriation Category." The figure \$4,600,000 is from the Florida government's *Office Program Policy Analysis and Government Accountability*, n.d., <<http://www.opaga.state.fl.us/profiles/4098/print.asp>> (accessed Mar. 17, 2001) For FY 2000–2001, the state appropriated \$4.6 million in general revenue, and \$1.3 million in trust funds.

**TABLE 4-2**  
**Division of Elections Appropriations for**  
**Fiscal Year 1998–1999**

Fiscal year	Approved budget
1998–1999	\$3,974,746

NOTE: The approved unreleased budget for the Division of Elections was \$2,073,372 in FY 1998–1999.

SOURCE: State of Florida, BAALRL01 LAS/PBS System, 1997 Appropriation Ledger, Detail Report by Fund/Category, Tentative Original Approved Budget, June 29, 1997.

**TABLE 4-3**  
**Division of Elections Appropriations for**  
**Fiscal Year 1997–1998**

Fiscal year	Budget	Total FTEs
1997–1998	\$3,430,634	47

SOURCE: State of Florida, BPEXBL01 LAS/PBS System, Budget Period: 1989–2000, Exhibit B—"Appropriation Category Summary," May 14, 1999 (excerpt).

In addition, Ms. Harris testified before the Commission that "cuts in the Division of Elections occurred prior to my election as secretary of state [in 1998]."<sup>19</sup> The above data indicate,

<sup>19</sup> Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 268. See also ABCnews.com, "Running the Recount—GOP Loyalist Vows Fairness in Overseeing Florida Tally," Nov. 15, 2000, <[http://abcnews.go.com/sections/politics/dailynews/election\\_harrisbio001113.html](http://abcnews.go.com/sections/politics/dailynews/election_harrisbio001113.html)>

however, that the Division of Elections also experienced a decrease in state appropriations and full-time equivalents from FY 1999–FY 2000 to FY 2000–FY 2001.

#### THE STATE'S CONTRIBUTION TO FLORIDA'S ELECTION RESOURCES

The state of Florida provides minimal, if any, direct financial support for election resources. In fact, Jane Carroll, former supervisor of elections for Broward County, maintained that she did not believe there was a legal provision that would have allowed her to request additional funding from the state's Division of Elections, even if the financial resources were available.<sup>20</sup> James Roberts, Monroe County administrator, reinforced Ms. Carroll's perspective, by stating, "There is no provision in the state statute that automatically allows Monroe County to ask the state of Florida to provide money for elections."<sup>21</sup> However, Mr. Roberts indicated that legislative or administrative budget processes could be used to request supplemental funding for elections.<sup>22</sup>

Other current and former government officials expressed similar positions regarding the state's contribution to local election needs:

- Linda Howell, supervisor of elections for Madison County, did not ask the Division of Elections for any additional funding for her county, because she knew the efforts would be futile.<sup>23</sup>
- Harry Sawyer, supervisor of elections for Monroe County, indicated that his office relies on the Division of Elections for limited needs. These include providing a list of

(accessed Mar. 27, 2001) (Secretary Harris was elected secretary of state in 1998).

<sup>20</sup> Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 304–05. Additionally, Ms. Carroll explained, "We have an unfunded mandate statute that says that the Florida legislature cannot mandate that the local governments or counties in particular spend dollars mandated by the Florida legislature if it goes above the amount of \$600,000." Ibid.

<sup>21</sup> James L. Roberts, Monroe County administrator, Response to Commission's Interrogatory 6, Apr. 9, 2001.

<sup>22</sup> Ibid.

<sup>23</sup> Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 102.

qualified election candidates, legal advice, and updates on legislation.<sup>24</sup>

- Clay Roberts, director of the Division of Elections, testified that the state of Florida does not provide the counties with any funding for voter outreach/education purposes.<sup>25</sup>

The Division of Elections did, however, initiate some level of voter education outreach to Florida residents.<sup>26</sup> In April 2000, the division entered into a contractual agreement with the Florida Cable Telecommunications Association to create a 30-second public service announcement (PSA) in English to educate Florida residents on voter fraud.<sup>27</sup> The Division of Elections

paid \$20,000 for the PSA.<sup>28</sup> The announcement aired between 6 a.m. and midnight from August 1, 2000, through November 7, 2000, in nine primary cable television areas in Florida.<sup>29</sup>

Subsequently, in August 2000, the Division of Elections also contracted with Next Generation Network, Inc., a for-profit Minnesota corporation to provide locations to display voter fraud public service announcements in Florida.<sup>30</sup> Next Generation Network owns and operates video monitors in 706 convenience stores in the state, which are primarily used to broadcast messages of interest to the general public.<sup>31</sup> Pursuant to the division's contract with Next Generation Network, the state paid \$11,469.50 for these services.<sup>32</sup> Similarly, the director of the Division of Elections testified before the Commission that "[w]e provide posters to the supervisor of elections in Spanish and English, which are posted in the polling place that explain to the voters the basics of voting. . . . As far as the mechanics of voting and showing voters how to vote, we do not participate in that because different counties have different systems."<sup>33</sup>

<sup>24</sup> Harry Sawyer Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 344–45.

<sup>25</sup> L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 287. *But see* Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 291. Secretary Harris believed that the Florida legislature should be more responsive to local funding needs, due to the closeness of the 2000 presidential election.

<sup>26</sup> *See* Ion Sancho, supervisor of elections, Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 57. Mr. Sancho testified that in 1992, Jim Smith, in his former capacity as the secretary of state, made arrangements with the Florida Association of Broadcasters to obtain free 30-second television air time for voter outreach purposes. The county supervisors of elections then used this air time to educate Florida residents on voting. According to Mr. Sancho, "[w]e used some of those same spots in 1994, but no secretary of state after that has provided any resources like that to the Florida Association of Supervisor[s] of Elections or elections in general." *Ibid.*, pp. 57–58.

<sup>27</sup> L. Clayton Roberts, director, Division of Elections, "Provider Contract," Apr. 7, 2000, Bates No. 0014713; Katherine Harris, secretary of state, Florida Department of State, "General Requisition," Apr. 11, 2000, Bates No. 0014737. *See* L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 270–71. *See also* Florida Outdoor Advertising Association, Inc., "Contract for Statewide Donated Advertising Space," Apr. 21, 2000, Bates No. 0015151. (The Division of Elections spent \$51,000 for the installation of at least 200 billboards from August 2000 through November 2000. These signs announced "Stamp Out Voter Fraud"). *See generally* Florida Department of State, Division of Elections, "General Requisition," Jan. 6, 1999, Bates No. 0015389; Florida Department of State, Division of Elections, "General Requisition," Jan. 26, 1999, Bates No. 0015390; the Print Shop of Tallahassee, Inc., "Invoice," Aug. 27, 1999, Bates No. 0015473; the Print Shop of Tallahassee, Inc., "Invoice," Aug. 13, 1999, Bates No. 0015491 (Previously, in 1999, the Division of Elections expended approximately \$14,262 for voter fraud notice posters in English and Spanish. The posters were ordered for distribution to county supervisors of elections offices).

<sup>28</sup> L. Clayton Roberts, "Provider Contract," Bates No. 0014713.

<sup>29</sup> *Ibid.*

<sup>30</sup> L. Clayton Roberts, director, Division of Elections, "Contract for Services," Aug. 8, 2000, Bates No. 0014837; Florida Department of State, Division of Elections, Bates No. 0014853. The advertisement stated, "Call (toll free) 1-877-868-3737[,] VOTER FRAUD[,] Division of Elections[,] Florida Department of State." *Ibid.* *See also* Charlotte Brand, director and chief executive officer, Florida Outdoor Advertising Association, Inc., "Contract for Statewide Donated Advertising Space," Apr. 21, 2000, Bates No. 0015151.

<sup>31</sup> L. Clayton Roberts, "Contract for Services," Bates No. 0014837. *See generally* L. Clayton Roberts, "Contract for Services," Bates No. 0014838. "The Vendor [Next Generation Network] shall broadcast the Division's announcement in three, 3-day broadcast periods for a total of nine (9) days coinciding with two days before and the day of the first primary; the second primary and the general election. Each broadcast period shall consist of 72 hours beginning at midnight (12:00 a.m.) on the commencement date and ending at 11:59 p.m. on the termination date. . . . During each broadcast period the Division's announcement shall be broadcast at least 500 times per day at each of the 706 Florida locations." *Ibid.*

<sup>32</sup> L. Clayton Roberts, "Contract for Services," Bates No. 0014838.

<sup>33</sup> L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 286–87. *See also* Ion Sancho, supervisor of elections, Leon County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 101 (indicating that the only voter outreach assistance the state of Florida provides is

The Division of Elections then entered into an agreement in September 2000 with the Victory Group, Inc., a Maryland communications and media firm, to produce a 30-second television commercial entitled "The Power" in order to reinforce the "Get Out to Vote" campaign in Florida.<sup>34</sup> General Norman Schwartzkopf appeared in this advertisement.<sup>35</sup> The total cost to the Division of Elections for the commercial was \$34,500.<sup>36</sup>

In spite of these efforts, some members of the public remained skeptical about the effectiveness of the Division of Elections' voter outreach. According to Tony Hill, a former state representative, "[t]he ad featured [Secretary of State Katherine Harris] at the beaches and thoroughbred horses and Norman Schwartzkopf. The message was not directed at voters least likely to vote. The code was protection of freedom, the question is for whom."<sup>37</sup> Mr. Hill added that the public service announcement was "a waste of time."<sup>38</sup> In contrast, Clay Roberts indicated that his office did not receive any requests from local county election officials for state assistance for their election preparation initiatives.<sup>39</sup>

Nevertheless, one supervisor of elections maintained that the foundation was already established for the state's inadequate allocation of Election Day resources prior to the 2000 election.<sup>40</sup> According to Ion Sancho, supervisor of elections for Leon County, when Katherine Harris was campaigning for her current position as secretary of state, her campaign platform did not

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supplying the counties with voter education pamphlets and posters).

<sup>34</sup> L. Clayton Roberts, director, Division of Elections, "Contract for Production of 'Get Out to Vote' Public Information Campaign," Sept. 9, 2000, Bates No. 0014745; the Victory Group, Inc., "Description of Services," Sept. 30, 2000, Bates No. 0014810.

<sup>35</sup> Katherine Harris, secretary of state, Florida Department of State, "[Draft] Letter to Station Managers," Oct. 6, 2000, Bates No. 0014792.

<sup>36</sup> The Victory Group, Inc., "Description of Services," Bates No. 0014810.

<sup>37</sup> Tony Hill Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 373.

<sup>38</sup> *Ibid.*

<sup>39</sup> L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 289-90.

<sup>40</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 56.

focus on reforming Florida's election process.<sup>41</sup> Instead, the emphasis was placed on other state program areas, such as cultural affairs and international trade relations. In addition, once Ms. Harris was elected as secretary of state, a number of her Division of Elections staff left their positions and were replaced by new and inexperienced employees.<sup>42</sup> Mr. Sancho concluded these two factors contributed to why county supervisors of elections "didn't depend on that office this year because simply they were too new. We knew more about the [elections] process than they did."<sup>43</sup>

### COUNTY CONTRIBUTIONS TO FLORIDA'S ELECTION RESOURCES

Florida's county supervisors of elections generally anticipate a lack of state financial resources for election needs, such as voter education and outreach. As a result, county supervisors either try to seek financial assistance from their respective boards of county commissioners, supplement budgetary needs by other means, or have inadequate voter education and outreach initiatives in their counties. The supervisors of elections view voter education and outreach, particularly for first-time voters, as critical elements for successful election outcomes. For example, Ion Sancho maintained that voter education could have greatly reduced the number of voter errors made on Election Day.<sup>44</sup> According

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.* See also Harry Sawyer, supervisor of elections, Monroe County, Response to Commission's Interrogatory 14, Apr. 13, 2001 p. 3 (responding that the Division of Elections or the state of Florida did not provide any guidance or funding for voter education in Monroe County).

<sup>44</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 17-18. Mr. Sancho maintained that not only do new voters require voting education, but so do voters who are new to the jurisdiction and unfamiliar with the local voting system. He testified, "I don't think there was any conscious targeting or racial discrimination on the part of supervisors. I think some of the effects of not having the kinds of monies necessary to do ongoing voter education programs has the effect of in fact impacting on minorities and young people and senior citizens because this was an election that brought out voters that voted maybe only one time in the last 10 years." *Ibid.*, pp. 52-54 (Mr. Sancho commended the NAACP for its \$7 million voter participation campaign, but said voter participation is not the responsibility of advocacy groups. He said states and counties must merge to be the predominate leaders in the area of voter education and participation).

to Mr. Sancho, if county supervisors of elections can get adequate funding from their respective boards of county commissioners, then they can usually offer sufficient outreach to their communities. He believes that in most instances, the supervisors of elections will satisfy the minimum state legal requirement of purchasing an advertisement in the newspaper to educate voters on the election process.<sup>46</sup>

Similarly, supervisors of elections are often unsuccessful in obtaining sufficient funding from their respective boards of county commissioners for election needs. In addition, some counties have larger budgets for voting equipment, while smaller Florida counties do not have the resources to pay for similar equipment.<sup>46</sup>

According to Denny Hutchinson, former Gadsden County supervisor of elections, county commissioners do not consider supervisors of elections offices as high priority funding needs.<sup>47</sup> Ms. Howell and Mr. Sancho also agreed with Mr. Hutchinson's testimony by stating that supervisors of elections' salaries are less than those of other Florida constitutional officers.<sup>48</sup> Jim Smith, co-chairperson of the Task Force on Election Procedures, Standards and Technology, testified that the task force heard testimony from various supervisors of elections who had requested that their county governments provide them with more modern voting equipment. Those requests were denied.<sup>49</sup>

<sup>46</sup> *Ibid.*, pp. 17–18. See FLA. STAT. ch. 98.255 (1999) (providing "Each supervisor of elections is authorized to provide voter educational programs and materials of a nonpartisan nature in his or her county as he or she may deem appropriate").

<sup>46</sup> Jim Smith Testimony, co-chairperson of the Governor's Select Task Force on Election Procedures, Standards and Technology, Tallahassee Verified Transcript, Jan. 11, 2001, p. 165. See also the Florida Election Reform Act of 2001, S.B. 1118, 103d Reg. Sess. (Fla. 2001) at 95–96. The act uses factors such as the population size and number of voting precincts in each county to determine budget appropriations for local voting systems, voter education programs, and poll worker recruitment and training initiatives. Accordingly, for the purposes of this discussion, the Commission assumes that these factors were previously employed to appropriate counties' budgets to determine allocations for election purposes. See also Epilogue.

<sup>47</sup> Denny Hutchinson Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 104.

<sup>48</sup> Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 105–06; Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 105–06.

<sup>49</sup> Jim Smith Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 159.

In those instances when supervisors of elections are unsuccessful in obtaining funding from boards of county commissioners, there is little, if any, recourse.<sup>50</sup> Jane Carroll, former supervisor of elections for Broward County, explained that the supervisor of elections position is the only constitutional office that has no appeals process to challenge the approved funding amount.<sup>51</sup> Her testimony described how in 1993, when the Broward County Board of County Commissioners denied her budget request for new voting machinery to replace the county's existing punch card voting system, there were no state or federal funds available to finance her request.<sup>52</sup>

Similarly, Miriam M. Oliphant, the current supervisor of elections for Broward County, also confronts obstacles in obtaining sufficient funding for her county's voting needs. During the time of the Commission's Miami hearing, Ms. Oliphant had anticipated sufficient financial support from Broward County. An excerpt from the hearing transcript follows:

COMMISSIONER WILSON: My last question . . . is your budget. How have you tried to increase it and have you put forth plans to increase it and by how much?

MS. OLIPHANT: Yes, I have had the opportunity to speak with the [Broward] County administrator and he has given me [the] go ahead . . . to . . . prepare a budget. I'm looking at more outreach education [and] community voter registration. . . .

I'm concerned that when I go into a community, whether it is the Haitian American community or Hispanic community, that I have the diversity that I need and the professional communication to go in there and communicate. . . . I am looking to expand staff and bring in the resources into [the supervisor of elections] office so that we can go out into the community and . . . communicate and educate people on voter education awareness.

I right now operate on a \$5 million budget with approximately . . . 61 employees. . . . I am antici-

<sup>50</sup> See Harry Sawyer, supervisor of elections, Monroe County, Response to Commission's Interrogatory 17, Apr. 13, 2001, p. 4 ("At the present time we do not have a mechanism to challenge Monroe County's refusal of a submitted budget from the supervisor of elections office. We are working on a bill that would provide for such a challenge").

<sup>51</sup> Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 279–80.

<sup>52</sup> *Ibid.*, pp. 270–71.

pating with the new voting equipment that we're going to be looking at some additional dollars. . . . [T]here's going to be additional dollars for technology, for the training of the people, and other outreach services.

So we're talking, and I mentioned [this] to the chairman of the county commission, maybe an additional \$2 million.<sup>53</sup>

Despite the widespread call for election reform in Florida, the Broward County Board of County Commissioners recently requested the supervisor of elections office reduce its budget submission 5 percent for fiscal year 2002, due to expected economic difficulties in the county.<sup>54</sup> Moreover, the board—

acknowledge[d] the need to replace the current voting system and appreciated [Ms. Oliphant's] recent correspondence regarding the ballpark cost figures pending the outcome of the State legislature's decisions on this matter. [Mr. Desjarlais] encourage[d] [Ms. Oliphant] to search for efficiencies in [Broward County's] current operations and look toward the reprioritization of . . . existing funds to support any operating improvements that [she] deem[s] critical.<sup>55</sup>

In response, the Broward County Supervisor of Elections Office emphasized the need for appropriate county funding to support voter out-

reach efforts to multicultural county residents, the replacement of the current punch card voting and tabulation system, advertising and public service announcements, initiatives that address systemic problems that occurred during the 2000 presidential election, and staffing increases.<sup>56</sup> Ms. Oliphant ultimately advised the Broward County board that she may need to again request supplemental funding from the board, if pending state legislation has a negative impact on her office's fiscal year 2002 budget appropriations.<sup>57</sup>

Another supervisor of elections has an alternative method of addressing reduced budget requests. Harry Sawyer of Monroe County contended that denied or reduced proposed budgets could be addressed by interpreting current Florida statutes that might allow redress.<sup>58</sup> Specifically, a Florida statutory provision requires that "each supervisor of elections shall certify to the board of county commissioners, or county budget commission . . . a proposed budget of income and expenditures to fulfill the duties, responsibilities, and operation of the office of the supervisor of elections for the ensuing fiscal year of the county."<sup>59</sup> Moreover, a subsequent provision states, "The *independence* of the supervisor of elections shall be preserved concerning the purchase of supplies and equipment; the selection of personnel; and the hiring, firing, and setting of salaries of personnel."<sup>60</sup> As a result, Mr. Sawyer suggested that the independent status of his position as a supervisor of elections requires that he must protect his proposed budget in order to fulfill his official duties.<sup>61</sup> He indicated that if Monroe County reduced its supervisor of elections' office budgetary request in these areas (i.e., supplies and equipment, the selection of personnel, and employee salaries), he would be "entitled to take legal action to bring my budget

<sup>53</sup> Miriam M. Oliphant Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 286–88. See also John E. Rodstrom, chairman, Broward County Board of County Commissioners, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 278–79 (describing how the board will be working with the supervisor of elections office for Broward County to address those concerns that arose during the 2000 presidential election); Interview Report, telephone interview with John E. Rodstrom, chairman, Broward County Board of County Commissioners, Jan. 30, 2001, p. 2 (indicating that the board usually "rubber stamps" the Broward County Supervisor of Elections Office's budget proposals).

<sup>54</sup> Roger J. Desjarlais, county administrator, Broward County Board of County Commissioners, letter to Miriam M. Oliphant, Mar. 13, 2001; Miriam M. Oliphant, supervisor of elections, Broward County, memorandum to Roger J. Desjarlais, Mar. 22, 2001.

<sup>55</sup> Roger J. Desjarlais, county administrator, Broward County Board of County Commissioners, letter to Miriam M. Oliphant, Mar. 13, 2001 ("If the economy cools even more than anticipated or the State or Federal governments cut funding to counties or force additional unfunded mandates, we will undoubtedly need to look for reductions in our base budget which is why I am asking all tax supported agencies to prepare five percent reduction plans to accompany the budget submission").

<sup>56</sup> Miriam M. Oliphant, supervisor of elections, Broward County, memorandum to Roger J. Desjarlais, Mar. 22, 2001.

<sup>57</sup> *Ibid.* See Epilogue.

<sup>58</sup> See Harry Sawyer, supervisor of elections, Monroe County, Response to Commission's Interrogatory 17, Apr. 13, 2001, p. 4.

<sup>59</sup> FLA. STAT. ch. 129.201(1) (1999).

<sup>60</sup> FLA. STAT. ch. 129.202(2) (1999) (emphasis added).

<sup>61</sup> See Harry Sawyer, supervisor of elections, Monroe County, Response to Commission's Interrogatory 17, Apr. 13, 2001, p. 4.

in compliance with state law.”<sup>62</sup> Hence, supervisors of elections who are in similar budgetary scenarios have to devise their own strategies for supplementing unmet financial need or else witness the residents of their counties doing without needed voting resources.

#### State Support and Election Day Preparations

Similarly, the state provides relatively little, if any, financial support to ensure the supervisors of elections can meet their obligations on Election Day. Instead, the Division of Elections, under the secretary of state, sets forth the minimum requirements to meet these responsibilities. Further, Secretary of State Katherine Harris testified at the Commission hearing that:

As to the basic structure of how elections are conducted in Florida, its underlying foundations are the 67 supervisors of elections. Forty-four of these supervisors are Democrats, 19 are Republicans, three are nonpartisan, and one is a nonpartisan appointed officer. These are public officials that our constitution and statutes hold accountable for (1) carrying out the registration of qualified electors; (2) handling the qualifying process for candidates for county offices and for other local offices with jurisdiction in one county; and (3) conducting the elections, including the hiring and training of poll workers, selecting of poll sites, and purchase and maintenance of any state-approved voting systems.<sup>63</sup>

While Secretary Harris acknowledged that the Department of State is charged with obtaining and maintaining uniformity in application, operation, and interpretation of election laws, she testified this “goal is achieved by the division’s authority to issue formal and informal advisory opinions to supervisors of elections and through the opportunities to provide training and educational assistance to our supervisors of elections, other agencies, and the public.”<sup>64</sup>

Secretary Harris testified that she delegates the duty to provide technical assistance on voter education and election personnel training services to the Division of Elections because she “consider[s] those people to be the experts and [to] be able to give far greater technical assis-

tance than could I.”<sup>65</sup> She maintained that while the division does provide voter education and training services, the responsibilities of poll worker training and election matters are left to the supervisors of elections who are “independently elected local officials who conduct elections.”<sup>66</sup>

When the secretary of state requested \$100,000 in funds from the Florida legislature for a media budget to aid in the “Get Out to Vote” efforts of associations in Florida, the governor, according to one supervisor of elections, “zero funded that and refused to fund it in his budget.”<sup>67</sup> As a consequence, “there was no budget in the state of Florida for voter education which relates to media.”<sup>68</sup> Thus, counties and their supervisors of elections were required to seek funding from county legislatures or from other fund-raising activities.<sup>69</sup> Ion Sancho testified that “the Association of Supervisors of Elections went out and raised our own money from private corporations in the attempt to set up some sort of a voter education and voter turnout fund. And essentially that’s how the process has worked in Florida.”<sup>70</sup>

The Commission heard testimony that the Division of Elections does provide technical assistance to supervisors of elections on voter edu-

<sup>62</sup> *Ibid.*, p. 247.

<sup>63</sup> *Ibid.*, p. 243.

<sup>64</sup> Ion Sancho Testimony, supervisor of elections, Leon County, Tallahassee Verified Transcript, Jan. 12, 2001, p. 34. The governor maintains the Department of State never made this request. See app. VI, Charles T. Canady, general counsel, Office of the Governor for the State of Florida, letter to Edward A. Hailes, Jr., general counsel, U.S. Commission on Civil Rights, June 6, 2001, pp. 6–7.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.* Mr. Sancho testified that he “personally raised money from teachers, lawyers, and other individuals of Leon County so that Leon County could spend a radio and television advertising budget that was totally separate from what the county [allotted] because the county did not provide much in that area.” *Ibid.*, pp. 34–35.

<sup>67</sup> *Ibid.*, pp. 34–35. These funds were allocated to a separate voter education advertising budget. See *ibid.*, pp. 57–58. Mr. Sancho noted, “The former Secretary of State Jim Smith contacted the Florida Association of Broadcasters . . . and they did free 30-second television spots that were distributed to the supervisor of elections office, so the supervisors could put 30-second television spots on the television to provide information and motivational information to the voters on voting. That was in 1992. We used some of those same spots in 1994, but no secretary of state after that has provided any resources like that to the Florida Association of Supervisors of Elections or elections in general.”

<sup>68</sup> *Ibid.*

<sup>69</sup> Katherine Harris Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 247.

<sup>70</sup> *Ibid.*, p. 243.



cation and election personnel training services upon request. The problem, noted one witness, is "from county to county you've got so many different voting systems they might can provide that technical assistance for this county . . . [but] then you've got to turn around to another county and provide a different type of assistance, and you've got . . . 10, 12, or 14 different voting systems in the state of Florida."<sup>71</sup>

The lack of funding, however, continues to be one of the most challenging obstacles that confront Florida's supervisors of elections. According to Leon County's supervisor of elections, the paucity of resources not only affected voter education, but also "the hiring and training of Election Day workers, as well as providing polling locations which must be convenient and accessible to our population if we want voters to vote."<sup>72</sup> Gadsden County's supervisor of elections, Shirley Knight, also confirmed this by testifying that there must be more money for training poll workers and additional polling places. In Gadsden County, she noted, people drive "miles and miles" to vote.<sup>73</sup>

Thus, counties struggle to shoulder the bulk of the responsibility for training poll workers. The counties vary widely in their approaches to poll worker training. As a result, it is unclear whether the training approaches and quantity and quality of instruction offered in different counties were beneficial to their respective poll workers.<sup>74</sup> For example, in Monroe County, the supervisor of elections holds a half-day training course for all poll workers and additional training for precinct leaders and workers responsible for the AccuVote machines used in the county. Theresa LePore, the supervisor of elections for Palm Beach County, testified:

<sup>71</sup> Denny Hutchinson, former supervisor of elections, Gadsden County Florida, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 22.

<sup>72</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 19.

<sup>73</sup> Shirley Knight Testimony, Jan. 12, 2001, Tallahassee Verified Transcript, Jan. 12, 2001, p. 28.

<sup>74</sup> See Marvin Rickles, Jr., precinct deputy, Precinct 74B in Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 127, 133–134. Mr. Rickles testified that some poll workers attend three yearly two-hour training classes. Poll workers, however, were given no special preparation for the expected large voter turnout on Election Day. He stated, "They merely go over the book, tell you . . . the duties of the deputy, and that's the extent of it." *Ibid.*

I have what I consider—I consider it extensive, my poll workers consider it over-extensive—training of my poll workers. My precinct clerks, the clerks are the ones that are in charge of the precinct, have to attend a two-hour workshop. The inspectors are the ones that give the demonstration, check in the voter, for about an hour and a half. The precinct deputy, who sits at the door greeting people coming in, is about an hour.

The clerk and inspectors, because they're the ones that actually deal with the voters, I have a Power Point presentation and a poll worker manual which is in the documents that I submitted, detail by detail of how to handle a variety of situations.

First, when the voter comes in, all voters coming in are supposed to be offered a demonstration of the equipment. They're not forced to take it, but the offer is supposed to be there.

The assistance devices are supposed to be out on the tables if somebody needs it. We also have, in addition to the page magnifier . . . we use punch card obviously—a handicap stylus is what it's called. It looks like a small tennis ball with a stylus on the end of it so people who might have trouble holding the small punching device can use that to punch their ballots.

I explain to them about if somebody comes in and needs assistance in voting, the procedure to do that. They can bring someone of their own choosing in or two poll workers of the opposite political party to come in and help them.

About the spoiled ballot, the time limit, we go through this in detail.<sup>75</sup>

Nevertheless, Ms. LePore recognized the limitations in training a large number of poll workers:

As far as the voting machines, I tell them all to put at least one machine on a table so that somebody who might have trouble standing can sit and vote, or somebody in a wheelchair can come up to the table and vote in private. I can't guarantee that they all do it. I have 531 precincts in my county and like I said, almost 4,000 workers. I instruct them. They have the written materials. And I can only hope that they do what they're told to do.<sup>76</sup>

<sup>75</sup> Theresa LePore Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 375.

<sup>76</sup> *Ibid.*, p. 376.

### ELECTION DAY RESOURCES

After November 7, 2000, one of the most significant Election Day issues became the availability of resources to handle the large number of voters. Voters and poll workers who testified at Commission hearings in Tallahassee and Miami were in accord about the various problems that occurred, such as inadequate telephone communication systems in the offices of the supervisor of elections, the inability to reach their respective supervisors of elections offices on Election Day to verify individuals' voter registration, and the accessibility of computerized voter registration information.<sup>77</sup>

### Difficulties on Election Day

The Commission heard testimony from some of Florida's voters and poll workers who expressed their dissatisfaction with the resources available to them on November 7, 2000. Specifically, several witnesses observed that on Election Day inadequate telephone systems in supervisors of elections offices affected precinct workers' abilities to confirm voters' registration status.<sup>78</sup> The following line of questioning during the Commission's Miami hearing portrays this difficulty:

MR. FOREMAN [questioning witness]: Ms. Phoele, can you give me an idea of how long people were waiting in your precinct in order to verify whether they would be eligible to vote?

MS. PHOELE: Hours, and a lot of them got discouraged and left and didn't vote, because our clerk could not get through to the Board of Elections. It's the same thing over and over. . . .<sup>79</sup>

MR. FOREMAN [to witness Marilyn Nelson]: Could you share with us your observation?

MS. NELSON: Of course, we couldn't get through to downtown. We were on the phone the majority of the day. And sometimes the phone would ring for hours, just ring and ring and ring. No one would ever pick it up and when they finally picked it up, you'd be on there for hours again. We had lines of people waiting just to see if they could vote.<sup>80</sup>

One poll worker also noted that some African Americans with current voter registration cards were unable to vote because their names were not included on the county's registered voter list.<sup>81</sup> Moreover, poll workers believed they could not remedy this problem by using affidavits as an alternative.<sup>82</sup> This belief ultimately contributed to the number of Florida residents who were unable to cast their vote on Election Day. For example, Maria DeSoto, a Broward County poll worker, testified that in her opinion at least 40 people were turned away from the voting precinct, due to poll workers' inability to contact the supervisor of elections office.<sup>83</sup>

<sup>77</sup> Bob Poe, Democratic National Party, "Voting Problems List," Bates No. 0000465. See also Marvin Rickles, Jr., precinct deputy in Precincts 74B and 74G in Palm Beach County, affidavit submitted to the U.S. Commission on Civil Rights, Nov. 9, 2000 (other problems included the number of poll workers and the adequacy of their training, access to bilingual poll workers, and the availability of ballots in non-English languages). "On November 7, 2000, I observed many people leaving the two precincts who were denied the right to vote because the precinct clerks could not reach the supervisor of elections to confirm their voter eligibility. Throughout the day, many individuals who were not allowed to vote told me that the clerk could not reach the supervisor of elections because the telephone lines were continuously busy. I personally counted 17 individuals in a two-hour period during the afternoon who told me they were not allowed to vote because the clerk could not reach the supervisor of elections. Many of these individuals were angry." *Ibid.*

<sup>78</sup> A panel of poll workers that testified before the Commission agreed it was harder to get through to supervisors of elections in this election than in the past. See generally Poll Workers Panel, Miami Verified Transcript, Feb. 16, 2001, pp. 150-72. See also Angenora Ramsey Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 96 (testifying that it took her three hours to get through to the Palm Beach County Supervisor of Elections Office, which was unprecedented in her 16 years as a poll worker).

<sup>79</sup> Barbara Phoele, poll worker, Precinct 6C in Broward County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 125, 136.

<sup>80</sup> Marilyn Nelson, poll worker, Precinct 232 in Miami-Dade County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 129-30.

<sup>81</sup> *Ibid.*, p. 140.

<sup>82</sup> See Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 63; Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 63; Maria DeSoto Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 144 (testifying that if voters' names were not on the precinct rolls and workers could not reach the supervisor of elections office, voters could vote by affidavit).

<sup>83</sup> Maria DeSoto Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 136, 142 (noting that she was only able to get through to the supervisor of elections two or three times despite her numerous attempts). See also Barbara Phoele Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 136 (testifying that she was aware of 40-50 people, mostly African Americans and Hispanics, who were frustrated with long lines and left).

### Computer Access

Telephonic communication was not the only method for some election precincts to verify the accuracy of their voter registration lists. In one county, precinct workers were provided with laptop computers in order to check the accuracy of the precinct registers against the master county registration list. For example, David Leahy, supervisor of elections for Miami-Dade County, had access to 18 laptop computers.<sup>84</sup> Mr. Leahy testified that he placed most of these computers, regardless of the demographic composition of the precinct, in precincts where the voting population was the most transient.<sup>85</sup> As a result, the vast majority of the laptop computers in Miami-Dade were situated in mostly Cuban American voting precincts.<sup>86</sup> Mr. Leahy noted that only one laptop computer was located in a largely African American precinct.<sup>87</sup>

Broward County also used laptop computers in 31 of its largest precincts on Election Day. The supervisor of elections for Broward County explained that the original purpose for these computers was to facilitate access to county

voter registration information at the precinct level.<sup>88</sup> In retrospect, Ms. Carroll determined there was limited success with this technological venture. In spite of the training that the staff received, "they didn't always know exactly what they were looking up on the computer."<sup>89</sup>

### CONCLUSION

The state's Division of Elections receives yearly fiscal appropriations for Florida's elections. The state of Florida, however, provides few, if any, direct financial resources to supervisors of elections offices. As a result, county supervisors of elections rely on their respective boards of county commissioners and/or private financing sources to fund various election preparation needs, such as voter education and outreach, voting equipment, polling place resources, poll worker training, and appropriate polling locations and communication systems.

This lack of financial support hinders the ability of Florida's supervisors of elections in providing all their county residents an equal opportunity to vote.

<sup>84</sup> David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 324.

<sup>85</sup> *Ibid.* (Mr. Leahy explained that the Miami-Dade County Supervisor of Elections Office receives the most inquiries from those precincts in areas in which the population is growing, as determined by the number of new residents).

<sup>86</sup> Interview Report, telephone interviews with David Leahy, supervisor of elections, Miami-Dade County, Feb. 1 and Feb. 5, 2001.

<sup>87</sup> David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 324.

<sup>88</sup> Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 296-97.

<sup>89</sup> *Ibid.*, p. 297 (Ms. Carroll noted that these individuals were not the same workers who were routinely employed by her office).

## CHAPTER 5

## The Reality of List Maintenance

*We wanted these lists to be fairly broad and encompassing. It was never intended to be a cure-all.*<sup>1</sup>

Convicted criminal offenders are the only class of mentally competent Americans denied the basic right to vote. This is the result of rigid sentencing guidelines and voter removal requirements for reformed offenders.<sup>2</sup> Advocates of stricter punishment of particular crimes seldom acknowledge that people of color are often convicted more frequently than their white counterparts. Thus, the disenfranchisement<sup>3</sup> of this class of citizens is sometimes overlooked in debates about the electoral process.

Since the Reconstruction Era following the Civil War, conviction of certain types of crimes supposedly committed more often by African Americans than other ethnic groups resulted in their disenfranchisement.<sup>4</sup> During the Reconstruction Era, South Carolina, for example, cited the following as crimes "to which [the Negro] was especially prone": theft, arson, attempted

rape, adultery, "wife beating," and "housebreaking."<sup>5</sup> Crimes equally or more likely to be committed by whites, such as murder and fighting, generally did not result in disenfranchisement.<sup>6</sup> The long-term effects of the disparity in consequences for alleged criminal behavior between races of people still ripple throughout the United States. Around 3.9 million Americans are disenfranchised.<sup>7</sup> Thirteen percent of African American men are disenfranchised and they account for over 36 percent of the total disenfranchised population.<sup>8</sup>

The state of Florida is one of eight states that permanently disenfranchise felons or former felons who have satisfied all sentencing requirements.<sup>9</sup> JoNel Newman, a Florida Justice Institute staff attorney, testified that Florida leads the nation in disenfranchising felons and in prosecuting children as felons.<sup>10</sup> Over 31 percent of the disenfranchised population in Florida are African American men.<sup>11</sup> Of all the disenfran-

<sup>1</sup> George Bruder, vice president, DBT Online, Testimony before the U.S. Commission on Civil Rights, Miami, FL, Feb. 16, 2001, Verified Transcript, p. 178 (quoting Emmett Mitchell, a former Division of Elections assistant general counsel who led the purge effort). Mr. Bruder stated he was quoting the December 10, 2000, edition of the *Miami Herald*.

<sup>2</sup> The Sentencing Project and Human Rights Watch, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, October 1998, p. 1 (hereafter cited as the Sentencing Project, *Losing the Vote*).

<sup>3</sup> BLACK'S LAW DICTIONARY 712 (7th ed. 1999). Disenfranchisement is defined as the "act of taking away the right to vote in public elections from a citizen or class of citizens." Disenfranchise is defined as to "deprive [a person] of the right to exercise a franchise or a privilege, especially to vote."

<sup>4</sup> Virginia E. Hench, "The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters," *Case Western Reserve Law Review*, vol. 48 (Summer 1998), p. 738. During Reconstruction, Caucasian advocates for disenfranchisement denounced African Americans as ignorant, lazy, criminally inclined, and a race demonstrably unqualified to vote. *Ibid.*

<sup>5</sup> The Sentencing Project, *Losing the Vote* (citing Andrew L. Shapiro, "Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy," *Yale Law Journal*, vol. 103, p. 540 (November 1993)), p. 3 (quoting Francis B. Simpkins, Pitchfork Ben Tillman).

<sup>6</sup> The Sentencing Project, *Losing the Vote* (citing Andrew L. Shapiro, "Challenging Criminal Disenfranchisement Under the Voting Rights Act: A New Strategy," *Yale Law Journal*, vol. 103, p. 540 (November 1993)), p. 3.

<sup>7</sup> The Sentencing Project, *Losing the Vote*, p. 2.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*, p. 5. A former felon or felon who satisfies all sentence requirements has complied with any prison, probation, and parole consequences attached to his or her conviction. The other states that disenfranchise former felons for life are Alabama, Delaware, Iowa, Kentucky, Mississippi, Nevada, New Mexico, Virginia, and Wyoming. *Ibid.*

<sup>10</sup> JoNel Newman, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 11, 2001, Verified Transcript, p. 32.

<sup>11</sup> The Sentencing Project, *Losing the Vote*, pp. 8-9. Of African American men in Florida, 31.2 percent are permanently

chised former felons in the United States, one-third are found within the borders of Florida.<sup>12</sup> As discussed in chapter 1, people of color, particularly African Americans, have a greater likelihood of appearing on the Florida felon exclusion list.<sup>13</sup> Moreover, African Americans have a better chance of erroneously appearing on the Florida felon exclusion list. For example, in Miami-Dade County, over half of the African Americans who appealed from the Florida felon exclusion list were successfully reinstated to the voter rolls.<sup>14</sup>

One commentator calls the disenfranchisement of voters a “stark reality” that—

necessarily depletes a minority community’s voting strength over time by consistently placing a greater proportion of minority than majority voters under a voting disability at any given time. For this reason, the effects of the intentional discrimination that originally motivated felon disenfranchisement still linger.<sup>15</sup>

Former U.S. Supreme Court Justice Thurgood Marshall explained that disenfranchisement—

doubtless has been brought forward into modern statutes without fully realizing the effect of its literal significance or the extent of its infringement upon the spirit of our system of government.<sup>16</sup>

The “[d]enial of voting rights creates permanent outcasts from society, persons internally exiled who are left without any opportunity ever to regain their full status as citizens.”<sup>17</sup> As the

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disenfranchised. Alabama leads the country with 31.5 percent of African American men within its borders permanently disenfranchised. *Ibid.*, p. 9.

<sup>12</sup> *Ibid.*, p. 8.

<sup>13</sup> The term “exclusion list” is used interchangeably with “exceptions list,” which is the term preferred by DBT Online. See J. Michael de Janes, general counsel and secretary, ChoicePoint, Inc., letter to Edward A. Hailes, Jr., general counsel, U.S. Commission on Civil Rights, June 5, 2001, p. 2 (hereafter cited as *de Janes Letter*).

<sup>14</sup> See chap. 1.

<sup>15</sup> Hench, “The Death of Voting Rights,” p. 767.

<sup>16</sup> The Sentencing Project, *Losing the Vote*, pp. 14–15 (citing *Byers v. Sun Savings Bank*, 41 Okla. 728 (1914), quoted by Justice Marshall in his dissent in *Richardson v. Ramirez*, 418 U.S. 24, 78 (1974)).

<sup>17</sup> Nora V. Demleitner, “Continuing Payment on One’s Debt to Society: The German Model of Felon Disenfranchisement

statistics indicate, African Americans and other racial minority groups are overrepresented among the disenfranchised, and the denial of voting rights based on felony conviction has a discriminatory impact on these groups.<sup>18</sup>

Chapter 3 of this report discusses the statutory provisions regarding list maintenance and explains how these provisions on their face could disenfranchise voters. These concerns are not, however, hypothetical. In the November 2000 election, voters lost their rights because of these provisions and how they were implemented. This chapter will provide further details on how the list maintenance law was implemented and its practical effect on Florida voters.

### HOW FLORIDA CONTRACTED FOR LIST MAINTENANCE

The statutory requirement to hire a private agency to assist in purging the voter files was enacted after the incidents of voter fraud in the 1997 Miami mayoral election that included votes cast in the names of deceased persons.<sup>19</sup> At the Commission hearing in Tallahassee, L. Clayton Roberts, director of the Division of Elections, described the history of chapter 98.0975 of the Florida statutes:

This section of the statute was passed in response to a 1997 Miami mayoral election where it was challenged in court and went up through the court system in the state of Florida. The gentleman who originally won that mayor’s race was turned out of office. There was a grand jury investigation. There was a Senate select committee appointed to investigate that election. There was [an] allegation and it was eventually proven that a large number of people who were deceased cast ballots—well, someone cast ballots in the name of some people who were deceased in that election. People who were convicted felons who had lost their right to vote under the Florida Constitution cast ballots in that election, and people who were also registered in another municipality or another county within that area cast ballots in the city of Miami mayor’s race.<sup>20</sup>

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as an Alternative,” *Minnesota Law Review*, vol. 84 (April 2000), p. 775.

<sup>18</sup> *Ibid.*

<sup>19</sup> Florida’s list maintenance provision was changed by the Florida Election Reform Act of 2001. See Epilogue.

<sup>20</sup> L. Clayton Roberts, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, pp. 254–55. In 1998, Mr. Roberts was employed

George Bruder, a vice president for DBT Online, a ChoicePoint Company, provided sworn testimony to the Commission about key elements of Florida's list maintenance activities and responsibilities prior to the 2000 presidential election. Mr. Bruder represented the private firm that was awarded a contract to perform state-sponsored list maintenance tasks before the election. His testimony offered a snapshot of the reality of list maintenance activities in Florida, including a description of the process that led to the Division of Elections' awarding the contract to his company.<sup>21</sup>

According to Mr. Bruder, the Division of Elections initially solicited private entities to bid for its list maintenance contract through requests for proposals. The first request resulted in an award to a private firm named Professional Analytical Systems & Services. Following its award of a contract to Professional Analytical Systems & Services, the Division of Elections, for reasons not evident in the record, submitted a second request for proposal.<sup>22</sup> Next, the Division of Elections extended an invitation to negotiate to a Florida company then known as Database Technologies, Inc., and to Computer Business Services, a Georgia company.<sup>23</sup>

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as the legislative research director of the House Election Reform Committee. L. Clayton Roberts, "DBT Assessment," Aug. 17, 1998.

The biggest problem in the Miami mayoral race was the abuse of absentee ballots, not the voting of convicted felons. "State agents uncovered hundreds of fraudulent examples: people who didn't live in the city voting in the election; phony signatures on absentee ballots; and campaign vote brokers acting as witnesses for most of these ballots. The abuses were discovered almost exclusively in the City Commission district of Humberto Hernandez." Jay Weaver, "Vote Reform Back to Square One; Justice Department Ruling Means State Legislature Must Draft New Law," *The Sun-Sentinel* (Fort Lauderdale), Aug. 23, 1998, p. 6B.

Mr. Hernandez was a city commissioner who was convicted on Aug. 14, 1998, of "helping to cover up vote fraud." *Ibid.*

<sup>21</sup> George Bruder, the signatory on the Division of Elections' list maintenance contract and former vice president of Database Technologies, Inc., is now vice president of the Public Records Group for ChoicePoint, Inc. Mr. Bruder testified under oath at the Commission's Miami hearing and subsequently in a Commission deposition.

<sup>22</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 200. The record does not indicate the basis for the Division of Elections' need to submit another request for proposals.

<sup>23</sup> *Ibid.*, pp. 176, 200, 227-28. The record does not indicate whether Computer Business Services eventually submitted a bid.

In response to the Division of Elections' second request for proposal, Database Technologies bid around \$3.1 million, an amount nearly 100 times higher than its first bid. DBT structured its bid, this time, in three different price levels based on the advice of "a little bird."<sup>24</sup> The company asserts that this substantial increase reflects the change in scope of work requiring "additional data processing expertise."<sup>25</sup> Mr. Bruder said:

What we brought to the table is the ability to . . . [take] different types of data from different types of platforms and being able to draw answers out of them that are useful.<sup>26</sup>

At the time Database Technologies was ultimately awarded the contract, the company also had a contract with the Florida Department of Law Enforcement.<sup>27</sup> The contract provided the Florida Department of Law Enforcement access to databases held by Database Technologies.<sup>28</sup>

#### **DBT Online, A ChoicePoint Company**

After Database Technologies was awarded the Division of Elections' list maintenance contract, it merged with ChoicePoint, Inc., and changed its name to DBT Online, a ChoicePoint Company. ChoicePoint and DBT Online issued a February 14, 2000, press release announcing the merger of the two companies.<sup>29</sup> Most of DBT Online's efforts for the list maintenance contract were completed at the time the press release was issued. On May 16, 2000, ChoicePoint and DBT Online shareholders agreed to approve the merger of the two companies.<sup>30</sup> As a result, sev-

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<sup>24</sup> George Bruder Unverified Deposition, p. 7. See also George Bruder, vice president, DBT Online, "Voter Registration," e-mail, Aug. 5, 1998.

<sup>25</sup> Bruder Unverified Deposition, p. 7.

<sup>26</sup> *Ibid.*, pp. 8-9.

<sup>27</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 199. Neither Database Technologies, Inc., nor its successor, DBT Online, a ChoicePoint Company, currently has a contract with the Florida Department of Law Enforcement.

<sup>28</sup> Bruder Unverified Deposition, p. 10.

<sup>29</sup> ChoicePoint, "ChoicePoint and DBT Online Unite, Becoming Leading Provider of On-demand Public Records in the U.S.," press release, Feb. 14, 2000, <<http://www.ChoicePoint.net>> (accessed Mar. 24, 2001).

<sup>30</sup> DBT Online, "Shareholders Approve Merger of ChoicePoint and DBT Online," press release, May 16, 2000.

eral DBT board members were appointed to ChoicePoint's board of directors.<sup>31</sup>

#### CONTRACTUAL PROVISIONS

The Division of Elections instructed DBT Online on the information it was to use in the data processing/data matching procedure.<sup>32</sup> George Bruder maintained that the "color blind" search criteria used to create a list of voters with a potential problem included name, date of birth, and social security number.<sup>33</sup> He claimed that neither race nor party affiliation was used to create the list.<sup>34</sup> But when Mr. Bruder was questioned regarding a June 9, 2000, letter, in which he informed the supervisors of elections that race and gender *had been* used as matching criteria, he testified that he had misinformed the supervisors of elections.<sup>35</sup> Mr. Bruder testified that he did not understand the contract to dictate that race, gender, and social security numbers were to be used as matching criteria for the felon list.<sup>36</sup> The Division of Elections gave DBT Online a "Requirements Document" that prescribed last name, first name, and date of birth as matching criteria for the felon list.<sup>37</sup>

To date, there has been no evidence that DBT Online made any further efforts to advise county or state officials that the information in the June

9, 2000, letter was erroneous. Mr. Bruder asserted that DBT Online would have to—

fully investigated where the letter went. I believe this was transmitted to the Division of Elections, and I don't know if it was communicated out to the supervisors; however, I have not had that discussion with the people at the division because this would have been sent to Bucky Mitchell.<sup>38</sup>

Mr. Bruder was referring to Emmett "Bucky" Mitchell, former assistant general counsel for the Division of Elections. Mr. Mitchell is no longer employed with the Division of Elections.

Although Mr. Bruder did not address the supervisors of elections regarding the content of his June 9, 2000, letter, he offered his views on the letter's content to the Commission. In a letter dated March 16, 2001, Mr. Bruder admits that the sentence regarding the use of race and gender was "inartfully drafted" and may have confused the supervisors of elections.<sup>39</sup> Mr. Bruder wrote:

What I was trying to convey was that, while race and gender were a part of the database that we received and returned to the Division of Elections, neither were used as matching criteria. As I reiterated at the hearing, DBT's function was simply to provide the data. We had neither the statutory nor the contractual right to remove a single voter from the registration lists. That was the function of the county supervisors of elections.<sup>40</sup>

#### Contract Scope and Databases

Persons adjudicated mentally incapacitated with respect to voting must be excluded from the voter lists according to Florida election law.<sup>41</sup> George Bruder stated, however, that the contract did not require DBT Online to include such data in its list.<sup>42</sup> The Division of Elections provided DBT Online with the following databases in order to create the exclusion list: the central voter file, the Florida Department of Law Enforcement file, the Bureau of Vital Statistics de-

<sup>31</sup> Ibid. "Today's meeting also confirmed the appointment of several new members to ChoicePoint's board of directors including Doug Curling, ChoicePoint's chief operating officer, and former DBT board members Charles G. Betty, Frank Borman, Kenneth G. Langone, and Bernard Marcus. Mr. Betty is currently president and CEO of EarthLink Network, Inc., the nation's second largest Internet service provider. Mr. Borman, a former astronaut, has served as chairman and CEO in a number of companies including Eastern Airlines, and is currently on the board of directors for The Home Depot, Inc., and American Semiconductor Corporation. Mr. Langone is one of the co-founders of The Home Depot and a director of the Company since 1978. He also serves as a director of the New York Stock Exchange, Inc., General Electric Company, Unifi, Inc., and Tricon Global Restaurants. Mr. Marcus is a co-founder and chairman of The Home Depot, Inc. He also serves on the boards of National Service Industries, Inc., Westfield America, Inc., and the National Foundation for Disease Control and Prevention." Ibid.

<sup>32</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 177.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid., pp. 204-06.

<sup>36</sup> Bruder Unverified Deposition, p. 46.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> George Bruder, vice president, DBT Online, "Testimony Clarification," letter to Mary Frances Berry, chairperson, U.S. Commission on Civil Rights, Mar. 16, 2001.

<sup>40</sup> Ibid.

<sup>41</sup> See FLA. STAT. ch. 98.0975(4) (1999).

<sup>42</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 202-03.

ceased persons file, and the Executive Board of Clemency file.<sup>43</sup> As dictated by the terms of the contract and the Division of Elections, DBT Online was expected to—

take the files that [the Division of Elections] gave us, take the process that they specified to us, develop a list, an exceptions list completely separate from the central voter file, provide that back to the Division of Elections, who would then take that list, disseminate it to the supervisors of elections, who would then take their individual list and do the verification process of the names on it.<sup>44</sup>

Some of the data provided by the Division of Elections to DBT Online were copied from the Florida Department of Highway Safety and Motor Vehicles (DHSMV) database.<sup>45</sup> Once the data have been copied from the DHSMV database, DBT Online no longer has any control over the integrity of the data contained therein.<sup>46</sup> Thus, DBT Online does not have the access to manipulate the “live” DHSMV database. Under the name of ChoicePoint’s predecessor, Equifax, the DHSMV entered into the agreement to provide access to its database on February 10, 1993.<sup>47</sup> On August 1, 1997, the contract was assigned to ChoicePoint and remains in effect.<sup>48</sup>

On November 5, 1993, DBT Online contracted for “interactive access to the driver’s license database” for its “corporate/professional licensed clients.”<sup>49</sup> Randolph A. Esser, information systems director for the DHSMV, defined

interactive access as “rapid two-way communications between an end user and a computer program. In this context, the end user will submit a driver’s license number(s) to the Department’s computer system and receive the information corresponding to that driver’s license number within a few seconds.”<sup>50</sup> Then, DBT Online determines which clients will have interactive access to the driver’s license database with no “input from, or explanation to” the DHSMV.<sup>51</sup> Each company with access authority has its own password and other identification. All requests to enter the driver’s license database are automatically logged by the computer system for later billing purposes.<sup>52</sup>

The driver’s license database contains the following personal identifiers: driver’s license number, full name, address, gender, race, and birth date.<sup>53</sup>

#### Simplified Verification of Accuracy

George Bruder explained that DBT Online hired a statistician “to build a model that would tell us how many records we would need to manually verify to give us a level of accuracy on the process . . . that was developed per the direction of the Division of Elections.”<sup>54</sup> DBT Online conducted its own assessment of the percentage by which, if any, its methodology failed to identify voters who had duplicate registrations, were convicted as felons without civil rights restoration, or were deceased. In a letter to Emmett Mitchell, former Division of Elections assistant general counsel, dated March 22, 1999, DBT Online reported that its statistician found that the margin of error was less than 0.4 percent.<sup>55</sup>

<sup>43</sup> *Ibid.*, p. 203.

<sup>44</sup> *Ibid.*, pp. 224–25.

<sup>45</sup> Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission’s Interrogatory 1, Apr. 12, 2001, p. 3. See also Enoch J. Whitney, general counsel, Department of Highway Safety and Motor Vehicles, letter to Edward A. Hailes, Jr., June 5, 2001, p. 2.

<sup>46</sup> Randolph A. Esser, Response to Commission’s Interrogatory 1, p. 3.

<sup>47</sup> *Ibid.* See also de Janes Letter, p. 2; Enoch J. Whitney, general counsel, Department of Highway Safety and Motor Vehicles, letter to Edward A. Hailes, Jr., June 5, 2001, p. 2.

<sup>48</sup> Randolph A. Esser, Response to Commission’s Interrogatory 1, p. 3. See also Kent E. Mast, general counsel and secretary, Equifax, Inc., letter to Edward A. Hailes, Jr., June 1, 2001.

<sup>49</sup> Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission’s Interrogatory 2, Apr. 12, 2001, p. 4. See also <<http://www.hsmv.state.fl.us/data/internet2.html>> (accessed Mar. 16, 2001).

<sup>50</sup> Randolph A. Esser, Response to Commission’s Interrogatory 2, p. 4.

<sup>51</sup> *Ibid.*

<sup>52</sup> Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission’s Interrogatory 3, Apr. 12, 2001, p. 4.

<sup>53</sup> Randolph A. Esser, information systems director, Department of Highway Safety and Motor Vehicles, Response to Commission’s Interrogatory 4, Apr. 12, 2001, p. 4.

<sup>54</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 207. DBT Online paid approximately \$1,641 or \$100 per hour to a Florida Atlantic University mathematics graduate assistant to perform the statistical analysis of its methodology for the Division of Elections contract. Marlene Thorogood, project manager, DBT Online, “Check Requests and Invoices,” March 1999, April 1999, and May 1999.

<sup>55</sup> Marlene Thorogood, project manager, DBT Online, “Statistical Verification and Phase I Concerns,” letter to Emmett



DBT Online randomly selected 6,760 records to be manually verified to determine its percentage of errors. Because this method found five errors, the statistician reported the confidence level at 99.9 percent.<sup>56</sup> DBT attributed the errors to its previous failure to increase the character count to capture hyphenated last names and the “multiple first name formatting errors” created in the merging of the county information into the central voter file.<sup>57</sup> Mr. Bruder claimed that he was unaware of any other efforts having been made to verify data on the list.<sup>58</sup>

#### Accuracy of the Felon Exclusion List

Clay Roberts, director of the Division of Elections, testified that a list of 3,993 possible felons was compiled by DBT Online and sent to the 67 supervisors of elections.<sup>59</sup> Janet Modrow, technical assistant for the Division of Elections, clarified the number provided by Mr. Roberts. Ultimately, DBT Online provided a list of 3,993 possible felons from its own databases and 38,329 possible felons based on the databases provided by the state of Florida.<sup>60</sup> Mr. Bruder stated the list created was not inaccurate, but rather it contained “false positives.” He explained:

A false positive is an industry term that means some but not all the data elements match the data provided. The fact that there were names on the list that were not ultimately verified as deceased, registered in more than one place, or convicted felons does not mean the list was inaccurate, but reflects the nature of the search parameters established by the Division of Elections.<sup>61</sup>

DBT Online advised the Division of Elections of the likelihood that a significant number of false positives existed and made recommendations to reduce those numbers, according to Mr.

Bruder.<sup>62</sup> He further asserted that DBT Online specifically suggested to state officials that narrow criteria be used in creating the lists, which would lower the false-positive rate, and therefore, minimize errors in the number of names matched.<sup>63</sup> Mr. Bruder testified that the company recommended, for example, that it develop criteria requiring an exact match on the first and middle names. Thus, a Floridian named Deborah Ann would not match with the name Ann Deborah.<sup>64</sup> But the Division of Elections favored more inclusive criteria and chose to “make it go both ways,” as Mr. Bruder recalls it.<sup>65</sup> In addition, he pointed out that state officials set parameters that required a 90 percent match in the last name, rather than an exact match.<sup>66</sup> Mr. Bruder insisted that “the state dictated to us that they wanted to go broader, and we did it in the fashion that they requested.”<sup>67</sup>

Mr. Roberts also testified that the Division of Elections contacted the Florida State Association of Supervisors of Elections regarding the contract. He stated:

[The Association of Supervisors of Elections] established a committee on this issue. We got the committee together with people from [the Florida Department of Law Enforcement], with people from the Board of Executive Clemency, with DBT. We got together to come up with a framework and a methodology that the supervisors could go through in verifying this information, to go through in a methodical way to verify before anyone’s name was removed from the voter rolls.<sup>68</sup>

Mr. Bruder disagrees with the above characterization of the meeting. At a deposition taken of Mr. Bruder, he recalled a meeting with the

<sup>62</sup> *Ibid.*, p. 178.

<sup>63</sup> *Ibid.*, pp. 218–19.

<sup>64</sup> *Ibid.*, p. 220.

<sup>65</sup> *Ibid.* At the time the parameter decisions were made, Emmett Mitchell (assistant general counsel for the Division of Elections), Janet Modrow (Division of Elections technical specialist), and Ethel Baxter (director of the Division of Elections) worked with DBT Online. *Ibid.*, p. 221.

<sup>66</sup> *Ibid.*, pp. 220–21.

<sup>67</sup> *Ibid.*, p. 219. At the February 16, 2001, Commission hearing, George Bruder agreed to submit to a deposition for further examination of the role DBT Online played in the removal of purported felons from the Florida voter files. The deposition was held on March 21, 2001, in Miami, Florida.

<sup>68</sup> L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 257–58.

Mitchell, assistant general counsel, Division of Elections, Mar. 22, 1999.

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 208.

<sup>59</sup> L. Clayton Roberts Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 258.

<sup>60</sup> Interview Report, interview with Janet Modrow, May 15, 2001, p. 1.

<sup>61</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 177–78.

Division of Elections and the Executive Board of the Florida State Association of Supervisors of Elections in early 1999.<sup>69</sup> At the meeting, the executive board members of the Florida State Association of Supervisors of Elections gave DBT Online its input “as far as what they wanted and our being able to tell them what we could and could not do in response to that.”<sup>70</sup> Mr. Bruder recalled that the supervisors of elections present at that meeting wanted—

to be as exacting as possible on the matches. If I condense it down to a major concern, that was what they were looking for.

And being that the Division of Elections was the entity that I was contracting with, they would be the ones that would be giving us the specifications. So they [Division of Elections] were there, they heard what the supervisors [of elections] wanted. They had technical representation there also to then give us advice as far as how they wanted us to construct the matching logic.<sup>71</sup>

Instead of providing an exclusion list with exact matches, the state decided to proceed with requiring the matching logic to “go both ways,” according to Mr. Bruder, who insisted that DBT Online “continued processing at the direction of the Division of Elections.”<sup>72</sup> DBT Online made no recommendations or instructions on how the supervisors of elections should implement their verification processes.<sup>73</sup> Emmett Mitchell reiterated to DBT Online the desire of the Division of Elections to cast a wide net for the exclusion lists. Mr. Mitchell said:

Obviously, we want to capture more names that possibly aren't matches and let the supervisors make a final determination rather than exclude certain matches altogether.<sup>74</sup>

Mr. Bruder also testified he did not believe all the supervisors of elections understood the matching logic used by DBT Online at the direc-

tion of the Division of Elections.<sup>75</sup> Mr. Bruder believed the supervisors of elections had a “lack of understanding of the methodologies used to derive the list.”<sup>76</sup> In June 1999, DBT Online attended a meeting with the Division of Elections and all 67 supervisors of elections or their representatives.<sup>77</sup> During that meeting, Mr. Bruder addressed questions regarding specific incidents posed by the supervisors of elections.<sup>78</sup> As a result of the June 1999 meeting, Mr. Bruder recalled that he advised that the supervisors of elections receive individual training on the matching logic.<sup>79</sup> Mr. Bruder elaborated:

Subsequent to that meeting, immediately thereafter I walked out of that meeting with Emmett Mitchell and told him that my suggestion to the Division of Elections was that we begin an immediate training program, to go to each and every supervisor to explain to them the logic that was used and why and to help them with whatever issues they had in doing their part of the verification.

Subsequent to that discussion we did five regional trainings that DBT orchestrated with the Division of Elections and the Florida Department of Law Enforcement in which we invited all counties to bring whoever their representatives were, either the supervisor or their designee, multiple people, and we built training materials for them. We sat with them and answered their questions.<sup>80</sup>

Mr. Bruder testified he also made a similar suggestion earlier in the data matching process:

I originally expressed to the Division of Elections early on in the process before we started doing any

<sup>69</sup> Bruder Unverified Deposition, p. 17.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*, pp. 49–56. Each supervisor of elections was invited to the meeting. It is unconfirmed if all supervisors of elections attended the meeting and/or sent a representative to the June 1999 meeting.

<sup>72</sup> *Ibid.*, p. 55.

<sup>73</sup> *Ibid.* Former Broward County Supervisor of Elections Jane Carroll also recalled the June meeting with the Division of Elections, DBT Online, and the other supervisors of elections. Ms. Carroll recalled that “inaccuracies” were discussed at the meeting. Ms. Carroll did not remove anyone from the Broward County voter rolls based on the two exclusion lists DBT Online gave to the Division of Elections. Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 290.

<sup>74</sup> *Ibid.*, pp. 56–57. Mr. Bruder testified that the regional training sessions occurred over a couple of months. *Ibid.*

<sup>69</sup> Bruder Unverified Deposition, pp. 14, 16.

<sup>70</sup> *Ibid.*, p. 14.

<sup>71</sup> *Ibid.*, pp. 15–16.

<sup>72</sup> *Ibid.*, p. 15.

<sup>73</sup> *Ibid.*, p. 17.

<sup>74</sup> Emmett Mitchell, assistant general counsel, Division of Elections, “Your letter,” Mar. 23, 1999.

data processing that there would probably be a need for training the eventual users of this data because it was a complex data processing job, and allow us to do that because we had trainers that understood that. I again suggested it after that [June 1999] meeting and DBT did that and we did it at no additional expense to the state.<sup>81</sup>

#### Division of Elections' Payment and Contract Status

The amount paid to DBT Online for its performance of the contract with the Division of Elections was \$3,221,800.<sup>82</sup> DBT representatives offered vague testimony about the actual costs of the services rendered under the contract, insisting that the payment encompassed hours of work, in addition to its "intellectual property, existing databases, and [our] experience."<sup>83</sup> The

Division of Elections, in addition to paying over \$3 million to DBT Online, compensated the Florida Department of Law Enforcement for its role in the removal of felons from the voter rolls. In addition to its own toll-free hotline for voters who wished to confirm their eligibility status,<sup>84</sup> the Florida Department of Law Enforcement (FDLE) performed record checks on a listing of 13,190 alleged felons in December 1999.<sup>85</sup> At a cost of \$8 per record, the Division of Elections received an invoice for \$105,520 from the Florida Department of Law Enforcement.<sup>86</sup> The FDLE responded to approximately 5,000 voters whose names appeared on the felon exclusion list.<sup>87</sup> Of those voters who contacted the FDLE to appeal the notice from a local supervisor of elections that they were ineligible to vote, approximately 50 percent were found to be convicted of felonies in Florida and 50 percent were determined to not have Florida felony convictions.<sup>88</sup>

The list maintenance contract between DBT Online and the Division of Elections has expired and it will not be renewed.<sup>89</sup>

<sup>81</sup> *Ibid.*, pp. 57–58.

<sup>82</sup> George Bruder, vice president, DBT Online, "Testimony Clarification," letter to Mary Frances Berry, chairperson, U.S. Commission on Civil Rights, Mar. 16, 2001. The contract allowed a total payment of \$4,365,800 for completion of four phases of the contract, including renewal through 2001. Because the Division of Elections did not renew its option with DBT Online through 2001, DBT Online was not paid the full contract price. Exhibit A, "Data Processing Services Agreement," Nov. 28, 1998.

<sup>83</sup> *Ibid.* DBT Online incorporated in 1992 and has been a provider of anti-fraud services to the following Florida agencies: Department of Children and Family Services, Department of Law Enforcement, Department of Corrections, Department of Business and Consumer Affairs, Department of Revenue, Department of State, Department of Insurance, Office of the Attorney General, and Agency for Health Care Administration. DBT Online, "DBT—a Florida Company," n.d. In October 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

DBT Online also is the intellectual property owner of the following products: AutoTrack Plus & Auto Track XP—online investigative database service; SOS—online insurance industry service; PFATS—Medicaid anti-fraud service (provider fraud analysis and tracking service); CLAWS—arrest warrant tracking service (criminal locator and warrant service); DataCase—online public access system for New York Unified Courts; PQS—anti-fraud service for private insurance carriers (provider query system). See "Products," n.d. In October 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

DBT Online is either the intellectual property owner of or has access to the following types of national databases containing over four billion records on over 200 million adults: aircraft, boats and vessels, businesses (including American Business Information and Dun & Bradstreet), corporations, criminal histories (including felony convictions and criminal arrests), driver's licenses, individuals, motor vehicles, properties, professional licenses, social security death file, and

real-time access to telephone numbers. See "National Databases," n.d. In October 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

DBT Online is either the intellectual property owner of or has access to the following types of Florida databases: arrest warrants, banking licensing, beverage licensing, boat registrations, business ownership, convicted felons, corporations, concealed weapons, driver licenses, divorces, marriages, motor vehicles, professional licenses, real estate ownership, and sexual predators. See "Florida Databases," n.d. In October 1998, DBT Online, then called DBT, submitted the above to the Division of Elections as part of a presentation to the Division of Elections.

<sup>84</sup> Michael R. Ramage, general counsel, Florida Department of Law Enforcement, "Comments in Response to Draft Report by U.S. Commission on Civil Rights," June 6, 2001, p. 1. The FDLE hotline was available to the "public 7 days a week, 12 hours a day, and resulted in written confirmation to voters and supervisors of elections, typically in less than 72 hours." *Ibid.*

<sup>85</sup> Florida Department of State, Division of Elections, "Felony Check Invoice," Dec. 1, 1999, Bates Nos. 0015531, 0015532, 0015533.

<sup>86</sup> *Ibid.*

<sup>87</sup> Michael R. Ramage, general counsel, Florida Department of Law Enforcement, "Comments in Response to Draft Report by U.S. Commission on Civil Rights," June 6, 2001, p. 1.

<sup>88</sup> *Ibid.*, p. 2.

<sup>89</sup> Bruder Unverified Deposition, p. 12.

### CONVICTED FELONS AND CLEMENCY STATUS

The list maintenance contract originally stated that only Florida felony convictions would be used to create an exceptions list.<sup>90</sup> Subsequently, George Bruder understood that the convicted felon and clemency status parameters were expanded to include other states when the Division of Elections discovered "that [DBT Online] had databases of other felony convictions and they asked us to include some of those states in the first year in the processing."<sup>91</sup> Based on a review of the documents submitted to the Commission, DBT Online used its access to felony conviction data from the following states for its contract with the Division of Elections: Florida, Texas, Ohio, Wisconsin, South Carolina, Kentucky, New Jersey, Virginia, Washington, Connecticut, and Illinois.<sup>92</sup> Following the instructions DBT Online received from the Division of Elections, felons convicted in the following states, which have automatic restoration of civil rights, must apply for clemency through the Florida Executive Board of Clemency: Texas, Connecticut, South Carolina, Illinois, and Wisconsin.<sup>93</sup> The following states, which do not have automatic civil rights restoration for felons, required the foregoing verification process described by Mr. Bruder: New Jersey, Virginia, Washington, and Ohio.<sup>94</sup> The states that were

"reciprocal" for clemency were Kentucky, New Jersey, Virginia, and Washington.<sup>95</sup>

Mr. Bruder asserts that DBT Online did, however, make a recommendation as to which states should be added to the felon and clemency exclusion lists. He explained:

Clemency from those states that had a similar clemency process as the state of Florida, we identified that and we provided that information to the Division [of Elections]. And those states that did not have a similar clemency process, we identified that and provided that information to the state.<sup>96</sup>

The clemency status of those listed as convicted felons was matched against the Florida Executive Board of Clemency file and similar boards of clemency in other states.<sup>97</sup>

### Automatic Restoration of Civil Rights

DBT Online performed the following procedures when dealing with felons from states providing automatic restoration of civil rights:

- Verified information with the executive board of clemency in the state where the felon was convicted, if one existed.
- If no Executive Board of Clemency existed in the other state, then DBT Online "ran [conviction information] solely against the Florida Executive Board of Clemency file."
- If the state where the felon was convicted had an executive board of clemency and a "repository type of agreement [existed] between that state and Florida to reinstate those civil rights, we checked with those boards of clemency to verify that [the] individual had been granted that right."<sup>98</sup>

<sup>90</sup> While the term "list maintenance" is used in this report in relation to DBT Online responsibilities, it is the state and county that have the responsibility to maintain the exclusion list. DBT Online is not required to continually update the list. See de Janes Letter, p. 2.

<sup>91</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 208.

<sup>92</sup> Scarlet Kirner, DBT Online, "Statewide criminal histories," e-mail, Apr. 14, 1999. DBT Online had the following information for these states as of the date of the e-mail: Florida—predator information, current as of 6/24/98; Department of Corrections (DOC), current as of 2/28/99; Ohio—DOC, current as of 3/15/99; South Carolina—DOC, current as of 3/9/99; New Jersey—active inmates and departures, current as of 6/30/98; Connecticut—court convictions, current as of 2/28/99; Texas—predator information, current as of 11/14/98, DOC, current as of 3/8/99, parole, current as of 2/28/99; Wisconsin—DOC, current as of 11/6/98; Kentucky—DOC, current as of 7/14/98; Virginia—parole, current as of 2/28/99; Washington—releases, current as of 12/31/98; Illinois—DOC, current as of 12/97. Ms. Kirner's e-mail also states that the current Texas DOC and the Florida DOC as well as predator information were available on-line.

<sup>93</sup> Marlene Thorogood, project manager, DBT Online, "DOE Clemency Queries," Mar. 4, 2000.

<sup>94</sup> Ibid. Ms. Thorogood was unsure of Ohio's clemency status at the time she wrote the e-mail. Ohio requires convicted felons to apply for clemency. See Ohio Rev. Code Ann. § 2967.07 (2001). See also Marie Smith, state of Washington, Department of Corrections, Information Technology, "Fax Information," Mar. 28, 2000.

<sup>95</sup> Marlene Thorogood, project manager, DBT Online, "Reciprocal States for Clemency," Aug. 8, 2000.

<sup>96</sup> George Bruder Unverified Deposition, p. 19.

<sup>97</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 209.

<sup>98</sup> Ibid., pp. 210, 211, 217.

Emmett Mitchell, former assistant general counsel for the Division of Elections, instructed DBT Online that felons from states with no executive board of clemency must apply for clemency in Florida to have their voting rights reinstated.<sup>99</sup> This interpretation of the executive clemency laws further compounds the disenfranchisement of African American voters. Further, it does not assess the interpretation of comparable statutes that require Florida's acceptance of a sister state's restoration of civil rights conferred upon a convicted felon. Although the issue of voting rights was not specifically addressed, two Florida courts of appeal have ruled that if an individual enters Florida with his or her civil rights, then through the full faith and credit clause<sup>100</sup> of the U.S. Constitution, he or she need not apply for clemency upon arriving in Florida.<sup>101</sup>

<sup>99</sup> *Ibid.*, pp. 211–12.

<sup>100</sup> U.S. CONST. art. IV, § 1 provides: "Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof."

<sup>101</sup> Both cases involved men who were convicted in other states, had their rights restored, and upon moving to Florida were denied concealed weapon permits. In *Schlenther v. Florida Dep't of State*, a Florida resident was convicted of a felony while he lived in Connecticut. 743 So. 2d 536, 537 (1998). Prior to his move to Florida, the state of Connecticut reinstated his civil rights. Mr. Schlenther applied for and received a concealed weapons permit after moving to Florida. *Id.* at 537. The permit was subsequently revoked when the Florida Licensing Division determined that Mr. Schlenther neither applied for nor received civil rights restoration in Florida. The Second District Court of Appeals ruled that when section 8, article IV, of the Florida Constitution (which grants authority to the governor with the approval of three cabinet members to restore civil rights) was drafted—

it was anticipated that the governor would be granting pardons, commuting punishments and remitting fines and forfeitures for Florida offenders, since the Governor of Florida could not do such things for out-of-state offenders. We believe the same analysis applies to the restoration of civil rights. Once another state restores the civil rights of one of its citizens whose rights had been lost because of a conviction in that state, they are restored and the State of Florida has no authority to suspend or restore them at that point. The matter is simply at an end.

We conclude that the restoration of [Schlenther's] civil rights in Connecticut is entitled to full faith and credit in this State. *Id.* at 537.

In *Doyle v. Florida Dep't of State*, a Florida resident was convicted of a misdemeanor in New York that would have been a felony if committed in Florida. *Doyle v. Florida Dep't of State*, 748 So. 2d 353, 354 (1999). Because Mr. Doyle was

Mr. Bruder testified that DBT Online "relied upon the information that was given to us by the Division of Elections, who was giving us the criteria in which to use to do the data processing."<sup>102</sup> His testimony was corroborated by e-mails from the Division of Elections assistant general counsel.<sup>103</sup> These e-mails were produced pursuant to a Commission subpoena.

#### Executive Clemency in Florida

Florida's Constitution empowers the governor to restore civil rights to those convicted of crimes, other than treason, with the approval of three members of the governor's cabinet.<sup>104</sup> Members of the governor's cabinet consist of the following: the secretary of state, attorney general, comptroller, treasurer, commissioner of agriculture, and commissioner of education.<sup>105</sup> Although the cabinet meets twice a month for 11 months each year,<sup>106</sup> it only meets as a clemency board on a quarterly basis.<sup>107</sup> During the months

convicted of a misdemeanor, his civil rights were never suspended in the state of New York. *Id.* at 355–56.

Mr. Doyle's application for a concealed weapon permit was denied by the Florida Licensing Division because the crime for which he was convicted in New York carried felonious penalties in Florida. Relying on *Schlenther*, the First District Court of Appeals ruled that once a sister state restores a person's civil rights, then Florida is required to give full faith and credit to the civil rights restoration. *Id.* at 356. Moreover, the Court found that Mr. Doyle could not prove that his civil rights were restored in Florida because they had never been suspended in New York. *Id.* The Court stated: "The governor of Florida has neither the power to restore the civil rights of out-of-state offenders which have already been restored by another state, nor the authority to restore the civil rights of those whose rights were never suspended by another jurisdiction." *Id.*

<sup>102</sup> George Bruder Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 212.

<sup>103</sup> See de Janes Letter, p. 2. See also Emmett Mitchell, assistant general counsel, Division of Elections, e-mail to Marlene Thorogood, project manager, DBT Online (Mar. 23, 1999, 3:57 p.m.); Emmett Mitchell, assistant general counsel, Division of Elections, e-mail to Marlene Thorogood, project manager, DBT Online (Dec. 21, 1999, 3:46 p.m.).

<sup>104</sup> FLA. CONST. art. IV, § 8(a). In 2003, only two members of the cabinet will be required to agree with the governor in order to restore the civil rights of a convicted felon.

<sup>105</sup> FLA. CONST. art. IV, § 4(a). Effective in 2003, the governor's cabinet will consist of only an attorney general, a chief financial officer, and the commissioner of agriculture.

<sup>106</sup> L. Clayton Roberts, director, Division of Elections, "Resign to Run Law" (responding to a request for an opinion on Florida law), letter to Katherine Harris, Florida secretary of state, Aug. 22, 2000, Bates No. 0022024.

<sup>107</sup> *Ibid.*

of May, June, and July 2000, the cabinet met six times, but only met once as the clemency board.<sup>108</sup>

The Department of Corrections is obligated to not only inform inmates and offenders under community supervision about civil rights restoration, but also to assist them in completing the clemency application.<sup>109</sup> The information that may be required to be filed with the clemency application includes the following: certified copy of the applicant's indictment or information, judgment adjudicating the applicant as guilty, and the sentence (if imposed).<sup>110</sup> Applicants for clemency in the state of Florida must also send a copy of their application to the current chief judge and current prosecuting attorney of the court in which they were convicted.<sup>111</sup> The clemency application, excluding the required attachments, is one page and requires the applicant to state a reason for consideration. The clemency process also requires applicants who were found guilty of a felony outside the state of Florida to complete the same application as those adjudicated in Florida.<sup>112</sup>

Seven days after the Commission hearing in Miami, where the policy of requiring out-of-state felons with restored civil rights to apply for Florida clemency was called into question, the Office of Executive Clemency sent a letter addressing the issue. In a letter to Ed Kast, assistant director of the Division of Elections, Janet H. Keels, coordinator for the Office of Executive Clemency, writes in pertinent part:

If a former felon's civil rights were restored in another state, or if a person's civil rights were never lost after being convicted of a felony in another state, the individual possessed his or her civil

rights in Florida and need not apply for restoration of civil rights in Florida. If a former felon attempting to register to vote in Florida claims that his or her civil rights were restored in another state or that his or her civil rights were not lost in another state, but the individual cannot produce supporting documentation, please refer that individual to my office.

My office will attempt to confirm the individual's claim by contacting the state that assertedly restored the individual's civil rights. If possession of civil rights is confirmed, the individual does not need to apply for restoration of civil rights in Florida.<sup>113</sup>

Ms. Keels, in the above-referenced letter, then requested that the Division of Elections accept a letter from her office confirming the individual's possession of civil rights as sufficient proof to allow the former felon to vote.<sup>114</sup> The director of the Division of Elections and all supervisors of elections were copied on the letter.<sup>115</sup>

Although Ms. Keels insists that her letter merely reiterated the Office of Executive Clemency policy, other mandates suggest that the letter actually changed it. Rule 9 states that felons "convicted in a court other than a Florida court" must be a legal Florida resident before requesting civil rights restoration.<sup>116</sup> Rule 9D states that persons convicted in out-of-state or federal courts *must* apply for civil rights restoration.<sup>117</sup>

State Senator Daryl Jones, a member of the Governor's Select Task Force on Election Procedures, Standards and Technology,<sup>118</sup> noted that

<sup>108</sup> *Ibid.* "Fifty-seven cases were heard and acted upon by the Clemency Board in June." *Ibid.*

<sup>109</sup> FLA. STAT. ch. 940.061 (1999).

<sup>110</sup> FLA. STAT. ch. 940.03 (1999).

<sup>111</sup> *Id.* Although the statutory language states that the applicant "may" be required to send a copy of his or her application to the appropriate judge and prosecutor of the court in which he or she was convicted, the clemency application requires the applicant to certify that he or she has mailed a copy to the judge and prosecutor. The clemency application also requests that the applicant certify that he or she has no pending charges at the time. The application makes no distinction between pending felony, misdemeanor, or infraction charges against the applicant.

<sup>112</sup> A copy of the clemency application was provided by the Florida Office of Executive Clemency.

<sup>113</sup> Janet H. Keels, coordinator, Office of Executive Clemency, letter to Ed Kast, assistant director, Division of Elections, Feb. 23, 2001.

<sup>114</sup> *Ibid.*

<sup>115</sup> *Ibid.*

<sup>116</sup> State of Florida rules of Executive Clemency, Rule 9, pp. 5-6.

<sup>117</sup> *Ibid.*, p. 7.

<sup>118</sup> In an executive order issued by Governor Jeb Bush on Dec. 14, 2000, the Select Task Force on Election Procedures, Standards and Technology was created to study and make policy recommendations and/or propose legislation to improve the election procedures, standards and technology employed in each of Florida's 67 counties. The Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, Mar. 1, 2001, p. 4.

the clemency process is extremely difficult in Florida:

[I]n order to have any chance of getting through it, and it does require today a full-blown hearing in front of the full cabinet, with not only you but your employer, your family, your pastor, and all kinds of people. This is about a \$10,000 effort for the average person. And what that means is that for the largest number, by far, of people who are former felons in Florida—and probably in the country—are poor people. And so this . . . is not an option. It has essentially barred the process from those people.<sup>119</sup>

#### Number of Felons and Out-of-State Clemency Verification

The first list DBT Online provided to the Division of Elections in April 2000 contained the names of 181,157 possible duplicate registrants, deceased persons, and felons without civil rights restoration.<sup>120</sup> Approximately 65,776 of those included on the first list were identified as felons.<sup>121</sup> In May 2000, DBT discovered that approximately 8,000 names were erroneously placed on the exclusion list.<sup>122</sup> Later in the month, DBT Online provided a revised list to the Division of Elections containing a total of 173,127 possible duplicate registrants, deceased persons, and felons without civil rights restoration.<sup>123</sup> Of those included on the “corrected list,” 57,746 were identified as felons.<sup>124</sup>

The documents received by the Commission from DBT Online indicate that the process for clemency verification for purported felons convicted in a court other than a Florida state court consisted of faxing a list of possible felons to the appropriate state agency. For example, the following state agencies responded to DBT Online’s clemency inquiries:

- State of Washington Department of Corrections;<sup>125</sup>
- Kentucky Secretary of State’s Office;<sup>126</sup>
- New Jersey Extradition Secretary, Office of the Governor;<sup>127</sup> and
- Virginia Secretary of State’s Office.<sup>128</sup>

#### DATA VERIFICATION

Although Florida election law required that the supervisors of elections, who received the exclusion lists compiled by Professional Analytical Systems & Services and DBT Online, attempt to verify the accuracy of those lists,<sup>129</sup> it appears that this procedure was not followed with any degree of uniformity. The first exclusion list was provided by Professional Analytical Systems & Services in 1998, and DBT Online provided exclusion lists in 1999 and 2000.<sup>130</sup>

At least one election official predicted and planned provisions for voters who arrived at the polls and discovered their names were removed from the voter rolls. Then director of the Division of Elections, Ethel Baxter, issued the first of a series of memos on August 11, 1998, regarding the list maintenance activities performed by the supervisors of elections. At that time, Ms. Baxter described the central voter file as the division’s “first experience with a statewide database” and said that it “cannot be a 100 percent accurate list.”<sup>131</sup> Ms. Baxter made particular note of the concerns with the felony information in the central voter file because of the potential use of aliases. As a result, Ms. Baxter recommended that the supervisors of elections “exercise caution

<sup>119</sup> Marie Smith, state of Washington, Department of Corrections, Information Technology, “Fax Information,” Mar. 28, 2000.

<sup>120</sup> Dottie Swanagan, state of Kentucky, secretary of state’s office, “Kentucky Clemency information,” June 15, 1999. See also Dottie Swanagan, state of Kentucky, secretary of state’s office, “Restoration of Civil Rights,” Mar. 29, 2000.

<sup>121</sup> Marlene Thorogood, project manager, DBT Online, “Clemency Verification,” Apr. 26, 1999. See also Donna Van Nostrand, administrator for policy analysis and planning, state of New Jersey, Department of Corrections, “Per Our Conversation,” June 13, 2000.

<sup>122</sup> Marlene Thorogood, project manager, DBT Online, “Clemency/Felons,” May 11, 1999.

<sup>123</sup> FLA. STAT. ch. 98.0975(4) (1999).

<sup>124</sup> See de Janes Letter, p. 2.

<sup>125</sup> Ethel Baxter, director, Division of Elections, “Central Voter File Update and Discussion,” memorandum to the supervisors of elections, Aug. 11, 1998.

<sup>119</sup> Daryl Jones, Testimony before the Hearing of the Governor’s Select Task Force on Election Procedures, Standards and Technology, Tallahassee, FL, Jan. 9, 2001, transcript, p. 307.

<sup>120</sup> Interview Report Addendum, interview with Michael de Janes, May 14, 2001, p. 1 (hereafter cited as de Janes Interview Report Addendum). Derek Smith, ChoicePoint, Inc., chairman, president, and CEO, “Letter to all ChoicePoint Associates from Derek Smith,” Jan. 12, 2001 (hereafter cited as Smith Letter).

<sup>121</sup> de Janes Interview Report Addendum, p. 1.

<sup>122</sup> Smith Letter.

<sup>123</sup> de Janes Interview Report Addendum, p. 1. Smith Letter.

<sup>124</sup> de Janes Interview Report Addendum, p. 1.

when deciding to remove someone who shows up as a convicted felon on the [central voter file]."<sup>132</sup> Ms. Baxter also advised the supervisors of elections of the following:

If you have doubts as to whether or not the felony information is accurate or are unable to verify the accuracy of the information, we recommend that affected persons execute the affidavit prescribed in section 101.49.<sup>133</sup>

In a memorandum dated August 14, 1998, Ms. Baxter forwarded the first exclusion list to the supervisors of elections. Ms. Baxter again advised supervisors to allow alleged felons to vote by affidavit, as provided in section 101.49 of the Florida statutes, if the supervisor of elections is unable to verify the accuracy of the information.<sup>134</sup> The use of affidavit voting under these circumstances provides a reasonable opportunity within the law for eligible persons to participate in the electoral process when election officials are unable to resolve routine conflicts generated by the government's inefficiency or error. Ms. Baxter specifically advised:

It is your responsibility to attempt to verify the accuracy of the information on the list, and remove, prior to the next election, any person who is deceased, convicted of a felony, or mentally incapacitated with respect to voting. If you have doubts as to whether or not the felony information is accurate or are unable to verify the accuracy of the information, we recommend that affected persons execute the affidavit prescribed in section 101.49, Florida statutes. *In short, if there is reasonable doubt as to the accuracy of the information, you should allow a person to vote.*<sup>135</sup>

In a follow-up memorandum dated August 18, 1998, Ms. Baxter recommended that the supervisors of elections "proceed with caution" while verifying the information on the exclusion list she forwarded just days prior.<sup>136</sup> Ms. Baxter advised the supervisors of elections as follows:

<sup>132</sup> *Ibid.*

<sup>133</sup> *Ibid.* (emphasis deleted).

<sup>134</sup> Ethel Baxter, director, Division of Elections, "Central Voter File Update," memorandum to the supervisors of elections, Aug. 14, 1998.

<sup>135</sup> *Ibid.* (emphasis added).

<sup>136</sup> Ethel Baxter, director, Division of Elections, "Central Voter File Update II," memorandum to the supervisors of elections, Aug. 18, 1998.

When notifying voters of potential problems with their registration you should refrain from being accusatory keeping in mind that the information in the list may contain some inaccuracies and is not completely foolproof.<sup>137</sup>

Ms. Baxter also suggested the supervisors contact the Office of Executive Clemency to identify persons who appear on the exclusion list but had their civil rights restored.<sup>138</sup>

Two days later, Ms. Baxter issued another memorandum to the supervisors of elections regarding their list maintenance activities. This August 20, 1998, memorandum states in pertinent part:

As a follow up to our August 11, August 14 and August 18 memorandums regarding the central voter file, we again want to emphasize the importance of verification of the names of the voters on the list provided for your county, who are . . . convicted felons. . . . As we cautioned in our previous memos, we are again recommending that you confirm this information prior to removing any names from the registration rolls.<sup>139</sup>

In this memorandum, Ms. Baxter, for a third time, advised the supervisors of elections to allow alleged felons to vote by affidavit, if he or she had "doubts as to whether or not the felon information is accurate, or [the supervisors of elections were] unable to verify the accuracy of this information. . . ."<sup>140</sup>

It appears that Ms. Baxter, through her memoranda, attempted to urge the supervisors of elections to exercise great caution in performing their list maintenance responsibilities. She specifically attempted to alert election officials of the possibility of eligible Floridians being wrongfully denied the right to vote if these officials failed to confirm the information compiled by DBT Online. In contrast, state officials apparently failed to issue similar warnings concerning the probable risk of the state mistakenly denying a legitimate voter the opportunity to participate in the November 2000 election. The complaints from the supervisors of elections and

<sup>137</sup> *Ibid.*

<sup>138</sup> *Ibid.*

<sup>139</sup> Ethel Baxter, director, Division of Elections, "Central Voter File Update II," memorandum to the supervisors of elections, Aug. 20, 1998.

<sup>140</sup> *Ibid.*



from Floridians in the aftermath of the election illustrate that indifferent attitudes and careless practices prevailed over the more cautious approach for the protection of voting rights advocated by Ms. Baxter.

#### Supervisors of Elections' Exclusion List Verification Methods

In his testimony before the Governor's Select Task Force on Election Procedures, Standards and Technology, Clay Roberts explained there was no clear statutory guideline on the manner in which the supervisors of elections were expected to verify the information supplied by DBT Online; as a result, each county supervisor established his or her own policy.<sup>141</sup> The lack of uniformity among the counties regarding felon list verification processes is evidenced in letters drafted by Miami-Dade Supervisor of Elections David Leahy and Leon County Supervisor of Elections Ion Sancho.<sup>142</sup> Mr. Leahy's form letter to alleged felons states in pertinent part:

According to information received from the Florida Department of Law Enforcement, *you have a felony conviction* and have not had your civil rights restored. Therefore, your name will be removed from the voter registration rolls thirty (30) days from the date of this letter unless information is received that you have not been convicted of a felony or have had your civil rights restored.<sup>143</sup>

The Miami-Dade letter further instructs the alleged felon to complete a form and provides three addresses to which he or she may forward the information.<sup>144</sup> If an alleged felon had, in

<sup>141</sup> L. Clayton Roberts, director, Division of Elections, Testimony before the Hearing of the Governor's Select Task Force on Election Procedures, Standards and Technology, Tallahassee, FL, Jan. 9, 2001, transcript, p. 256.

<sup>142</sup> Both letters were included as examples in a Division of Elections-sponsored training course in 1999.

<sup>143</sup> David Leahy, supervisor of elections, Miami-Dade County, letter to alleged felons, n.d. (hereafter cited as Leahy Letter) (emphasis added). In 1999 and 2000, Mr. Leahy deleted the phrase "you have a felony conviction"; instead, Mr. Leahy used the following wording: "Your name has been submitted to our office by the Florida Division of Elections on a list of voters who have allegedly been convicted of felony, but have not had their civil rights restored." David Leahy, supervisor of elections, Miami-Dade County, letter to Edward A. Hailes, Jr., June 1, 2001, Exhibit E.

<sup>144</sup> Leahy Letter. The alleged felon is instructed to send the completed form to the Florida Department of Law Enforcement Special Desk if he or she believes that his or her name

fact, been convicted of a felony and did not have his or her civil rights restored, the letter instructs him or her to obtain a clemency application form from the Office of Executive Clemency and to contact the office of the supervisor of elections to obtain voter registration information once restoration has been granted.<sup>145</sup> While Mr. Leahy's letter appears to place confidence in the veracity of the DBT Online felon list, the Leon County form letter to alleged felons demonstrates an understanding of the lists' inclusion of "false positives." Mr. Sancho's form letter provides in pertinent part:

Your name has been submitted to our office by the Florida Division of Elections on a list of voters who have allegedly been convicted of a felony, but not had their right to vote restored. *We do not know if this list is accurate.* Our office is required to remove you from the voter rolls if you have been convicted of a felony and your right to vote has not been restored.

If you have never been convicted of a felony, we want to help you clear this up.<sup>146</sup>

The letter instructs the alleged felon to fill out a form and return it to the supervisor of elections office within 30 days or be removed from the voter list.<sup>147</sup> The form requests the alleged felon to self-identify as one of the following: never convicted of a felony; convicted of a felony, but civil rights have been restored and eligible to vote; or convicted of a felony, but civil rights have not been restored.<sup>148</sup>

Mr. Sancho's letter suggests a partnership between his office and the alleged felon to "clear up" any confusion regarding his or her voting status; whereas Mr. Leahy's letter requires the alleged felon prove his or her eligibility status. The simplicity of Mr. Sancho's letter may have

and identifying information are being confused with that of a convicted felon. If the alleged felon was convicted of a felony and had his or her civil rights restored, then he or she is instructed to request proof from the Office of Executive Clemency. Otherwise, the alleged felon is instructed to send the completed form to the Florida Department of Law Enforcement disposition address.

<sup>145</sup> Ibid.

<sup>146</sup> Ion Sancho, supervisor of elections, Leon County, letter to alleged felons, n.d. (emphasis added).

<sup>147</sup> Ibid.

<sup>148</sup> Ibid. The alleged felon must check a block, sign, and date the form.

even been preferred by DBT Online. When asked about the language used in Mr. Leahy's letter, Mr. Bruder responded:

Are you asking me should he have drafted this letter to say "you possibly have a felon conviction and we're trying to verify that"? I would have wrote it that way.<sup>149</sup>

Patricia M. Hollarn, the 1998 president of the Florida State Association of Supervisors of Elections and then supervisor of elections for Okaloosa County, drafted a letter to alleged felons that read in pertinent part:

We have received a list of convicted felons on which your name appears. This list was sent to us by the state and we have been informed it may contain errors. We are asking our voters whose names appear on the list to please assist us with verification so that we don't incorrectly remove any names from our rolls.<sup>150</sup>

Ms. Hollarn's letter then asks the recipient to identify him or herself in one of three categories. The first category is that the individual was convicted of a felony with his or her civil rights restored. The recipient is informed that his or her civil rights restoration status will be confirmed with the Office of Executive Clemency.<sup>151</sup> If the recipient self-identifies in the second category as a convicted felon without civil rights restoration, then Ms. Hollarn's office promises to assist in the paperwork. The third category is that the individual has never been convicted of a felony. Ms. Hollarn offers an apology to this recipient. Ms. Hollarn's letter enclosed a prepaid self-addressed envelope with each letter.<sup>152</sup>

In a letter transmitted by facsimile to the Division of Elections from the Florida Department of Law Enforcement on August 14, 1998, the instruction on voter eligibility verification through fingerprints was clarified. A form provided by the Florida Department of Law Enforcement required that both the supervisor of elections and the voter complete separate sections of the

form requesting the voter's complete name, date of birth, gender, and social security number.<sup>153</sup> The voter must also authorize that the information be used to "confirm or deny a felony conviction" and be fingerprinted in the space provided on the form.<sup>154</sup>

The supervisors of elections were not required to report to the Division of Elections if they removed someone based on the possible felon list.<sup>155</sup> Once an individual was identified as a "possible" felon by DBT Online, the supervisors of elections sent a letter to the voter at his or her registration address.<sup>156</sup> Some supervisors sent their letters by certified mail, while others did not.<sup>157</sup> If the voter did not respond to the letter, some supervisors may have attempted to contact the voter again, while others did not.<sup>158</sup>

Clay Roberts also acknowledged that "miscommunication" led to approximately 8,000 persons who committed misdemeanors in Texas being incorrectly identified as felons in Florida; consequently, many of these voters were erroneously notified of their removal by county supervisors.<sup>159</sup> Mr. Roberts stated he believed the problem was addressed and "no person was removed from the voter rolls based on that erroneous information."<sup>160</sup>

County supervisors and other local officials noted their frustration with the election problems that resulted from the false positives on the felon list. Linda Howell, Madison County supervisor of elections, testified that she found the disenfranchisement of felons "most distressing."<sup>161</sup> Yet, elected African American officials asserted that by the time the error was caught, it was too late for the counties to correct it and that the first time any of these voters realized

<sup>149</sup> Florida Department of Law Enforcement, "Verification of Voting Status," fax to the Division of Elections, Aug. 14, 1998.

<sup>150</sup> *Ibid.*

<sup>151</sup> L. Clayton Roberts, director, Division of Elections, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 258.

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> *Ibid.*

<sup>157</sup> *Ibid.*

<sup>158</sup> Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 26.

<sup>149</sup> Bruder Unverified Deposition, p. 53.

<sup>150</sup> Patricia M. Hollarn, supervisor of elections, Okaloosa County, letter to alleged felons, 1998.

<sup>151</sup> *Ibid.* The letter makes no distinction among those convicted in a Florida court, a federal court, or an out-of-state court.

<sup>152</sup> *Ibid.*

they had been removed from the voter rolls was on Election Day.<sup>162</sup> Ms. Howell testified:

There needs to be something done with the law with regard to a person being able to get their civil rights restored. It's a very different thing in Florida to have that done. Some people—it's been 20 years and they still haven't gotten their civil rights. Sometimes that is because they don't even know they are supposed to do something. You have to apply to have your civil rights restored. If I applied today, it would take me from six months to a year to get them restored. So that is an area that has been very distressful for us in our county.<sup>163</sup>

Ms. Howell stated that the first list her office received from the Division of Elections was in 1998 and had no indication of the origin of the information.<sup>164</sup> Floridians who had been convicted of a misdemeanor with an adjudication withheld or people who had received clemency or were pardoned were included in the first Madison County list.<sup>165</sup> Ms. Howell recalled that one person on the list received a pardon in 1967. "The first list was so inaccurate that you were almost afraid to do anything with it," she said.<sup>166</sup>

Ms. Howell attempted to verify the names on the list by requesting felony conviction confirmation with the Madison County clerk's office and sending letters to the alleged felons on the list.<sup>167</sup> The letters sent to the alleged felons included a voter verification form that is sent to the Florida Department of Law Enforcement.<sup>168</sup> The FDLE would then verify the felon status of the voter and send the alleged felon a letter including its determination. A fingerprint card to determine whether he or she was the same person listed as a felon was sent along with the letter when appropriate.<sup>169</sup> The alleged felons to

<sup>162</sup> See State Senator Daryl Jones and State Representative Chris Smith, "Report: Accuracy and Fairness for Florida's Voters—Analysis and Recommendations by Democratic Legislators Serving on the Task Force on Election Procedures, Standards and Technology," Jan. 8, 2001 <<http://www.leg.stat.fl.us>> (accessed Mar. 21, 2001).

<sup>163</sup> Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 26.

<sup>164</sup> *Ibid.*, pp. 39, 41. Ms. Howell testified that she received the list compiled by DBT Online from the Division of Elections.

<sup>165</sup> *Ibid.*, p. 40.

<sup>166</sup> *Ibid.*, p. 39.

<sup>167</sup> *Ibid.*

<sup>168</sup> *Ibid.*, p. 43.

<sup>169</sup> *Ibid.*

whom Ms. Howell sent letters had 30 days to respond.<sup>170</sup> Ms. Howell stated she removed some names of people who appeared on that first list from the Madison County voter file. Ms. Howell received a second list in June 2000, which had only two names, but she chose not to use that list.<sup>171</sup>

Even Ms. Howell, who is not a convicted felon, erroneously received a form letter referencing a prior felony conviction from the Florida Department of Law Enforcement.<sup>172</sup> The letter, dated March 27, 2000, states in pertinent part:

The Florida Department of Law Enforcement (FDLE) received your Voter Registration Appeal Form. After reviewing your Florida criminal history, we have determined that you have a Florida felony conviction in our repository. FDLE will notify your supervisor of elections that we have data indicating that you meet the criteria of a convicted felon.<sup>173</sup>

The form letter informs the recipient that he or she may obtain and review a copy of his or her personal criminal history at no charge.<sup>174</sup> If the recipient obtained a Certificate of Restoration of Civil Rights, the letter instructs the individual to forward a copy of the certificate to the county supervisor of elections and the FDLE.<sup>175</sup>

At the Commission hearing in Tallahassee, Ms. Howell recalled her response to receiving the letter:

I had sent the letter to one of my voters and he sent in the verification form. Instead of picking up his name, they picked up my name and sent me the information. Now the thing that really upset me was that . . . they were not taking their job seriously. The law said that they had to verify this, but they were not taking it seriously. And that could destroy a person's life. You get that on your record, how do you get it off?<sup>176</sup>

<sup>170</sup> *Ibid.*, p. 39.

<sup>171</sup> *Ibid.*, p. 40.

<sup>172</sup> *Ibid.*, p. 43.

<sup>173</sup> Martha Wright, chief, User Services Bureau, Florida Department of Law Enforcement, Howell "yes-felon.doc," Mar. 27, 2000, Bates No. 0004376.

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 44.

Ms. Howell later learned she was never on the felon list provided by the Division of Elections or the Florida Department of Law Enforcement.<sup>177</sup>

The FDLE explained to the Commission that Ms. Howell's receipt of the letter was due to a clerical error in its "haste to provide a quick response to a voter and to the Madison County Supervisor of Elections."<sup>178</sup> The FDLE asserted that anyone who received such a letter in error could contact the department through the toll-free number and have the issue resolved as one caused by clerical error.<sup>179</sup>

Ms. Howell described the position of supervisors of elections with the felon list as "precarious" and testified:

We have a law that says that a felon cannot be on your rolls, and if I remove that person, you know, from information that I've received and I've done it improperly, then I'm violating a person's right to vote. So where is the middle ground here?<sup>180</sup>

Ms. Howell recommended there be a link between the Florida Department of Law Enforcement, the Florida Executive Board of Clemency, and the Florida Department of Corrections to improve the accuracy of the lists.<sup>181</sup>

Ion Sancho, Leon County supervisor of elections, recalled the process in his county:

[T]he workers at the polling place are given a precinct register, a countywide register, and in Leon County you have special numbers set aside that the public doesn't have access to so that we can communicate telephonically with the Election Day workers. An individual . . . would come in and present themselves to the precinct, they wouldn't be on the rolls. They would be sent to see the clerk, who is basically the CEO of the operation. That individual then would look in their countywide register to see if that individual is eligible anywhere to vote in Leon County. Failing to find your name there—and if you have been dropped as a felon, your name wouldn't be there—then that clerk would then call—be instructed—this is the way the procedure is supposed to work. They call

the elections office and present the facts to a troubleshooter that we have in our office, who then would try to research the records in our office. And that's where this would have to be resolved because the list would be there.<sup>182</sup>

If the Leon County troubleshooter was unable to make a determination, then his or her supervisor, the assistant supervisor of elections, would make the decision.<sup>183</sup> Mr. Sancho explained:

If the troubleshooter can't make a determination, then they would have to ask permission of their supervisor, who in our jurisdiction is the assistant supervisor of elections who is in charge of Election Day problems of all the Election Day problem workers, and it may differ in other counties.

And again, the person may have not been able to resolve the problem but then presented it to their direct supervisor, who made the decision to tell the person that they're given authorization to vote. Then the clerk would then write down on the precinct register that they were instructed by—and write down the name of the individual in our office that gave them the authorization to allow the person to vote and then the person would be required to just fill out a form, what we call the rule pages, which are any sort of trouble or problem and then fill those out and then vote.<sup>184</sup>

Former Broward County Supervisor of Elections Jane Carroll testified that she also found the felon exclusion list to be inaccurate. As a result, Ms. Carroll chose not to use the felon exclusion list provided to her office. An excerpt from the Miami hearing transcript follows:

COMMISSIONER EDLEY: Did you have responsibility for verifying the correctness of the felony exclusion list?

MS. CARROLL: Had we chosen to use that list that you're discussing, we would have attempted to verify it. We did with the previous list that came out, the first time that list came out, which was two years ago prior to the '98 elections. We wrote to everyone who was on the list and we didn't use the word felon in the letter for fear it would fall into

<sup>177</sup> Ibid.

<sup>178</sup> Michael R. Ramage, general counsel, Florida Department of Law Enforcement, "Comments in Response to Draft Report by U.S. Commission on Civil Rights," June 6, 2001, p. 2.

<sup>179</sup> Ibid.

<sup>180</sup> Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 41.

<sup>181</sup> Ibid.

<sup>182</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 70–71.

<sup>183</sup> Ibid., p. 72. Mr. Sancho explained that this process may work differently in other counties.

<sup>184</sup> Ibid., pp. 72–73.

someone else's hands and might be embarrassing. We said, "Your voting status has come under question from information we've received from the secretary of state and would you please call us to discuss this."

Most of them did call. We cleared it up. Either it was not accurate information or it was. If they didn't call we did not remove them.

When the list came the next time there was a great deal of discussion among the supervisors as to the validity of the list. So we chose not to use it. So actually in Broward County no one was removed due to that second and third list. If you remember, there was a second list that was corrected later, according to testimony that I heard earlier.

But when I attended the supervisors' meeting in June in Key West, there was much discussion of the inaccuracies of the list. So we opted not to remove anybody that was on that list.<sup>185</sup>

Ms. Carroll also testified that she attempted to work with the Executive Board of Clemency to verify the felon list but found that it was "very understaffed" and without "all the technical equipment to check all of these things." Ms. Carroll exercised her "discretion" to not remove names from the voter rolls based on the felon exclusion list.<sup>186</sup>

Miami-Dade County Supervisor of Elections David Leahy found the statutory language that ultimately places the burden on alleged felons to prove their "innocence" to be a "reversed process." Mr. Leahy explained:

Under Florida law when I'm provided with a list of individuals who the state maintains are convicted felons who have not had their rights restored, it is my responsibility to verify that information to the best of my ability, and if I do not have any information that they are not convicted or that they haven't had their rights restored, then I'm required to remove them from the rolls.

[But you're correct, in essence,] the way it works in reality, the persons on that list who I send notices out to are responsible for giving me information that they are not convicted. So it's kind of a re-

verse process. They have to prove that they're not convicted felons in order to remain on the list.<sup>187</sup>

In addition to sending notices in the mail, Miami-Dade County also held administrative hearings where alleged felons could present their "evidence." Mr. Leahy explained:

We don't remove these individuals that do not send us information back as convicted felons, because I don't know that for a fact. We go through what is called an administrative hearing process, which is set out in state law, where if people who are provided proper notice that there may be a problem with their registration do not contact us, either in writing or by phone or at an administrative hearing, then they are removed from the rolls.

So we remove many of these individuals because they did not contact us. As part of the administrative hearing process we don't remove them as felons unless we have specific information that they are indeed felons who have not had their rights restored.<sup>188</sup>

Supervisors of elections are required to submit their voter registration files to the Division of Elections upon request. Their voter registration files are compiled into the central voter file, which was used by DBT to provide the felon list.<sup>189</sup>

Mr. Leahy admitted that even the administrative hearing process does not provide complete protection for those wrongfully placed on the felon list. He recalled that some alleged felons proved their "innocence" through the submission of fingerprints to the Florida Department of Law Enforcement.<sup>190</sup> Mr. Leahy explained:

I'm concerned mainly with the process, in that so many of these people don't respond, and I don't know whether it's because they don't get notice or they're confused or what the problem is. But we're removing a lot of people from the rolls when I know for a fact based on the appeal forms that I get back that this is not a truly accurate list. It's

<sup>187</sup> David Leahy Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 315.

<sup>188</sup> *Ibid.*, pp. 315–18.

<sup>189</sup> *Ibid.*, pp. 325–26.

<sup>190</sup> *Ibid.*, pp. 320–26. Mr. Leahy also observed that "there are some instances where the response came back that they were a convicted felon according to FDLE and then they submitted fingerprints and it was determined it was actually somebody else who was the convicted felon, that they were not." *Ibid.*

<sup>185</sup> Jane Carroll Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 289–90.

<sup>186</sup> *Ibid.*, pp. 298–99.

drawn off the Florida Department of Law's database and that database was never intended for this purpose, but it's being used for this purpose.

And so I am concerned that we may be removing people through the administrative hearing process that are truly not convicted felons, and that will cause them a problem when they show up to vote in the next election.<sup>191</sup>

Palm Beach County Supervisor of Elections Theresa LePore also decided not to use the felon exclusion list provided by DBT Online. Ms. LePore testified that she found errors through her own study of the list and thought that a thorough verification process would be "tedious." Ms. LePore added:

The last list we got, the infamous list that's been talked about statewide, which was in summer of 2000, statewide had a tremendous amount of problems. One supervisor of elections' name even appeared on it and she had nothing more than a traffic ticket. We did some spot checking, found that there were errors, and I felt that I'd rather err on the side of the voter than to take somebody off with the chance that it was an error and to deny someone their right to vote by mistake. It's very time consuming and tedious to try to verify every single name on that list and to—if somebody calls on Election Day, they're on the list and they say they're on there in error, to go through the procedure of trying to make sure that they're eligible to vote, I decided to err on the side of the voter.<sup>192</sup>

Although the Commission's record reflects that some supervisors of elections registered general complaints regarding the use of the exclusion lists, the record does not reflect that the Division of Elections was flooded with specific examples of Floridians erroneously identified as felons. For example, Beverly Hill, then Alachua County supervisor of elections, registered her complaints regarding the first exclusion list provided by DBT Online.<sup>193</sup> Ms. Hill was concerned that a person, whose clemency papers were dated prior to 1975, still appeared on the felon list.<sup>194</sup>

<sup>191</sup> *Ibid.*, pp. 327–28.

<sup>192</sup> Theresa LePore Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 399–400.

<sup>193</sup> Beverly Hill, supervisor of elections, Alachua County, "Central Voter File Reports," Mar. 9, 1999.

<sup>194</sup> *Ibid.* Ms. Hill noted that "one person who was restored earlier than 1975 (I saw his papers) is still on our list, and

Three examples of false positives occurred in Monroe County when a supervisor of elections employee, the spouse of another supervisor of elections, and the father of Harry Sawyer, the supervisor of elections, were all listed as potential felons.<sup>195</sup>

#### Division of Elections' Responsibilities

Among the duties assigned to Clay Roberts, director of the Division of Elections, are the following:

- provide technical assistance to the supervisors of elections on voter education and election personnel training services;
- oversee and approve training courses for continuing education for supervisors of elections; and
- coordinate, on an annual basis, two statewide workshops for the supervisors of elections by reviewing and providing updates on the election laws to ensure uniformity statewide in the interpretation of the election laws.<sup>196</sup>

In the fall of 1999, the Division of Elections held training for the supervisors of elections on the central voter file as refined by DBT Online.<sup>197</sup> In an e-mail to Marlene Thorogood dated April 28, 2000, Janet Modrow, a Division of Elections employee working on the contract, informed DBT that she and then Assistant General Counsel Emmett Mitchell were "swamped with work" and did not feel that training workshops were "really necessary."<sup>198</sup> Consequently, state officials may have missed an important opportunity to reduce the risk of removing eligible voters from the voter rolls.

one is still on the list from the last time [whose adjudication was withheld], and we informed FDLE." *Ibid.*

<sup>195</sup> Marlene Thorogood, project manager, DBT Online, "Felony Information," e-mail, June 17, 1999.

<sup>196</sup> Florida Department of State, Division of Elections, "Director's Office; Administrative/Legal," n.d., <<http://election.dos.state.fl.us/about/director.shtml>> (May 9, 2001).

<sup>197</sup> Emmett Mitchell, assistant general counsel, Division of Elections, "CVF Training Sessions," letter, Oct. 5, 1999. The letter also credits DBT Online project manager Marlene Thorogood for her participation in the training for which the Division of Elections "received very positive feedback from the supervisors and staff who attended." *Ibid.*

<sup>198</sup> Janet Modrow, Division of Elections, "Workshops," Apr. 28, 2000.

### Responses to Implementation of the List Maintenance Contract

Florida State Senator Daryl Jones and State Representative Chris Smith, both members of the Governor's Select Task Force on Election Procedures, Standards and Technology, noted their opposition to the use of DBT Online's information in Florida's voter list maintenance:

Other voters were disenfranchised because a company hired by the Department of State to match voter rolls against other databases to ensure that felons and the dead could not vote did not properly do so. Database Technologies included in their list the names of more than 8,000 voters who should not have been removed from the voting rolls. However, by the time the error was caught, it was too late for the counties to fix it; in fact, the first time many of these voters realized they had been removed from the voter rolls was on Election Day.

In Leon County, the supervisor of elections was provided a list of nearly 700 names to purge from the voting rolls. Yet the Supervisor could only confirm 34 as actual felons (St. Pete Times, 12/6/00). In fact, Leon County's supervisor of elections always confirms the names by social security number and birth date—two pieces of information not used to match the lists by Database Technologies—because he does not trust the information provided to him by this company (St. Pete Times, 12/6/00).<sup>199</sup>

Phyllis Hampton, general counsel of the Florida Elections Commission, testified that her office could investigate the wrongful removal of a Floridian from the voter rolls if there was evidence of a willful violation. Ms. Hampton stated:

If we had a sworn complaint, which on its face was legally sufficient, we would proceed and look into the matter and see. But one of the requirements to find a violation is that there is willfulness. So if you had a person who had accidentally been removed during the purging of the election records, that would not be a willful violation. You would

have to have someone who was deliberately removing people when they should not be removed, for there to be an election law violation.<sup>200</sup>

Barry Krischer, state's attorney for Palm Beach County, testified that although his office has a civil rights unit that is in contact with the community, it received no complaints of criminal misconduct, fraud, police presence, limited access, or discrimination at polling places.<sup>201</sup> When asked to what he attributed the lack of complaints received by his office, Mr. Krischer opined that the public does not perceive his office as the appropriate agency to receive these complaints. An excerpt from the Commission hearing transcript follows:

COMMISSIONER LEE: You mentioned that you had not received any complaints from your office regarding ineligible and race violations. How does the public know about getting to your office to file complaints? Is it a common knowledge?

MR. KRISCHER: Actually, the public doesn't perceive that the prosecutor's office is the place to go with those complaints. Law enforcement investigates. Then we receive them and we prosecute them. So the public will generally go to the supervisor of elections or call Tallahassee.

COMMISSIONER LEE: So it's safe to say that it's not that no one filed complaints, it's just that it never got to your office?

MR. KRISCHER: Correct. They don't perceive our office as the appropriate agency to receive those complaints.<sup>202</sup>

### Human Consequences of Felon Exclusion List

The use of the parameters dictated by Florida state officials and the lack of any meaningful verification process left many county supervisors confused. As a result, many Floridians were erroneously removed from the voter lists.<sup>203</sup>

One such Floridian was **Willie D. Whiting, Jr.**, a member of the clergy and registered voter in Tallahassee, who went with his family to vote

<sup>199</sup> State Senator Daryl Jones and State Representative Chris Smith, "Report: Accuracy and Fairness for Florida's Voters—Analysis and Recommendations by Democratic Legislators Serving on the Task Force on Election Procedures, Standards and Technology," Jan. 8, 2001 <<http://www.leg.state.fl.us>> (accessed Mar. 21, 2001). *But see* L. Clayton Roberts, director, Division of Elections, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 258 (testifying the problem was addressed and that "no person was removed from the voter roll based on that erroneous information").

<sup>200</sup> Phyllis Hampton Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 153–54.

<sup>201</sup> Barry Krischer, state's attorney, Florida's Fifteenth Judicial Circuit, Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 191–92, 194–95.

<sup>202</sup> *Ibid.*, pp. 229–30.

<sup>203</sup> *See de Janes Letter*, p. 2.

at his assigned polling place, Precinct 42 in Leon County. When Apostle Whiting presented his driver's license for identification purposes, the poll worker said his name was not on the registration list and called the supervisor of elections for Leon County to verify his registration status. Apostle Whiting asked to speak with a supervisor at that office, and he was told that an individual named Willie J. Whiting, born two days after Apostle Whiting, had been convicted of a felony in the state of Florida. Consequently, Apostle Whiting learned he had been wrongfully removed from the registration list. After Apostle Whiting threatened to contact an attorney, he was allowed to vote.<sup>204</sup>

**William J. Snow, Jr.**, a Miami-Dade resident, testified that he received notice that he would be ineligible to vote in the November 2000 election because of a felony conviction. Receiving the notice "caused a great stress" upon Mr. Snow's heart because he had never been convicted of a felony. Mr. Snow testified that the problem has been corrected. Mr. Snow has been a Miami-Dade County resident for more than 33 years and voted in the 1996 election without incident.<sup>205</sup>

**Marilyn Nelson**, a poll worker with 15 years of experience in Precinct 232 in Miami-Dade County, encountered "quite a few" people whose names did not appear on the rolls at her precinct. When she called the supervisor of elections office, she was told that their rights had been taken away from them due to an alleged felony conviction. She was further instructed by the supervisor's office that she could not inform those voters of the reason for their removal from the rolls, but she was instructed to "tell them to call downtown at a later date."<sup>206</sup>

**Professor Darryl Paulson** testified that the Hillsborough County supervisor of elections estimated that 15 percent of those purged were purged in error and they were disproportionately

<sup>204</sup> Willie D. Whiting Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 32.

<sup>205</sup> William J. Snow, Jr., Miami-Dade County, affidavit submitted to the U.S. Commission on Civil Rights, Mar. 5, 2001. Mr. Snow did not state the extent to which this great stress upon his heart affected his health. Mr. Snow neither explained the process by which the confusion of his voting eligibility was corrected nor when the correction was made. *Ibid.*

<sup>206</sup> Marilyn Nelson Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 130.

African American. According to Professor Paulson, another source estimated that 7,000 voters, mostly African Americans and registered Democrats, were removed from the list.<sup>207</sup>

According to news reports, even those who had received a full pardon for their offenses were listed on DBT's exclusion list.

**Reverend Willie Dixon**, a Tampa resident, received a full pardon for drug offenses in 1985, and has since become a youth leader, a bible preacher, and a "pillar of the Tampa African American community who has voted in every presidential election."<sup>208</sup> But despite his 15 years of voting status, Pam Iorio, the supervisor of elections for Hillsborough County, sent Reverend Dixon a letter informing him that he had been removed from the rolls because of a prior conviction.<sup>209</sup> Eventually, Reverend Dixon was able to verify his status as a registered voter.<sup>210</sup>

Media accounts also captured the impact of list maintenance activities and the frustration they caused for Florida voters.<sup>211</sup>

**Wallace McDonald**, in 1959, was convicted of a misdemeanor, vagrancy, for falling asleep on a bench in Tampa while he waited for a bus. In 2000, Mr. McDonald received a letter from Ms. Iorio informing him that as an ex-felon, his name had been removed from the rolls. Despite the efforts of his attorney to correct the problem, Mr. Wallace was not allowed to vote.<sup>212</sup> Mr. McDonald stated:

I could not believe it, after voting all these years since the 50s, without a problem . . . I knew something was unfair about that. To be able to vote all your life then to have somebody reach in a bag and take some technicality that you can't vote. Why now? Something's wrong.<sup>213</sup>

<sup>207</sup> Darryl Paulson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 186-89.

<sup>208</sup> Julian Borger, "How Florida Played the Race Card," *The Guardian Observer*, Dec. 4, 2000 <<http://www.guardianunlimited.co.uk>> (accessed Dec. 6, 2000).

<sup>209</sup> *Ibid.*

<sup>210</sup> It is not known whether Reverend Dixon was able to vote in the November 7, 2000, election.

<sup>211</sup> See, e.g., Robert E. Pierre, "Botched Name Purge Denied Some the Right to Vote," *The Washington Post*, May 31, 2001, p. A1; Scott Hiaasen, Gary Kane, and Elliot Jaspin, "Felon Purge Sacrificed Innocent Voters," *The Palm Beach Post*, May 27, 2001, p. 1A.

<sup>212</sup> Borger, "How Florida Played the Race Card."

<sup>213</sup> *Ibid.*



### CONCLUSION

Historically, individuals convicted of certain types of crimes alleged to be committed more by African Americans are affected by felon disenfranchisement. The practice of felon disenfranchisement has resulted in the greater likelihood of people of color, particularly African Americans, appearing erroneously on the Florida felon exclusion list.

In claiming to address the same types of fraud found during the 1997 Miami mayoral election, the Florida legislature enacted chapter 98.0975 of the Florida statutes, which required the Division of Elections to contract with a private entity to purge its voter file of deceased persons, duplicate registrants, individuals declared mentally incompetent, and convicted felons without civil rights restoration.<sup>214</sup> As a result, DBT Online was eventually retained to assist the Division of Elections in the removal of ineligible voter registrants from the voter file.

DBT Online performed an automated matching process against databases provided by the state of Florida and its own databases. Ultimately 173,127 Floridians were identified as potentially ineligible to vote in the November 2000 election. Of those on the list, 57,746 were identified as convicted felons. Based on DBT Online's statistical verification, the list it provided to the Division of Elections was 99.9 percent accurate. The Division of Elections distributed the relevant portions of the list to the 67 supervisors of elections.

The Division of Elections instructed DBT Online to verify the clemency status of any alleged convicted felon, even those convicted in states with automatic civil rights restoration, with the Florida Executive Clemency Board. Among those states with their own executive clemency boards, DBT Online was instructed to confirm the alleged felons' clemency status with the board. The methodology adopted by DBT Online to verify the clemency status of those alleged felons basically consisted of faxing a list to the appropriate state agency.

DBT Online was not required to provide a list of exact name matches. Rather, the matching logic only required a 90 percent name match, which produced "false positives" or partial

matches of the data. Moreover, the Division of Elections required that DBT Online perform "nickname matches" for first names and to "make it go both ways." Thus, the name Deborah Ann would also match the name Ann Deborah.

At a meeting in early 1999, the supervisors of elections expressed a preference for exact matches on the list as opposed to a "fairly broad and encompassing" collection of names. DBT Online advised the Division of Elections that it could produce a list with exact matches. Despite this, the Division of Elections nevertheless opted to cast a wide net for the exclusion lists.

Former director of the Division of Elections, Ethel Baxter, in 1998, recommended to the supervisors of elections that if there was any doubt as to the accuracy of an individual's status, the voter should be allowed to vote by affidavit. Despite knowing the exclusion lists contained many errors, there is no record that the Division of Elections provided similar cautionary advice to the supervisors of elections for the 2000 presidential election. The evidence does show that some election officials decided that it further served the state's interests to capture as many names as possible on these exclusion lists.

The process by which each county verified its exclusion list was as varied and unique as the supervisors of elections themselves. Some supervisors of elections sent letters to the alleged felons and held hearings to allow them to produce evidence of their clemency status or establish they were on the list in error. Other supervisors chose not to use the exclusion list at all.

Although the Commission's record reflects that the Division of Elections is responsible for coordinating two statewide workshops annually for the supervisors of elections to ensure uniformity in the interpretation of Florida election laws, the complaints registered by some supervisors of elections suggest that there was no common understanding of the use of the exclusion lists. The Florida legislature's decision to privatize its list maintenance procedures without establishing effective clear guidance for these private efforts from the highest levels, coupled with the absence of uniform and reliable verification procedures, resulted in countless eligible voters being deprived of their right to vote.

<sup>214</sup> This law was changed by the Florida Election Reform Act of 2001. See Epilogue.

## CHAPTER 6

## Accessibility Issues

*The right to vote is not only a sacred testament to the struggles of the past. It is an indispensable weapon in our current arsenal of efforts to empower those who have traditionally been left out.*<sup>1</sup>

After the November 7, 2000, election, newspapers were plastered with headlines about the complaints of Americans alleging their ability to vote was delayed, blocked, or otherwise impeded. The grievances voiced by Floridians at the Commission hearings on Election Day irregularities held in Tallahassee and Miami included inaccessible polling places for people with disabilities and the inability to receive language assistance. This chapter focuses on accessibility—the physical barriers and language barriers that disenfranchised some Florida voters.

**SPECIAL NEEDS ASSISTANCE**

The Voting Rights Act of 1965 and its subsequent amendments are designed to ensure every citizen entitled to vote can both register to vote and have access to his or her polling site—both physical accessibility and ballot accessibility. Physical accessibility includes not only accessible entrance into a voting precinct, but also physical access to a polling booth. Ballot accessibility includes ballots that do not discriminate against blind or visually impaired individuals as well as individuals who are unable to read English. The Commission hearings in Florida included testimony from Floridians with disabilities and of limited English proficiency contending they were disenfranchised in the November 2000 election because their precincts were not accessible.<sup>2</sup>

<sup>1</sup> President Clinton's Message to Congress on the Unfinished Work of Building One America, *Federal Department and Agency Documents*, Jan. 15, 2000.

<sup>2</sup> There are various laws that mandate states and the federal government to achieve comparable access for individuals

**ACCESS TO POLLING PLACES FOR PEOPLE WITH DISABILITIES**

In 1984, Congress passed the Voter Accessibility for the Elderly and Handicapped Act, which requires that all polling places be physically accessible to voters with disabilities.<sup>3</sup> When a polling place is not accessible, it must be relocated or made temporarily accessible.<sup>4</sup> If neither option is achievable, election officials might be allowed to employ an alternate method, such as curbside voting.<sup>5</sup> Specifically, the statute provides:

with disabilities or special needs. These include the Americans with Disabilities Act and the Rehabilitation Act. For example, Title II of the Americans with Disabilities Act of 1990 prohibits discrimination in the election process by state and local entities, ensuring access to people with disabilities, and section 504 of the Rehabilitation Act of 1973 requires that state and local governments receiving federal funds ensure that their programs are accessible to persons with disabilities.

<sup>3</sup> 42 U.S.C. § 1973ee (1984). Prior to its passage, the few cases challenging the right to vote by individuals with disabilities were rejected on the basis that because absentee ballot voting was available, there was no requirement that polling places be accessible.

<sup>4</sup> An example of the proper implementation of the physical accessibility provisions of the Voter Accessibility for the Elderly and Handicapped Act is found in Monroe County, Florida. The day before any election—local or national—the Department of Public Works goes to each precinct that is inaccessible and installs a temporary ramp and other modifications to ensure accessibility to those with physical disabilities.

<sup>5</sup> For example, in Miami-Dade, a deputy sheriff, at 7 a.m. on Election Day, posts a sign near the front entrance of a polling place that reads, "Voters who find the polling place inaccessible should see the Deputy Sheriff." The deputy sheriff, should be "stationed near the front entrance of the polling place while the polls are open [to] watch for voters with mobility impairment" that prevents them from gaining access to the voting area. A clerk or assistant clerk is then dispatched to the curbside to confirm that the voter is properly registered and then provides a ballot card, secrecy envelope, and voting device for the voter. After the "elector [places] the ballot in the secrecy envelope" the clerk brings the ballot and

(a) within each State . . . each political subdivision within each State . . . responsible for conducting elections shall assure that all polling places for Federal elections are accessible to handicapped and elderly voters.<sup>6</sup>

The statute required the Federal Election Commission (FEC) to report to Congress "no later than December 31 of each even-numbered year . . . the number of accessible and inaccessible polling places in such State on the date of the preceding general federal election, and the reasons for such inaccessibility." The FEC was only required to file these reports for a period of 10 years beginning in 1984.<sup>7</sup> The FEC fulfilled this duty, collecting data through self-reporting by local jurisdictions. The FEC's final report in 1992 found that 86 percent of polling places in the United States were physically accessible to individuals with disabilities seeking to exercise their right to vote.

Disability advocacy groups, routinely hearing from their constituents, were skeptical of these numbers and have challenged these numbers, conducting their own surveys to determine compliance with the Voter Accessibility for the Elderly and Handicapped Act. In fact, a recent report titled *Voters Denied Equal Access at the Polls* found numbers startlingly different from those of the FEC.<sup>8</sup> *Voters Denied* found that "voters with disabilities frequently encountered physical accessibility problems at their polling places."<sup>9</sup> The report noted that independent surveys and court cases suggest that potentially 40 percent of polling places "continue to pose sig-

voting device back to the ballot box and "with [an] inspector observing" casts the ballot into the ballot box for the individual with the disability. See David Leahy, supervisor of elections, Miami-Dade County, Response to Commission's Interrogatory 6, Exhibit C, p. 31. Miami-Dade also provides procedures for disabled voters requiring assistance. The voter completes a "Declaration to Secure Assistance" affidavit. The voter is then escorted with a clerk and a "person of the voter's choice to a votomatic" or has two election board members assigned to assist the voter. *Ibid.*, Exhibit C. It is unclear from Mr. Leahy's response to the interrogatory whether the deputy sheriffs providing curbside assistance were in uniform or plainclothes. See chap. 2.

<sup>6</sup> 42 U.S.C. § 1973ee-1(a) (1984).

<sup>7</sup> 42 U.S.C. § 1973ee-1(c)(3) (1984).

<sup>8</sup> New Hampshire Developmental Disabilities Council, 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*, 2000.

<sup>9</sup> *Ibid.*, p. 6.

nificant accessibility problems for voters with disabilities."<sup>10</sup>

#### Florida's Inaccessible Polling Places for People with Disabilities

At the Commission's Tallahassee hearing, Jim Dickson of the National Organization on Disability testified that the inaccessibility of the nation's voting systems means that many people with disabilities are unable to vote.<sup>11</sup> In addition, many of these people with disabilities found themselves forced to cope with inaccessible polling places that failed to provide proper accommodations. In some polling places, individuals using wheelchairs had to negotiate steps and unreachable polling booths. Some visually impaired voters were not provided with proper equipment to assist them in reading the ballots. As a result, they had to rely on poll workers and others to cast their ballots, denying them the right to a secret ballot. Many poll workers were not adequately trained to provide proper assistance to individuals with disabilities, denying these voters their rights.

The following examples present vivid illustrations of the barriers individuals with disabilities encountered when attempting to vote.

- **Joy Cohen**, an elderly woman from Broward County who uses a wheelchair, said her polling place did not have wheelchair-accessible ramps and did not provide curbside voting. As a result, she had to be lifted into her polling place. She testified how disappointing it was for her that she had spent her life advocating for legislation that would provide proper assistance for individuals with disabilities, and the one time she was in need of help, that assistance was not provided for her.<sup>12</sup>
- **Harold Cousminer**, a visually impaired voter from Palm Beach County, was given improper equipment to assist him in voting.

<sup>10</sup> *Ibid.* The report cites many examples and found in one state that a shocking 60 percent of polling places were inaccessible. Perhaps most egregious are two New York counties in which every polling place, with the exception of one, was physically inaccessible to voters with disabilities. *Ibid.*

<sup>11</sup> Jim Dickson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 204.

<sup>12</sup> Joy Cohen, Testimony before the U.S. Commission on Civil Rights, Miami, FL, Feb. 16, 2001, Verified Transcript, pp. 115-16.

The poll workers were unfamiliar with providing assistance and accommodations to individuals with disabilities. He was given a magnifying screen to see the ballot, but the magnifying screen could not be used for his butterfly ballot. He ultimately relied on his wife to cast his ballot and his right to a secret ballot was compromised.<sup>13</sup>

- **Dr. Frederick Shotz**, a resident of Broward County, had to use his upper body to lift himself up the steps in order to access his polling place. Once he was inside the polling place, he was not given a wheelchair accessible polling booth. Once again, he had to use his arms to lift himself to see the ballot and, while balancing on his arms, simultaneously attempt to cast his ballot. He testified that an individual using a wheelchair who did not have the same upper body strength could not have accessed his polling place. He also said his polling place did not provide curbside voting and described curbside voting as a "wonderful fantasy that never came true."<sup>14</sup>
- **Felix Boyle**, a resident of Miami-Dade County, testified that his polling place was under construction and that it would have been impossible for individuals using wheelchairs to access. The pavement leading to the main entrance of the building was broken and the surrounding areas were muddy.<sup>15</sup>
- **Alan Fields**, a Palm Beach resident in poor health, brought his wife and his nurse to assist him in voting. Neither was allowed to assist the resident to vote. Rather, a precinct worker assisted the voter and told him to fill in the first bubble if he wanted Bush or the second bubble if he wanted Gore, which was in fact the bubble for Buchanan. Thus, the resident did not vote for the candidate of his choice.<sup>16</sup>
- In one particularly egregious situation in Palm Beach, a group of people with disabilities had arranged for a bus to transport them from their condominium to their polling place. When they arrived, they discovered that the polls were on the second floor of the building with no elevator. "Those people who were disabled, therefore, one by one, using the wheelchair lift in the bus, got back on the bus, went back to their condominium association buildings without ever casting a vote."<sup>17</sup>

<sup>13</sup> Harold Cousminer Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 58-60. Mr. Cousminer suggested that the disabled population votes 15 percent to 20 percent less than other communities because of the insufficient accommodations at polling places. Mr. Cousminer recommended that supervisors of elections utilize the following: (1) disability advisory groups to assess "whether the entire voting process is accessible and to determine what makes a polling place or ballot inaccessible"; (2) a polling place access guide provided by the National Task Force on Election Accessibility; (3) buildings already deemed accessible for polling places; (4) signs to direct people to disabled accessible entrances; (5) wheelchair accessible voting booths; and (6) larger print ballots for the visually impaired. *Ibid.*, pp. 62-65.

<sup>14</sup> Frederick Shotz Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 20-25. Dr. Shotz stated that he was not offered the accommodation to which he was accustomed at his polling place for the November 2000 election. Dr. Shotz described his experience as follows:

"And then, much to my surprise, the accommodation I've been given in the past to have the voting platter placed on a table for me where I could actually see to vote was denied with the excuse being, 'We have no spare tables and we are too busy today.' But there was a votomatic machine with a wheelchair symbol taped to the machine. And somebody had actually lowered two of the legs to make it at wheelchair accessible height, but the machine has four legs, not two. So the front of the machine was higher than the back of the machine causing it to tilt away from me and making it almost impossible to see the ballot. The legs were not wide enough apart for my wheelchair so I could not sit close to the machine. I fortunately was able to use my arms to lift myself up and attempt to read the ballot and to cast my vote. I have

Miriam M. Oliphant, supervisor of elections for Broward County, conceded that some precincts in her district are inaccessible and need ramps to comply with accessibility requirements.<sup>18</sup> Ms. Oliphant also admitted that some

the strength in my arms to do that. Many people that use wheelchairs do not."

*Ibid.*, pp. 24-25. Although some may propose that absentee ballots are a reasonable accommodation to people with special needs, Dr. Shotz testified that while absentee ballots may provide access to the voting process, it does "not provide equal access for people who want to vote on Election Day." *Ibid.*, p. 20.

<sup>15</sup> Felix Boyle Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 97.

<sup>16</sup> Robert A. Butterworth, Florida attorney general, "Ballot in Palm Beach County," letter to addressee, Nov. 8, 2000, Bates No. 0010150.

<sup>17</sup> Frederick Shotz Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 35.

<sup>18</sup> Miriam M. Oliphant, supervisor of elections, Broward County, Response to Commission's Interrogatory 1, Apr. 16, 2001.

precincts were not only inaccessible, but could not be ramped or made accessible and needed to "be replaced."<sup>19</sup>

These are not isolated instances. Based on the hearings held by the Commission and the testimony of witnesses, numerous Florida residents encountered obstacles to polling places and were thus disenfranchised.

Requirements of accessibility are not limited to individuals with physical disabilities. The Voting Rights Act requires "ballot accessibility." This includes voters who are blind or visually impaired and those with language barriers. Accessibility means that individuals with accessibility issues—whether they be physical or language issues—should have the same access to precincts and ballots as individuals without these barriers.

#### ACCESS TO POLLING PLACES FOR PEOPLE NEEDING LANGUAGE ASSISTANCE

The majority of non-English-speaking Americans are native-born citizens constitutionally entitled to vote.<sup>20</sup> Congress responded in 1975 by enacting amendments to the Voting Rights Act addressing voting discrimination against members of "language minority groups,"<sup>21</sup> which prohibit states from providing voting materials exclusively in English when certain conditions exist.<sup>22</sup> Prior to the 1975 legislation,<sup>23</sup> which requires multilingual voting assistance in areas with large numbers of non-English speakers, people who did not understand English were effectively disenfranchised by elections held only

in English. Congress enacted a multilingual requirement if:

- (i)(I) more than five percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient;
- (II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited-English proficient; or
- (II) in the case of a political subdivision that contains all or any part of an Indian reservation, more than five percent of the . . . citizens of voting age within the Indian reservation are members of a single language minority and are limited-English proficient; and
- (ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.<sup>24</sup>

The law requires that when this provision applies, all "voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots[,] be provided in the appropriate language of the minority group as well as English."<sup>25</sup>

#### Florida's Inaccessible Ballots for Non-English or Limited-English-Proficient Voters

Despite the requirements that non-English-proficient voters be provided with some form of language assistance, large numbers of limited English-speaking voters were denied this assistance at polling places all around Florida. This occurred in counties and precincts where bilingual ballots and language assistance are mandated. Because of this failure to provide proper language assistance, voters faced problems understanding the ballots or the fundamental procedure for voting. The groups disproportionately affected were Haitian Americans and Spanish-speaking Latinos.

Many poll workers were not properly trained to handle language assistance issues. Some voters found that even when volunteers were avail-

<sup>19</sup> *Ibid.*

<sup>20</sup> It is estimated that over 23 million Americans speak languages other than English in their homes. See Bureau of the Census, U.S. Department of Commerce, *Statistical Abstract of the United States* (1996).

<sup>21</sup> 42 U.S.C. § 1973b(f)(1) (1994).

<sup>22</sup> 42 U.S.C. § 1973aa-1a (1994). The Voting Rights Act defines "language minorities" or "language minority groups" as persons who are "American Indian, Asian American, Alaskan Natives or of Spanish heritage." 42 U.S.C. § 1973(c)(3) (1994).

<sup>23</sup> 42 U.S.C. § 1973b(f)(4) (1982). The 1975 amendments to the Voting Rights Act of 1965 provide that in any jurisdiction covered by the act "[w]henver any [jurisdiction] . . . provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," it shall provide them on a multilingual basis to members of applicable language minority groups.

<sup>24</sup> 42 U.S.C. § 1973aa-1a(b)(2)(A) (1994).

<sup>25</sup> 42 U.S.C. § 1973aa-1a(c) (1994). This provision compels "any State or political subdivision subject to [42 U.S.C. § 1973aa-1a(b)] to provide[ ] any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots . . . in the language of the applicable minority group as well as in the English language."

able to provide assistance, the volunteers or precinct workers were prevented from providing language assistance. In some instances, bilingual poll workers were directed to not provide language assistance to voters who were in need of that assistance. Thus, these non-English minority voters found their polling places to have ballots that were, essentially, inaccessible to them.

Marleine Bastien, a Haitian American community leader, testified at the Commission's Miami hearing that she received an overwhelming number of complaints on Election Day. She visited polling places that were required by county ordinance to provide bilingual ballots. Ms. Bastien was disturbed to learn that the precincts, in violation of the law, did not have bilingual ballots. Many Haitian American voters were, in effect, turned away from their polling places without the opportunity to vote.<sup>25</sup>

Similarly, Jackson Chin, associate counsel at the Puerto Rican Legal Defense and Education Fund (PRLDEF), testified at the Tallahassee hearing that after a "groundswell of complaints from Latino Floridians," the PRLDEF "dispatched a team of lawyers to investigate and to assess multiple complaints."<sup>27</sup> PRLDEF's field investigation revealed that many eligible Puerto Rican voters were turned away from polling places without proper language assistance. Mr. Chin expressed his surprise that counties subject to section 203 of the Voting Rights Act failed to meet their "legal obligations to guarantee meaningful electoral access to its growing Spanish-speaking language minority voters."<sup>28</sup> In

some counties, many Latino voters did not receive bilingual assistance.<sup>29</sup> PRLDEF believes that certain election practices and policies in Florida led to widespread voter disenfranchisement of possibly several thousand Latino voters.<sup>30</sup>

At the Tallahassee hearing, however, the director of the Division of Elections, L. Clayton Roberts, testified that his office in fact provided posters to the supervisors of elections in Spanish and English.<sup>31</sup> He stated:

The extent of what we've done on mechanics of voting is we provide posters to the supervisor of elections in Spanish and English, which are posted in the polling place that explain to voters the basics of voting; to get their ballot, take it to their voting system to vote it, if they make an error on it, they are entitled to get another ballot.<sup>32</sup>

Similarly, Florida Attorney General Robert A. Butterworth testified that approximately 11 counties have ballots in English and Spanish.<sup>33</sup> Attorney General Butterworth said preclearance<sup>34</sup> counties are required to have ballots in both English and Spanish.<sup>35</sup> He also commended Miami-Dade County for its ordinance that requires ballots to be translated into Creole because of its large Haitian community.<sup>36</sup> Ap-

groups to be informed of and participate in voting-connected activities.

<sup>25</sup> Ibid., pp. 200-01.

<sup>26</sup> Ibid., p. 199.

<sup>27</sup> L. Clayton Roberts, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, p. 286.

<sup>28</sup> Ibid.

<sup>29</sup> Robert A. Butterworth Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 201.

<sup>30</sup> When a state or political subdivision has violated the Voting Rights Act (VRA), it becomes subject to preclearance obligations under section 5 of the VRA. The jurisdiction subject to section 5 must obtain preclearance—procedures the state must follow whenever it enacts or seeks to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting. 42 U.S.C. § 1973c (1994). Preclearance requires proof that the proposed voting change does not deny or abridge the right to vote on account of race, color, or membership in a language minority group. Section 5 provides that preclearance may be obtained only from the United States District Court for the District of Columbia or from the United States attorney general.

<sup>31</sup> Robert A. Butterworth Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 218.

<sup>32</sup> Ibid.

<sup>25</sup> Marlene Bastien Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 25-28.

<sup>27</sup> Jackson Chin Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 197.

<sup>28</sup> Ibid. In 1975, Congress enacted Public Law 94-73, which amended the Voting Rights Act of 1965 (VRA). Section 203 of that law amended section 4 of the VRA and was enacted after "Congress [found] that voting discrimination against citizens of language minorities [was] pervasive and national in scope." Among other things, the subsection provided that "no voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group." 42 U.S.C. § 1973b(f)(2) (1984). The objective of the VRA's new provisions was to enable members of applicable language minority groups to participate effectively in the electoral process, including a requirement that materials and assistance be provided in a way that allows members of applicable language minority

proximately 60 Miami-Dade County precincts had ballots in both English and Creole.<sup>37</sup> Attorney General Butterworth nevertheless conceded the Miami-Dade County ordinance does not resolve all the language assistance issues. He noted:

Now there might not have been enough handouts in Creole or enough interpreters there to assist, but I think at least the counties went in the right direction, and with the strong enrollment, this time the Haitian American community had a tremendous enrollment, a tremendous turnout and it appears that there may not have been enough materials for this election.<sup>38</sup>

Attorney General Butterworth defended Miami-Dade County from criticisms that it was not prepared for the voter turnout on November 7, 2000, remarking:

When you see a community like Miami-Dade attempting to reach out and do what they believe is appropriate and they miss the estimates—well, gee, all the news media missed the estimate twice when it came to Florida. But they tried to, as they predict what the election is going to be, how many machines they'll need in each precinct, they have to go by their own experience and the people in the community.<sup>39</sup>

After the November election and upon further reflection, Attorney General Butterworth recommended that Broward County enact an ordinance requiring Creole translation in certain precincts.<sup>40</sup> He conceded that so many languages are spoken in Florida that accommodations are essential.<sup>41</sup>

#### CONCLUSION

The inaccessibility of polling places—for both individuals with physical disabilities needing barrier-free access to buildings and those needing ballot accessibility—was an issue presented at the Commission's Florida hearings.

It is estimated that voter participation among people with disabilities is at least 15 to 20 per-

cent below that of the population at large.<sup>42</sup> Despite the enactment of the federal law requiring polling places to be accessible to people with disabilities, the law is not enforced and barriers that prevent individuals with disabilities from voting have not been removed at all polling places. Credible testimony established that many voters, unable to access (enter) the precincts, returned home without voting. Others, while able to gain physical access to their precinct, found the booths or ballots inaccessible and were deprived of their voting rights.

Many language minority voters were also effectively prevented from casting a ballot because election officials refused to provide bilingual ballots or assistance on Election Day, and many persons who were not literate were denied adequate assistance in casting their ballots. Remarkably, while being denied this assistance, other language minority voters were forced to vacate the voting booth after five minutes, a limitation imposed by Florida law.<sup>43</sup> These failures meant that language minority voters were denied meaningful participation in the November 2000 election.

Florida's chief legal officer, Robert A. Butterworth, conceded that more "accommodations" must be made to enfranchise voters with special needs. He noted, "We should also target those communities with the most urgent needs and Florida has communities with many urgent needs, especially language needs, people who are elderly and minority communities who are voting sometimes for the first time."<sup>44</sup> He added, "We have so many languages that are being spoken throughout Florida . . . that we have to make accommodations."<sup>45</sup>

Unless and until these accommodations are made, for both persons with disabilities and language minority voters, the struggles to gain the right to vote and the history of barriers being erected remain.

<sup>37</sup> *Ibid.*

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*, p. 220.

<sup>41</sup> *Ibid.*, p. 219.

<sup>42</sup> Genevieve Cousminer, coordinator of advocacy services, Coalition for Independent Living Options, Miami Verified Transcript, Feb. 16, 2001, p. 62.

<sup>43</sup> FLA. STAT. ch. 101.51 (1999).

<sup>44</sup> Robert A. Butterworth Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 201.

<sup>45</sup> *Ibid.*, p. 219.

## CHAPTER 7

## Casting a Ballot

*The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.*<sup>1</sup>

#### PROVING ONE SHOULD BE PERMITTED TO VOTE

In the 2000 presidential election, many Floridians arrived at their polling places expecting to cast ballots for the candidates of their choice, but left frustrated after being denied this right. This chapter focuses on the mechanisms provided by Florida election law that are intended to safeguard the right to vote. In Florida, affidavits are used to cure problems arising at the polling place, while absentee ballots are used when the voter cannot physically be at the polling place on Election Day. At the time of the 2000 election, Florida law did not allow "provisional" balloting.<sup>2</sup> A provisional ballot allows a person to cast a ballot, but the ballot is not counted until the eligibility of the voter is determined.<sup>3</sup>

#### Affidavits

When there is doubt that a person who seeks to vote is registered, yet that person is willing to swear that he or she did in fact register to vote, the Florida Election Code authorizes voting by affidavit in certain circumstances. Although affidavits seem able to remedy many situations, they are of no use when poll workers are unable to reach supervisors of elections, a complaint

heard frequently at the Commission hearings.<sup>4</sup> In those cases, the individuals were denied the right to vote. The Florida Election Code provides for affidavit voting in the following circumstances:

- **Discrepancy between Signatures.** Under Florida law, individuals identify themselves as duly qualified electors by signing an identification slip. The election clerk compares this signature with the signature in the precinct registration book. If the official is satisfied that the signature is the same, the person is then permitted to vote. If the election official has doubts that the signature is actually that of the person attempting to vote, the person may be still permitted to vote if he or she executes an affidavit.<sup>5</sup>
- **Change of Address.** An elector who moves from one precinct to another precinct within the county in which the elector is registered may be permitted to vote in the precinct that is the legal residence at the time of voting, provided the elector completes an affidavit providing information as to where he or she is legally registered to vote.<sup>6</sup>
- **Change of Name.** An elector whose name changes because of marriage or another legal process may be permitted to vote if he or she completes an affidavit providing the name

<sup>1</sup> Reynolds v. Sims, 377 U.S. 533 (1964).

<sup>2</sup> After the 2000 election the Florida legislature provided for the limited use of provisional ballots. See Epilogue.

<sup>3</sup> The use of provisional balloting is discussed in greater detail later in this chapter.

<sup>4</sup> In her testimony at the Commission hearing, Theresa LePore agreed with the characterization that in the "vast majority of circumstances," would-be affidavit voters needed to contact her office before being permitted to vote. Theresa LePore, supervisor of elections, Palm Beach County, Testimony before the U.S. Commission on Civil Rights, Miami, FL, Feb. 16, 2001, Verified Transcript, p. 381.

<sup>5</sup> FLA. STAT. ch. 101.47(1)-(2); ch. 101.49(1) (1999).

<sup>6</sup> FLA. STAT. ch. 105.045(2)(a) (1999).



under which the elector is legally registered to vote.<sup>7</sup>

- **Assistance by Reason of Disability.** An elector who requires assistance because of "blindness, disability, or inability to read or write" is entitled to vote if the elector executes an affidavit attesting to this need for assistance.<sup>8</sup>
- **Challenged Ballots.** An affidavit is used to allow an individual to vote when another elector, or an observer, challenges the right of the person to vote. The challenger is required to swear that the reasons given for the challenge are true. The challenged elector then executes an affidavit stating that he or she is authorized to vote. If the voter executes the affidavit, the election officials will decide by a majority vote whether the challenged person may vote.<sup>9</sup>
- **Elector's Name Does Not Appear on the List.** When an elector's name does not appear in the registration books of the election precinct where the elector is registered, and when the elector cannot present a valid registration identification card, the elector may have his or her name restored, if the supervisor of elections for the county where the polling place is located authorizes the vote.<sup>10</sup>

<sup>7</sup> FLA. STAT. ch. 101.045(2)(b) (1999).

<sup>8</sup> FLA. STAT. ch. 101.051 (1999).

<sup>9</sup> FLA. STAT. ch. 101.111(1)-(3) (1999). According to George Reeves, attorney for Madison County, this procedure has been interpreted to apply only if the person whose right to vote is challenged is listed on the registration rolls. George Reeves, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 11, 2001, Verified Transcript, p. 68.

<sup>10</sup> FLA. STAT. ch. 101.045(3) (1999). While this provision does not specifically reference the use of an affidavit, it appears that in order to be satisfied the supervisor would want the elector's position in an affidavit form. According to Ion Sancho, poll workers are given a countywide register and special telephone numbers so they can communicate with the office of the supervisor. When a person is not on the rolls, the clerk will look in the register to see if the person is eligible to vote. If the person is not on the countywide register, the clerk will call the office of the supervisor of elections to verify the information before issuing a ballot. Ion Sancho, supervisor of elections, Leon County, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, p. 70. According to Linda Howell, most situations where this provision was used involved persons who moved yet went to their former voting places to vote. Linda Howell, supervisor of elections, Madison County, Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 73-74.

Florida permits affidavits to be used to remedy many situations where a potential voter could be denied the right to vote. Florida Election Code section 101.111 conceivably solves many problems that would disenfranchise voters. This provision permits an individual to be issued a ballot even if the person's name does not appear on the precinct register and the voter cannot present a valid registration identification card. Nevertheless, this person can only be restored to the registration lists and be permitted to vote "if the supervisor is otherwise satisfied that the voter is validly registered, that the voter's name has been erroneously omitted from the books, and that the voter is entitled to have his or her name restored. . . ."<sup>11</sup>

Under these statutory provisions tremendous discretion is vested in the supervisor of elections. If the supervisor is not satisfied with the individual's voting eligibility then the person's right to vote is denied. Equally important, the law vests the supervisor, no one else, with power to deny or permit an individual to vote. If the supervisor cannot be contacted, the right to vote is denied. As discussed more fully in chapter 2, one of the biggest problems during the November 2000 election was the great difficulty contacting supervisors of elections.

Some election officials in Florida may have unduly restricted the use of affidavit voting when faced with mounting confusion over confirming the eligibility status of voters on Election Day. For example, if the name of an eligible voter did not appear on the voter registration list at a polling place due to governmental inefficiency or error, that person was not allowed to cast a ballot that could be counted even if it was later confirmed that that person was eligible to vote. The officials, however, maintain this is done because once a ballot is cast as authorized by affidavit ballot, it is indistinguishable from the ballots of individuals on the registration list. They emphasize that if it is discovered that the information in the affidavit is false, the fraudulent vote cannot be annulled. Anyone submitting a false affidavit regarding his or her ability to vote is subject to criminal prosecution; yet, there is no remedy for the eligible voter who was wrongly denied an opportunity to vote due to the government's inefficiency or error.<sup>12</sup> The lack of

<sup>11</sup> FLA. STAT. ch. 101.045(3) (1999).

<sup>12</sup> FLA. STAT. ch. 104.011 (1999).

sufficient training of poll workers also contributed to the problem of confirming the eligibility status of registered voters whose names did not appear on lists at certain polling places.

#### Provisional Ballots

One way to help protect the rights of registered voters is the provisional ballot. In May 2001, Governor Bush signed into law a provision that permits the use of provisional ballots in some circumstances.<sup>13</sup> A provisional ballot is issued to a voter at a polling place if there is a question about the voter's eligibility. Provisional ballots allow those eligible to vote to do so and at the same time protect the integrity of the elections by not counting the provisional ballots of those persons who are not eligible to vote. If the election official issues a provisional ballot, the voter's ballot is usually sealed in a special provisional voter's envelope that the voter signs under penalty of perjury. The voter states his or her eligibility to vote, and the inspector notes the reasons for issuing the provisional ballot on the envelope. Provisional ballots are not opened until voting officials research the registration information and the eligibility of the voter is determined. This research occurs during the official vote count, during the days immediately following the election. Eligible ballots are added during the vote count period.

Ion Sancho, Leon County supervisor of elections, testified to the advantages of a provisional ballot:

Well, let me give you the experience in Hillsborough County, [where] . . . I visited. It's a wonderful county who added 40 [telephone] lines. There are going to be times when I don't care if you add 40 lines . . . it's not enough. Which is one of the reasons why in our legislative meeting in Tampa on December 12, the supervisor of the legislative committee has made a recommendation . . . that we will present to the legislature this spring. So let's go to [a] provisional ballot because we recognize that under certain elections, I don't care if you add 50 lines, . . . you're not going to be able to deal with all you need to. And the other aspect of that is, do you have 50 trained individuals who know intimately all of the intricacies of the Florida elec-

tion law that would be able to answer the person's problem?<sup>14</sup>

The use of provisional balloting is not a new or unique practice. The following are a few examples of states using provisional ballots and when they can be used.

- **California.** At all elections, a voter claiming to be properly registered is entitled to vote by provisional ballot. A provisional ballot is sealed in a special envelope and deposited in the ballot box. The color of the envelope is different from that of absentee ballots. These provisional ballots are not counted until the registration information is researched by the registrar's office and the voter is determined to be eligible to vote. Provisional ballots are also authorized for absentee voters who vote at the polls but are unable to surrender their unvoted absentee voter ballots.<sup>15</sup>
- **New Jersey.** Any voter who prior to an election moves within the same county but has no confirmation of that move may still vote in the district to which he or she has moved by use of a provisional vote.<sup>16</sup> After voting by provisional ballot and completing the affirmation statement, the voter places the provisional ballot in an envelope. The voter then hands the envelope to a member of the district board, who places the envelope in the provisional ballot bag to be opened and counted at a later time if it is established that the person is entitled to vote.<sup>17</sup>
- **Kansas.** When a registered voter changes name by marriage, divorce, or another legal proceeding and is otherwise qualified to vote at the polling place that voter is allowed to vote by a provisional ballot. When a registrant moves from an address on the registration book to another address within the county and has not reregistered, that individual is allowed to vote by provisional ballot.<sup>18</sup> If a person's right to vote is challenged, the person is permitted to vote by provisional ballot, which is opened and reviewed

<sup>14</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 82-83.

<sup>15</sup> CAL. ELEC. CODE § 14310(a)-(e) (2001).

<sup>16</sup> N.J. STAT. § 19:53C-1 (2001).

<sup>17</sup> N.J. STAT. § 19:53C-10(a)-(b) (2001).

<sup>18</sup> KAN. STAT. ANN. § 25-2316c(a)-(b) (1999).

<sup>13</sup> See Epilogue.

by the county board of canvassers, which determines whether to accept the vote.<sup>19</sup>

- **West Virginia.** A voter whose registration record lists one address but who has since moved to another address in a different precinct in the same county is permitted to update the registration at the polling place in the new precinct. He or she is permitted to vote by provisional ballot at the new polling place. If the voter's registration is found on the registration records within the county during the canvass and no other challenge of eligibility was entered on Election Day, the ballot is counted.<sup>20</sup>

The Governor's Select Task Force on Election Procedures, Standards and Technology endorsed "the concept of provisional ballots as a way of encouraging votes by those whose registration status could not be clarified quickly at the polls, but also urged the Division of Elections to look carefully at various alternatives."<sup>21</sup>

#### Absentee Ballots

Although there was little testimony at the Commission hearings regarding the use absentee ballots, an overview of Florida's voting systems cannot overlook the statutory provisions regarding absentee ballots. The rules that applied to absentee ballots in Florida's 2000 presidential election were a combination of federal, state, and local laws. The Florida Election Reform Act of 2001 changed several provisions regarding absentee ballots.<sup>22</sup> The discussion that follows is based on Florida law at the time of the 2000 presidential election.

#### Requests for Absentee Ballots

Florida law provides that an elector may request an absentee ballot in person or in writing.<sup>23</sup> One request is deemed sufficient to receive an absentee ballot for all elections held within a calendar year and the request may be considered canceled when any first-class mail sent by the supervisor of elections to the elector is returned

as undeliverable.<sup>24</sup> The supervisor may also accept a written or telephonic request for an absentee ballot from the elector, or, if directly instructed by the elector, a member of the elector's immediate family or the elector's legal guardian.<sup>25</sup>

The person making the request must disclose: (1) the name of the elector for whom the vote is requested; (2) the elector's address; (3) the last four digits of the elector's social security number; (4) the registration number on the elector's registration identification card; (5) the requester's name; (6) the requester's address; (7) the requester's social security number and, if available, driver's license number; (8) the requester's relationship to the elector; and (9) the requester's signature.<sup>26</sup>

Florida law allows voting by absentee ballot for any registered and qualified voter who—

- is unable without another's assistance to attend the polls;
- is an inspector, a poll worker, a deputy voting machine custodian, a deputy sheriff, a supervisor of elections, or a deputy supervisor who is assigned to a different precinct than that in which he or she is registered to vote;
- on account of the tenets of his or her religion, cannot attend the polls on the day of the general, special, or primary election;
- may not be in the precinct of his or her residence during the hours the polls are open for voting on the day of the election;
- has changed his or her residency to another county in this state within the time period during which the registration books are closed for the election for which the ballot is requested; or
- has changed his or her residency to another state and is ineligible under the laws of that state to vote in the general election; however, only for presidential ballots.<sup>27</sup>

<sup>19</sup> KAN. STAT. ANN. § 25-409 (1999).

<sup>20</sup> W.VA. CODE § 3-2-31(e) (2000).

<sup>21</sup> The Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, Mar. 1, 2001, p. 56.

<sup>22</sup> See Epilogue.

<sup>23</sup> FLA. STAT. ch. 101.62(1)(a) (1999).

<sup>24</sup> *Id.*

<sup>25</sup> FLA. STAT. ch. 101.62(1)(b) (1999).

<sup>26</sup> *Id.*

<sup>27</sup> FLA. STAT. ch. 97.021(1)(a)-(f) (1999).

Florida also provides for absentee voting for any registered and qualified voter residing overseas, specifically—

- members of the Armed Forces while in the active service who are permanent residents of the state and are temporarily residing outside the territorial limits of the United States and the District of Columbia;
- members of the Merchant Marine of the United States who are permanent residents of the state and are temporarily residing outside the territorial limits of the United States and the District of Columbia; and
- other citizens of the United States who are permanent residents of the state and are temporarily residing outside the territorial limits of the United States and the District of Columbia.<sup>28</sup>

Florida law requires absentee ballots for overseas electors to be sent 45 days prior to the general election<sup>29</sup> and be received by the supervisor of elections by 7 p.m. on the day of the election.<sup>30</sup>

Conversely, Florida has an administrative provision<sup>31</sup> that allows overseas ballots to be counted up to 10 days after the general election if they are postmarked and dated by Election Day and they have a foreign postmark.<sup>32</sup> This administrative rule was promulgated as the result of a 1980 complaint in which the United States attorney general sued the state of Florida to enforce the provisions of the Overseas Citizens Voting Rights Act<sup>33</sup> and the Federal Voting

Assistance Act.<sup>34</sup> The complaint alleged that because of Florida's late scheduling of primary elections in 1980 and the delayed mailing of absentee ballots, overseas voters would be deprived of their right to vote.<sup>35</sup> Florida subsequently reached an agreement with the United States and entered into a consent decree in which it agreed, among other things, to accept overseas absentee ballots received up to 5 p.m. 10 days after Election Day and inform overseas absentee voters of the 10-day extension.<sup>36</sup> The parts of the consent decree regarding absentee ballots are now provisions in the Florida Administrative Code.<sup>37</sup>

In the aftermath of the 2000 presidential election, the conflict between the Florida statute and the administrative rule became the subject of litigation. A lawsuit was filed seeking to exclude the 2,411 overseas ballots received up to 10 days after the election that were included by the Florida Elections Canvassing Commission in the final election results.<sup>38</sup> The district court and the 11th Circuit allowed the administrative rule to trump the statutory provision.<sup>39</sup> Consequently, ballots of overseas voters can now be counted if received within 10 days of the election.

<sup>28</sup> 42 U.S.C. §1973cc(b).

<sup>29</sup> *Harris v. Florida Elections Canvassing Comm'n*, 122 F. Supp. 2d 1317, 1322 (2000).

<sup>30</sup> *Id.* at 1322.

<sup>31</sup> FLA. ADMIN. CODE r. 1S-2.013(7)-(8) (2000).

<sup>32</sup> The counting of these overseas ballots received after 7 p.m. on Election Day became relevant because of the vote margin. The plaintiffs stipulated that 1,575 of the overseas absentee votes received after November 7 were cast for Bush and 836 votes were cast for Gore. Consequently, overseas absentee votes received after November 7 resulted in a net gain to Bush of 739 votes. The parties also agreed that the certified difference between the two candidates in the state as a whole was 537 votes, in favor of Bush. Therefore, if all the overseas absentee votes received after November 7 were excluded, the result would be that Gore would have a margin of 202 votes over Bush.

<sup>33</sup> See *Harris v. Florida Elections Canvassing Comm'n*, 235 F.3d 578 (2000). In the district court case, the court acknowledged that when statutes and administrative rules are in conflict, the statute usually prevails. The court observed, "This is the opposite of the traditional interplay between the administrative code and the statutes, but is in recognition of the fact that the administrative code mechanism was merely the expression of a federal court detailing . . . the manner in which a state must remedy its statute's conflict with federal law." *Harris v. Florida Elections Canvassing Comm'n*, 122 F. Supp. 2d 1317, 1324 (2000).

<sup>28</sup> FLA. STAT. ch. 101.62(7)(a)(1)-(3) (1999). The Florida statute is nearly identical to the Uniformed and Overseas Citizens Absentee Voting Act of 1986. See 42 U.S.C. §§ 1973ff-1-1973ff-6 (2001). The administrative responsibilities for the Uniformed and Overseas Absentee Voting Act are assigned to the secretary of defense; the attorney general has enforcement responsibilities. 42 U.S.C. §§ 1973ff-6, 1973ff-4.

<sup>29</sup> FLA. STAT. ch. 101.62(4)(a) (1999).

<sup>30</sup> FLA. STAT. ch. 11.67(2) (1999).

<sup>31</sup> FLA. ADMIN. CODE ANN. r. 1S-2.013(7)-(8) (2000).

<sup>32</sup> Robert A. Butterworth, Florida's attorney general, issued an opinion that a date entered by the elector can substitute for a postmark. In his view, overseas military ballots lacking postmarks but containing handwritten or notarized dates should be counted. See Jon Steinman and Kevin Spear, "Official Look at Discarded Ballots; Attorney General Bob Butterworth Responded to GOP Concerns About Military Absentee Ballots," *The Orlando Sentinel*, Nov. 21, 2000, p. A1.

<sup>33</sup> 42 U.S.C. §§ 1973 *et seq.*

**CONCLUSION**

There was consistent, uncontroverted testimony regarding the persistent and pervasive inability of poll workers to reach the offices of the county supervisors of elections to verify voter eligibility during the 2000 presidential election.<sup>40</sup> In situations when a potential voter's name does not appear on the precinct registration books, and when he or she cannot present a valid registration card, voting is permitted only "if the supervisor is otherwise satisfied that the elector is validly registered, that the elector's

name has been erroneously omitted from the books, and the elector is entitled to have his or her name restored."<sup>41</sup> If—as occurred in Florida—the supervisor of elections cannot be contacted, then voter eligibility cannot be verified and corrected on Election Day. While in many states this problem can be addressed through the use of provisional ballots, the use of such ballots was not available under Florida law on November 7, 2000, and this led to numerous Floridians being denied their right to vote.

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<sup>40</sup> See chap. 2.

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<sup>41</sup> FLA. STAT. ch. 101.045(3) (1999).

## CHAPTER 8

## The Machinery of Elections

*As long as ours is a representative form of government . . . the right to elect legislators in a free and unimpaird fashion is a bedrock of our political system.*<sup>1</sup>

Florida lacks uniform voting systems for its 8.4 million voters.<sup>2</sup> Each county is authorized to select its voting method from the list of systems certified by the secretary of state and the state Division of Elections.<sup>3</sup> The federal role is extremely limited. While Federal Election Commission (FEC) standards govern all voting systems other than paper ballots and lever machines, state adherence to the standards is completely voluntary. Douglas Jones, associate professor of computer science at the University of Iowa and chair of the Iowa Board of Examiners of Voting Machines and Electronic Voting Systems, said the FEC's standards are "far from perfect, they are significantly out of date . . . and the number of states that don't even write any reference to the standards into their state law governing voting machines is embarrassing."<sup>4</sup>

<sup>1</sup> Reynolds v. Sims, 377 U.S. 533, 562 (1964).

<sup>2</sup> The Florida Election Reform Act of 2001 attempted to achieve uniformity of election systems in Florida.

<sup>3</sup> The secretary of state is required to examine all models of electronic or electromechanical voting systems to determine if they comply with state law. The director of the Division of Elections is responsible for adopting uniform rules for the purchase, use, and sale of voting equipment in the state and for voting system standards and certification. See FLA. STAT ch. 101.28, 101.5605.

<sup>4</sup> Douglas Jones, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 11, 2001, Verified Transcript, p. 282. Florida is one of the 31 states that have adopted the FEC's voting system standards. See the Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, Mar. 1, 2001, p. 43 (hereafter cited as Governor's Task Force, *Revitalizing Democracy*).

## THE MACHINES

There are five voting systems used in Florida's 67 counties: punch cards (24 counties), optical scan *central tabulation* (16 counties), optical scan *precinct tabulation* (25 counties), paper ballot (one county), and machine lever (one county).<sup>5</sup>

## Punch Cards

Punch cards were developed for data processing in the 1890s, and they started being used as ballots in 1964. After the polls close, the ballots are counted at a central counting center using an industry-standard punch card reader attached to a computer system. Because the punch card is a physical ballot, any questions about the correctness or accuracy of the vote-counting software can be resolved—or attempted to be resolved—by a hand recount of the ballots.<sup>6</sup>

<sup>5</sup> Douglas Jones also stressed that regardless of what system is used, "[w]e must not trust any particular participant, mechanism or computer program; in fact, we must expect every participant, the maintainer of every mechanism, and the designer of every computer program to be a partisan." Douglas Jones, associate professor of computer science, University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates Nos. 0003399–0003400.

<sup>6</sup> *Ibid.*, Bates Nos. 0003402–0003404. Punch card voting was hailed as a big step forward when it was invented in 1962. The basic technology drew on the punch card readers that stored data for IBM mainframe computers. Its advantage was that it tallied the cards quickly. However, it was soon discovered that the tiny pre-perforated rectangles—called "chads"—do not always fall away from the cards. And when they stick—whether it becomes a hanging chad, a swinging chad, or a dimpled or pregnant chad—they can obscure the holes, making the votes unreadable by the counting machines. See David Von Drehle, et al., "A Wild Ride into Uncharted Territory: Two Candidates Caught a Whiff of Defeat—and Then Rapidly Mobilized for a Recount War," *The Washington Post*, Jan. 28, 2001, p. A1.

### Optical Scan Central Tabulation

In this system, a ballot card has candidates' names preprinted next to an empty oval, circle, rectangle, or an incomplete arrow. A voter records his or her choices by filling in the empty oval, circle, or rectangle or by completing the incomplete arrow with a pencil. After the polls close, the ballots are sent to a central location for counting by a high-speed reader.<sup>7</sup> Like the punch card, because physical ballots are used, questions about how the vote is tabulated can be resolved by reviewing the ballots.

### Optical Scan Precinct Tabulation

This is the same system as the optical scan central tabulation system described above, except that once the voter is finished completing the ballot, it is fed into a tabulating device at the precinct. Because the machine can be programmed to "kick out" ballots that have been voted incorrectly, a voter has the opportunity to immediately correct any errors before he or she leaves the precinct.<sup>8</sup>

### Paper Ballot

The voter takes one of the paper ballots and makes a mark next to the candidate(s) of his or her choice—the only requirement is that any ballot containing a clear indication of the voter's intent be counted.<sup>9</sup> If properly used, the paper ballot system sets a standard for fair and honest elections that is not easy to match with more recent voting technologies. Paper ballots may be transported to a counting center, or they may be counted at the precinct immediately after the

polls close.<sup>10</sup> An honest count is ensured by having each ballot inspected by two election workers, representing opposing parties, with observers from opposing parties allowed to watch over their shoulders. If there is any doubt about the count, it may be resolved by a recount.<sup>11</sup>

### Machine Lever

Lever machines completely eliminate the problems of ballot interpretation that accompany paper ballots. In addition, lever machines contain interlocks preventing voters from selecting too many candidates—an overvote—which invalidates the ballot. However, counters in lever machines are extremely complex, with thousands of moving parts. Exhaustive tests of these counters are difficult and therefore rare, and the vote counts obtained from these machines are only as trustworthy as the technicians who maintain them.<sup>12</sup>

### VOTES IN COMMUNITIES OF PEOPLE OF COLOR LESS LIKELY TO BE COUNTED

The Governor's Select Task Force on Election Procedures, Standards and Technology stated in its March 2001 report that error—or "spoilage"—rates in Florida's November 2000 election varied widely by type of voting system. The report concluded:

In statewide or national elections, when different kinds of voting systems with different error rates are used, every voter does NOT have the same chance to have his or her vote counted accurately.<sup>13</sup>

The task force continued that "[u]sing different systems with different 'spoilage' rates for voters in the same statewide or national elections creates substantial questions about equal protection."<sup>14</sup>

<sup>7</sup> Ibid.

<sup>8</sup> Ibid., Bates Nos. 0003404–0003406.

<sup>9</sup> Ibid., Bates No. 0003402. Furthermore, because there are no physical ballots, if there is any suspicion of malfunction or tampering, there is nothing to recount. When people speak of a recount with lever machines, they are speaking of repeating the tabulation of the canvass of the election, starting with the totals in the machines. This can correct errors in tabulation and transcription, but it cannot verify that the machines did, in fact, operate correctly. Ibid.

<sup>10</sup> Governor's Task Force, *Revitalizing Democracy*, p. 36.

<sup>11</sup> Ibid.

<sup>7</sup> Douglas Jones, associate professor of computer science, University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates Nos. 0003404–0003406.

<sup>8</sup> It is clear, however, that simply having this "kick out" feature on a voting machine does not guarantee the feature will be activated during the voting process. Both the Florida counties of Escambia and Manatee had machines with kick out capacity during the 2000 presidential election, but the feature was turned off to save money and speed up voting lines. As a result, approximately 5,400 flawed ballots that might have been corrected were not counted. See Roger Roy and David Damron, "New System Fumbles Votes, Optical-Scan Machines Tossed out Thousands of Ballots in 2000, Denying Voters a Second Chance," *The Orlando Sentinel*, May 6, 2001, p. A1.

<sup>9</sup> Douglas Jones, associate professor of computer science, University of Iowa, "Evaluating Voting Technology," Jan. 11, 2001, Bates No. 0003401.

The available statistical evidence indicates that Florida voters in poorer, predominantly people of color communities were more likely to use voting systems with higher spoilage rates—meaning those voters had a lower chance of having their votes counted accurately. For example, Gadsden County, which used an optical *central* tabulation system, had a spoilage rate of 12.4 percent. Just on the other side of the Ochlockonee River, in Leon County, which used an optical *precinct* tabulation system, the spoilage rate was only 0.18 percent.<sup>15</sup>

Gadsden County had the highest spoilage rate in the state. In addition to being rural and poor, it is also approximately 63 percent African American—the only county in the state with an African American majority.<sup>16</sup> On November 7, approximately one in eight Gadsden County voters was effectively disenfranchised. Leon County, on the other hand, which is approximately 28 percent African American, had the lowest spoilage rate in the state. It is the home of the prosperous state capital and two state universities. There, fewer than two votes in 1,000 were not counted.<sup>17</sup>

Other studies show a similar relationship between race and discounted votes.<sup>18</sup> The *New York Times* conducted a study of voting systems in Florida and concluded that “the majority of the state’s African American voters . . . cast their ballots on punch cards that are more prone to voter error and miscounts.”<sup>19</sup> The *Times* study found that, across the state, nearly 4 percent of the type of punch card ballots most widely used

in Florida were thrown out because the machines read them as blank or invalid.<sup>20</sup> Ion Sancho, who has served as supervisor of elections for 12 years in Florida’s Leon County, testified that approximately 90,000 people were disenfranchised in the punch card jurisdictions due to “failure in voter technology, failure in training the citizens to vote in those technologies, and failure to administer the process properly.”<sup>21</sup>

By contrast, the more modern optical scan systems rejected far fewer votes—only about 1.4 percent of those cast.<sup>22</sup> And while 64 percent of the state’s African American voters live in counties that used punch cards, only 56 percent of whites do so. The *Times* reported:

The impact of these differences on the outcome [of the presidential race] will never be known but their potential magnitude is evident in Miami-Dade County, where predominantly black precincts saw their votes thrown out at twice the rate as Hispanic precincts and nearly four times the rate of white precincts. In all, 1 out of 11 ballots in predominantly black precincts were rejected, a total of 9,904.<sup>23</sup>

<sup>20</sup> Barbanel and Fessenden, “Demographics of Error-Prone Ballots,” p. A19.

<sup>21</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 16. Mr. Sancho testified further that Florida “spends not one dollar on radio and TV ads informing voters how to vote. This in a state that in the past has spent over \$35 million in one year telling Floridians how to play the lottery.” *Ibid.*, pp. 17–18.

<sup>22</sup> Barbanel and Fessenden, “Demographics of Error-Prone Ballots,” p. A19. In *Siegel v. LePore*, 234 F.3d 1163, 1215–18 (11th Cir. 2000), the court discussed data indicating that the percentage of ballots recorded as having no vote in Florida counties using a punch card system was 3.92 percent, while the error rate for the optical scan systems in use elsewhere in Florida was 1.43 percent (charts C and F).

<sup>23</sup> Barbanel and Fessenden, “Demographics of Error-Prone Ballots,” p. A19. The *Washington Post* conducted a precinct-by-precinct analysis of Florida’s spoilage rates and came to a similar conclusion. According to the *Post*, in those Miami-Dade County precincts where less than 30 percent of the voters are African American, about 3 percent of ballots did not register a vote for president. However, in the same county, in those precincts where more than 70 percent of voters are African American, the number of ballots not registering a vote for president rose to nearly 10 percent. In addition, the *Post* determined that as many as one in three ballots in African American sections of Jacksonville (part of Duval County) did not count in the presidential contest. That was four times as many as in white precincts elsewhere in the same county. The *Post* concluded, “Heavily Democratic and African American neighborhoods in Florida lost many more presidential votes than other areas because of outmoded voting machines and rampant confusion about bal-

<sup>15</sup> See app. I, “Population and voting characteristics of Florida counties, ranked by percentage of votes spoiled.” See also Governor’s Task Force, *Revitalizing Democracy*, chart 4, “Lost Votes? Blank or spoiled ballots in the last presidential election, by percentage,” pp. 31–32.

<sup>16</sup> Shirley Knight, supervisor of elections, Gadsden County, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 12, 2001, Verified Transcript, p. 31.

<sup>17</sup> See app. I, “Population and voting characteristics of Florida counties, ranked by percentage of votes spoiled.”

<sup>18</sup> See chap. 1.

<sup>19</sup> Josh Barbanel and Ford Fessenden, “Racial Pattern in Demographics of Error-Prone Ballots,” *The New York Times*, Nov. 29, 2000, p. A19 (hereafter cited as Barbanel and Fessenden, “Demographics of Error-Prone Ballots”). See also *Gore v. Harris*, 772 So. 2d 1243, 1258 (Fla. 2000) (finding that “the record shows voter error, and/or less than total accuracy in regard to the punch card voting devices utilized in Miami-Dade and Palm Beach counties, which these counties have been aware of for many years”).



A study conducted by *USA Today* and *The Miami Herald* concluded, "Voters in Florida's majority-African American precincts were nearly four times as likely to have their presidential election ballots invalidated than voters in precincts that are overwhelmingly made up of white voters."<sup>24</sup> The study also found that among the 100 precincts with the highest numbers of disqualified ballots, 83 of them are majority-African American precincts.<sup>25</sup>

Governor Bush's Select Task Force on Election Procedures, Standards and Technology stated that while "[s]ome voter errors are caused primarily by uneducated, uninformed, or disinterested voters . . . the error rates for those reasons seem to be less than 1 percent."<sup>26</sup> It stated that the large differences found in error rates for different kinds of voting systems "appear to be directly related to the type of equipment used."<sup>27</sup> The report went on to say that "[t]he differences in error rates among various kinds of voting systems are much too high to be accounted for solely by uneducated, uninformed or disinterested voters."<sup>28</sup>

That conclusion by the governor's task force appears to be buttressed by a recent congressional study produced by the staff of Representative Henry Waxman, a ranking member of the Committee on Government Reform. The study documented how voting results were affected in the city of Detroit by a switch in voting technology combined with voter education on how to use the new machine.<sup>29</sup>

lots." John Mintz and Dan Keating, "Spoilage Likelier for Blacks," *The Washington Post*, Dec. 3, 2000, p. A1.

<sup>24</sup> Laura Parker and Peter Eisler, "Ballots in Black Florida Precincts Invalidated More," *USA Today*, Apr. 6, 2001, p. A1.

<sup>25</sup> *Ibid.*

<sup>26</sup> Governor's Task Force, *Revitalizing Democracy*, p. 36.

<sup>27</sup> *Ibid.* Testimony was presented before the Commission that error rates can also be influenced by how equipment is maintained. For example, Jim Smith, co-chairperson of the Governor's Select Task Force on Election Procedures, Standards and Technology, testified that some of the voting machines are more than 30 years old, and in Miami-Dade County, "one reason they had a significant problem with chads is the machines hadn't been cleaned, maybe ever." Jim Smith Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 166-67.

<sup>28</sup> Governor's Task Force, *Revitalizing Democracy*, p. 37.

<sup>29</sup> See U.S. House of Representatives, Special Investigations Division, Committee on Government Reform, Minority Staff, *Election Reform in Detroit: New Voting Technology and In-*

The report analyzed precinct-level results for Detroit for the 1996 and 2000 presidential elections. It was determined that the number of Detroit voters whose ballots were invalidated decreased nearly two-thirds—from 3.1 percent to 1.1 percent—after the city switched from punch card to optical scan machines that warn of errors and allow an immediate revote.<sup>30</sup> Moreover, the report stated that the reduction in the undercount was especially large in precincts with high rates of uncounted votes in 1996; precincts that had over 7 percent uncounted votes for president in 1996 had less than 1 percent uncounted votes in 2000.<sup>31</sup>

#### PRECINCT-BASED COUNTING SYSTEMS

There was testimony at the Commission hearings to indicate that using precinct-based counting (PBC) systems—or counting mechanisms placed at each polling site—dramatically decreases spoilage rates.<sup>32</sup> PBC systems count ballots as they are cast. If a voter improperly votes for too many candidates (i.e., if he or she overvotes), the PBC system can be programmed to reject the invalid ballot. The ballot can then be set aside and the voter can be given another chance to cast a valid ballot.<sup>33</sup>

Dan Gloger, an expert on voting machinery with Melbourne Technical Services in Melbourne, Florida, testified that when PBC systems were used the drop off rate<sup>34</sup> in those juris-

*created Voter Education Significantly Reduced Uncounted Ballots*, Apr. 5, 2001.

<sup>30</sup> *Ibid.*, pp. 5-6. The city of Detroit spent nearly \$100,000 to introduce voters to the new system. This introduction included: (1) demonstrations in community centers, churches, festivals, etc., on how to use the new machine; (2) public service announcements on television, radio, and billboards informing voters about the new system; and (3) blanketing the city with flyers and pamphlets explaining how to vote with the new machine. *Ibid.*, p. 5.

<sup>31</sup> *Ibid.*, p. 1.

<sup>32</sup> Dan Gloger, voting technology expert, Melbourne Technical Services of Melbourne, Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 268-70.

<sup>33</sup> *Ibid.*, p. 268. See also the testimony of Shirley Knight, supervisor of elections, Gadsden County, who said precinct counters are needed to "stop the high number of overvoted ballots. And that's the main thing I saw in the county, that we had just a tremendous high number of overvoted ballots, which I think disenfranchised voters of their opportunity to vote on the president." Shirley Knight Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 30.

<sup>34</sup> The drop off rate is the number of overvotes and undervotes added together. An overvote occurs when a person

dictions was 0.8 percent.<sup>35</sup> However, when PBCs were not used—meaning when voters were not informed they had cast an invalid overvote ballot—the drop off rate rose to 4.8 percent.<sup>36</sup> Commissioner Christopher Edley, Jr., asked, “So the effect of having the overvote protection was essentially to give 4 percent of the voters back their franchise.”<sup>37</sup> “That’s correct,” responded Election Data Services machine expert Kimball Brace.<sup>38</sup>

Ion Sancho, supervisor of elections in Leon County, arrived at the same conclusion in his testimony before the Commission:

There was a failure for voting systems in Florida, but it went far beyond punch cards and chads that we saw highlighted by the media. Voters who cast their ballots in the presidential race and then had those ballots tabulated at some central or regional location lost their votes at a rate four to five times higher than voters who voted in counties that used precinct-based counting technology. Why? Because precinct-based voting systems allow the voters to correct any overvote errors they may have made.<sup>39</sup>

Supervisors of elections from both Monroe and Leon counties use precinct tabulation systems (the AccuVote system is used in both counties), and both supervisors of elections speak

very highly of the machines.<sup>40</sup> Leon County Supervisor of Elections Ion Sancho, whose county had the lowest spoilage rate in Florida at 0.18 percent, is particularly enthusiastic about the system. He called it “the simplest voting system in use in the United States of America”<sup>41</sup> and said the technology it uses (precinct-based optical scan technology) is “the only one that accurately reflected the will of the voters in the state of Florida.”<sup>42</sup>

Statistical data appear to bolster these favorable opinions: On average, the spoilage rate for counties using the precinct-based optical scan technology was 0.83 percent—far lower than the average spoilage rates for either central-based optical scan technology (5.68 percent) or central-based punch card technology (3.93 percent). Put another way, 22 of the 23 counties with the lowest spoilage rates used precinct-based optical scan technology (the remaining one used lever machines).<sup>43</sup>

votes for too many candidates, thereby invalidating his or her ballot, an undervote occurs when a voter, for whatever reason, does not select a candidate for an office. Kimball Brace, election technology expert, Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 245, 284–85.

<sup>35</sup> Dan Gloger, voting technology expert, Melbourne Technical Services of Melbourne, Florida, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 268.

<sup>36</sup> Kimball Brace, election technology expert, Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, pp. 284–85, 268–69. The testimony suggests that the type of voting machine used for the study was “optical scan,” but the transcript is not entirely clear. *Ibid.*

<sup>37</sup> Christopher Edley, Jr., commissioner, U.S. Commission on Civil Rights, Tallahassee Verified Transcript, Jan. 11, 2001, p. 270.

<sup>38</sup> Kimball Brace, election technology expert, Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 270. It is estimated that 26 percent of African American voters and 34 percent of white voters live in Florida counties that verify ballots as valid immediately after they are cast. John Mintz and Dan Keating, “Spoilage Likelier for Blacks,” *The Washington Post*, Dec. 3, 2000, p. A1.

<sup>39</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, pp. 12–13.

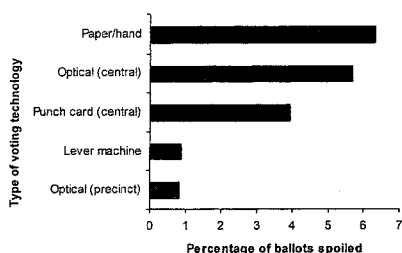
<sup>40</sup> Monroe County purchased the AccuVote system in 1993, and the county elections supervisor, Harry Sawyer, believes the system provides a fast, simple, and secure means of conducting elections. The day before the vote, all machines and phone lines are tested for accuracy. During the vote, voters mark an optically readable paper ballot in the privacy of a voting booth. The ballot is inserted into the AccuVote tabulator that immediately reads the votes cast, adds them to the total for the precinct, and drops the ballot into the secured ballot box. Precinct results can then be transmitted to a host server for accumulation. The size of the lettering on the ballot is changeable, allowing large print for those with visual difficulties. In addition, the system can be programmed for different languages to accommodate non-English-speaking individuals. Finally, if the ballot is not properly filled out, the AccuVote reader will immediately “kick out” the ballot with an explanation of the problem—for example, overvotes. When a ballot is spoiled, the voter places it in a sealed envelope and is given a new ballot. At the end of the voting day, each AccuVote machine, at each precinct is plugged into a phone line and the votes are uploaded to a computer located in the office of the county elections supervisor. After the ballots are run, the system is confirmed for accuracy. Mr. Sawyer reported no problems for Monroe County during the November 2000 election. The AccuVote has a sealed memory card that cannot be tampered with, and a clerk and inspector validate the numbers and forms: *See Interview Report, interview with Harry Sawyer, supervisor of elections, Monroe County, Feb. 1, 2001.*

<sup>41</sup> Ion Sancho Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 48.

<sup>42</sup> *Ibid.*, p. 15.

<sup>43</sup> *See chart 8-1.*

**CHART 8-1**  
**Percentage of Spoiled Ballots by**  
**Voting Technology**



SOURCE: Figure generated by U.S. Commission on Civil Rights staff, based on *Orlando Sentinel* survey as updated by the Collins Center.

#### BALLOT CONFUSION

Closely related to the equipment issue is ballot design and its effect on accurately recording votes. In Florida's November 7 general election, there were 12 candidates listed on the ballot for President—compared with only three or four in previous years. Across the state, election officials wrestled with ways to get more names into the available space.<sup>44</sup>

#### Palm Beach County

Theresa LePore, supervisor of elections for Palm Beach County, decided that because tens of thousands of her voters were elderly, she would not be able to solve the space problem by using extremely small typeface.<sup>45</sup> Instead, Ms.

LePore decided to place the names on two facing pages, with punch holes running down the center, and arrows pointing from the names to the holes. Wing-like in appearance, the ballot came to be known as the butterfly ballot.<sup>46</sup>

When the ballot cards were fed into the voting machines, some voters said the holes did not line up with the arrows. Moreover, there was confusion because the hole for Reform Party candidate Patrick J. Buchanan was the second hole down the center of the ballot, between the holes for George W. Bush and Al Gore—this despite the fact that Bush and Gore were listed first and second on the left-hand side of the ballot. The result was that in Palm Beach County, which has 337 Reform Party members, Buchanan received 3,407 votes—four times higher than the next highest county vote total he received in the state.<sup>47</sup> Even Buchanan acknowledged that he ordinarily would not have won so many votes in heavily Democratic Palm Beach County.<sup>48</sup>

Moreover, more than 19,000 Palm Beach County voters punched two separate holes when voting for President, thereby invalidating their ballots with an overvote.<sup>49</sup> That means approximately 63 percent of the 29,702 spoiled ballots in Palm Beach County were overvotes.<sup>50</sup> According to Kimball Brace, an election machine expert from Election Data Services, this “extremely high” percentage of overvotes is “just the opposite of what we normally observe,” which is 5 percent or less of the spoiled ballots.<sup>51</sup> Mr. Kimball testified that the high number of overvotes cast indicates confusion on the part of voters.<sup>52</sup> Based on this expert testimony, it appears clear

<sup>44</sup> Linda Howell, supervisor of elections, Madison County, testified that in the past, all ballots had to be certified by the state elections division. “Now,” said Ms. Howell, “we’re on our own to prepare a ballot.” Linda Howell Testimony, Tallahassee Verified Transcript, Jan. 12, 2001, p. 25. See also David Von Drehle, et al., “A Wild Ride into Uncharted Territory; Two Candidates Caught a Whiff of Defeat—and Then Rapidly Mobilized for a Recount War,” *The Washington Post*, Jan. 28, 2001, p. A1.

<sup>45</sup> See Theresa LePore, supervisor of elections, Palm Beach County, Testimony before the U.S. Commission on Civil Rights, Miami, FL, Feb. 16, 2001 (testifying “I basically use my own judgment and that of my staff to try to make the print a little bit larger for people that might have a problem reading”).

<sup>46</sup> See app. IV, excerpt from “Official Sample Ballot: Palm Beach County, Florida General Election,” Nov. 7, 2000, prepared by Theresa LePore, supervisor of elections, Palm Beach County.

<sup>47</sup> Stephanie Desmon, “Judge Denies New Vote in Palm Beach,” *The Baltimore Sun*, Nov. 21, 2000, p. 12A.

<sup>48</sup> *Ibid.*

<sup>49</sup> Matt Bai and Michael Isikoff, “Clouds Over the Sunshine State,” *Newsweek*, Nov. 20, 2000, p. 16. See also FLA. STAT. ch. 101.28, 101.5606 (1999) (prohibiting the use of voting systems or machines that permit the voter to cast a simultaneous ballot for two different candidates for a single office).

<sup>50</sup> Kimball Brace, election technology expert, Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 249.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*, p. 258.

that the Palm Beach County butterfly ballot, designed by Ms. LePore's office, led to the invalidation of thousands of ballots.

Before the November 2000, election, the butterfly ballot was shown to the major party county chairs and to campaign officials for every candidate. Ms. LePore stated that none of those campaign officials objected to the ballot's design.<sup>53</sup> However, after the election, the Commission heard testimony from several witnesses who criticized the ballot design.

**Witnesses Confirm Confusion in Palm Beach**

**Joanna Carbone** testified that she took her children to vote with her on November 7. She and her 14-year-old daughter entered the polling booth together. Ms. Carbone testified:

We placed our ballot into the little slot, lined up the red pegs, and proceeded to select our candidates. At first glance it looked like Al Gore was the second hole to be punched, so we punched the second hole. . . . Upon a second glance, a third look, a fourth, "What have I done," I realized that the second hole was for Pat Buchanan.<sup>54</sup>

Ms. Carbone said she took her ballot to a poll worker and asked for a second ballot, telling him she made a mistake. The poll worker said, "No, just take that ballot and place it into the box."<sup>55</sup> Ms. Carbone said she had "no reason to question" the poll worker because she "thought he knew his job."<sup>56</sup> Several days later, Ms. Carbone learned that, by law, she was allowed up to three ballots in casting her vote.<sup>57</sup> Testifying that her "civil and constitutional rights were violated," Ms. Carbone said she "went from being upset to angry to outraged."<sup>58</sup>

<sup>53</sup> Interview Report, interview with Theresa LePore, supervisor of elections, Palm Beach County, Jan. 30, 2001.

<sup>54</sup> Joanna Carbone Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 107.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*, pp. 107-08.

<sup>57</sup> FLA. STAT. ch. 101.5608(2)(b) (1999) (providing that "in no case shall a voter be furnished more than three ballots").

<sup>58</sup> Joanna Carbone Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 108. It is impossible to know the number of voters who, like Ms. Carbone, alerted poll workers of making ballot mistakes but were nevertheless directed to place the invalid ballots into the box. However, there was testimony from a poll worker who did know the law—that voters are allowed up to three ballots in casting a vote—and who replaced 68 ballots in his precinct alone on Election Day. See

**Jim Dickson** is vice president of the National Organization on Disability. Mr. Dickson, who is legally blind, testified that the butterfly ballot was a "classic case of blaming the victim."<sup>59</sup> He testified that although Palm Beach County Supervisor of Elections Theresa LePore said she designed the butterfly ballot to provide assistance for voters with low vision—

[LePore] not only failed to request the assistance of those who know how to develop effective large print media, but she consistently rebuffed the offers from activists in her county to provide assistance.<sup>60</sup>

Mr. Dickson explained that persons with low vision often experience difficulty with "tracking" on ballots with columns, and he said the butterfly ballot "took what would have been a two column problem and made it into a five column problem."<sup>61</sup> He concluded the ballot was "absolutely irresponsible to say the least."<sup>62</sup> At the Commission's Miami hearing when Ms. LePore was told of Mr. Dickson's testimony, she stated:

To my knowledge, nobody contacted my office to offer assistance. I had contacted other agencies, not with regard to the sight problem with the ballot, but as far as the language, and received no response in trying to go out and ask for assistance. . . .<sup>63</sup>

**Rabbi Richard Yellin** is a rabbi of a 2,800-member synagogue—"the largest retiree synagogue in Florida, maybe in the United States."<sup>64</sup> The rabbi testified there were so many voting problems in his synagogue-precinct that he "summoned the supervisor and . . . told her that the precinct should be closed until an announcement was made to all of those voting that the butterfly ballot was problematic."<sup>65</sup>

Millard Suid, poll worker, Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 130-31.

<sup>59</sup> Jim Dickson Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 206.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, p. 207.

<sup>62</sup> *Ibid.*

<sup>63</sup> Theresa LePore, supervisor of elections, Palm Beach County, Testimony, Miami Verified Transcript, Feb. 16, 2001, p. 372.

<sup>64</sup> Rabbi Richard Yellin Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 28-29.

<sup>65</sup> *Ibid.*, p. 29.

Rabbi Yellin reported that many of the people at his synagogue told him they mistakenly voted for Patrick J. Buchanan. The rabbi testified, "In my synagogue there's more than 100 Holocaust survivors. There's no way that anybody in my congregation would have voted or cast a vote for Buchanan."<sup>66</sup> He said that of the approximately 1,100 elderly Jewish voters with whom he had contact shortly after the election, 20 percent of them "had the same misprinted, misaligned experience in their voting booth."<sup>67</sup> The rabbi testified that these individuals were "experienced" voters who turn out to vote over 90 percent of the time and who "don't make mistakes."<sup>68</sup>

Testifying that the ballot's "arrows did not line up with the holes," Rabbi Yellin provided the Commission with an official copy of what he called a "misprinted" voting booklet containing "a total mistake in the instructions."<sup>69</sup> The rabbi concluded that "[b]ecause of negligence of the Palm Beach County election authorities who permitted the use of tainted machines and brochures to confuse the electorate, the nation ridiculed Palm Beach County citizens."<sup>70</sup>

#### Duval County

Testimony indicated there was confusion with the ballot in Duval County. The list of presidential candidates was spread over two pages, and voters were only permitted to vote for one candidate. Some people, however, voted for one candidate on each of the two pages, thereby invalidating their ballot with an overvote. Moreover, this problem was exacerbated by the fact that the sample ballot in Duval County explicitly instructed people to "vote all pages" of the ballot, leading to thousands of spoiled ballots.<sup>71</sup> Kimball Brace from Election Data Services testified that of the 26,909 spoiled ballots found in Duval County, 81 percent—or 21,796—were "overvotes." Mr. Brace attributes these mistakes to voter confusion.<sup>72</sup>

<sup>66</sup> Ibid.

<sup>67</sup> Ibid., p. 30.

<sup>68</sup> Ibid., p. 47.

<sup>69</sup> Ibid., pp. 31–32. See app. IV.

<sup>70</sup> Ibid., p. 32.

<sup>71</sup> Kimball Brace, election technology expert, Election Data Services, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 252.

<sup>72</sup> Ibid., pp. 250, 258.

#### CONCLUSION

During Florida's 2000 presidential election, different voting systems, with different error rates, were used throughout the state. Compelling evidence indicates that voters in poorer, predominantly people of color communities were more likely to have voting systems with higher spoilage rates. These voters, therefore, had a decreased chance of having their votes counted accurately—if counted at all.

It is also clear that Florida voters who cast their ballots and then had those ballots tabulated at a central location were more likely to lose their vote because of a spoiled ballot than were voters who used precinct-based counting (PBC) technology. PBC voting systems reject invalid ballots and allow voters to immediately correct overvote errors at the polling place. In fact, in Florida, 22 of the 23 counties with the lowest spoilage rates used PBC technology.<sup>73</sup> There is strong evidence that whatever voting system(s) Florida uses in future elections, incorporating PBC technology will significantly increase the chances that a voter will have his or her vote counted.

Finally, the evidence demonstrates there was substantial ballot confusion during Florida's November 2000 election, which led, in some jurisdictions, to unprecedented numbers of invalidated ballots through overvoting. The majority of the complaints were registered in Palm Beach and Duval counties. In Palm Beach County, the so-called butterfly ballot caused people to mistakenly vote for the wrong candidate and to complain of a "misprinted, misaligned experience in their voting booth."<sup>74</sup> A representative of the National Organization on Disability concluded the butterfly ballot's design was "absolutely irresponsible" when it came to persons with visual impairments.<sup>75</sup> In Duval County, the ballot spread presidential names over two pages, leading thousands of voters to invalidate their ballots by voting on both pages—a problem com-

<sup>73</sup> See app. I, "Population and voting characteristics of Florida counties, ranked by percentage of votes spoiled." See also Governor's Task Force, *Revitalizing Democracy*, chart 4, "Lost Votes? Blank or spoiled ballots in the last presidential election, by percentage," pp. 31–32.

<sup>74</sup> Rabbi Richard Yellin Testimony, Miami Verified Transcript, Feb. 16, 2001, pp. 29–30.

<sup>75</sup> Jim Dickson, vice president, National Organization on Disability, Testimony, Tallahassee Verified Transcript, Jan. 11, 2001, p. 207.

pounded by the sample ballot explicitly instructing people to "vote all pages" of the ballot.

While nothing can be done to restore votes lost by Florida voters in the November 2000 election due to machine disparities and ballot

design flaws, the Commission believes that illuminating and cataloguing these various difficulties can prevent their recurrence in Florida and elsewhere.

## CHAPTER 9

## Findings and Recommendations

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*The great majority of Americans . . . are uneasy with injustice but unwilling yet to pay a significant price to eradicate it.*<sup>1</sup>

**OVERVIEW**

The U.S. Commission on Civil Rights conducted an extensive public investigation of allegations of voting irregularities during the 2000 presidential election in Florida. The investigation, utilizing the Commission's subpoena power, included three days of hearings, more than 30 hours of testimony, 100 witnesses, and a systematic review of more than 118,000 pages of pertinent documents.<sup>2</sup>

Perhaps the most dramatic undercount in Florida's election was the uncast ballots of countless eligible voters who were turned away at the polls or wrongfully purged from voter registration rolls.

While statistical data, reinforced by credible anecdotal evidence, point to widespread disenfranchisement and denial of voting rights, it is impossible to determine the extent of the disenfranchisement or to provide an adequate remedy to the persons whose voices were silenced in this historic election by a pattern and practice of injustice, ineptitude, and inefficiency.

Despite the closeness of the election, it was widespread voter disenfranchisement, not the

dead-heat contest, that was the extraordinary feature in the Florida election. The disenfranchisement was not isolated or episodic. And state officials failed to fulfill their duties in a manner that would prevent this disenfranchisement.

The Commission does not adjudicate violations of the law, hold trials, or determine civil or criminal liability. Therefore, the recommendations that follow urge the U.S. Department of Justice and Florida officials to institute formal investigations based on the facts in this report to determine liability and to seek appropriate remedies.

The Commission is charged to "investigate allegations in writing under oath or affirmation relating to deprivations—(A) because of color, race, religion, sex, age, disability, or national origin; or (B) as a result of any pattern or practice of fraud; of the right of citizens of the United States to vote and have votes counted. . . ."<sup>3</sup> The Commission is also charged with reporting its findings to the President and Congress as appropriate.<sup>4</sup> The uncontroverted evidence leads the Commission to the following findings and recommendations.

**CHAPTER 1: VOTING SYSTEM CONTROLS AND FAILURES****Voter Disenfranchisement****Findings**

- During Florida's 2000 presidential election, restrictive statutory provisions, wide-ranging errors, and inadequate resources in the Florida

<sup>1</sup> Reverend Dr. Martin Luther King, Jr., "Where Do We Go From Here: Chaos or Community?" in *A Testament of Hope: the Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (Harper Collins Publishers, 1991), p. 562.

<sup>2</sup> This report was subjected to required reviews to ensure its legal integrity and to give affected agencies an opportunity to review and provide comments. The governor, secretary of state, and the Florida attorney general, among others, were given an opportunity to review and respond to those portions of the report affecting their offices. These comments were then considered and where appropriate are reflected in this final report.

<sup>3</sup> 42 U.S.C. § 1975a(a)(1) (2000) (emphasis added).

<sup>4</sup> 42 U.S.C. § 1975a(c)(2) (2000).

election process denied countless Floridians of their right to vote.

- This disenfranchisement of Florida voters fell most harshly on the shoulders of African Americans. Statewide, based on county-level statistical estimates, African American voters were nearly 10 times more likely than white voters to have their ballots rejected in the November 2000 election.<sup>5</sup>

- Poorer counties, particularly those with large minority populations, were more likely to use voting systems with higher spoilage rates than more affluent counties with significant white populations. For example, in Gadsden County, the only county in the state with an African American majority, approximately one in eight voters was disenfranchised. In Leon County, on the other hand, which is home to the prosperous state capital and two state universities, fewer than two votes in 1,000 were not counted. In Florida, of the 100 precincts with the highest numbers of disqualified ballots, 83 of them are majority-black precincts.

- Even in counties where the same voting technology was used, blacks were far more likely to have their votes rejected than whites.

- The recently enacted election reform law mandates that a county must use an electronic or electromechanical precinct-count tabulation voting system and that as of September 2, 2002, a voting system that uses a device for the punching of ballots by the voter may not be used in Florida.

- While technology improvements and the adoption of state-of-the-art voting systems statewide should reduce overall ballot spoilage rates and lessen the disparity between the rate that African Americans' and white voters' ballots are rejected, these enhancements will not, standing alone, eliminate the racial disparity in ballot rejection rates.

- The allocation of adequate financial resources and enhanced, effective training of poll workers, other election workers, educating voters, and accountability standards for state and local officials, as well as technological improvements in voting systems, should reduce the rate at which ballots are spoiled and should lessen

the disparity in vote spoilage rates between whites and blacks.

- The Voting Rights Act of 1965, as amended, prohibits intentional discrimination and forbids practices or procedures that (when considering the "totality of the circumstances") result in people of color being denied equal access to the political process.

- Under the Voting Rights Act of 1965, as amended, jurisdictions covered under section 5 of the act cannot make voting changes unless and until they obtain approval (preclearance) either from the federal district court in Washington, D.C., or from the U.S. attorney general. Five Florida counties are subject to section 5 requirements: Collier, Hardee, Hendry, Hillsborough, and Monroe.

### Recommendations

1.1 The U.S. Department of Justice should immediately initiate the litigation process against the governor, secretary of state, director of the Division of Elections, specific supervisors of elections, and other state and local officials responsible for the execution of election laws, practices, and procedures, regarding their contributions, if any, to the extraordinary racial disparity in the rate that votes were rejected, through their actions or failure to act before and during the 2000 presidential election, in violation of the Voting Rights Act of 1965, as amended. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

1.2 The Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials who violated the Voting Rights Act of 1965, as amended, and/or Title IX of the Florida statutes through their actions or failure to act before, during, and after the November 2000 election. Based on the results of the investigation, appropriate enforcement action should be initiated to ensure full compliance with the election laws.

1.3 The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against all state election officials who through their actions or failure to act violated the Voting Rights Act of 1965, as amended, by

<sup>5</sup> These figures are based on a complex statistical analysis of statewide estimates using county-level data. The analysis is more fully presented in a report prepared by Dr. Allan Lichtman. See app. VII.



not obtaining preclearance either from the federal district court of Washington, D.C., or the U.S. attorney general. Based on the results of the investigation, appropriate enforcement action should be initiated to ensure full compliance with the election laws.

**1.4** The state of Florida should institute effective monitoring systems to ensure the uniform implementation of any voting system that allows for a precinct count and an opportunity for the voter to correct his or her ballot; annually analyze the rejection rates of the voting systems used in the previous year; consider, based upon that analysis, decertifying any voting system that minimizes the rejection of spoiled ballots; and ensure that there is a consistent ballot rejection rate throughout the state. The funding authorized by the state legislature, but not yet distributed to the counties, must be sufficient to support this mandate. More specifically, the funding should ensure that all counties can obtain the required technology; and can provide appropriate voter education and effective training for poll workers and other election workers and officials. Appropriate administrative rules should be adopted that provide clear guidance and targeted oversight responsibilities for election officials at every level to ensure proper implementation of these requirements.

**1.5** The state of Florida should retain knowledgeable experts to undertake a formal study to ascertain the reasons for the disparity in the vote rejection rates between white voters and persons of color and then adopt and publicize procedures to eliminate this disparity. The study should target "best practices" that ensure comprehensive poll worker training, enhanced education for first-time voters, and the delivery of adequate resources in all counties to resolve problems as they arise on Election Day.

**1.6** The five counties subject to section 5—Collier, Hardee, Hendry, Hillsborough, and Monroe—should take immediate steps to determine if certain specifications, particularly the "voter responsibilities" provisions set forth in the recently enacted Florida election law changes, constitute tests or devices that trigger preclearance action by the U.S. Department of Justice.

Moreover, the U.S. Department of Justice should review these concerns.

**1.7** Adequate financial resources should be allocated to educate voters, poll workers, and state election officials on all appropriate policies and procedures, including, but not limited to, general voting rights, a voter's rights while at the polling place, how the voter should use the technology to vote for his or her candidate of choice, and the proper procedures to resolve issues that arise at the polling place on Election Day.

#### *The Impact of the Purge List on Persons of Color*

##### **Findings**

- The state of Florida's statutorily mandated purge list, compiled by a private firm, was provided to county supervisors of elections with names that were inexact matches. The data provided demonstrated that this list had at least a 14.1 percent error rate.
- African Americans had a significantly greater chance of being listed on Florida's mandated purge list. The probability of names of African Americans appearing on the list in error was significantly greater than the likelihood of the names of whites being erroneously included on the purge list.
- The state of Florida's use of this purge list, combined with the state law that places the burden on voters to remove themselves from the list, resulted in denying countless African Americans the right to vote.

##### **Recommendations**

**1.8** The U.S. Department of Justice should immediately initiate the litigation process against Florida state officials whose list maintenance activities during the 2000 presidential election discriminated against people of color in violation of federal law or resulted in the denial of people of color to have equal access to the political process. The process should focus on at least the following factors: the rate African Americans appear on the purge list, the rate that African Americans appear on this list in error, the fact that state law places the burden on the voter to prove his or her innocence to be

permitted to vote, and the awareness of state officials that names would be placed on these lists in error. Appropriate enforcement action should be initiated to ensure compliance with the Voting Rights Act of 1965, as amended.

**1.9** The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials who implemented list maintenance activities before, during, and after the November 2000 election that either intentionally discriminated against people of color or resulted in the denial of people of color to have equal access to the political process. The litigation process should include, but not be limited to, the methodology for the compilation of names for the exclusion lists, the burden upon the voter to prove his or her eligibility status before he or she could remain on the voter rolls, the forecast of inexact matches on the exclusion lists, the methodology for data verification, and the criteria for removal of a voter's name from the voter rolls. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

**1.10** The state of Florida should swiftly and uniformly implement specific provisions of its recently adopted electoral reform laws, to eliminate the current practice that places the burden on eligible voters to prove they have not lost their civil rights to be permitted to vote. Sufficient funding should be provided to support this mandate. The appropriate administrative rules should be promulgated to ensure implementation of the legislation.

## **CHAPTER 2: FIRST-HAND ACCOUNTS OF VOTER DISENFRANCHISEMENT**

### ***Voters Not on Rolls and Unable to Appeal***

#### **Findings**

- Many voters who attempted to register to vote were not notified of alleged application errors until Election Day, or in some instances, after Election Day. These voters were also denied the opportunity to correct the information so that they could vote.

- Other voters in Florida submitted their voter registration applications well before the deadline, but on Election Day were informed by poll workers that there was no evidence of their registrations.

- Many Floridians who were registered and voted in past elections were informed for the first time on November 7, 2000, that their names had been removed prior to Election Day. These individuals were given no opportunity to appeal this determination.

- On November 7, 2000, countless voters in Florida were denied the opportunity to vote because their names did not appear on the lists of registered voters.

- Voters (whose names were removed without notice prior to the November 2000 election) were neither allowed to vote by affidavit nor appeal their removal from the voter rolls.

- During the 2000 presidential election, poll workers in numerous Florida counties confronted significant obstacles to communicating with supervisors of elections offices to verify the accuracy of voters' registrations. Because of factors such as insufficient telephone systems in supervisors of elections offices, incorrect use of laptop computers intended to access county voter registration information, and the lack of a computer in each voting precinct, a significant number of eligible Florida residents were denied their right to vote.

- The state of Florida enacted a new provision in the law that permits provisional balloting under restricted circumstances. This law is too restrictive to address the numerous instances caused by governmental inefficiency or error in which eligible voters may be denied opportunities to vote in an election.

#### **Recommendations**

**2.1** The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated relevant federal and/or state laws that required poll workers be able to communicate with election officials or access data to resolve issues during the November 2000 election. The process should include, but not be limited to, insufficient telephone systems in supervisors of elections offices, incorrect

use of laptop computers intended to access county voter registration information, and the lack of at least one computer in each voting precinct to access voter registration information. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

**2.2** While the newly enacted Florida legislation provides for a provisional ballot to those whose eligibility cannot be determined at the precinct where he or she should be properly registered, the Florida legislature should enact legislation and/or appropriate administrative rule promulgation to provide for access to a provisional ballot in every polling place and where the voter executes an appropriate affidavit attesting that he or she is legally entitled to vote on Election Day, even if the voter mistakenly believes it is the precinct where he or she should be properly registered. The state of Florida should also provide an immediate right to appeal the discarding of a ballot with resolution prior to the canvassing of the election or counting of ballots. Sufficient funding should be provided to support this mandate.

**2.3** Any voter who is denied the opportunity to vote on Election Day should have an absolute right to appeal this determination, as well as a right to receive resolution of the issue prior to the canvassing of the election or the counting of ballots. Thus, any voter wrongfully denied the right to vote will have an opportunity for his or her vote to count in the same election in which the denial initially occurred.

**2.4** Resources should be allocated to create a system of voter reminder cards. These cards should be mailed to voters before every election and inform them of their registration status and the location of their polling place. In addition, an electronic or automated telephone system could be devised that would allow voters to access their registration status and polling place location via the Internet or by telephone.

**2.5** Each supervisor of elections should devise systems to process voter registration applications and notify voters of any errors or missing data within a reasonable time to maintain eligibility to vote in the next election.

**2.6** The Division of Elections should mandate through legislation and/or appropriate administrative rule promulgation proactive measures to verify and update the information received from the supervisors of elections on a regular basis to ensure that all properly registered voters are allowed to exercise their right to vote.

**2.7** Supervisors of elections should ensure there is a sufficient number of properly trained staff available at their central offices to answer calls and resolve problems throughout the day during every election. Moreover, supervisors of elections should routinely examine the capability of their respective offices' telephone systems to determine whether additional resources should be requested to supplement their communication procedures during elections where a high volume of voters is expected. Accordingly, during those times, supervisors of elections offices should have the capability of increasing the number of available phone lines in order to meet the demand. Supervisors of elections should be provided with sufficient funding to accomplish this mandate.

**2.8** Poll workers should be adequately trained to use any available measure under Florida election law that would permit properly registered individuals to vote, including, but not limited to, voting by affidavit, provisional ballot, and all language and special needs assistance. Poll workers should continue to be given training on the use of laptop computers that are designated for accessing current voter registration information. Further, all polling places in each county should have computers for this purpose. Supervisors of elections' staff who are thoroughly familiar with computerized methods of accessing voter registration data should be available at each polling site on Election Day to assist poll workers.

**2.9** Counties should allocate sufficient resources for the effective implementation of Florida election laws, including, but not limited to, laws that mandate voter education, poll worker training, laptop computers for each precinct, additional phone lines on Election Day, automated registration systems/software, and administrative costs of appeals.

**2.10** The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act, violated relevant federal and/or state laws that ensure polling places are neither closed during official poll hours nor moved without the required notification to affected voters. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

**2.11** The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated relevant federal and/or state laws by denying voters who arrived at a polling place during official poll hours their right to vote. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

**2.12** The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated relevant federal and/or state laws by neither uniformly informing drivers of the "motor voter" registration process nor ensuring that the voter registration applications arrived at the appropriate supervisor of elections office and were processed in a timely fashion. The process should include, but not be limited to, the failure to include the names of drivers who satisfactorily completed voter registration applications to appear on the voter rolls for the November 2000 election, the failure to inform voter registration applicants that a driver's license change does not automatically update voter registration, and lack of a verification system to ensure that the appropriate supervisor of elections received all voter registration applications in a timely manner. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

***Polling Places Closed Early or Moved Without Notice***

**Findings**

- The official statewide poll hours on November 7, 2000, were 7 a.m. to 7 p.m. Eastern Standard Time and Central Standard Time. During these times, polls were to be open and anyone present in a precinct prior to 7 p.m. maintained his or her right to vote.
- In several instances, voters who had been standing in line before 7 p.m. were not allowed to vote, because poll workers stopped the voting at 7 p.m.
- In other instances, voters were prevented from entering a polling place when the gates automatically locked at 6:15 p.m.
- Some polling places were moved without prior notice to the affected voters.
- Some voters who reported to their assigned polling places on Election Day neither received notice of the move nor were given further instructions on the location of their new polling place.
- The above voters were not allowed to vote by affidavit or provisional ballot.

**Recommendations**

**2.13** Once a supervisor of elections determines that a polling place should be moved, all affected voters should be promptly notified by mail and the information should be posted on the county's Web site and otherwise publicized in a manner most effective in reaching the voters of that precinct.

**2.14** The former polling place should have clearly posted signs throughout the location at a reasonable time preceding the election and on Election Day, which not only identify the new polling place, but also provide clear directions to the polling place.

**2.15** Poll workers should also be provided with a list of all polling places, including those that were recently moved and closed. Poll workers should be able to inform voters of the location of the new polling place.

**2.16** Poll workers should be educated regarding proper poll closing procedures to ensure that all voters who arrive at the polls before closing time are permitted to vote. Florida election law should be changed to permit those wrongfully denied an opportunity to vote an immediate right to appeal with resolution of the issue prior to the canvassing of the election or counting of ballots. A listing of all polling places should be widely distributed and featured prominently in the print media within one week of the election.

***National Voter Registration Act:  
The Motor Voter Law***

**Findings**

- Many voters who completed voter registration applications at the Department of Highway Safety and Motor Vehicles (DHSMV) when they updated their driver's license information discovered on Election Day that they were not registered or their names did not appear on the rolls.
- DHSMV examiners did not inform voters that changing their address on their driver's license does not automatically register them to vote in the new county of residence. In addition, DHSMV does not retain copies of voter registration applications, which are subsequently transmitted to supervisors of elections.
- Once DHSMV has transmitted voter registration applications to supervisors of elections offices, there is no verification system in place to ensure that the supervisors of elections received this information.
- Once a driver changes his or her driver's license address, the DHSMV is not required to forward voter registration applications to supervisors of elections offices for the new resident county of the driver.

**Recommendations**

**2.17** The DHSMV should be mandated through legislation and/or appropriate administrative rule promulgation to forward completed voter registration applications to the supervisor of elections office of the new county of residence for the voter.

**2.18** Driver's license examiners should be trained to inform applicants that any change in their driver's license files does not automatically update their voter registration information. Examiners should inform voters that completion of registration applications does not guarantee the appearance of their names on the voter rolls in their county of residence and that applicants should contact local supervisors of elections offices for information on their voter registration status.

**2.19** The DHSMV, through enacted legislation and/or appropriate administrative rule promulgation, should be required to devise a uniform statewide system of review to verify that supervisors of elections offices received DHSMV voter registration applications in a timely manner. Copies of transmitted voter registration applications should be kept in the DHSMV database or files for a reasonable time after transmission.

**2.20** Resources should be allocated to the DHSMV for the additional staff and training required to provide the services recommended.

***Police Presence at or Near Polling Sites***

**Findings**

- Florida Highway Patrol troopers conducted an unauthorized vehicle checkpoint within a few miles of a polling place in a predominately African American neighborhood. Several Florida voters reported seeing Florida Highway Patrol troopers and other uniformed law enforcement officials in and around polling places on Election Day.
- The Florida Highway Patrol did not anticipate that the existence of the checkpoint would intimidate voters.

**Recommendations**

**2.21** No law enforcement agency should conduct routine checkpoints or other traffic barriers around polling locations. Checkpoints and other traffic barriers should only occur on Election Day in case of emergencies or exigent circumstances.

2.22 As recommended in previous Commission reports, public forums involving both the community and Florida law enforcement agencies should take place at regular intervals throughout the year. These forums would allow all in attendance—including law enforcement officers and officials, elected officials, and community members—to learn about and develop a greater respect for the racial, economic, and cultural diversity of Floridians. The dialogue and idea exchange at the public forum should allow concerns to be addressed before they become serious grievances, e.g., the perceived use of checkpoints predominantly in communities of color, the perceived use of checkpoints on Election Day to prevent certain communities from participating in the electoral process, and the perceived intimidation in the use of checkpoints on Election Day.

### CHAPTER 3: RESPONSIBILITY WITHOUT ACCOUNTABILITY?

#### *Delegation of Responsibilities*

#### Findings

- Florida's statutory scheme for elections provides responsibility without accountability and contributed significantly to the disenfranchisement of Florida voters.
- The governor chose not to exercise his authority to appoint special officers to investigate alleged election law violations in response to the allegations of impropriety in the 2000 presidential election.
- The secretary of state chose to exercise authority to ensure the vote count was discontinued and that the vote was canvassed after the election, but did little to ensure that Floridians would be able to get to the polls and be permitted to vote. The secretary's office did little to ensure that the state was prepared for the election, adequate resources were available to address problems arising on Election Day, Florida voters received adequate education on voting processes, election precincts were appropriately staffed, and election workers received needed education and training.
- The secretary of state delegated her statutory obligation before and during the 2000 presidential election, to "[o]btain and maintain uniformity in the application, operation and interpretation of the election laws" (as it relates

pretation of the election laws" (as it relates to ensuring that legal voters would be permitted to vote) to the degree that her duty was exercised on such a discretionary basis as to be arbitrary.

#### Recommendations

3.1 The U.S. Department of Justice should initiate the litigation process against the governor regarding his failure to appoint special officers to investigate alleged election law violations that discriminated against people of color. Appropriate enforcement action should be initiated to ensure compliance with the Voting Rights Act of 1965, as amended.

3.2 The U.S. Department of Justice should initiate the litigation process against the secretary of state regarding her disregard of statutory obligations (as they relate to ensuring legal voters were permitted to vote during Florida's 2000 presidential election), which either discriminated against people of color or resulted in their denial of equal access to the political process in violation of federal law. Appropriate enforcement action should be initiated to ensure compliance with the Voting Rights Act of 1965, as amended.

3.3 The state of Florida should pass legislation requiring the secretary of state to ensure that the state is prepared for elections, adequate resources are available to address problems arising on Election Day, Florida voters receive adequate education on voting processes, election precincts are appropriately staffed, and election workers receive needed education and training. These changes should ensure that there is an effective process for challenging a secretary if he or she does not fulfill these statutory mandates.

3.4 The governor of Florida should immediately appoint special officers to investigate alleged violations of election laws under the authority vested in him by section 102.091 of the Florida Election Code. If violations are found, then the governor should ensure that the violators are prosecuted as provided for under the law.

3.5 The Civil Rights Division in the Office of the Florida Attorney General should develop a

cooperative relationship with the Florida Elections Commission and the Florida Division of Elections to ensure that all individuals complaining that they were denied the right to vote have their complaints processed by the appropriate agency in an expeditious manner.

#### **CHAPTER 4: RESOURCE ALLOCATION**

##### ***Voter Education***

##### **Findings**

- Although the state Division of Elections is mandated to provide voter education assistance to the public, as well as voter education technical support to supervisors of elections, Florida's supervisors of elections generally expect the state to provide limited support (e.g., legislative updates and legal advice) and/or do not anticipate that they will receive direct resources from the division (such as financial assistance for local voter education initiatives).
- The omission of this possible financial resource contributes to the counties' lack of success in providing extensive and consistent outreach to first-time voters and those residents with special needs. Currently, it is unclear whether supervisors of elections would receive state financial support to fund local voter education initiatives if they seek the state's assistance.

##### **Recommendation**

4.1 The Division of Elections should cooperate with the appropriate state and local authorities (e.g., Florida's legislature and county boards of commissioners) to devise a mechanism for supervisors of elections to request and receive supplemental state funding for essential voter education initiatives that address the particular needs of the residents in their respective counties.

##### ***Educating the Public on Voter Fraud and the Mechanics of Voting***

##### **Findings**

- The Division of Elections expended funds to provide public service announcements and other

advertising to fulfill its mandate of educating the public on voter fraud. In spite of these expenditures, it is unclear whether the public was informed of the essential elements of voter fraud, as defined by Florida law. As a result, state estimates of the incidence of voter fraud that are based on public reports of alleged fraudulent voting practices may not be accurate.

- There is no evidence that the Division of Elections spent a comparable amount of funds for voter education and/or instructing Florida residents on how to cast their votes properly.
- The Division of Elections failed to fulfill its obligation to educate Florida residents on the mechanics of voting.

##### **Recommendations**

4.2 Future public service announcements and advertisements should plainly define voter fraud, provide succinct examples of when fraud occurs, and suggest measures that members of the public can take to prevent and/or report its occurrence.

4.3 The Division of Elections should also provide an appropriate level of funding for advertisements and public service announcements that educate Florida residents on the mechanics of voting, as well as the importance of voting.

4.4 The Division of Elections should maintain a routine and working relationship with all supervisors of elections, to become familiar with voter education assistance needs of each county, as well as the types of voting systems used in each jurisdiction.

4.5 The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated relevant federal and/or state laws through the manner by which funds were distributed to polling places or precincts. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

***No Process for Challenging Reduced Supervisors of Elections' Budgets***

**Finding**

▪ Florida's supervisors of elections do not have a specific process to challenge the level of funding approved by their respective county boards of commissioners to update voting equipment, provide relevant voter education resources, and/or supplement poll worker training. Consequently, expected voting needs in various counties remain unmet, since supervisors of elections have limited financing alternatives to augment reduced budget proposals.

**Recommendations**

4.6 The secretary of state's office, the Florida legislature, county boards of commissioners, and supervisors of elections should jointly create a process for supervisors of elections to challenge local funding decisions. Possible solutions include requiring an amendment to the Florida statutes in order to permit supervisors of elections access to an appeals process (as constitutional officers); or providing state financing to fund proposed budgets of supervisors of elections offices, if specific prerequisites have been met (e.g., the anticipated unavailability of county financing).

4.7 The state of Florida should enact a specific law to authorize use of state emergency funds that are earmarked for elections preparation in order to supplement proposed budgets of supervisors of elections offices. This funding would be accessible to supervisors of elections when adequate county financing is not available. Sufficient funding should be provided to support this mandate, and appropriate administrative rules should be promulgated to ensure meaningful implementation of the law.

***Inconsistent Poll Worker Training among Florida's Counties***

**Findings**

▪ The quantity and quality of training provided to poll workers vary among counties. As a result, poll workers throughout the state do not receive consistent guidance on issues that affect

an individual's right to vote (e.g., instructing residents on the mechanics of voting, appropriately assisting voters with disabilities, offering substitute ballots when spoilage occurs, and verifying voters' registration).

▪ The secretary of state and the Division of Elections failed to provide clear and consistent guidance for the training of poll workers.

**Recommendations**

4.8 Each county board of commissioners should regularly review its respective county's financial allocation for poll worker training. Input from the secretary of state's office may be required to ensure uniform instruction materials and guidance on state voting regulations, as well as funding for supplemental training. To determine the effectiveness of training curricula, supervisors of elections offices should routinely obtain responses from a representative sample of each county's poll workers regarding any difficulties they encountered on Election Day, how prepared they were to solve these problems, and suggestions on improving their training courses. Information derived from these responses should be included in the design of future poll worker training curricula.

4.9 State and county officials should establish certification requirements for poll workers to assure the public that poll workers have recently been instructed in the basics of election law and procedures.

**CHAPTER 5: THE REALITY OF LIST MAINTENANCE**

***Who Are the Disenfranchised?***

**Findings**

▪ Approximately 3.9 million Americans are disenfranchised or separated from their right to vote in public elections due to their status as former offenders.

▪ Over 36 percent of the total disenfranchised population of these offenders consists of African American men.

▪ Thirteen percent of African American men are disenfranchised.



- Thirty-one percent of the Florida disenfranchised population consists of African American men.
- Florida's recently enacted electoral reform law failed to change the state's policy of permanently disenfranchising former felons, which produces a stark disparity in disenfranchisement rates of African American men compared with their white counterparts. The state also failed to reform the laborious and protracted executive clemency application procedures.

### Recommendations

5.1 The state of Florida should authorize legal measures to ensure that former felons receive automatic restoration of their civil rights upon satisfaction of their sentences, including probation. Sufficient funding should be provided to support this mandate. Moreover, appropriate administrative rules should be promulgated to monitor the implementation of the law. The governor should issue an executive order to streamline the executive clemency application procedures to provide the swift restoration of civil rights to persons who are so entitled.

5.2 The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated relevant federal and/or state laws by permanently disenfranchising voters on the basis of felony conviction. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

5.3 The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated relevant federal and/or state laws through the method by which private entities were involved with list maintenance activities. The process should include, but not be limited to, the failure to include persons adjudicated mentally incompetent to vote in the compilation of the exclusion lists, the matching logic prescribing for false positives or inexact matches, the inclusion of criminal history information from states other than Florida, and the failure to prescribe uniform provisions for voters

who erroneously appeared on the exclusion lists. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

5.4 The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated relevant federal and/or state laws by failing to provide standard training to election employees. The process should include, but not be limited to, whether the Division of Elections provided technical assistance to the supervisors of elections on voter education and election personnel training services; monitored and approved training courses for continuing education for supervisors of elections; and coordinated, on an annual basis, two statewide workshops for the supervisors of elections by reviewing and providing updates on the election laws to ensure uniformity statewide in the interpretation of the election laws. The process should also consider the standards by which names were removed from the voter rolls. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

5.5 The Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated the Voting Rights Act of 1965, as amended, and/or Title IX of the Florida statutes through the failure to give full faith and credit to the automatic restoration of civil rights in other states; and the inconsistencies in the Executive Clemency Board's policy statement (that felons who enter Florida with their civil rights need not apply for civil rights in Florida) and its rules (requiring that the felons who enter Florida must apply for civil rights in that state). Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

### Data Verification

### Findings

- The 1997 Miami mayoral election, with its high incidence of voter fraud, gave impetus to the drive for a statutory requirement for the

state to award a contract to a private entity to assist in purging the voter files.

- The Division of Elections solicited bids from private entities through requests for proposals. The first contract was awarded to Professional Analytical Systems & Services. DBT Online was ultimately awarded the contract through an invitation to negotiate.

- The Division of Elections instructed DBT Online, through a Requirements Document, to use last name, first name, and date of birth as matching criteria for the felon exclusion list.

- Although persons adjudicated as mentally incompetent to vote, in accordance with Florida election laws are to be purged from the voter rolls, DBT Online was not required to include such data in its list. DBT Online provided a list of duplicate registrants, deceased persons, and felons whose civil rights have not been restored.

- The purge list was compiled using certain state-provided databases. DBT Online provided databases in conjunction with the matching logic prescribed by the Division of Elections. The matching logic prescribed by the Division of Elections for compiling the purge list resulted in inexact matches (“false positives”). The Division of Elections contracted for the more inclusive methodology of processing the data and did not require DBT Online to produce a list of exact matches.

- There were no clear guidelines from the governor, the secretary of state, or the director of the Division of Elections to subordinates to employ list maintenance strategies that would protect eligible voters, particularly historically disenfranchised populations, from being wrongfully removed from the voter registration rolls.

- An official of the Division of Elections dictated to representatives of the private firm to employ a strategy that resulted in a disproportionate number of eligible African American voters being removed from the voter registration rolls in error.

- The Division of Elections failed to take the same cautionary steps before the 2000 presidential election that were taken before the 1998 election to alert supervisors of elections to verify the exclusion lists with the greatest of care and to provide opportunities for persons to vote by affidavit ballot in those instances in which the voter makes a credible challenge to his or her removal from the voter registration rolls.

- Weary state officials missed opportunities to provide necessary training to supervisors of elections on verification procedures, even when scheduled or requested.

#### **Recommendation**

**5.6** The state of Florida should authorize legal measures to ensure that no registered voter is purged from voter rolls or files, unless he or she is an exact match of someone who is deceased, also registered to vote in another jurisdiction, a convicted felon without restoration of his or her civil rights, or someone adjudicated as mentally incompetent to vote. The state of Florida should provide clear guidance to the Division of Elections on how to use information provided from its own state agencies to determine the eligibility of registered voters. Sufficient funding should be provided to support this mandate, and the appropriate administrative rules should be promulgated that establish, with clear guidance, accountability standards and effective monitoring mechanisms to protect voters and the integrity of the voter registration rolls.

#### ***Executive Clemency in Florida***

#### **Findings**

- The Division of Elections required DBT Online to include felony conviction and clemency information from 11 other states. Five of the 11 states have automatic restoration of civil rights for former felons. Thus, there was no clemency board database from which DBT Online could easily match the names of probable felons. Six of the 11 states do not have automatic restoration of civil rights for former felons. DBT Online matched the names of felons against the clemency databases of each of those states.

- The Division of Elections instructed DBT Online that those felons who were convicted outside the state of Florida and restored their civil rights in a state other than Florida should apply for clemency in Florida.

- Florida case law states that the full faith and credit clause of the United States Constitution requires the state of Florida to recognize the restoration of an individual’s civil rights from another state(s).

- On February 16, 2001, the Commission questioned the policy of requiring felons whose civil rights were restored in another state to apply for clemency in Florida. On February 23, 2001, the Office of Executive Clemency issued a letter stating that former felons who enter the state of Florida with restored civil rights need not apply for civil rights in Florida.

#### **Recommendations**

5.7 The state of Florida should establish clear guidance and monitoring systems to ensure that a practical appeal mechanism exists for those Florida residents whose names appear on a purge list. Sufficient funding should be provided to support this mandate, and the appropriate administrative rules should be promulgated.

5.8 The state of Florida should authorize legal measures, as the Florida legislature appears to have done in recently enacted legislation, to ensure that the policy statement issued by the Office of Executive Clemency on February 23, 2001, is codified through enacted legislation and/or appropriate administrative rule promulgation. Sufficient funding should be provided to support this mandate.

5.9 The state of Florida should ensure through enacted legislation and/or other appropriate action that modifications are made in the state's statutes and constitution to comply with the policy statement issued by the Office of Executive Clemency on February 23, 2001.

#### **List Verification and Removal of Names**

##### **Findings**

- Supervisors of elections had no uniform method to verify the information on the exclusion lists.
- Some supervisors of elections chose not to use the information on the exclusion lists in any manner.
- One supervisor of elections, who has never been convicted of a felony, received a letter stating that she was identified as a convicted felon.

- Former director of the Division of Elections, Ethel Baxter, instructed supervisors of elections that if they had any doubts as to the accuracy of the felony information, they should allow the person to vote by affidavit.

- There is no evidence that in preparation for the 2000 presidential election, the director of the Division of Elections took proper steps to ensure that supervisors of elections were informed about the errors in the exclusion lists.

- The Florida Elections Commission has authority to investigate the wrongful removal of a Floridian from the voter rolls with evidence of a willful violation.

#### **Recommendations**

5.10 Although the recently enacted Florida legislation appears to provide some level of instruction on list verification, the Division of Elections should provide step-by-step instructions on how supervisors of elections verify the accuracy of any information that may purge a voter from the central voter file.

5.11 Supervisors of elections should verify the veracity of any information that may purge a voter from the central voter file, prior to the removal of any name from the voter rolls.

5.12 The Florida legislature should broaden the scope of the Florida Elections Commission's authority to investigate the wrongful removal of a Floridian from the voter rolls, with not only evidence of a willful violation, but also negligent removal of a Floridian from the voter rolls.

5.13 The Florida Elections Commission should better advertise the scope of its investigative and enforcement authority to the public, by not only posting information on its Web site, but also by using other forms of media most effective in reaching the voters of each community.

5.14 The Florida legislature should appropriate funding to support the broader scope of investigative authority of the Florida Elections Commission and its additional advertising efforts.

**CHAPTER 6: ACCESSIBILITY ISSUES*****Special Needs*****Findings**

- In the November 2000 election, countless Floridian voters with special needs were denied their right to vote due to inaccessible precincts and ballots.
- Many precinct managers and poll workers were not properly trained to handle individuals with accessibility needs, including those with physical disabilities and language barriers.

***Access to Polling Places for People with Disabilities*****Findings**

- It is estimated that voter participation for individuals with physical disabilities is 15 percent to 20 percent below that of the general population.
- The inaccessibility of the nation's voting systems means that many individuals with disabilities are unable to vote. In addition, many people with disabilities find themselves forced to cope with inaccessible polling places that fail to provide accommodations.
- In the November 2000 election, Florida voters with disabilities who rely on wheelchairs were forced to negotiate steps and unreachable polling booths or undergo humiliation by relying on others to lift them into the polling places to exercise their right to vote. Others who did not have these options were simply turned away, which denied them their right to vote.
- Some voters with visual impairments found that the precincts did not have proper equipment to assist them in reading their ballots and, therefore, they had to rely on others to cast their votes, which denied them a secret ballot.
- As one supervisor of elections conceded, many precincts are inaccessible. Some require ramps to comply with the accessibility requirements and others should be "replaced" as they cannot be made accessible.
- Although a 1992 Federal Election Commission study of local jurisdiction data collected through self-reporting found that 86 percent of the polling places in the United States are

physically accessible to individuals with disabilities, a recent report using data based on independent surveys and court documents suggests that potentially over 40 percent of polling places "continue to pose significant accessibility problems for voters with disabilities."

- Despite the Voter Accessibility for the Elderly and Handicapped Act, which requires that all polling places be physically accessible to voters with disabilities, numerous Florida precincts are not accessible to voters with disabilities. Thus, many Floridians with disabilities were disenfranchised in the November 2000 election.

***Access to Polling Places for People Needing Language Assistance*****Findings**

- Despite the requirements that non-English-proficient voters be provided with some form of language assistance, many limited-English-speaking voters were denied this assistance at Florida's polling places in the November 2000 election.
- Many poll workers were not properly trained on the requirements of language assistance and thus failed to assist non-English-proficient voters. Even bilingual members of the public were prevented from providing language support. In some instances, bilingual poll workers were directed not to provide language assistance. Thus, these non-English-speaking voters found that their polling places offered ballots that were essentially inaccessible to them.
- Haitian Americans and Spanish-speaking voters were disproportionately affected.
- In some central Florida counties, Spanish-speaking voters did not receive bilingual assistance and some of these counties were subject to section 203 of the Voting Rights Act. This failure to provide proper language support led to widespread voter disenfranchisement of possibly several thousand Spanish-speaking voters in central Florida.
- Numerous Haitian Americans did not receive proper language assistance. Even in precincts where a county ordinance required bilingual ballots, the precincts failed to do so; as a result, many Haitian American voters were denied the opportunity to vote.

▪ Under Florida law, voters are allowed five minutes to cast their ballots. It is difficult for some limited English proficient voters to cast ballots within this time period. These voters either did not have a complete opportunity to cast their votes or their votes were not counted. As a result, they were denied meaningful participation in the November 2000 election.

#### Recommendations

**6.1** State and county officials should allocate funding and resources to train precinct managers and poll workers on providing required assistance to individuals with disabilities and non-English-speaking voters. This training should not only focus on the mechanics of providing assistance, but it should also include sensitivity training to provide services to better assist and accommodate individuals with special needs.

**6.2** The Florida legislature should enact similar legislation to the Voter Accessibility for the Elderly and Handicapped Act that directs the state Elections Commission to study and collect data on accessibility of polling places in Florida.

**6.3** State and county officials should establish minimum standards for polling places, ensuring that they are fully accessible to individuals with disabilities and that individuals with special language needs receive proper language assistance in order to exercise their right to vote.

**6.4** To ensure the uniformity of the application of election laws in Florida, the secretary of state should require that each supervisor of elections submit a report to the secretary of state that certifies that each polling site in the county is accessible to persons with disabilities and individuals with special language needs. In response, the secretary of state should assess the certification no later than 30 days prior to an election. All polling places deemed inaccessible through the above assessment process should be made accessible through a cooperative relationship between the secretary of state, supervisors of elections, and county commissioners.

**6.5** The Florida legislature should enact legislation and/or appropriate administrative rule promulgation ensuring that the state of Florida

complies with the requirements of the Voter Accessibility for the Elderly and Handicapped Act and other applicable federal laws.

**6.6** All inaccessible precincts should be relocated to buildings that are accessible or made accessible through the use of ramps. At a minimum, curbside voting should be provided to voters with disabilities.

**6.7** All curbside voting should be conducted by poll workers or plain-clothed sheriffs when a county law requires that the sheriffs be used for this process. No uniformed law enforcement officers should be required to be present at or near polling places, where this presence may cause intimidation of voters.

**6.8** The Division of Elections and the supervisors of elections should provide accessible ballots for non-English-speaking voters. Florida voting machinery should contain the ability to accommodate the language needs of the multilingual population of Florida. The new optical scan voting machines can be programmed in most, if not all, languages, eliminating language barriers that exist with old voting systems (e.g., punch cards).

**6.9** The Florida legislature should pass legislation and/or appropriate administrative rule promulgation that would allow the secretary of state to mandate that each supervisor of elections submit a report detailing steps and procedures that each county has taken to comply with legal language assistance requirements.

**6.10** Supervisors of elections should actively recruit bilingual poll workers to assist bilingual voters. Furthermore, there should be a language assistance mechanism that is readily available for voters who need such support on Election Day.

**6.11** The U.S. Department of Justice should initiate the litigation process against state election officials who implemented practices during the 2000 presidential election that either intentionally discriminated or resulted in discrimination against persons with disabilities and language minorities, including, but not limited to, the enforcement of a five-minute voting rule and

the requirement to enter the voting booth alone. Appropriate enforcement action should be initiated to ensure compliance with the Voting Rights Act of 1965, as amended, as well as other applicable federal laws. The state of Florida should amend section 101.51 of the Florida statutes through enacted legislation and/or appropriate administrative rule promulgation to affirm (1) that persons with disabilities and those requiring language assistance have "sufficient reason" to occupy a voting booth for more than five minutes, and (2) that persons requiring language assistance may enter the voting booth with someone to assist them with casting ballots for the candidates of their choice.

**6.12** The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated the Voting Rights Act of 1965, as amended, the Voter Accessibility for the Elderly and Handicapped Act, and other relevant federal and/or state laws by failing to provide reasonable accommodations to people with disabilities and voters with limited English proficiency. The process should include, but not be limited to, whether polling places, polling booths, and ballots were accessible to all voters, including individuals with disabilities; and whether voters with limited English proficiency and individuals with disabilities were provided with assistance to not only understand the ballot, but also to cast the ballot for the candidates of his or her choice. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

**6.13** The state of Florida should require through legislation or appropriate administrative rule promulgation that supervisors of elections consult people with disabilities, people with limited English proficiency, and their advocacy and affected community groups to ensure that ballots are readily understood by voters. State officials should establish strategies to provide adequate assistance for persons with disabilities and persons with limited English proficiency.

## CHAPTER 7: CASTING A BALLOT

### *Voting by Affidavit and Provisional Ballot*

#### Findings

- Florida election law grants supervisors of elections tremendous discretion in determining who will ultimately be permitted to vote.
- The Florida Election Code authorizes voting by affidavit in numerous situations, based on prior approval of the supervisor of elections. An individual may seek to vote by affidavit if there is a change of address, a change of name, the voter requires assistance due to disability, his or her right to vote is challenged, or if the voter's name does not appear in the precinct registration book.
- The Florida Office of the Secretary of State and its Division of Elections failed to provide clear guidance and proper training to ensure supervisors of elections acted uniformly in providing equal opportunities in the use of affidavits.
- On November 7, 2000, some voters who were eligible to vote by affidavit were not informed of that right—or were led to believe they did *not* have such a right—by poll workers who did not clearly understand the law or did not convey accurate information.
- One of the key irregularities in Florida during the 2000 election was a near-statewide inability of poll workers to reach supervisors of elections to verify voter eligibility or to obtain authorization to permit the individual to vote by affidavit. Thus, countless citizens were denied the right to vote.
- Provisional ballots protect the rights of eligible voters as well as the integrity of the electoral process by counting the provisional ballot only after election officials have verified the voter's registration status and eligibility. Eligible votes are then added during the final tally.
- The Election Reform Act allows for voting by provisional ballot but specifically holds that if the voter is registered in a different precinct from the one in which the ballot is cast, then the provisional ballot will not be counted.

### Recommendations

7.1 The state of Florida must effectively implement the provisions of its recently enacted Election Reform Act and ensure (1) poll workers are no longer required to contact supervisors of elections for authorization to vote by affidavit, and (2) alternative measures to verify voter eligibility are created that would minimize or eliminate the need to contact supervisors of elections on the day of an election.

7.2 Sufficient funding should be provided to support the mandates of the Election Reform Act that relate to affidavit voting and provisional ballots, and the appropriate administrative rules should be promulgated to provide effective monitoring mechanisms that will ensure implementation of the legislation.

7.3 Poll workers should be trained on the use of affidavits and provisional ballots during elections. If a voter's eligibility cannot be immediately determined, poll workers should be instructed to inform the voter of the affidavit procedure and know how to assist the voter in properly casting his or her vote.

7.4 When a person votes by affidavit, the ballot should be distinguishable from other ballots. If it is discovered that information in the affidavit is false, a mechanism should be in place during the verification process that would capture and annul the fraudulent vote, as well as notify the voter of the reason for the rejection of the ballot.

7.5 While the recently enacted Election Reform Act provides for limited use of voting by provisional ballot, the state of Florida should provide an absolute right to a provisional ballot in every polling location where the voter executes an appropriate affidavit attesting that he or she is eligible to vote.

7.6 The state of Florida should provide voters with an immediate right to appeal the discarding of any ballot or the refusal of any opportunity to vote prior to the final canvassing of the election.

7.7 The secretary of state should require each supervisor of elections to submit a report to the Division of Elections providing detailed information on the specific steps that will be taken to ensure that voters are given adequate notice and other information about opportunities and requirements relating to voting by affidavit or provisional ballot. The report must also include detailed information about the training of poll workers and other election officials to implement these provisions. Based on these reports, the secretary of state must assess the voter education and training needs in each county and provide adequate resources as needed.

7.8 The U.S. Department of Justice and the Civil Rights Division in the Office of the Florida Attorney General should initiate the litigation process against state election officials whose actions or failure to act violated the Voting Rights Act of 1965, as amended, and other relevant federal and/or state laws by failing to allow voters to cast ballots through the use of affidavit procedures prescribed in the election code. Appropriate enforcement action should be initiated to ensure full compliance with the election laws.

## CHAPTER 8: THE MACHINERY OF ELECTIONS

### *Voting Systems and Spoiled Ballots*

#### Findings

- During Florida's 2000 presidential election, different voting systems, with varying error rates, were used throughout the state. The evidence indicates that Florida voters in poorer communities, as well as voters in communities where the majority of residents are people of color, were more likely to use voting systems that cause higher spoilage rates. It is clear that every voter did not have an equal opportunity to have his or her vote counted.
- Florida voters who cast their ballots and then had those ballots tabulated at a central location were more likely to lose their votes through spoiled ballots than were voters who used precinct-based counting (PBC) technology. PBC voting systems can be programmed to "kick out" invalid ballots and allow voters to correct overvote errors occurring at the polling site.

Florida law gives voters three opportunities to cast a correct ballot.

- Even if machines incorporate PBC technology to identify and kick out invalid ballots so voters can try again, it does not guarantee the feature will be used. During the November 2000 election, at least two Florida counties turned off that part of the machine to cut costs and save time. Disabling the kick out feature of this technology, which can easily be done, resulted in thousands of spoiled ballots that otherwise might have been corrected.

- In Florida, 22 of the 23 counties with the lowest spoilage rates used precinct-based optical scan technology. On average, the spoilage rate for counties using the precinct-based optical scan technology was 0.83 percent—far lower than the average spoilage rates for either central-based optical scan technology (5.68 percent) or central-based punch card technology (3.93 percent).

#### **Recommendation**

**8.1** The state of Florida should enact legislation requiring the use of an electronic or electromechanical precinct-count tabulation voting system. These technologies will significantly increase the chances that a voter will have his or her vote count. The legislation should specifically prohibit the dismantling of the kick out feature of the machines since the main purpose of the technology is to identify and kick out invalid ballots, allowing voters to try again if necessary. Sufficient funding should be provided for this mandate. The appropriate administrative rules should be promulgated to ensure proper monitoring of each stage of the implementation of the new law.

#### **Ballot Confusion**

#### **Findings**

- There was substantial voter ballot confusion during Florida's 2000 presidential election. In some jurisdictions this led to unprecedented numbers of invalidated ballots through overvoting. The majority of the complaints were registered in Palm Beach and Duval counties.
- In Palm Beach County, there was massive voter confusion due to the design of the so-called

butterfly ballot. The confusion played a role in more than 19,000 Palm Beach County voters punching two separate holes when voting for President, thereby invalidating their ballots with an overvote. The confusion also played a role in Reform Party candidate Patrick J. Buchanan receiving approximately 3,400 votes in Palm Beach County—far more than anywhere else in the state—despite the fact there were only 337 Reform Party members in the county.

- The Commission concurs with the findings of a representative of the National Organization on Disability, who concluded that the butterfly ballot's design was "absolutely irresponsible" for use by persons with visual impairments.

- In Duval County, the ballot placed the names of presidential candidates over two pages, leading thousands of voters to invalidate their ballots by voting on both pages. This problem was compounded by the sample ballot's instructions, which explicitly guided voters to "vote all pages" of the ballot.

#### **Recommendation**

**8.2** The state of Florida should ensure through legislation or administrative rulemaking that ballot designs are as uniform and as easy to read and understand as possible for all Florida residents, including individuals with disabilities and those with language assistance needs. Because of their instrumental role in creating and/or approving ballot designs, this should include training for supervisors of elections and their staffs—including training on how to conduct effective outreach efforts seeking advice and input from disability rights and other community groups. Sufficient funding should be provided for this mandate, and the appropriate administrative rules should be promulgated to monitor the implementation of the legislation.

#### **CONCLUSION**

While some of those denied the right to vote in the November 2000 election no doubt were legally denied that right, others who should have been legally entitled to vote were also denied that right. Indeed as this report demonstrates, Florida state law in some instances virtually guaranteed that some citizens who were legally entitled to vote would be denied that right. The statute's silence on other instances



provided tacit approval for the denial of some to vote. Not all voices were heard on Election Day, and the law provides no meaningful way for their voices to now be heard. Picking winners and losers is rarely an easy task. Justice Stevens in his dissenting opinion in *Bush v. Gore* opined, "Although we may never know with complete certainty the winner of this year's presidential election, the identity of the loser is perfectly clear. It is the Nation's confidence in the judge as the impartial guardian of the rule of law."<sup>6</sup> There are, however, those like Cathy Jackson and Donnise DeSouza who lost the chance to speak through their ballots on Election Day but who now speak to the nation through this report about their Election Day experiences. "Voting is the language of our democracy and regrettably,

when it mattered most, real people lost real opportunities to speak."<sup>7</sup>

Florida officials have a formidable challenge and responsibility. First, they must hold themselves accountable for the significant array of voting irregularities that occurred on their watch. Second, they must move swiftly to meaningfully implement reform measures signed into law by Governor Bush. They must establish monitoring and control systems to facilitate effective communications among all levels of officials in the electoral system. There must be adequate funding, better training, more voter education resources, increased access for special needs populations, and greater responsiveness to the voting rights of all people.

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<sup>6</sup> *Bush v. Gore*, 121 S. Ct. at 542.

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<sup>7</sup> U.S. Commission on Civil Rights, "Status Report on Probe of Election Practices in Florida During the 2000 Presidential Election," Mar. 9, 2001, p. 3.

## Epilogue

Days after receiving allegations of voter disenfranchisement in Florida during the November 2000 election, the U.S. Commission on Civil Rights began a preliminary investigation. As the Commission's investigation was in progress, Florida's governor appointed a task force to investigate the alleged election irregularities and suggest reforms to the state election laws. The task force was mandated to complete its study by March 1, 2001. After the Commission hearings in January and February, the secretary of state presented a proposal to revamp the state's voting systems. The Florida House of Representatives and Florida Senate also considered proposed legislation to reform the state's voting systems. The Florida legislature ultimately passed comprehensive election reform legislation, the Florida Election Reform Act, which was signed into law by the governor on May 9, 2001.

### GOVERNOR BUSH'S SELECT TASK FORCE

On December 14, 2000, Florida Governor Jeb Bush issued an executive order creating the Select Task Force on Election Procedures, Standards and Technology.<sup>1</sup> The task force co-chairperson, Jim Smith, originally believed that Governor Bush wanted the task force to focus on technology.<sup>2</sup> Subsequent to the Commission's

<sup>1</sup> Exec. Order No. 00-349, Dec. 14, 2000. See the Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, Mar. 1, 2001, p. 4 (hereafter cited as Governor's Task Force, *Revitalizing Democracy*).

<sup>2</sup> Jim Smith, Testimony before the Hearing of the Governor's Select Task Force on Election Procedures, Standards and Technology, Tallahassee, FL, Jan. 9, 2001, transcript, p. 480. Mr. Smith testified, "I'm happy to go anywhere and, really, do anything, but I think we really need to think about what the governor asked us to do. We're here at his invitation. And he really didn't ask us to go hold public hearings. He asked us to look at, you know, the standards, procedures, and technology." Ibid.

announcement that it would hold hearings to investigate allegations of election irregularities, the scope of the task force's investigation expanded and when Governor Bush testified at the Commission's Tallahassee hearing he was questioned by Commissioners about the scope of his task force. The governor confirmed that the task force was charged with investigating all questions raised by the 2000 presidential election.<sup>3</sup> On March 1, 2001, the governor's task force published its conclusions in an 80-page report, which includes 35 recommendations.<sup>4</sup> The proposals range from minimum standards for voter education to expanding the time between an election and the certification of the results of that election.<sup>5</sup>

### SECRETARY OF STATE'S PROPOSED REFORMS

After testifying before the Commission on January 12, 2001, about her limited involvement in election matters,<sup>6</sup> Florida Secretary of State Katherine Harris proposed a three-year, \$200 million plan to modify the voting system.<sup>7</sup> She suggested leasing optical scan voting systems

<sup>3</sup> John Ellis Bush, governor of Florida, Testimony before the U.S. Commission on Civil Rights, Tallahassee, FL, Jan. 11, 2001, Verified Transcript, p. 108. At the hearing Governor Bush was asked if he "put any restrictions on the work of the task force, apart from the timeframe in which they are to report back to you?" Governor Bush responded, "No, it's fairly flexible." Ibid.

<sup>4</sup> See generally Governor's Task Force, *Revitalizing Democracy*.

<sup>5</sup> Ibid., pp. 70-77.

<sup>6</sup> See chap. 3.

<sup>7</sup> See Florida Department of State, "The Honorable Katherine Harris, Congressional Testimony—Election Reform," press release, Apr. 25, 2001. See also Mark Hollis, "Official Urges High-Tech New Voting System for Florida," *The Chicago Tribune*, Mar. 21, 2001, p. A10. Ms. Harris announced a three-year plan, stating, "How can we confirm the principles of freedom if we're shackled by outdated technology and processes that have grown passé?" Ibid.

before the 2002 elections and then urged the legislature to consider changing to touch screen systems before 2004.<sup>8</sup>

#### FLORIDA LEGISLATURE'S PROPOSED REFORMS

In the aftermath of the presidential election and the Commission's ongoing investigation, the Florida legislature considered numerous bills and resolutions.<sup>9</sup> Many of these legislative proposals were eventually consolidated into one bill. On May 4, 2001, the Florida legislature passed the Florida Election Reform Act of 2001,<sup>10</sup> and on May 9, 2001, Governor Bush signed the bill into law. To place the law that was ultimately passed in some perspective, the following is a brief discussion of the proposed changes that were considered by the Florida legislature.

#### Absentee and Military/Overseas Voting

There were 10 Senate bills that proposed changes in the casting and tabulating of absent-

tee ballots.<sup>11</sup> Senate Bill 1150 and its counterpart, House Bill 749, would have eliminated the requirement that a person requesting an absentee ballot disclose his or her social security number as well as the requirement that the last four digits of the elector's social security number be on the ballot for it to be tabulated.<sup>12</sup> Although these bills would simplify the absentee ballot process,<sup>13</sup> they appear to be inconsistent with earlier legislation passed to eliminate voter fraud after the problems that arose with absentee voting in the 1997 Miami mayoral election.<sup>14</sup> In fact, some senators suggested that the former rules should be enforced.

#### Election Day Registration

The Commission heard testimony from Floridians who believed they properly registered to vote but were turned away on Election Day because their names did not appear on the voter rolls.<sup>15</sup> Senate Bill 1574 proposed that—

registration books be open on Election Day during the time election polls are open and at other times during the regular office hours of the supervisor of elections.<sup>16</sup>

<sup>8</sup> Florida Department of State, "The Honorable Katherine Harris, Congressional Testimony—Election Reform," press release, Apr. 25, 2001. See also Mark Hollis, "Official Urges High-Tech New Voting System for Florida," *The Chicago Tribune*, Mar. 21, 2001, p. A10. Katherine Harris presented her proposal on April 25, 2001, when she testified in front of the House of Representatives Committee on House Appropriations at its hearings on election reform along with four other secretaries of state: J. Kenneth Blackwell, Ohio secretary of state; Sharon Priest, Arkansas secretary of state; Rebecca Vigil-Giron, New Mexico secretary of state; and Ron Thornburgh, Kansas secretary of state. U.S. Congress, House, Committee on House Appropriations, Hearing on Election Reform, 107th Congress, 1st Sess., 2001, <<http://www.house.gov/cha/business/042501testimonies/9.pdf>>.

<sup>9</sup> The past election has also spurred the U.S. Congress into considering election reform. Senator Chris Dodd (D-Conn.) and Representative John Conyers (D-Mich) have cosponsored a bill that would allocate \$3.5 billion to assist states in adopting uniform standards for election equipment by 2004. The bill would also require states to permit "provisional voting." The Dodd-Conyers proposal, however, is just one of many before members of both houses of the U.S. Congress. Senator Charles Schumer (D-N.Y.) and Senator Sam Brownback (R-Kan.) have cosponsored a bill that would provide \$2.5 billion and create a commission that would become responsible for drafting new voting procedures. Likewise, Senators John McCain (R-Ariz.) and Fritz Hollings (D-S.C.) are pushing efforts for voluntary standards that would improve voting accuracy, voter education, and voting machinery and Representative Asa Hutchinson (R-Ark.) is sponsoring a \$1.5 billion bill. See "Democrats Seek Voting Rights Update," *The Associated Press*, Mar. 18, 2001.

These proposals could have a major impact on the manner in which Americans cast vote in future elections.

<sup>10</sup> Senate Bill 1118, 103d Reg. Sess. (Fla. 2001).

<sup>11</sup> S.B. 200, 103d Reg. Sess. (Fla. 2001); S.B. 448, 103d Reg. Sess. (Fla. 2001); S.B. 748, 103d Reg. Sess. (Fla. 2001); S.B. 1150, 103d Reg. Sess. (Fla. 2001); S.B. 1252, 103d Reg. Sess. (Fla. 2001); S.B. 1308, 103d Reg. Sess. (Fla. 2001); S.B. 1420, 103d Reg. Sess. (Fla. 2001); S.B. 1590, 103d Reg. Sess. (Fla. 2001); S.B. 1660, 103d Reg. Sess. (Fla. 2001); S.B. 1712, 103d Reg. Sess. (Fla. 2001).

<sup>12</sup> See S.B. 1150, 103d Reg. Sess. (Fla. 2001). Senator Durrell Peaden, Jr., sponsored this bill. See H.B. 749, 103d Reg. Sess. (Fla. 2001). Senator Paula Bono Dockery sponsored this bill.

<sup>13</sup> By eliminating the possibility of error, e.g., someone forgetting to place his or her social security number on a ballot or placing the wrong social security number on a ballot, the changes would make it easier for persons voting absentee to vote correctly and have that ballot counted.

<sup>14</sup> FLA. STAT. ch. 97.053(5)(a) (1999) (listing requirements for a complete voter registration application). See also Jay Weaver, "Vote Reform Back to Square One: Justice Department Ruling Means that State Legislators Must Draft New Law," *The Sun-Sentinel* (Fort Lauderdale), Aug. 23, 1998, p. 6B (noting that the law passed by the state "requires people to show a photo ID when they vote at the polls and to write the last four digits of their Social Security number on absentee ballot envelopes").

<sup>15</sup> See chap. 2.

<sup>16</sup> S.B. 1574, 103d Reg. Sess. (Fla. 2001). Senator Kendrick Meek sponsored this bill.

Senate Bill 1590 proposed that voters be permitted to register and request absentee ballots on-line. Senate Bill 1950 and House Bill 673 proposed that each school district establish voter registration programs that offer eligible high school students the opportunity to register to vote and/or update their voter registration records at least once a year.<sup>17</sup>

#### Former Felons

Senate Bill 152, entitled "Felons' Right to Vote," called for the automatic restoration of convicted felons' voting rights one year after the completion of the sentence, unless objected to by a majority of the Board of Executive Clemency. Senate Bill 404 and House Bill 51 proposed creating the Citizens' Empowerment Act, which mandated the automatic restoration of former felons' voting rights following completion of the sentence of incarceration and community supervision.<sup>18</sup> The bill would have also required the Department of Corrections to complete any necessary paperwork and file it with the Board of Executive Clemency.<sup>19</sup>

Florida Senate Joint Resolution 406 and House Joint Resolution 49 proposed amending section 4 of article VI of the state constitution as it relates to the rights of convicted felons to vote.<sup>20</sup>

<sup>17</sup> See S.B. 1590, 103d Reg. Sess. (Fla. 2001). Senator Darryl L. Jones sponsored this bill. S.B. 1950, 103d Reg. Sess. (Fla. 2001). Senator Darryl L. Jones sponsored this bill. H.B. 673, 103d Reg. Sess. (Fla. 2001). Representative Frederica S. Wilson sponsored this bill.

<sup>18</sup> See S.B. 152, 103d Reg. Sess. (Fla. 2001). Senator Mandy M. Dawson sponsored this bill. S.B. 404, 103d Reg. Sess. (Fla. 2001). Senators Darryl L. Jones and Kendrick Meek sponsored this bill. H.B. 51, 103d Reg. Sess. (Fla. 2001). Representative Christopher Smith sponsored this bill.

<sup>19</sup> S.B. 404, 103d Reg. Sess. (Fla. 2001), H.B. 51, 103d Reg. Sess. (Fla. 2001).

<sup>20</sup> See S.J. Res. 406, 103d Reg. Sess. (Fla. 2001). Representative Jerry Paul sponsored this bill. H.J. Res. 49, 103d Reg. Sess. (Fla. 2001). Representatives James Harper, Jr., and Phillip Brutus were the chief sponsors of this resolution. There have been some allegations in the press that efforts by the state to restrict the rights of convicted felons to vote were aimed at depressing the voting of minorities, particularly African Americans and Latinos, who are disproportionately convicted of felonies. See, e.g., Gregory Palast, "Florida's Disappeared Voters: Disfranchised by the GOP," *The Nation*, Feb. 5, 2001, p. 20.

#### People with Limited English Proficiency and Those with Disabilities

Assistance to those with limited English proficiency was another issue on which the Commission heard testimony.<sup>21</sup> House Bill 173<sup>22</sup> proposed to make it easier for Floridians who do not speak English both to register and to vote. The bill would revise the information mandated for the statewide uniform registration form and requires that the registration forms be available in languages other than English, including Spanish and Creole. Under this bill, voting assistance would be provided for a member of a language minority group, if the group constituted more than 1 percent of the county's population.<sup>23</sup>

The bill also requires precinct workers to permit voters whose primary language is not English to receive assistance in voting booths while voting. Any person who is eligible to register and unable to read or write, whose primary language is other than English, or who, because of a disability, needs assistance in voting would upon that person's request be registered by the supervisor and would be entitled to receive assistance at the polls under the conditions prescribed by this section.<sup>24</sup>

#### Poll Closings

Senate Bill 748 proposed uniform opening and closing of polls across the state because Florida is in two time zones. Specifically, the bill provided for opening polls at 7:30 a.m. Eastern Standard Time and 6:30 a.m. Central Standard Time and for closing polls at 7:30 p.m. Eastern Standard Time and 6:30 p.m. Central Standard Time.<sup>25</sup>

#### Provisional Ballots

Senate Bill 1118 included a provision that would create procedures for casting and counting provisional ballots. The bill would require verification of a voter's eligibility if the voter's name was not on the precinct register. The bill would also permit a voter who requests an absentee ballot, then appears at the polls on Elec-

<sup>21</sup> See chap. 6.

<sup>22</sup> H.B. 173, 103d Reg. Sess. (Fla. 2001). Representative Philip Brutus sponsored this bill.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> S.B. 748, 103d Reg. Sess. (Fla. 2001). The Ethics Committee and Senator Charlie Clary sponsored this bill.

tion Day, to vote through a provisional ballot if the absentee ballot has not been submitted.<sup>26</sup>

#### Purging of Voters

Senate Bill 1739 would have eliminated the statutory obligation to have the voter purge lists developed by a private contractor. It would have restored the roles of the Florida Department of Law Enforcement, the Board of Executive Clemency, and the Office of Vital Statistics in directly furnishing information to the supervisors of elections that relates to the rights of citizens to vote.<sup>27</sup>

#### Voter's Bill of Rights

The Voter's Bill of Rights was originally proposed as Senate Bill 2098 and included a 10-point list of a voter's rights. It, like many proposals, was incorporated into the Election Reform Act.<sup>28</sup>

#### THE NEW LAW: THE FLORIDA ELECTION REFORM ACT OF 2001

The new Election Reform Act is comprehensive legislation that combines aspects of several bills considered by the Florida legislature.<sup>29</sup> The act makes major changes to the election laws of the state in areas of concern addressed by the Commission during the hearings in Tallahassee and Miami, including absentee ballots, ballot uniformity, poll worker training and education, provisional ballots, the purging of people from voter lists, voter education, and voting system modernization. The act, however, was silent on several areas of concern raised at the Commission hearings, including Election Day registration, former felons' voting rights, language assistance, and roadblocks. The following discussion is a brief review of some of the key provisions of the new law.

<sup>26</sup> See the Florida Election Reform Act of 2001, S.B. 1118, 103d Reg. Sess. (Fla. 2001). The Committee on Ethics and Elections and Senator Bill Posey sponsored this bill. The Florida Election Reform Act of 2001, S.B. 1118, 103d Reg. Sess. (Fla. 2001).

<sup>27</sup> See S.B. 1739, 103d Reg. Sess. (Fla. 2001). The Fiscal Responsibility Council and Representative Randy Johnson sponsored this bill. S.B. 1739, 103d Reg. Sess. (Fla. 2001).

<sup>28</sup> See S.B. 2098, 103d Reg. Sess. (Fla. 2001). Senator Darryl L. Jones sponsored this bill. The Florida Election Reform Act of 2001, S.B. 1118, 103d Reg. Sess. (Fla. 2001) at 82.

<sup>29</sup> The Florida Election Reform Act of 2001, S.B. 1118, 103d Reg. Sess. (Fla. 2001).

#### Absentee Voting and Military/Overseas Voting

The Election Reform Act includes provisions that eliminate the need to provide social security numbers or voter identification numbers on absentee ballots.<sup>30</sup> Moreover, the act redefines "absent elector" to include any qualified voter who casts an absentee ballot.<sup>31</sup>

#### Poll Closings

The Election Reform Act calls for a study by the Division of Elections and the Florida State Association of Supervisors of Elections into the potential benefits and drawbacks of having uniform poll opening and closing times throughout the state.<sup>32</sup>

#### Poll Workers

The Election Reform Act has a section on poll worker recruitment and training.<sup>33</sup> The act requires the supervisor of elections to ensure minimum poll worker training and education and requires the Division of Elections "to distribute the sum of \$5,949,375 in fiscal year 2001-2002 to the counties to fund comprehensive voter education programs and poll worker recruitment and training programs provided in the act."<sup>34</sup> The law makes clear, however, that no county shall receive any funds under that provision until the "supervisor of elections provides the Department of State a detailed description of the voter education programs to be implemented . . . for the 2002 election cycle."<sup>35</sup>

#### Provisional Ballots

The inability of voters to cast provisional ballots when their registration status could not be confirmed by the supervisors of elections offices was a topic of significant testimony at the Commission hearings.<sup>36</sup> The Election Reform Act allows for voting by provisional ballot but states that if the voter is registered in a different pre-

<sup>30</sup> The Florida Election Reform Act of 2001, S.B. 1118, 103d Reg. Sess. (Fla. 2001) at 78.

<sup>31</sup> *Id.* at 33.

<sup>32</sup> *Id.* at 102.

<sup>33</sup> See the Florida Election Reform Act of 2001, S.B. 1118, 103d Reg. Sess. (Fla. 2001) at 85-87.

<sup>34</sup> *Id.* at 95.

<sup>35</sup> *Id.*

<sup>36</sup> See chap. 2.

cinct from the one in which the ballot is cast, then the provisional ballot will not be counted.<sup>37</sup>

#### Purging of Voters

The Election Reform Act creates a new section of the election code in section 98.0977. The new provisions mandate the creation of the statewide voter registration database.<sup>38</sup> The act provides that “the [Department of State] may contract with the Florida Association of Court Clerks to analyze, design, develop, operate and maintain a statewide on-line voter registration database and associated web site, to be fully operational statewide by June 1, 2002.”<sup>39</sup> The database will contain all the voter registration information from each of the 67 supervisors of elections and will be on-line. The Election Reform Act repealed section 98.0975 entirely, which called for the state to contract with a private entity to maintain the state’s voter registration lists.<sup>40</sup>

#### Uniform Ballots

The Election Reform Act amends section 101.151 to define, in detail, the specifications for ballots. For example, it addresses the issue of uniformity of the ballot: “The department rules shall graphically depict a sample uniform primary and general election ballot form for each certified voting system.”<sup>41</sup>

#### Voting Systems

The Election Reform Act decertifies punch card machines<sup>42</sup> and at the same time certifies touch screen systems.<sup>43</sup> It authorizes the distribution of \$7,500 per precinct for counties with populations of 75,000 or less and \$3,750 per pre-

cinct for all other counties.<sup>44</sup> Moreover, the act requires second-chance technology, e.g., scanners, at the precinct level that would determine whether voters made mistakes, specifically overvotes or undervotes, and allow voters to correct those mistakes.<sup>45</sup>

#### Voter’s Bill of Rights and Responsibilities

The Election Reform Act requires a 10-point list of voter’s rights be published and posted inside every precinct in the state. The Voter’s Bill of Rights provides that each registered voter has the right to:

- vote and have his or her vote accurately counted;
- cast a vote if he or she is in line when the polls are closing;
- ask for and receive assistance in voting;
- a replacement ballot if he or she has voted in error;
- an explanation if his or her registration is in question;
- cast a provisional ballot if his or her registration is in question;
- prove his or her identity by signing an affidavit if election officials doubt the voter’s identity;
- written instructions to use when voting, and, upon request, oral instructions in voting from elections officers;
- vote free from coercion or intimidation by elections officers or any other person; and
- vote on a voting machine that is in working condition and that allows votes to be accurately cast.<sup>46</sup>

The Election Reform Act includes the following list of voter responsibilities:

- study and know candidates and issues;
- keep his or her voter address current;
- know his or her precinct and its hours of operation;
- bring proper identification to the polling station;
- know how to operate voting equipment properly;

<sup>37</sup> The Florida Election Reform Act of 2001, S.B. 1118, 103d Reg. Sess. (Fla. 2001) at 41.

<sup>38</sup> *Id.* at 90–93.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 95.

<sup>41</sup> *Id.* at 5–10.

<sup>42</sup> *Id.* at 15. “Section 17. Effective Sept. 2, 2002, a voting system that uses an apparatus or device for the piercing of ballots by the voter may not be used in this state.” *Id.*

<sup>43</sup> *Id.* at 14. “Electronic or electromechanical voting systems” means a system of casting votes by use of voting systems devices or marking a system of casting voting devices or marking devices and counting ballots by employing automatic tabulating equipment or data processing equipment, and the term includes touchscreen systems.” *Id.*

<sup>44</sup> *Id.* at 96.

<sup>45</sup> *Id.* at 16.

<sup>46</sup> *Id.* at 82.

- treat precinct workers with courtesy;
- respect the privacy of other voters;
- report problems or violations of election law;
- ask questions when confused; and
- check his or her completed ballot for accuracy.<sup>47</sup>

## CONTINUING ISSUES

### Former Felons

The Commission heard testimony and secured documents on the issue of felon disenfranchisement.<sup>48</sup> In some states, individuals convicted of felonies retain their right to vote or have that right automatically restored upon completion of their felony sentence. Seven days after the Commission's Miami hearing, the Florida Office of Executive Clemency issued a letter revising the state's policy so that individuals with felony convictions from jurisdictions with automatic civil rights restoration need not apply for restoration of their voting rights in Florida.<sup>49</sup> Despite this, Florida still requires these individuals to apply for clemency in order to vote in Florida. Some civil rights organizations charge this practice is unconstitutional.<sup>50</sup>

While the Senate voted for the automatic restoration of ex-offenders' voting rights, House Speaker Tom Feeney rejected automatic restoration of convicted felons' voting rights.<sup>51</sup> In the alternative, House legislators supported an easier process for applying for restoration of voting rights.<sup>52</sup> The Florida legislature ultimately rejected changes that would have allowed for the automatic restoration of convicted felons' voting rights, and the Election Reform Act does not address the voting status of former felons.

### People with Limited English Proficiency and Those with Disabilities

The Election Reform Act fails to address issues confronting voters with special needs. First, it proposes no changes to assist individuals whose primary language is not English, specifically Spanish or Creole speakers, in casting their votes. Similarly, the Election Reform Act proposes no specific changes to assist individuals with disabilities.

### Absentee Ballots

The Election Reform Act, in trying to correct one problem, has reopened the door to past abuses of the absentee ballot. By not requiring the requestor or the elector to provide social security numbers on ballots, the Election Reform Act ignores a potential fraud problem in absentee voting. Moreover, persons who present themselves at the poll must present identification; absentee voters are not required to provide identification.<sup>53</sup>

## CONCLUSION

The Election Reform Act of 2001 must be viewed as a much-needed step toward ensuring Floridians the right to vote. The Florida legislature attempted to address some of the major problems caused by the failure of voting procedures and systems in the 2000 presidential election.<sup>54</sup> The new law has provisions that reform and improve absentee voting, military and overseas registration and voting, poll worker education and training, and the voter registration maintenance system. It also provides for the use, although limited, of provisional balloting.

Despite this positive change, only time will tell if this legislation will be effective. Much depends on how its provisions are implemented by state and local officials. It is unknown whether adequate resources will be budgeted by the state and local governments to ensure the law's effective-

<sup>47</sup> *Id.* at 82-83.

<sup>48</sup> See chap. 5.

<sup>49</sup> Janet H. Keels, coordinator, Office of Executive Clemency, letter to Ed Kast, assistant director, Division of Elections, Feb. 23, 2001. See chap. 5.

<sup>50</sup> David Ruppe, "Florida Changes Policy on Ex-Felons' Voting Rights: Government Practice May Have Been a Factor in Bush Victory" <[http://www.abcnews.go.com/sections/us/dailynews/floridafelonvote\\_010321.html](http://www.abcnews.go.com/sections/us/dailynews/floridafelonvote_010321.html)> (accessed Mar. 26, 2001).

<sup>51</sup> Mark Silva, "Election Overhaul is Approved," *The Miami Herald*, May 3, 2001, p. A1.

<sup>52</sup> *Ibid.*

<sup>53</sup> Thomas B. Edsall, "A Long Road for Election Reform," *The Washington Post*, May 9, 2001 <[www.washingtonpost.com/wp-dyn/politics/elections/2002/](http://www.washingtonpost.com/wp-dyn/politics/elections/2002/)> ("Hans A. von Spakovsky, a Republican member of the Fulton County Board of Registrations and Elections in Georgia, was sharply critical of election reforms that provide easier use of absentee ballots. Von Spakovsky argued that absentee ballots make voter fraud simpler because 'multiple registration and multiple votes' are far more accessible and much more difficult to regulate").

<sup>54</sup> See app. V for a general overview of proposed and implemented changes.

tiveness.<sup>55</sup> Several million dollars have been authorized for voter education, poll worker selection and training, and new machinery;<sup>56</sup> it remains to be seen whether it is enough to equip all voters, rural and urban, with the best machinery to ensure that their votes will be correctly tallied.

Several important issues were not addressed by this legislation. The failure to address these issues continues the legacy of disenfranchisement. These issues include the failure to extend voting rights to former felons, the lack of required language assistance to non-English-speaking voters, and the failure to provide

meaningful voting assistance to individuals with disabilities. Additionally, Florida's new election law still provides no meaningful process for a person whose right to vote on Election Day is denied to challenge that denial.

Ultimately, the success or failure of Florida's election reform efforts depends on the leadership provided by Florida's highest elected officials. The Commission hopes the lessons learned from the November 2000 election will lead to the effective implementation of long-lasting reforms throughout the state that send a clear message to the country about the importance of the right to vote and the consequences of its denial.

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<sup>55</sup> For this reason, the Commission has made a commitment to continue its investigation. The Commission "will travel to Florida to assess the impact of the legislation and to encourage appropriate distribution of resources to eliminate the well-publicized difficulties that were experienced in the last election." See U.S. Commission on Civil Rights, "U.S. Commission on Civil Rights Commends Florida Leaders' Proposed Overhaul of Voting System," May 4, 2001.

<sup>56</sup> S.B. 1118, 103d Reg. Sess. (Fla. 2001) at 95-96.



**Statement of Chairperson Mary Frances Berry, Vice Chairperson Cruz Reynoso, and Commissioners Christopher Edley, Jr., Yvonne Y. Lee, Elsie Meeks, and Victoria Wilson**

Citizens must have a voice in the election of those who make the laws under which we all must live. As this report, *Voting Irregularities in Florida During the 2000 Presidential Election*, concludes, the voices of many voters, particularly African Americans, Latinos and Haitians with language assistance needs, and persons with disabilities, were silenced in Florida. This report's unique blend of statistical analyses, combined with the presentation of striking eyewitness testimony and voluminous documentary evidence, provides a compelling portrait of disenfranchisement. We commend the staff for their swift response to the innumerable allegations of voting irregularities they considered.

The report emphasizes the barriers that Hispanics encountered during the November 2000 election. However, due to the limitations of the available data, Hispanics could not be easily distinguished from nonblacks in statistical analysis. However, the work of the Commission's expert, Dr. Allan Lichtman, suggests that if the data on the Hispanic group were further isolated, the racial disparities between blacks and nonblacks would be greater.

Governor Jeb Bush's Select Task Force on Election Procedures, Standards and Technology revealed that less than 1 percent of the problems minority voters faced during the election resulted from "voter error." Our report demonstrates that independent of income, poverty rates, and literacy, factors that are all deeply intertwined with race, a double-digit difference exists in the ballot rejection rates for African Americans. Standing alone, the major racial disparities in ballot rejection rates in Florida's election appear to establish a prima facie violation of the Voting Rights Act, which protects the franchise for all eligible persons.

There are no permanent majority or minority factions within the United States Commission on Civil Rights. Nor does the Commission issue majority or minority reports. Once any report is approved by the vote of a majority of Commission members it is the Commission's report. Commissioners who dissent or wish to concur or add additional remarks may do so in statements commenting on the report that may be published with the report as long as they comply with our statute.

We want to ensure that nothing detracts from a focus on the documented disenfranchisement that occurred in Florida. Therefore, we have included documents validating the fairness and routine nature of the process used to produce this report in the appendix. The Commission has reviewed and updated its procedures, where necessary, in response to a 1997 General Accounting Office (GAO) report that found managerial "disarray" in that certain administrative deficiencies had not been addressed by Republican and Democratic appointees since the early 1980s. Some of these problems were analyzed in a 1988 GAO report, *Concerns About Commission Operations*.

Our report concludes that there were election policies and practices in place that prevented some of Florida's residents from voting and others from having their votes counted. American voters are no longer disenfranchised through the use of poll taxes, literacy requirements, grandfather clauses, and other similar procedures. The Commission's investigation, however, revealed a more subtle and possibly more insidious form of disenfranchisement caused by the inexplicable lack of needed election resources and accountability of public officials entrusted to protect this critical and fundamental right. We will continue to monitor events in Florida in the hope that these barriers to the right to vote have been removed.

### Statement of Commissioner Victoria Wilson

I am delighted to vote in support of the U.S. Commission on Civil Rights report, *Voting Irregularities in Florida During the 2000 Presidential Election*. It is a report that shows grasp and reflects a profound belief in one of the basic principles of American democracy: that wrongs can be looked at and identified and spoken about, and that there is the hope that these wrongs can be corrected. I applaud the staff of the Commission for so quickly analyzing and giving shape and coherence to the 118,000 pages of documentary evidence and the 30 hours worth of testimony from the 100 witnesses who came before the Commission to testify under oath.

The U.S. Commission on Civil Rights has been underfunded for 13 years. There have been no increases to meet either rising standard costs or the increasing demands placed upon the Commission's services. In fact, the funding for the Commission during this decade or so has consistently been cut, year after year. Yet in times of crisis, it is to the U.S. Commission on Civil Rights that people have turned. And it is the Commission that has risen above the general state of fear, inertia, and politics and has willingly moved toward the flashpoint, in an effort to sort out truth from distortion.

While I am in agreement with most of the Commission's findings on the Florida voting irregularities, I should like to comment on the issue of conspiracy, which the Commission report does not even discuss. Conspiracy is defined by *Black's Law Dictionary* as an agreement by two or more persons to commit an unlawful act. Was there a conspiracy in the 2000 presidential election in Florida? Not provable—as of today.

But from the many hours of disparate testimony that I heard in both Tallahassee and Miami, regarding the November 2000 election process in Florida, there emerges an interesting confluence of circumstances, a confluence of circumstances that indicates intimidation and harassment of the Florida voters and that was set in motion long before the November election.

I listen as a profession. I listen to writers—historians, scientists, journalists, biographers, playwrights, essayists, psychologists, scholars, and novelists. I listen to them tell stories, true and imagined; and I read narratives. That's what I do to earn a living.

In Florida, I listened to many hours of testimony, as did the other commissioners and the staff. I listened to a great many narratives. And the disparate details come together to provide an unsettling account of what led up to the events of November 7, 2000.

It begins almost 18 months before November 2000 with the election of a new secretary of state and her taking office in January 1998. To quote from one of the supervisors of elections who testified before the Commission in Tallahassee: Florida's new secretary of state soon "cleaned out the institutional memory to a large degree of the Division of Elections."

The Florida Division of Elections director and the assistant director, both of whom had served for many years as key officials of the division, left those positions. Both former officials, who were acquainted with the voting regulations for each of the 67 counties of Florida, were replaced by a new director who was inexperienced and was not familiar with the ways that voting problems and procedures had been resolved in the past.

In a letter dated January 3, 2001, from General Counsel Charles T. Canady of the Office of the Governor for the State of Florida, addressed to Edward A. Hailes, Jr., general counsel of the U.S. Commission on Civil Rights, Mr. Canady wrote, regarding the "statutory responsibility over election and voter related issues," that, it is the secretary of state that has been entrusted by the legislature with the comprehensive obligation to "obtain and maintain uniformity in the application, operation and interpretation of the election laws."

Yet the individual supervisors representing the 67 counties of Florida "knew enough not to depend on that office this year because surely they [the Division of Elections officials] were too new. We [the election supervisors] knew more about the process in some cases than they did."

In addition, there was the testimony of a former Florida secretary of state who served from 1979 to 1986, and whose "number one priority" during his term in office was "election reform." Jim Smith

testified at the Commission's hearing, that the Division of Elections "shrank over a four-year period from 65 officials down to 37," making "the ability to supervise and give direction, very, very difficult." Mr. Smith went on to suggest "that that should be looked into." Jim Smith also served as the attorney general for the state of Florida, and was most recently co-chair of Governor Jeb Bush's Select Task Force on Election Procedures, Standards and Technology.

#### **No Funds for Voter Education**

Officials knew months in advance that the election was going to be complex. There was an unusually large number of presidential candidates on a ballot that would be confusing to even the most experienced of voters. It was also known that tens of thousands of voters, newly registered, would be voting for the first time.

The secretary of state testified that \$100,000 was requested for voter education in her budget but that the request for those funds was turned down. However, the governor of Florida testified that there had been no request of \$100,000 in the budget for voter education.

There was \$51,000 spent for billboards that warned about voter fraud, and a pamphlet on the same subject was sent out to all Florida voters. But there were no instructions about the ballot itself or sample ballots of each county that would show the voter what the ballot actually looked like; this, in an election where there were 12 candidates for president on the Florida ballot.

During the hearing, I, along with the other commissioners, was shown a sample Florida ballot that had no consistency of layout regarding type, no clarity of design within the row of candidates, and a row of names of presidential candidates that continued on the back of the sample ballot. Much has been written about the lack of clarity in the design of the butterfly ballot. But the sample ballot I saw from Duval County made the butterfly ballot seem, by comparison, a snap to navigate. The Duval ballot looked more like a take-out menu from a delicatessen than a ballot designed to make it easy for an American to vote. Its design was more a dare, than a design that would enable a voter to make a clear, knowing choice of candidates.

Had I seen the ballot for the first time on Election Day, in a voting booth, under pressure of time, with people in line outside of the booth waiting for their turn, I would have looked at the jumble of names in different type faces and the maze of columns, and thrown up my hands and left without voting at all. Voter inexperience would not have been the cause of my blank ballot. I have voted in eight presidential elections and consider myself an experienced voter.

Election supervisors testified before the Commission that they knew there was no money for voter education to be carried out in the weeks and months before the November election. Many of the supervisors testified to their helplessness and frustration in the face of what they knew in advance would be a large voter turnout. They knew they were on their own, without help or resources from the Division of Elections.

One supervisor from Leon County spoke of his efforts to circumvent what he knew could easily evolve into a state of chaos on November 7, and valiantly tried to head it off by raising funds for voter education on his own, knowing no help would be forthcoming from the Division of Elections, "this in a state that in the past has spent more than \$55 million in one year telling Floridians how to play the lottery."

This supervisor "personally raised money from teachers, lawyers, and other individuals of Leon County so that Leon County could spend a radio and television advertising budget that was totally separate from what the county had given me because the county did not provide much in that area as well, in order to meet some of the needs that we saw coming down the road." [my underlining]

His plan worked. Leon County had less than 1 percent of spoiled ballots—one of the two lowest counties in the state. But in many of the other counties, where no additional funds were raised to help the voters, chaos and confusion indeed prevailed.

#### **The Mysterious Missing Registration Cards from Motor-Voter**

More than 600,000 people were registered by a system called motor-voter when they registered for a driver's license months in advance of November 2000. They were told their names would appear

on registration lists at their polling place. But on November 7, the names of too many motor-voter registrants inexplicably did not appear on registration lists, and those citizens were not allowed to vote.

#### **Inaccurate Lists Compiled by Database Technologies**

The state of Florida spent more than \$3 million of taxpayer money to hire a company, Database Technologies, whose mandate was to compile the names of former, or present, convicted felons who, under Florida law, had forfeited their civil rights, and would not be eligible to vote.

Election supervisors heard in advance that the Database Technologies lists were inaccurate and should not be relied upon. Many of the poll workers who did use the Database lists were unwittingly contributing to a state of chaos and confusion and intimidation where many law-abiding Americans, anticipating the casting of their vote for the 43rd President of the United States, were told by an election staffer, "Sorry. Step this way. You need to talk to a supervisor. There is a problem." And were subsequently told something along the lines of, "Sorry but you can't vote. Your name is on this list of convicted felons. Your civil rights have been revoked."

#### **In Sum, An Interesting Confluence of Circumstances . . .**

- A Division of Elections whose key election officials of many years, who knew about the complexities of the voting law in each of the 67 counties, left their positions, and were replaced by a new secretary of state and an inexperienced Elections Division who knew less than the local election supervisors. . . .
- No money allocated by the secretary of state to help the voters in an election that was going to be complicated and with extremely heavy voter turnout, and with tens of thousands of first-time voters . . .
- A motor-voter registrations glitch in which 600,000 voters registered for the first time, months in advance, many of whom, on their arrival at the polling place, did not find their names on the registration lists and were therefore not allowed to vote . . .
- A database company hired by the state of Florida at a cost to the taxpayers of millions of dollars, to compile a list of convicted felons, who by law were prohibited from voting, but that, in addition erroneously listed thousands of names of law-abiding Americans who at their voting place either were forced to argue their standing in the community or, if too intimidated, or disheartened to rally to their own defense, were denied their most fundamental, inalienable right: to vote as citizens and taxpayers of this country . . .

As my colleague, Commissioner Thernstrom, said in her testimony before the Committee on Rules and Administration of the United States Senate, "Process matters. But when the process is corrupt, the conclusions themselves (current and future) are deeply suspect."

Commissioner Thernstrom also stated at the same hearing that Dr. Allan Lichtman, the historian who conducted the statistical analysis used in the Commission's report on Florida's voting irregularities, had "close ties to Albert Gore, Jr." as an example of the "perfectly obvious partisan passions that not only destroyed the credibility of the [Commission's] report but informed the entire process that led up to the final draft." According to Dr. Lichtman, his alleged close ties to Albert Gore, Jr., were nothing more than a few memos written by him six years ago when Albert Gore, Jr., was serving as the Vice President of the United States.

Here's a how-de-do . . . here's a pretty mess.

If Dr. Lichtman's preparation of a few memos for the then Vice President—who undoubtedly received thousands of memos during his eight-year term in office—is to be construed as having "close ties" to a candidate six years later, and is considered an example of partisan judgment, and therefore, suspect, then what are we to make of other close ties to a candidate, ties that may have affected crucial decisions months before the Florida elections took place: the ties implicit in the fact that Florida's secretary of state (the chief election officer of the state, whose responsibilities and duties in-

cluded “the obligation to obtain and maintain uniformity in the application, operation and interpretation of election laws.”) was at the same time, the co-chairwoman of George Bush’s presidential election campaign for the state of Florida.

Or, the close ties of the governor of this same state, whose emotional bond to the same presidential candidate couldn’t possibly have been any closer, or run any deeper?

In an article in the *New York Times*, June 4, 2001, regarding the leaking of the Commission’s report, long before most of the commissioners, including myself, had even received their copies, Commissioner Redenbaugh incorrectly attributes the leak to Chairperson Berry. Commissioner Redenbaugh is quoted in the same article as saying: “Sometimes people who believe that their cause is a correct one, lose sight of the procedural violations and believe that the means they pursue are justified by the goodness of the ends they desire.”

An apt description of the confluence of circumstances I have outlined here, that explains the disenfranchisement of one out of every eight African American voters in Florida in the November 2000 presidential election.

**Dissenting Statement**

Commissioners Redenbaugh and Thernstrom voted against approving the report and submitted a dissent. However, public acknowledgments and the contents show that the dissent was prepared in a manner that violates the Commission's statute. Specifically,

"(c) VOLUNTARY OR UNCOMPENSATED PERSONNEL—The Commission shall not accept or use the services of voluntary or uncompensated persons. This limitation shall apply with respect to services of members of the Commission as it does with respect to services by other persons."  
42 U.S.C. § 1975.

The Commission provided the dissenting Commissioners with an opportunity to work with the General Counsel to address the illegality so that a dissenting statement could be included, but the Commissioners did not avail themselves of the opportunity. Although the Commission could not publish the dissenting opinion, the appendix to this report includes the complete dissenting statement of Commissioners Redenbaugh and Thernstrom submitted to the U.S. Senate Committee on Rules and Administration to ensure that their views are heard. A full explanation of the Commission's decision on this matter, with supporting documents, and the bases for the decision are provided in the appendix.

ISBN 0-16-050927-0

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**Congress of the United States  
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**THE HONORABLE JAMES R. LANGEVIN  
U.S. HOUSE OF REPRESENTATIVES**

TESTIMONY BEFORE THE SENATE COMMITTEE ON RULES AND ADMINISTRATION

JUNE 28, 2001

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I would like to thank Chairman Dodd and the Committee for holding this hearing today to address election reform – an issue that has been prominent in the minds of many Americans since last November. From my experience as Rhode Island's Secretary of State, I am aware of the many challenges that lie ahead in making our nation's voting system accurate, fair, and accessible to all Americans. Because significant reforms cannot be enacted overnight, we must continue to press this matter so we can improve our system before the federal elections of 2002.

When I was elected Secretary of State of Rhode Island, it had the oldest voting equipment in the nation. Beginning in 1993, as a state Representative and then as Secretary of State, I worked with my colleagues in the legislature, the State Board of Elections, local canvassing authorities and the public to investigate voting problems throughout the state and develop an effective resolution. By May of 1994, our Commission reported the need to replace antiquated Shoup lever voting machines with optical scan equipment because it would be cost-effective, help increase voter participation, and provide faster, more accurate tabulation of votes. By the end of 1996, the procurement process began and by the September 1997 primary local elections, the optical scan equipment was in place. In both the 1998 and 2000 elections, these machines were in full operation throughout the state.

Implementation of the new optical scan equipment was cost-effective because it was cost neutral. Rhode Island's revenue neutral laws ensured that the expenses for staffing, storage and transportation of voting equipment, and printing and mailing ballots all equaled the cost of establishing this new voting system. We also met our goal of increasing voter participation by contributing to the increase in the number of registered voters by nearly 60,000 from 1993 to 2000.

Finally, ensuring timely accuracy in tabulating votes was a top priority. Because the optical scan machines read voting ballots by sensing the darkest marks, this method ensures the clear intent of the voter is transmitted and tabulated. These also provide an audit trail for each ballot and they enable the use of ballots printed in multiple languages. However, since the machines are not accessible to blind voters, I introduced a Braille ballot initiative to ensure that those who have lost their sight maintain their right to vote independently. As you can see, models exist for accurate, efficient and cost-effective election reform, which we should utilize in our efforts to ensure true democracy in America.

I have made election reform one of my top priorities in Congress and have introduced three pieces of legislation to spur Congressional action on election reform, and to help states that have not yet modernized their voting equipment. The first is a resolution calling on Congress to swiftly enact meaningful election reform legislation so that states may begin to implement new systems before the federal election of 2002.

Secondly, the Voting Opportunity through Technology and Education, or VOTE, Act would require the Federal Election Commission to establish accessibility and ease-of-use standards for polling places and voting equipment. The ability to cast a vote is a guaranteed right and it should not be restricted because of poor technologies or other factors. In every election year, many people stay home from the polls, not from apathy, but from concern about their ability to cast a vote independently. With nearly 1 in 5 Americans having some level of disability and approximately 35 million Americans over the age of 65, we must act now to guarantee access to the polls for all Americans regardless of age, race, or disability.

Finally, the Make Every Vote Count Act, the House companion measure to a bill offered by Senator Cleland, would create a \$1 billion federal matching block grant for states to replace punchcard voting systems, lever machines, and paper ballots with a single advanced voting system of their choice. The bill would also permit states to use a portion of grant funds for poll worker training and voter education, and would allow members of the armed forces to vote by absentee ballot in their last state of residence, and extend this right to state and local elections.

We may agree that election reform is an issue that must be addressed immediately because confidence in our voting system and laws is the cornerstone of a strong democracy. I congratulate the Committee for your action to keep election reform a top priority of the 107<sup>th</sup> Congress, and I look forward to working with you to develop significant and meaningful changes to our nation's voting system.





July 8, 2001

## Advancing Election Reform

**A**mericans are still waiting for the federal government to step in to fix the numerous deficiencies in the nation's electoral process that were uncovered by last year's close presidential race. Members of Congress and President Bush will be politically foolish, not to mention neglectful in their duties, if they duck the problem and simply allow America's patchwork of thousands of underfinanced electoral jurisdictions to continue carrying on as if nothing had happened. Americans' right to vote, and the chances of having their ballots accurately tabulated, must not be diluted by their local government's neglect. There is a clear need for national standards governing how presidential elections are administered.

The Justice Department must also do more to enforce those federal mandates bolstering the right to vote that are already in place. A Federal Election Commission report released last month found that 23 states had "significant problems" implementing their "motor voter" registration programs, three times more than in the past election cycle. This is a very serious problem given that 4 out of 10 voter registration applications are now submitted through motor vehicle offices. Many voters were inexcusably turned away from the polls simply because their voter registration applications were languishing at the D.M.V.

The Senate has taken the lead in advancing election reform, and had done so even before the Democrats gained control of that chamber. Shortly before that happened, we applauded the coming together in May of Senators Charles Schumer, Mitch McConnell, Robert Torricelli and Sam Brownback behind a worthy bipartisan bill. It would provide \$2.5 billion over five years for states to modernize their election practices, obligating those that take grants to meet certain national standards on election practices to be established by a new bipartisan commission.

The McConnell-Schumer bill is supported by a majority of members, but a competing bill by Senator Christopher Dodd, the Democrat who replaced Senator McConnell as the Rules Committee chairman, is now being pushed by the Democratic leadership. It differs significantly from Mr. Schumer's bill in that it would impose mandates on all states to meet minimum federal standards established by a panel after a period of study, whether or not the states take federal grants.

Senator Dodd is to be commended for his forceful approach, and for persuading all Democratic senators, many of whom are also backing McConnell-Schumer, to co-sponsor his bill. Federal mandates are preferable to a voluntary approach

<http://www.nytimes.com/2001/07/08/opinion/08SUN2.html?pagewanted=print>

7/8/01

that could leave voters in many states unaffected.

The political challenge facing Senator Dodd and the Senate majority leader, Tom Daschle, is to demonstrate that this proposal is viable, and not just a means of partisan posturing. As of yet, no Republican senator is supporting it, and some states might challenge its constitutionality. Supporters of the voluntary McConnell-Schumer approach say it is better designed to garner broad support and still achieve many of the same results.

Democratic leaders must assess the merits of this claim, but should not flinch lightly from taking the tougher approach. Decisive Senate action on election reform in the near term is needed to pressure the leadership in the House and the Bush administration. Lamentably, neither has shown much interest in the subject.

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UNITED STATES SENATOR  
GEORGIA

# MAX CLELAND

FACT SHEET

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The "Make Every Vote Count" Act of 2001 (S. 479)

***Background:***

- According to the Georgia Secretary of State's office, Georgia's rate of "undervotes" in the 2000 elections was 3.5%, nearly twice the national average (which was estimated at 1.9%.)
- In Georgia, 18 counties use punch card or "votomatic" systems; 76 use lever-style machines; and 63 use optical scanning machines and two use paper ballots. Georgia's two most populous counties, Fulton and DeKalb, use the punch card ballots.
- A 1998 Election Data Services study of elections found that Votomatic systems were used in roughly 33% of all precincts nationwide.
- Class action lawsuits have been filed in several states, including Florida and Illinois, over use of the punch card ballots.

***The legislation will:***

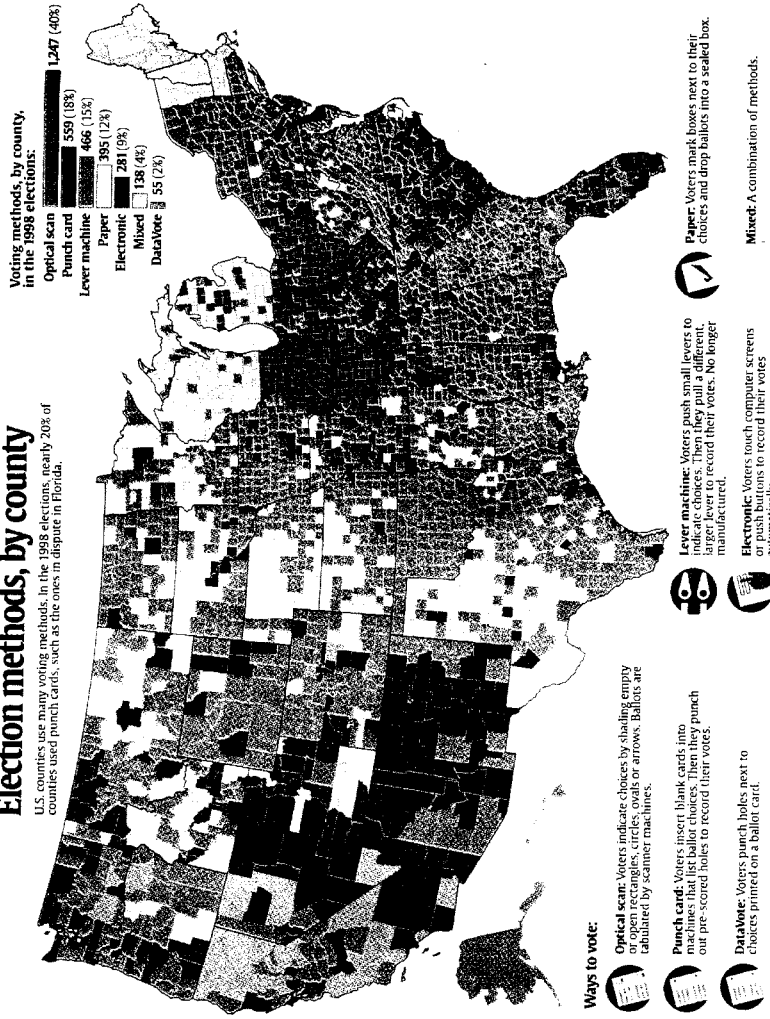
- Provide grants to states to eliminate punch card ballot machines and other dated voting equipment to be replaced by more advanced, accurate voting devices;
- Fund a formula grant to states for redistribution to appropriate authorities responsible for purchasing equipment (usually counties). The formula for allocation would be based on the states' shares of dated equipment currently in use nationwide;
- Be directed by the Federal Elections Commission (FEC). The FEC will distribute the money to state elections officials within 30 days of enactment;
- Be introduced in the early part of the 107<sup>th</sup> Congress.

***Senator Cleland:***

- Was Georgia's Secretary of State from 1982-1995;
- Called for Senate Armed Services Committee Hearings in November into irregularities of the overseas military ballot count.
- Formally requested a General Accounting office (GAO) investigation into procedures used for overseas military ballots during the 2000 elections, along with Senators Warner, Levin and Hutchinson. A report is expected in the Spring of 2001. Details will include the number of ballots thrown out, reasons for disqualification and recommendations for remedial action.
- Was an original co-sponsor of *the Voting Study and Improvement Act of 2000*, bipartisan legislation introduced by Senators Charles Schumer (D-NY) and Sam Brownback (R-KS) to modernize the nation's voting systems.

## Election methods, by county

U.S. counties use many voting methods. In the 1998 elections, nearly 20% of counties used punch cards, such as the ones in dispute in Florida.



In support of my testimony given on Monday, July 23, 2001, I would like the following letter from the Consortium for Citizens with Disabilities, added to the record.

July 19, 2001

Dear Senator or Representative

We the undersigned members of the Consortium for Citizens with Disabilities (CCD) are writing to endorse and call for the swift enactment of the Equal Protection of Voting Rights Act of 2001 (S. 565/HR 1170).

CCD joins with a growing coalition of disability, women and civil rights groups supporting the immediate passage of this critical legislation. There are many bills in Congress aimed at improving one or more features of our nation's electoral processes. But, CCD believes S 565/HR 1170 will best guarantee access to the polls and a secret ballot to all voters including those with disabilities in all future Federal elections. For it to take effect for the 2004 election, however, this bill must be acted on immediately. We thank those in Congress who have cosponsored this legislation thus far and encourage all others to do so.

The voting irregularities in last November's election revealed a sobering truth: the voting systems we have relied on for so long to elect our local and national leaders are antiquated and badly flawed. They deny many -- especially minority voters, older Americans and voters with disabilities -- their most fundamental civil rights--the right to vote. The U.S. Civil Rights Commission recently issues a draft report on the vote count in Florida which found:

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

Tragically, such barriers to voting and the active participation of Americans with disabilities in our political process are by no means unique to Florida or last November's presidential election.

Taken together, the Voting Accessibility for the Elderly and Handicapped Act, the voters' assistance provisions of the Voting Rights Act and the ADA as well as numerous State voter laws, already require that polling places and balloting procedures be accessible to voters with disabilities. But these laws are not uniformly enforced and people with disabilities continue to face discrimination in voting. Nationwide surveys conducted over the past few years by the National Organization on Disability, Harris Interactive and others reveal that:

\* Of the 35 million voting-aged citizens with disabilities over a third or



14 million of them are unregistered to vote.

\* 81 percent of voters who are visually impaired must rely on others to mark their ballots, despite the affordability of voting systems enabling them to cast ballots independently and in secret.

\* At least 14% of the nation's polling places are inaccessible to voters who use wheelchairs.

These conditions can and must be remedied through the passage and effective enforcement of mandatory Federal voting rights legislation guaranteeing uniform and nondiscriminatory access to the nation's polls for all Americans.

Furthermore, CCD requests that following changes be made top the bill as it moves through the legislative process

- . Clarify the mandatory standards are to be established by the ACCESS Board
- . Funds are made available for education and outreach to disenfranchised voters
- .

Nothing is more central to righting this historic wrong than guaranteeing that all Americans have equal access to the polls by the time of the 2004 general elections. As we approach the 11th Anniversary of the Americans with Disabilities Act, we call on all Members of the Senate and House to pass this legislation and make American democracy accessible to every voter.

Please do not hesitate to call on us if we can be of assistance or try to answer any questions you or your staff may have regarding our support for this legislation. To do so, please contact Jim Dickson at the American Association of People with Disabilities (phone: 202-955-6114; e-mail: Curt.Decker@NAPAS (phone 202-408-9514) e-mail Curt@napas.org or Bob Williams at United Cerebral Palsy Associations (phone: 202-776-0406; e-mail: bwilliams@ucp.org).

Thank you for your consideration of our views.

- United Cerebral Palsy Association
- CPA
- National Organization on Disability
- American Association on Mental Retardation
- American Association of People with Disabilities
- National Association o Protection and Advocacy Systems
- Easter Seals
- National Association of Developmental Disabilities Council
- Learning Disabilities Association
- The Council on Quality and Leadership in Supports for People with Disabilities
  
- National Industries for the Severely Handicapped
- The ARC
- National Council on for Community Behavioral Healthcare
- Center on Disability and Health

Heumann & Associates  
The American Diabetes Association  
Paralyzed Veterans of America  
Association for Persons in Supported Employment  
Council for Learning Disabilities

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**Testimony for the Senate Committee on Rules  
and Administration**

**by the American Society for Quality**

**on**

***S. 565, The Equal Protection of Voting Rights Act of 2001***

**Atlanta, Georgia, Field Hearing  
July 23, 2001**

*When the scope of voting problems became clear after the November 2000 federal elections, many states and localities began to examine their election procedures and systems, looking for ways to improve and to avoid the embarrassing situations encountered in Florida and elsewhere. In Bernalillo County, New Mexico, county elections officials and concerned citizens are taking an approach that other jurisdictions can learn from. They are taking a process management view of their voting procedures and are beginning to undertake a systematic review of those processes. What distinguishes the effort in Bernalillo County is the involvement of a group of quality improvement professionals who are serving as advisors and facilitators for this process improvement effort.*

*In the aftermath of its own election nightmares, Bernalillo County was approached by members of the Albuquerque Section of the American Society for Quality with an offer of assistance. Certification of New Mexico vote totals had been held up during three days of tense counting and re-counting of votes in Bernalillo County. The main problem turned out to be a programming error—a human error—on the optical scanners used to count some 67,000 early and absentee ballots, complicated by other dramas and snafus such as a lost ballot box.*

*County officials were open to the offer to bring quality improvement methods and expertise to bear on the county's election problems. Meetings to explore what could be done were held between newly elected Bernalillo County Clerk Mary Herrera, the Director of the Bureau of Elections, Jaime Diaz, the Deputy Director of the bureau, Patricia Miller, ASQ Albuquerque Section Past Chairman Jay Chamberlin, the Section's Vice Chair Karl Ricker, and Section member Bob Richards, who proposed the idea.*

*As a result of these meetings, the elections bureau developed a prioritized list of three areas to explore with the aid of the quality professionals: 1.) voter registration processes and data base integrity; 2.) written policies and procedures; 3.) processes for early and absentee voting.*

*The ASQ members will serve as external quality consultants, comparing existing practices to best practices and making recommendations for improvement. As the need arises, they will draw on various experts from among their ranks, including skilled facilitators and experts in areas such as software quality. The quality professionals will evaluate the practices used by the Bureau of Elections to establish and improve their internal policies and procedures. They will work with the county's contractors on processes to ensure valid data in the voter registration database. And they will conduct facilitated process improvement activities examining the voter registration processes and the early and absentee voting processes. The aim is to lead the people who own and manage these processes through a course of discovery to help them find and fix their own election system problems.*

We bring this example to the attention of the Senate Rules and Administration Committee because what is happening in Bernalillo County has implications bearing on

the ultimate success in administration of the provisions of S. 565, the election reform legislation currently being marked up in this Committee. It is instructive in several regards, demonstrating:

- 1.) The importance of local problem solving. There are many different problems, varying from one jurisdiction to the next, and many possible approaches. Legislation should be flexible in allowing each jurisdiction to determine what its most pressing needs are and to devise ways to meet those needs by improving its election processes.
- 2.) The value of education. There is a great need for public agencies to learn how to improve—i.e., to acquire the tools and knowledge necessary to solve quality problems.
- 3.) The understanding that voting is a process, which can be analyzed and improved through the application of quality improvement methods that have been proven in service businesses, industry, and public sector organizations.

S. 565, the *Equal Protection of Voting Rights Act of 2001*, addresses many of the problems that came to light in the year 2000 federal elections. From a quality improvement perspective, there are many things to like about this legislation. It addresses many of the concerns that ASQ raised in its December 2000 white paper on election quality problems. It will permit localities like Bernalillo County and others all across the country to make unprecedented improvements in their election processes.

We are pleased by its call for the study of voting systems by independent experts in order to identify and understand problems and propose solutions.

The legislation wisely addresses training of election workers (including both paid staff and volunteers) and education of the voters rather than limiting itself to equipment and voting technologies. The “soft” issues of training and education sometimes get less attention in improvement efforts than the usually more apparent hardware issues—and can offer greater payback than comparable investment in hardware.

The establishment of a best-practices database publicly accessible on the Internet is an admirable and farsighted provision. We are certain that many good ideas will surface in the months ahead as states and localities devote their attention to improving their election processes. These ideas must be captured and disseminated to serve as a benchmarking tool. We would be willing to discuss providing our expertise and experience in setting up and operating such a benchmarking database.

S. 565 wisely utilizes existing federal organizations such as the Federal Election Commission, rather than establishing new agencies to carry out the provisions of the legislation.

We are pleased to see that certain fears about mandates that might have been contained in the legislation are unfounded—mandates stating which types of voting apparatus, procedures, and technologies must be used. S. 565 mandates only that whatever procedures and technologies a voting jurisdiction chooses to use must meet certain minimum standards for things like accuracy, verification, error-proofing, and auditability.

How to meet certain specifications for voting systems should be left up to the states and localities to determine, since this course will encourage innovation and continuous improvement and allow localities to tailor their systems to meet their particular needs, which is the surest route to customer satisfaction.

However, S. 565 falls short in some respects. It leaves many details to the states without giving them any guidelines for establishing the structures and systems that will allow them to carry out elections in an error-free manner and to continuously improve. Nor does it provide such guidelines to the Attorney General and agencies such as the Federal Elections Commission that are charged with carrying out various duties under the Act. Simply stated, it does not do enough to establish a quality system for election planning and administration. We believe such systems can be designed, using as their foundation models that have been proven in the private and voluntary sectors.

S. 565 does not address mechanisms by which appropriate authorities may assess whether the provisions of the legislation are being carried out. The Sec. 207 and Sec. 208 auditing and reporting provisions of S. 565 are very nonspecific and are much more likely to deal with the appropriateness of funded activities rather than their efficacy. For example, the auditing requirements in Sec. 207 are most likely to ascertain whether states and localities are in fact spending Election Technology and Administration Improvement Grant Program funds on the activities authorized in Sec. 202. Without specific guidelines calling for an examination of the effectiveness of programs and funded activities in meeting measurable goals for election process improvement, we fear that the reporting required in Sec. 208 will become merely an exercise in inventorying activities engaged in rather than their outcomes.

How, then, will anyone know with any measure of certainty that voting systems are meeting requirements? How can the agencies that conduct elections demonstrate their competence?

There are many opportunities to accomplish these objectives by applying quality tools, using a synthesis of approaches such as the ISO 9000 quality systems standards, the Baldrige criteria for performance excellence, and the six sigma methodology.

Each of these approaches can contribute to the successful operation of an undertaking as complicated as an election process. ISO 9000 provides a foundation by offering independently verifiable assurance that there is a basic level quality system driving the process; Baldrige providing a target for achievement by pointing the way toward best practice in quality management; and six sigma as an integrating method that ties the other two statistically.

Conducting elections is a process. As such, election processes can be studied, analyzed, and evaluated by tools of quality management, with goals similar to those in industrial applications, including effective process control, specific measurements of the confidence of reported quality levels, continuous improvement and customer satisfaction.

ISO 9000 is essentially a generic quality systems structure, enabling processes to be audited to the standard. Existing processes can be examined and gaps in the control system identified, providing a mechanism for improvement. For processes that meet the standard, periodic auditing can confirm that effective control is being maintained. The year 2000 revision of ISO 9000 incorporates changes in both substantive content and clause structure, making the standard usable in non-manufacturing applications such as election processes. For example, the Panama Canal authorities are seeking ISO 9000 certification to demonstrate to the world the competence of Panamanians in operating the canal. This is an example of a non-industrial ISO 9000 application being used to demonstrate competence. We are also aware of one proposal in development for an audit-based system for election process improvement that includes an ISO-9000 type certification scheme designed to reduce the costs of voting processes and increase voter confidence in the system.

A standards-based approach can help improve election processes across the country by developing voluntary standards combined with independent verification and public reporting. There are many opportunities to apply this type of approach. Work is already underway by the Federal Elections Commission and the National Institute of Standards and Technology to define voluntary performance standards for voting systems. The American Society for Quality is supportive of these efforts. These proposals, however, do not cover the administrative and management aspects of the voting processes, and we believe there is therefore additional and significant opportunity to apply quality management systems standards (ISO 9000) to voting processes.

The private sector has a great deal of experience in setting voluntary standards that include not only product-specific standards, but, more relevantly, generic quality management systems standards that could have direct applicability in rectifying problems uncovered recently in elections processes. This knowledge and experience must be brought into play in this effort, and there are many different groups that would be willing to take up the challenge. The Bernalillo County example mentioned earlier is one such instance. As we see it, one of the main challenges in making this legislation work and guaranteeing that ultimately it has its maximum intended impact will be to take advantage of this type of experience.

It is therefore imperative that in carrying out the provisions of the bill people and organizations who understand process improvement be involved, both in the workings of the Commission on Voting Rights and Procedures and in the elections improvement efforts at the state and local levels. Many of the Title II Sec. 202 activities authorized by the bill, which will be undertaken by the states and localities, cannot be carried out successfully without a quality system being in place.

Quality methods should be incorporated into the various studies (studies of election technology and systems, studies of designs of ballots and uniformity of ballots, and studies of the accuracy of voting, election procedures, and election technology) that are authorized in Title I Sec. 103 of the bill. And in setting standards for the accuracy of voting systems, aiming for a six sigma goal (i.e., no more than 3.4 defects per million

votes cast) is not at all unrealistic; it would send a message to the American people that the nation is serious about making every vote count.

In summary, we applaud the many outstanding provisions of S. 565, but we feel that the bill should be more forceful and explicit in calling for the establishment of quality systems for election planning and administration. We would offer several recommendations for accomplishing that goal. Namely, election reform legislation should:

- 1.) Foster a multiplicity of approaches carried out within a system of voluntary standards to achieve effective and fair solutions to current problems and to promote continuing improvement and innovation in the years to come.
- 2.) Use every opportunity to encourage the employment of quality methods for process management and problem solving, and the employment of expertise and experience in quality management systems standards.
- 3.) Place strong emphasis on education of election workers and the public and avoid a single-minded rush to buy hardware in order to fix current problems.

These elements ought to be expressed in the legislation and form the basis for the activities that federal agencies and various state and local jurisdictions will undertake as they carry out the provisions of the legislation. It would make elections processes more accurate and more responsive and establish a foundation for continuous improvement of these processes.

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*The American Society for Quality is a 116,000-member professional association with headquarters in Milwaukee, Wisconsin. The 55-year old organization advances individual, organizational, and community excellence worldwide through quality improvement, learning, and knowledge exchange. ASQ has been the administrator of the Malcolm Baldrige National Quality Award, managed by the U.S. Department of Commerce, since the award's inception more than a decade ago.*



**A Record of Police Intimidation  
and Arrest of Minority Voters in  
Cobb County, Georgia on  
November 7, 2000**

**Prepared for the United States Senate  
A Public Forum in Atlanta, Georgia  
Voting Reform  
Richard B. Russell Federal Building**

**by Laura M. Lester from the taped  
commentary of Keith Page and Edith Page  
on December 5, 2000, about their  
experiences, Tuesday and Wednesday,  
November 7 and 8, 2000**

**prepared Monday, July 23, 2001**

**Narrative: On election day evening at my home in Cobb County, Georgia, I received two phone messages from Edith Page, an African-American woman who had lost an election to Earl Earnhart to represent voters of Cobb County in the Georgia Assembly, House District 35. I worked as her campaign manager in that election one year previous to the events I recorded on audiotape upon return to Georgia, on December 5, 2000, at the office of Edith Page's firm in downtown Powder Springs, Georgia, with her son, Keith Page, and Edith Page about their conversations and incidents concerning Keith's arrest and Edith's attendance at this initial charge at the Cobb County Adult Detention Center on Wednesday, the day after the national election. Initially, I did not return the phone messages. I was working for the Gore campaign in Davidson County.**

**The audiotape consists of questions asked by Laura Lester and answered by Keith Page about his arrest late Tuesday night in Powder Springs and his transport and stay to the lockup in Cobb County.**

**Keith reports the arrest and the witness of the unbelievable crowded conditions in the lock-up of approximately four or five dozen African-American men in his holding area, and six or seven white and Hispanic men. Keith says in conversation with his fellow arrestees that several reported the unusual nature of their arrests at a police check point outside an apartment complex on Favor Road in Cobb County where a bus was present to place arrested people for myriad violations. Keith and his mother interviewed prisoners and family members that spent the entire election day held on small vehicular charges. The conversations detailed the experience of these arrested people held without bail the entire election day in hideously crowded conditions with no ability to be processed and released because of the crowded conditions.**

Edith sat in court Wednesday morning to arrange bail for her son, and discovered in conversation with a woman who had returned to their apartment on Favor Road in a separate car behind her husband who was arrested at a police blockade.

Edith says that this woman, and others in court, related to her seeing an unmarked school bus parked at the side of the road at the corner of Favor Road at Harmony Leland Apartments. The reports to Edith was of a long line of a dozen Cobb County police cars dropping off their arrested persons to sit for hours in the bus stationed at the side of the blockade. The family and arrested persons stated that they knew that this harassment and arrest was unusual in the extreme and was part of an election day strategy to intimidate minority voters.

Cobb County police reported in the media that the set up check points for seat belt law compliance were not in connection with the election day plans for vehicle safety.

Questions of excessive police presence in Cobb County need to be scrupulously developed using available records of duty assignments and arrest records in the southern part of Cobb County.

The audiotape is available on request from proper officials to aid in the investigation of citizen allegations of improper and illegal police activities aimed at suppression of minority voting.

Prepared by:  
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NAACP VOTERS PUBLIC HEARING

Proceedings before the National Association  
for the Advancement of Colored People, Atlanta  
Branch, reported by Diane King, Certified Court  
Reporter and Notary Public, at 55 Trinity Avenue,  
Atlanta City Council Chambers, Atlanta, Georgia,  
on the 21st day of November, 2000, commencing at  
the hour of 6:30 p.m.

- - -

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## 1 APPEARANCES:

2 NAACP: REV. R. L. WHITE, President  
3 JUDITH WITHERS-HANSON,  
4 Executive Director  
5 MICHAEL BOND, Deputy Director  
6 MARY L. PEELER, Georgia State  
7 Director  
8 ALISHA THOMAS, Georgia Youth College  
9 REV. MARKEL HUTCHINS, President,  
10 National Youth Connection

## 11 State of Georgia:

12 TERRELL L. SLAYTON, JR.,  
13 Assistant Secretary of State  
14 LINDA W. BEAZLEY, Director,  
15 State Elections Division

16 Fulton County: JOHN P. SULLIVAN, Registration Chief

17 MS HANSON: Good evening. We're going to  
18 get started. This is the voters public hearing in the  
19 Atlanta City Council Chambers at City Hall. The date  
20 is November 21, 2000.

21 We do have a court reporter present,  
22 Ms. Diane King, who will be taking down our every word.  
23 And we are also videotaping and going out live over the  
24 city channel.

25 We do thank all of you for coming. We thank

1 Mr. Bond for arranging the City Council Chambers for  
2 us. We had expected an overflow crowd, and we still  
3 may get that, but we do know that there are some other  
4 things going on in the city this evening, but we are  
5 happy to see those of you who are here. We are not  
6 happy because we had problems at the polls, but happy  
7 to see that you came out to express those concerns.

8 Before we go further, I'm going to ask  
9 Reverend R.L. White, who is the president of the  
10 Atlanta NAACP, to come and start us off with prayer,  
11 please.

12 REV. WHITE: Let us pray. Come ye, oh God,  
13 we come into your presence thanking you for these  
14 moments. Thanking you for allowing us to come together  
15 to discuss things that are of importance to all of us.

16 We pray now, oh, God, that you will guide  
17 our minds, our hearts, and help us to recognize that  
18 through all deliberations that you are the supreme  
19 arbitrator.

20 Bless us we come now in the name of Jesus.  
21 Amen.

22 MS. HANSON: Thank you, Reverend White. The  
23 NAACP is a non-partisan organization and tonight's  
24 voters public hearing is a non-partisan public hearing.

25 We decided to have this public hearing

1 because after election day on November 7 the Atlanta  
2 branch of the NAACP got so many calls not only from  
3 Atlanta, but from throughout Georgia, and so we decided  
4 to have a forum where those persons could come and be  
5 heard by many of the people that you see and will hear  
6 from tonight.

7 I'd like to introduce Ms. Linda Beazley from  
8 the Secretary of State's office.

9 Mr. Terrell Slayton from the Secretary of --  
10 who is the Assistant Secretary of State.

11 And I failed to introduce myself. I'm  
12 Judith Withers-Hanson. I'm the executive director of  
13 the Atlanta NAACP.

14 Our president, Dr. R.L. White. Raise your  
15 hand.

16 Mr. Michael Bond, who is the City Council  
17 member, and also the deputy director and programs --  
18 chief of programs for the Atlanta NAACP.

19 Ms. Mary Peeler, who is the Georgia State  
20 director of the national NAACP voter fund.

21 Ms. Alicia Thomas, who is the president of  
22 the Georgia State conference of youth -- the Georgia  
23 State Conference Youth and College division.

24 And Mr. Markel Hutchins, who is the  
25 national -- who is president of the National Youth

1 Connection.

2 I also see people from DeKalb County here.  
3 Students from AU center. People from all over. And if  
4 you hope to speak then you must have signed a sheet,  
5 and we do have those sheets with the gentleman there.

6 We have collected some, but other people  
7 coming in who would want to speak. Tim, raise your  
8 hand. See the man right there and he will have some  
9 for you to sign up.

10 We have representatives from --  
11 representatives from other NAACP branches. The DeKalb  
12 County branch, Ms. Angie Patrick. Raise your hand.  
13 Fayette County, Mr. Edward Johnson. And from Henry  
14 County, Mr. Harold Thibodeaux.

15 Okay. If there are others that I have  
16 not -- and I have not called your name just raise your  
17 hands, please, and let us know that you're here.

18 We also welcome Ms. Helen Butler, who is the  
19 Atlanta coordinator for the national NAACP voter fund.

20 Thank you all for being with us this  
21 evening.

22 At this time I'm going to ask Mr. Michael  
23 Bond to come and, in his own way, and express some of  
24 the concerns, too, that we have heard.

25 Just because we don't have an overflow crowd



1 tonight we do have an overflow notebook of -- we are  
2 logging all of the calls that we have received.

3 So Mr. Bond we're going to ask to come at  
4 this time.

5 MR. BOND: Thank you, Ms. Hanson. Briefly,  
6 on election day the NAACP, along with the Coalition of  
7 Operation Big Vote, the SCLC, 100 Black Men, Delta  
8 Sigma Theta Sorority, and other organizations conducted  
9 get out the vote efforts through rides to the polls  
10 efforts throughout the city and, of course, in  
11 cooperation under the division of the national NAACP  
12 voter fund, which Helen Butler, as is stated, headed  
13 up.

14 Throughout the day we were very impressed  
15 with the number of people who turned out to vote  
16 regionally between Clayton, Fulton, DeKalb County,  
17 parts of Cobb and parts of Gwinnett. I believe we got  
18 27,000 persons registered in that same coalition. New  
19 voters anxious to come to the polls and vote, and those  
20 new voters plus people who were already on voting rolls  
21 were experiencing a cornucopia of problems and  
22 difficulties ranging from, one, not even being listed  
23 as a voter in their own precinct. Some who have voted  
24 in that precinct before.

25 Others were simply flatly refused the right

1 to vote bearing a voter registration card, but not  
2 appearing on the register.

3           There were several problems with the actual  
4 polling stations and the equipment. Some of the voting  
5 booths simply did not work. Other voting books fell  
6 apart. The pages missing. Some precincts ran out of  
7 ballots. Others did not have enough machines, or they  
8 had plenty of machines and only a third or half of the  
9 machines were working.

10           There were long lines everywhere, and we  
11 received a plethora of calls throughout the day from  
12 people who were experiencing problems, and we were in  
13 constant contact with Mr. Terrell Slayton here from the  
14 Secretary of State, the Deputy Secretary of State's  
15 office to try to resolve some of those problems as best  
16 we could.

17           At one point we even went on the radio  
18 asking people to go back to the polls and vote because  
19 so many persons had been turned away for various  
20 reasons at the polls.

21           Also, we held a press conference after  
22 election day announcing this public hearing, and  
23 literally from the moment that they flashed our office  
24 number, (404) 761-1266, we received hundreds of phone  
25 calls from that period until today from people who felt

1 that they had been disenfranchised at the polls and  
2 simply denied their right to vote, or right to have  
3 their registration processed.

4           And this is a problem that we thought was  
5 only germane to the City of Atlanta. And as Ms. Hanson  
6 stated, we've gotten calls as far away from Macon,  
7 Georgia, Augusta, Georgia, Albany, all around the  
8 metropolitan area from people who have been denied  
9 their right to vote, or right to participate in the  
10 election.

11           And so this hearing is to try to get some of  
12 those concerns from individuals, hopefully some of the  
13 ones that called our office, other people who may not  
14 have been in contact with the NAACP office to try to  
15 come up with their concerns on the record so that we  
16 can begin to address these problems cooperatively. And  
17 this is why we're here tonight.

18           I believe we have a full panel who will be  
19 here to listen to the concerns. We hope that all the  
20 the persons who were signed up to speak will remember  
21 to sign their name, their address, not only the  
22 problems that they experienced at the polls but the  
23 location of polls, and also if they can recall the time  
24 at which they went to vote, and that may have something  
25 to do with why they ran into difficulty.

1           Also, Tim is still in the back. He also has  
2 forms for persons who are coming in to fill those out  
3 so that we can have a record of every person that has  
4 come to speak.

5           And for those who are on the panel, all the  
6 microphones are activated. If you just hit the button  
7 if you have a question and your voice will carry.  
8 Thank you.

9           MS. HANSON: Thank you, Councilman Michael  
10 Bond. I'd like to pause just a moment to acknowledge  
11 the presence of many of our board members. Mr. Larry  
12 Epps. Larry, raise your hand, who is the vice  
13 president of the Atlanta branch NAACP.

14           Ms. Martha ~~Powerl~~<sup>Blunden</sup>, who is a board member,  
15 and Ms. Annie Pauline Ward. Are there other board  
16 members in here that I have not spotted? Okay. Thank  
17 you very much, and we appreciate you all being here  
18 this evening.

19           We have -- after all the calls that you  
20 heard Mr. Bond mention, we were immediately in touch  
21 with the Secretary of State's office. I met with the  
22 Secretary of State and, believe me, she is very, very,  
23 very much concerned about this problem.

24           We being the -- we being the NAACP made a  
25 concerted effort to register voters. We did a

1 fantastic job. We registered about 29,000 voters, new  
2 voters, within a very short period of time. In or  
3 about three weeks. And so, of course, we were very  
4 concerned when we started getting calls that those  
5 people or many -- or some of them could not vote when  
6 they got to the polls for various reasons.

7 And so that, too, is a reason that we have  
8 called this meeting tonight and that we have  
9 representatives from the Secretary of State's office  
10 here.

11 I would now call Mr. Terrell Slayton for  
12 comment.

13 MR. SLAYTON: Thank you so very, very much  
14 Ms. Judith Withers-Hanson. The illustrative executive  
15 director of our Atlanta NAACP.

16 Good evening, everybody.

17 THE AUDIENCE: Good evening.

18 MR. SLAYTON: I'm a Mason. Before you speak  
19 as a Mason you always establish protocol. And so to  
20 Reverend White, the chairman of this board, the  
21 president of our board here.

22 To Michael Bond, the deputy director.

23 And to other board members that are present.  
24 My friend Larry Epps and Ms. Plowden, and to Annie  
25 Pauline Ward, who let us occupy her office before this

1 session.

2 To Ms. Mary Peeler, who has done a yeoman's  
3 job with voter registration and education.

4 Young Reverend Markel Hutchins. A powerful  
5 man of his own time.

6 Ms. Alicia Thomas, the NAACP youth division  
7 director.

8 I say to all of you greetings on behalf of  
9 your Secretary of State, Cathy Cox, and the woman who  
10 runs our elections division in this state, Ms. Linda  
11 Beazley and myself.

12 My comments are going to be very brief. I  
13 want to thank you for having the wherewithal to hold  
14 such a forum like this and to capture in one place the  
15 experiences that we had during this last election  
16 cycle.

17 Just as your phones have lit up in Fayette  
18 County, and in DeKalb County, and in Cobb County, and  
19 here in Fulton County, Atlanta, our phones have lit up  
20 here in the Capitol, and we've heard from virtually  
21 every county in this state about their experience on  
22 election day.

23 There are some things that are common.  
24 There are some things that are not so common. But I  
25 want you to know that your Secretary of State is taking

1 the experience that we had very seriously. And she's  
2 not just taking it seriously to reflect upon it. You  
3 see, she wants to do something about it. And she's  
4 already made up her mind that she's going to go back to  
5 this year's General Assembly and she's going to at  
6 least do one thing again.

7           You see, for the last two General Assembly  
8 sessions she's tried to pass an early vote bill that  
9 will allow people to vote up to 15 days ahead of  
10 election day, and we believe that had that bill been in  
11 place this last election cycle, it could have been,  
12 then we might not have had some of the experiences with  
13 long lines that we did have.

14           We still think that is part of the solution,  
15 and we already know she is going to take that bill back  
16 to the General Assembly again, and I want you to  
17 understand that she will take your testimony today and  
18 make that part of what she will present to the  
19 Governor, and to our members of the General Assembly as  
20 rationale as to why it's a good thing.

21           She also has taken seriously the comments  
22 that we've heard thus far. And we're not just hearing  
23 from the like counties that use like equipment.  
24 Pregnant chads, that's -- in Georgia, that's something  
25 that is reported in a few counties, but in other

1 counties it's not.

2           We've got about two million people that use  
3 an optical scanning system to vote, and they think  
4 that's pretty good. It's probably the best thing that  
5 we have now, but Cathy thinks that perhaps there is an  
6 opportunity for us to take this experience and even  
7 make some improvements there.

8           We still got about a million two people that  
9 use the punch cards, and we got about 600,000 pulling  
10 the lever, and then we still got folks that's actually  
11 using paper ballots in this state. We've got a few  
12 counties that's using that.

13           The one thing we do know for sure, Cathy  
14 knows that if it's left up to counties they could not  
15 afford to buy new equipment and so one of the things  
16 she's going to take to this year's General Assembly is  
17 a notion that that is part of the solution of the  
18 problems that we had on election day, and that if we  
19 could get the General Assembly to see the wisdom in  
20 buying common equipment, training for that operation,  
21 and maintenance kind of money to sustain it over a  
22 period of time that that would be a good thing for our  
23 state.

24           She also understands that there are some  
25 things that happened that nobody predicated would



1 happen. They just happened. We need to caption them  
2 and we need to figure out how we -- how to fix it, and  
3 so she's conceptualized something that she's going to  
4 call election reform.

5 We don't have a better word for that right  
6 now, but at the end of tonight when we better hear some  
7 of the experiences that you have had then we will  
8 better know what election reform might mean. So we  
9 will go to this year's general assembly, and thinking  
10 in terms of election reform. And, finally, we will go  
11 and do some just basic old housekeeping.

12 But what I'd like to do is to ask Linda  
13 Beazley, who is the division director over our  
14 elections division in Georgia, is to just share with  
15 you briefly some of the things that we are, and some of  
16 the things that we are not in the context of being your  
17 chief elections official here in Georgia.

18 We've been getting all kinds of calls and  
19 some of those calls are really meant for Ms. Champion  
20 here in Fulton County, but we'll take them and refer  
21 them on. Or they've been meant for DeKalb County or  
22 others, but the one thing we will say, we will not duck  
23 our responsibility and anybody who has a problem with  
24 elections anywhere in Georgia call your Secretary of  
25 State.

1                   Let me bring to you Ms. Linda Beazley, the  
2                   division director of our elections division.

3                   MS. BEAZLEY: Thank you very much,  
4                   Mr. Slayton and distinguished head table. I'm not as  
5                   familiar with all of you as Terrell is, and I would  
6                   never do as well as he did greeting all of you.

7                   And to those of you in the audience, it's  
8                   good to be with you tonight to try to defend what we do  
9                   in the Secretary of State's office.

10                  As Mr. Slayton commented, we heard from  
11                  counties all over the state with all sorts of problems.  
12                  A lot of them related to registration problems. And up  
13                  front I want to tell you a little bit about what the  
14                  Secretary of State's office is responsible for.

15                  Under the Georgia Election Code, we are  
16                  responsible for overseeing a state-wide voter  
17                  registration system and for the conduct of elections.

18                  Now, that does not mean that we go out into  
19                  every county and physically handle the elections.  
20                  Contrary to what a lot of the public may think, we  
21                  provide forms, we provide the sample ballot with all  
22                  federal, state, and state-wide offices on that ballot,  
23                  and the format for that ballot for each county.

24                  When each county receives that information  
25                  then they add to that information those offices in

1 their county for their particular offices. And believe  
2 it or not, not all counties in Georgia have the same  
3 type offices.

4           There are certain county offices that all  
5 counties have, and then some counties have different  
6 type offices. Such as the surveyor. In some counties  
7 they have a county surveyor that's elected. Some have  
8 a county tax assessor that's elected. And so when you  
9 get down to the county level there are different things  
10 that are placed on that ballot.

11           The counties in Georgia under the law are  
12 allowed to select the type of voting system their  
13 particular county wants to use. And as Mr. Slayton  
14 mentioned, he told you a little bit about the number of  
15 voters that vote on the types of systems that we have,  
16 but we have a system that has not been manufactured  
17 since the late forties or early fifties, and that's the  
18 lever type voting machine, and approximately 70  
19 counties in Georgia still use that type of voting  
20 system. When it breaks, they cannibalize the parts  
21 from other machines.

22           We have, of course, the vote recorder system  
23 which has been in use since the mid sixties in Georgia,  
24 and if I'm not mistaken Fulton and DeKalb were two of  
25 the first counties in the nation to go on the punch

1 card system, and it was the most sophisticated system  
2 at the time.

3 There are about 17 counties in the state  
4 that still use the punch card system. We have  
5 Optiscan. It's an optical scan voting system where you  
6 either complete an arrow, or fill in a little bubble,  
7 and you run your ballot through a tabulating machine.

8 There are actually two types of that system.  
9 Some that count at the precinct level and some prepare  
10 the ballots into the office to a central count.

11 And as Mr. Slayton brought out, yes, we do  
12 have some counties that still use paper ballots.  
13 Actually, we only have two and a half counties that use  
14 paper ballots, but they still use the large paper  
15 ballots that many of you may be familiar with, and they  
16 vote on those.

17 Well, those are the types of voting systems  
18 that we have in Georgia that we have to deal with, and  
19 the Secretary of State's office is responsible for  
20 printing numerous forms to accommodate the instructions  
21 for each of these voting systems, and we supply those  
22 to the counties as well as a lot of other forms.

23 When we do that, that is, basically, our  
24 responsibility for conducting the elections on the  
25 county level. When the counties purchase the system

1 they choose to use we have no responsibility, no  
2 jurisdiction, no authority over what they do. They pay  
3 for it, and they -- they choose it.

4 Now, the only thing is that every county in  
5 Georgia must select equipment that's certified for use  
6 in Georgia, and all of those systems are certified for  
7 use in Georgia.

8 If they change systems, if, for instance,  
9 Gwinnett and Cobb recently changed from a punch card  
10 system to the optical scan system, then they have to  
11 get the approval of the United States Justice  
12 Department to change the system of voting.

13 So a county cannot just jump up and change  
14 their system of voting without going through a process  
15 that involves the U.S. Justice Department. We can't do  
16 anything in our office even so far as change a form  
17 without going through the United States Justice  
18 Department for preclearance and approval.

19 On the elections side, too, when the votes  
20 are tallied by the different counties, we have what is  
21 called the election night reporting system, and there  
22 was a law passed this past session of the General  
23 Assembly that requires the counties to enter by  
24 Precinct the vote totals for each federal, state-wide,  
25 and state county.

1           And that would mean all your -- well, we got  
2           it for the U.S. Senate special election, and we would  
3           get it for all members of Congress, we would get it for  
4           all Supreme Court judges and Appellate Court judges,  
5           and all the state representatives.

6           We also receive those totals for the  
7           constitutional amendments and the state-wide questions.  
8           Anything that was state-wide, and this is a brand new  
9           system and we used it in the primary, and this is the  
10          first time we've used it in the general election.

11          Previous to this year the Secretary of  
12          State's office has never had a compiled listing of vote  
13          totals by Precinct. And this is information that is  
14          much desired by people from all over the country,  
15          especially in this state. So the counties have 45 days  
16          in which to enter that information, and they're in the  
17          process of completing that now.

18          I might say, too, that today we found out  
19          that we had voted 69.61 percent of the total voters in  
20          Georgia, and we did that by having them tell us how  
21          many ballots were cast in their particular counties.

22          That, basically, is our function for holding  
23          elections. We don't go out, we don't staff elections,  
24          we don't hire the poll workers, we don't select the  
25          voting places. We received any number of comments,

1 some of them not so nice, that said we didn't do a good  
2 job selecting polling sites in the Metro area. And we  
3 have responded to every one of those complaints, and I  
4 still have a few to go because there are hundreds.

5           And what we do is we have sent those letters  
6 of complaint back to the counties that are responsible,  
7 but we have explained as best we could in these letters  
8 that we are not responsible for selecting, equipping,  
9 or staffing polling places.

10           I used to have a picture of a little monkey  
11 on my wall for years and years when I worked in another  
12 office and it said, you know, "If I was running the  
13 Government things would be a whole lot different." And  
14 I feel like if Cathy Cox, our Secretary of State, was  
15 really responsible for all of that, things would have  
16 been somewhat different.

17           Polling places are, by law, required to be  
18 accessible to the handicapped. That's a law that's  
19 been in effect since 1984. And Georgia, most of our --  
20 I would say that probably 80 to 90 percent of all the  
21 polling places are accessible to the handicapped.

22           We have had a survey team to come down from  
23 Washington. They interviewed a number of counties in  
24 Georgia to see if they could report back to the General  
25 Accounting Office whether or not Georgia's polling

1 places were accessible to the handicapped.

2 We got complaints that places were not  
3 accessible to the handicapped. We had complaints that  
4 there were not machines set up for the handicapped.  
5 The law requires that there must be a machine set up  
6 for the handicapped.

7 In those counties that use the large lever  
8 type voting machines, they are required by law to print  
9 paper ballots because if someone goes in in a  
10 wheelchair and they cannot reach the levers on the  
11 machine, they should be able to vote a paper ballot.

12 The other thing is voter registration.  
13 Although the voter registration cards that are mailed  
14 in are processed through our office, we have a -- like  
15 a mail room. We send all of those cards back to the  
16 individual counties.

17 I see a representative here from Fulton  
18 County. They pick theirs up everyday, and they did  
19 that during the time that we were just bombarded with  
20 all of the cards that came in.

21 We probably received 150,000 cards in the  
22 last week and a half of the voter registration  
23 deadline, and those are sent back out to the counties  
24 and the counties, themselves, enter that data.

25 We don't keep a list of the registered



1 voters, we keep a file of the whole state's voters, but  
2 each county enters the data for those voters who are  
3 registered in their county, and that's why when you go  
4 to the polls on election day those lists are provided  
5 by those counties based on the information that's input  
6 into the system.

7 I'll be glad to answer any questions when  
8 the time comes about any of the problems that some of  
9 you may have encountered and try to respond to them the  
10 best that we can, but I wanted you to understand our  
11 function as far as the Secretary of State's office's  
12 responsibility for the elections and registration in  
13 the State of Georgia. Thank you.

14 MS. HANSON: Thank you Mr. Slayton and  
15 Ms. Beazley for being here. And we -- as I said, I did  
16 talk with Cathy Cox, who is our Secretary of State, and  
17 she regretted that she could not be here tonight, but  
18 she cared enough to send the very best, and so she sent  
19 Mr. Slayton and Ms. Beazley, and so we appreciate you  
20 being here on her behalf.

21 We are about ready now to hear from the  
22 public. Are there any other elected officials who have  
23 come in since we began this process? If not, we are  
24 about ready to -- did I see a hand? Oh, I thought we  
25 were waiting on -- okay.

1                   Before we do hear from the public, there are  
2 a couple of things that we want to establish and ask  
3 your cooperation with.

4                   When you come to the mic, would you please  
5 state and spell your name for the record. Give your  
6 address, and your voting precinct. We ask you, also,  
7 if you would try your very, very level best to limit  
8 your comments to two minutes because we do have many  
9 people who want to speak this evening.

10                  And so try to limit your comments to two  
11 minutes, state and spell your name for the record, give  
12 us your address and your voting precinct.

13                  And now Reverend R.L. White.

14                  REVEREND WHITE: Thank you, Ms. Hanson. Let  
15 me say thank you for coming tonight because I think in  
16 this country now we can finally see the importance of  
17 the vote. If we want our votes to count, of course we  
18 must make sure that machines and whatever it takes are  
19 in place to count them correctly.

20                  We were happy to have signed up so many  
21 voters. We're happy that the interest is up, and what  
22 we're hoping is since the interest is up that we can  
23 maximize on this effort and keep them interested so  
24 that all of our citizens will feel that I do count.

25                  And now I'm going to call your name, and if

1 you would please come to the microphone and state your  
2 situation. I have Mia Bass, would you please come.

3 MS. BASS: My name is Mia Bass, spelled  
4 M-I-A, B-A-S-S. My address is Spelman College, 350  
5 Spelman Lane, Campus Box 109, Atlanta, Georgia 30314.  
6 My voting precinct was the Fulton County precinct. I'm  
7 not sure what district number that is.

8 My complaint is that during our freshman  
9 orientation week at Spelman a group known as Spark came  
10 to our college and spoke with us, and there were  
11 approximately 400 freshman students who were present  
12 that day.

13 They handed out voter registration forms  
14 which we all filled out, and they assured us that they  
15 would send those in. Myself as well as, I believe, the  
16 majority of those who registered, who believe they  
17 registered that day, did not receive any confirmation.  
18 I didn't receive a letter, a registration card, or  
19 anything of that nature.

20 When November 7th came I heard that there  
21 was a list of girls at Spelman who registered -- who  
22 supposedly registered that day in the Fulton County  
23 precinct and that we would be able to go down there and  
24 vote.

25 Myself and another individual went down to

1 the Fulton County precinct, which is located in the  
2 basement of Clark-Atlanta University's gym. The whole  
3 system was very disorganized. There were children at  
4 the door handing out legal documents. It was just a  
5 very messy business. And we went down there. No one  
6 had heard of any list and we were not registered in the  
7 book.

8 We came back to school and we spoke with our  
9 vice president of student affairs, who is Dr. Zenobia  
10 Hikes. She informed us that this was not just  
11 happening to us, it was happening to a majority of  
12 people who registered that day that drew many  
13 complaints.

14 She was very irate about the situation. She  
15 spoke with the attorney of one of the members who is in  
16 the Georgia Senate and they informed her of a challenge  
17 ballot, and that we should go back down to Clark  
18 Atlanta's gym and try to vote under a challenge ballot  
19 and that our votes would count.

20 We went back down there. No one knew what  
21 we were talking about: There were no challenge  
22 ballots. There was -- there were very long lines.  
23 There was a large group of students not only from  
24 Spelman, but other -- other schools in the Atlanta  
25 University Center, and we were all sitting in the

1 hallway waiting for challenge ballots, which never  
2 came.

3 I called three TV stations. We also called  
4 radio stations to try and get people to come back down  
5 to the Fulton County precinct who were turned away so  
6 that we could all vote under a challenge ballot.

7 The TV stations that I talked to, they also  
8 said that they had heard the same information, just  
9 different numbers, and this was not just a problem in  
10 the Atlanta Metro area, but all over the State of  
11 Georgia, as was stated earlier here.

12 Finally, we were able to get challenge  
13 affidavits, but there were not enough copies for  
14 everybody here -- for everybody there, and someone went  
15 and made copies and, of course, when you make copies of  
16 a legal document it becomes an illegal document.

17 And since the polls closed at 7:00, we all  
18 gathered into the room when they closed, and I believe  
19 they may have locked the doors. We signed the  
20 affidavits and put down any kind of information that we  
21 had, and we were told by an individual, I'm not sure  
22 what his name was, who was with the NAACP that he would  
23 try and get those affidavits in and see if our votes  
24 would be able to count, but I really don't think that  
25 they were.

1                   And I was just very upset because this is my  
2 first time being able to vote and this was something  
3 that my ancestors fought and died for, the right so  
4 African-Americans can vote, and I was just very upset  
5 that the whole process was so disorganized.

6                   REVEREND WHITE: Thank you, Ms. Bass. Let  
7 me ask a question. How many others are here with that  
8 same complaint? The record will say that there are  
9 four others with that same complaint, and this is on  
10 behalf of the court reporter.

11                   Thank you, Ms. Bass. Bethany Clark.

12                   MS. CLARK: Good evening. My name is  
13 Bethany Clark and I had the same complaint that Mia  
14 Bass just gave, and so I'm going to decline.

15                   REVEREND WHITE: Very good. Thank you.  
16 Alexandria Lee.

17                   MS. LEE: Good evening. My name is  
18 Alexandria Lee, spelled A-L-E-X-A-N-D-R-I-A, L-E-E,  
19 Spelman College, Spelman lane, 350 Spelman, Campus Box  
20 No. 198, Atlanta, Georgia 30314.

21                   I was just there during the time -- Mia and  
22 I were actually together, but just a brief overview  
23 that on the night of the election I saw a lot of  
24 dysfunction. I was there for five hours waiting. I  
25 left and came back. Went to practice -- actually,

1 missed practice and, basically, I saw a lot of disabled  
2 people who were unable to vote, who were trying to  
3 vote, who were being just tossed aside.

4 I went and talked to the poll manager  
5 myself. We went together, tried to call the  
6 registrar's office. We called, I would say, six times  
7 in the course of the time that I was there, and we  
8 couldn't get ahold of anyone. Busy signals on both  
9 lines, and I ended up just staying up in one of the  
10 rooms trying to call myself over, and over, and over.  
11 I went home and called.

12 And I don't know who to direct this to.  
13 There are a lot of people up here. I really don't know  
14 what you can do. But my complaint is there was  
15 dysfunction in this organization and this is such an  
16 important election, I'm sure you, obviously, are aware,  
17 and we all went there as first-time voters hoping to  
18 have some kind of voice.

19 I mean, we were just, basically, shut down.  
20 That's a big percentage of intelligent black vote in  
21 AUC and we were unable to vote, and so I'd like to see  
22 whoever has the power to change it so that there is  
23 better communications, number one.

24 I had a voter registration card and was told  
25 that I was not on the books, and so therefore I

1       couldn't vote. Just I'd like to see the poll manager  
2       having some kind of power. She didn't know what a  
3       challenge ballot was. She didn't know what was to be  
4       done, and there were only three people working, and  
5       hundreds of people coming in, and it was just extremely  
6       dysfunctional.

7                       And so that's my complaint. Thank you very  
8       much.

9                       REVEREND WHITE: Very good. Thank you. And  
10       I'd like to state that all of the statements are being  
11       recorded by a court reporter tonight and will be given  
12       the attention that it deserves.

13                      Your comments here will not be in vane. For  
14       the record, election officials from many counties were  
15       invited to participate at tonight's public hearing.  
16       Yes, sir.

17                      MR. SLAYTONG: Mr. President, let the record  
18       reflect, also, as part of Ms. Lee's testimony that she  
19       has submitted a letter to the NAACP, and that letter  
20       also has with it about 75 other names of individuals  
21       who had a similar problem in terms of having a voter  
22       registration card in their hands, but not allowed to  
23       vote.

24                      MS. HANSON: We do have it, and your  
25       petitions.



1                   MR. SLAYTON: Okay. I just wanted to make  
2                   sure that the record reflected that.

3                   REVEREND WHITE: Remarkable, and thank you  
4                   for that kind of interest.

5                   REVEREND HUTCHINS: I'm sorry, Reverend  
6                   White. I have a previous commitment at 7:30, but I did  
7                   want to respond to the young lady.

8                   One of the things that we can do is what  
9                   Mr. Slayton recommended, and that is put pressure on  
10                  our legislators, those representatives, and Senators  
11                  because the legislature should appropriate more money  
12                  in their next session to help Cathy Cox, our Secretary  
13                  of State, purchase more modern, digitally sound,  
14                  sophisticated, common equipment for all of the polling  
15                  precincts around the state.

16                  As it stands now, Mr. Slayton explained to  
17                  us that on many sides of the track, the south side of  
18                  town, we have older, more antiquated equipment whereas  
19                  on the other side of the track they have better  
20                  equipment; therefore, it's much easier for them to be  
21                  able to vote.

22                  But the other part of that is we need to do  
23                  all we can to educate our elections officials that are  
24                  working these precincts, because a lot of them did not  
25                  know what they were doing.

1                   And so I think this kind of conversation  
2                   should move to the next level and we ought to be able  
3                   to engage our legislators.

4                   REVEREND WHITE: Very good. Ms. Hanson.

5                   MS. HANSON: One of the things that I would  
6                   like to say is in the year 2000, here we are in a new  
7                   millennium and we have people still using paper  
8                   ballots. We're not just talking about Atlanta, but  
9                   throughout Georgia, and because they think we are the  
10                  national headquarters we got calls from all over  
11                  Georgia, and some of the complaints were that they were  
12                  using paper ballots in the year 2000.

13                  And as the representatives from the  
14                  Secretary of State's office said, they cannot just  
15                  decide they want to change and just change, it has to  
16                  go through our legislature, and so we need to put  
17                  pressure on those legislators to change the system.

18                  And one of the things that we're going to be  
19                  suggesting in the wrap-up portion is that we have  
20                  standardized equipment throughout the whole state so  
21                  that everybody -- because somebody in Fulton County may  
22                  use one system, somebody in DeKalb may use -- as close  
23                  as we are -- may use another system, and so one of the  
24                  things, again, that we're going to be recommending is a  
25                  standardized form of voting throughout the state.

1 REVEREND WHITE: Thank you, Ms. Hanson.  
2 Muhammed Trammell.

3 MR. TRAMMELL: Good everyone. My name is  
4 Muhammed Trammell, M-U-H-A-M-M-E-D, T-R-A-M-M-E-L-L.

5 On the day of the election my wife and I  
6 went to vote. We were turned away from three different  
7 precincts, and the reason we were turned away we were  
8 told we weren't registered to vote.

9 Now, we registered through the DMV. Now,  
10 that was alarming to us because we felt like if we  
11 registered through the DMV it was bonafide that we  
12 should be able to vote. We were turned away.

13 I did mention could we sign a provisional  
14 and vote. They didn't know what a provisional was.

15 Also, it took us a total of three and a half  
16 hours being shifted from precinct, to precinct, to  
17 precinct, and that was very alarming to us to where,  
18 you know, we weren't given any answers, no explanation,  
19 we were just put on hold and said well just have a seat  
20 and wait. You know, no one can reasonably do that.

21 Also, as far as one of the things that were  
22 mentioned to alleviate this, a 15-day early  
23 registration. That sounds good. That needs to be  
24 implemented because all of this pressure on one day and  
25 nothing was as it should have been, it was just

1 chaotic. That would be a great start.

2 Also, like the lady here just said, this is  
3 the year 2000. Why are we not able to have high-tech  
4 equipment? Why not use a computer system? A highly  
5 sophisticated computer system and make it to where your  
6 vote can count?

7 And I feel like those things need to be  
8 implemented so we don't have these problems again. I  
9 still feel the votes that were not tabulated should be  
10 counted because the election still is not decided. We  
11 still don't know who the president is. And so that's  
12 still an opportunity for us to correct this mistake  
13 because right now everybody's passing the buck.  
14 Someone needs to be accountable. Thank you.

15 REVEREND WHITE: Thank you, Mr. Trammell.  
16 And I might mention that votes from the State of  
17 Georgia have already been certified, am I correct?

18 MS. BEAZLEY: That's right.

19 REVEREND WHITE: And once they are certified  
20 they -- unless there is a provision for an amendment to  
21 the count, which would not help in the amount of the  
22 percentage disparity, but I can agree with what you're  
23 saying.

24 MR. TRAMMELL: Can I respond to that?

25 MR. BOND: Mr. Trammell, as you come back up

1 to the microphone, can you also state for us where you  
2 registered with the DMV?

3 MR. TRAMMELL: I registered at DeKalb  
4 County.

5 MR. BOND: Can you give us the exact  
6 location?

7 MR. TRAMMELL: The Kroger Citi Center.

8 MR. BOND: Can you give us the street  
9 address?

10 MR. TRAMMELL: On Memorial Drive.

11 MR. BOND: Kroger on Memorial Drive?

12 MR. TRAMMELL: Yes. Being that I'm a fairly  
13 new resident here to Georgia, I've only been here a  
14 year.

15 MR. BOND: Well, I wanted to know where you  
16 registered.

17 MR. TRAMMELL: And to respond to what the  
18 gentleman just said, that's no consolation to the  
19 voters saying it's been certified and turned in.  
20 That's not acceptable because it's been a mistake. And  
21 you don't turn your head and not accept that. That's  
22 contributing to it. That's not corrected.

23 REVEREND WHITE: Okay. Now, I'm not  
24 differing with anything that you said. I'm just saying  
25 that in the process the whole country now, the only

1 voter -- the thing about voting that is being contested  
2 is in Florida.

3 In other words, all of the other states have  
4 certified, and so now it's not an issue. It's only  
5 there for -- for the total populating voting people in  
6 this country.

7 Now, I agree with what you're saying, but I  
8 just wanted you to know that that's where it is now,  
9 and so there is nothing else in this country under  
10 protest other than Florida right now.

11 MR. TRAMMELL: I understand that, and my  
12 comment to that is still that it's not acceptable.  
13 That is not acceptable.

14 REVEREND WHITE: But it's not within the  
15 power of--

16 MR. TRAMMELL: Until you are willing to  
17 embrace new ideas and correct a wrong, you will be  
18 stuck in the same thought process.

19 REVEREND WHITE: So that's what we're here  
20 for tonight, to find the problem and to go forward.

21 MR. TRAMMELL: I understand that.

22 REVEREND WHITE: Now, this is what we are  
23 doing now. We're calling a hearing to see where the  
24 problems are and to deal with it.

25 MR. TRAMMELL: I understand, but your

1 solution is like you're in a sinking ship and you're  
2 taking a teaspoon and shoving out the water. The boat  
3 is going to sink.

4 REVEREND WHITE: That is not my solution.  
5 I'm not saying the solution. I'm just saying by law  
6 you have to get the Supreme Court judges to get it  
7 amended, sir.

8 MR. TRAMMELL: Yes, sir. Thank you.

9 REVEREND WHITE: Thank you. Yes.

10 MR. SLAYTON: Young man, can I ask you a  
11 question? I'm sorry, if you could go back to the  
12 microphone, sir.

13 You said you were registered at the Kroger,  
14 and I know there were two opportunities at Kroger  
15 because of the power of the NAACP and some other powers  
16 in this state, every Kroger store in Georgia created an  
17 opportunity for anybody who walked through it to  
18 register.

19 There were some Kroger stores that had DMV  
20 stations within the Kroger store as well, and my  
21 question is did you register at the DMV counter?

22 MR. TRAMMELL: Yes.

23 MR. SLAYTON: Or at the public service  
24 counter?

25 MR. TRAMMELL: At the DMV counter.

1 MR. SLAYTON: Okay. Thank you.

2 REVEREND WHITE: Reverend Edward Johnson.

3 REVEREND JOHNSON: I'm just here as a  
4 representative from the Fayette County branch of the  
5 NAACP. We had no registered complaints funneled  
6 through our office. If they had been funneled through  
7 any of the other branches, we would like to hear about  
8 them.

9 REVEREND WHITE: Very good. Thank you.  
10 Thank you for being here tonight. Eugene Miller.  
11 You're with Fayetteville?

12 MR. MILLER: Yes.

13 REVEREND WHITE: Okay. He's with the  
14 Fayetteville branch and they're here to find out if  
15 there were people in their county who had complaints.  
16 Pleasant Lucas. Pleasant Lucas. Demia Peters.

17 MS. PETERS: My name is Demia, D-E-M-I-A,  
18 P-E-T-E-R-S. I live at 830 Martin Luther King  
19 Boulevard, Atlanta 30314.

20 I am the graduate president of Student  
21 Government Association at Clark-Atlanta University and  
22 I'm here tonight to represent those students who vote  
23 not only in District 3, but District 4 as well.

24 The young ladies from Spelman experienced  
25 the same problems as many of our students felt that



1 they -- many of them did not receive cards. We started  
2 registering students at our student orientation in  
3 August. The day before the election many of those  
4 students had not received cards, as well as many of the  
5 students we registered throughout the first semester  
6 before the deadline.

7 We had -- SGA had a cooperative effort with  
8 the NAACP, the mentioned dates that we had registered  
9 students and those students did not receive cards;  
10 however, we were more fortunate in the fact that we  
11 were able to get in contact with the Fulton County  
12 Board of Elections, and even on the day of elections  
13 that we were able to send faxes and get confirmation of  
14 the precincts where our students were voting.

15 However, our complaint is just the division  
16 of the precincts and where those students vote. As the  
17 young lady stated, she attends Spelman College and she  
18 voted at Clark-Atlanta gym.

19 No Clark-Atlanta students voted in their  
20 gym. Clark-Atlanta votes at Morehouse's gym, and they  
21 also vote at Morris Brown's student center, and two of  
22 the churches surrounding Morris Brown.

23 And that posed a large problem for us when  
24 we were trying to get rides and contact various  
25 organizations to help us get the students to the polls

1 because one of the buildings on campus that houses 400  
2 students, when we called the Board of Elections, they  
3 did not tell us where those students voted because they  
4 can only tell us by name. When we did a poll  
5 ourselves, that one building was assigned to three  
6 different precincts.

7 And so as I said that caused a large problem  
8 for someone who did not receive a card for us to just  
9 tell them where they could go vote. And so it had to  
10 be a phone call, or it had to be a fax to take place.  
11 There was not one location that we could send them, and  
12 so I just ask that, one, that you continue to lobby to  
13 have this early voting so that students won't have to  
14 stand in line for five hours because there is only four  
15 machines for them to vote on.

16 And, also, that there is more consistency on  
17 where the students are allowed to vote so that if for  
18 some reason they don't receive a card there is someone  
19 with some knowledge that can direct them in a correct  
20 place to going. Thank you.

21 REVEREND WHITE: Very good. Thank you.  
22 Angela Patrick. This is -- from our state conference.

23 MS. PATRICK: Good evening. I bring  
24 greetings from the Georgia State Conference of the  
25 NAACP branches but, however, I live in DeKalb County.

1 I'm here representing the DeKalb branch.

2 Now, you've given us two minutes. I might  
3 need two hours. I'm not here to take it, though.

4 REVEREND WHITE: Thank you.

5 MS. PATRICK: I was working in field  
6 operations for NAACP DeKalb as well as an observer role  
7 for the Georgia State Conference, and I really  
8 witnessed a lot of stuff that was just a travesty for  
9 this election cycle.

10 The main thing, precincts are too big. The  
11 areas where there were two precincts in a location,  
12 maybe one side was overloaded and the other side was  
13 not barely used.

14 Not enough equipment.

15 Atlanta, your phone was ringing off the  
16 hook. So was DeKalb. From the time we opened at 6:30  
17 until we closed, the phone was ringing.

18 There were many instances of citizens having  
19 voter registration cards. They would go to the  
20 precinct. They're not on the list. They're not on the  
21 supplemental list.

22 There was one instance where I left the  
23 DeKalb branch and went to the elections supervisor's  
24 office because we couldn't get through. What was  
25 happening at this particular precinct, several voters

1 were there with cards. They were being turned away.

2 The elections supervisor looked up a voter's  
3 name, I'm standing there looking at her on her system  
4 and I see the voter is registered. It's not on the  
5 list. It should have been on the primary list.

6 Prior to me going, 20 or 30 people were  
7 turned away that didn't get a chance to vote. And I  
8 was very upset about that. And so I told the elections  
9 supervisor we needed her pager number, her private  
10 number, everything, so we could get through. We went  
11 back over trying to get voters to come back and to stay  
12 and vote.

13 The biggest mess that we had in DeKalb was  
14 Stoneview precinct. We got a call after the precinct  
15 had closed to tell us there was 4,500 people still  
16 there that had not voted.

17 Now, I wanted to go see this, and I went,  
18 and I witnessed from the school door, all in the  
19 vestibule area, all of the way up into the auditorium  
20 where they were voting, people were everywhere.

21 I started talking to the voters in the mix  
22 and asked them, "How long had you been here?" 4:00,  
23 4:30. By this time it's 8:00, 8:30, 9:00. They voted  
24 until 11:15.

25 I want to commend Terrell Slayton because

1 he's one of the persons that we did call. It was when  
2 he showed up that we got some organization in that  
3 precinct.

4 What I also saw, two little old ladies  
5 sitting at the desk with one book, and they had eight  
6 booths, and all of these people. It was just really a  
7 crime.

8 Now, we have some issues, and we're going to  
9 have to really be pro active. We've got to protect  
10 these voters that have registered with the NAACP and  
11 everybody else's efforts to make sure that they don't  
12 get disillusioned.

13 The other thing that I saw was we need to  
14 move, if not 15 days before, we need to move to  
15 Saturday voting where citizens are available all day  
16 long. 7:00 to 7:00 is no longer valid. It's no longer  
17 really a rational option that we have. People don't  
18 have that much time to be commuting to get to the  
19 polls.

20 I witnessed people being mistreated by poll  
21 workers. I witnessed precincts that were inadequately  
22 staffed. Precincts that didn't have enough equipment.  
23 Precincts that ran out of ballots. You know, citizens  
24 that were talked to very rudely.

25 So we got some issues on both sides of the

1 house. Unfortunately, it is the perception that the  
2 Secretary of State's office is the author of all of  
3 this. So we've got to leave here with some action  
4 items and line it up as to who we need to hit and  
5 where.

6           Legislator Shirley, I have a question in  
7 terms of maybe if you would help me with this, or  
8 Ms. Beazley, who decided in Georgia that the counties  
9 would have a multi system? Because that's part of the  
10 problem. That's what started the problem.

11           It seems to us at the NAACP from looking at  
12 it that, especially when the role of the voter came  
13 about, that the State Election Board, that's the  
14 perception that we have, the State Election Board  
15 passed the ruling that counties that didn't happen  
16 before then -- this is my question -- that counties  
17 could decide how they poll the elections because there  
18 is an education process that has to go on so that the  
19 voters can understand because the perception is you  
20 guys are involved, and it's in your lap, and so who  
21 decided? Was it the legislature? Was it the State  
22 Election Board? The counties could do whatever they  
23 want to do?

24           MR. SLAYTON: Let me defer that to Linda.  
25 She can tell you the law.

1 MS. BEAZLEY: Am I on? Yes, I am. Thanks.  
2 The State Election Board actually has never had any  
3 part of determining or giving permission to counties to  
4 select their voting equipment. That is a law that has  
5 been on the books many, many, many, many, many years.

6 And I am very familiar back in the middle  
7 sixties, when my County of Richmond went to their  
8 county governing authority and requested to change from  
9 lever type voting machines to the vote recorder type  
10 that the counties that had that authority as long as I  
11 am aware of the election code being in existence, which  
12 was 1964.

13 MS. PATRICK: It was given that authority by  
14 the legislature?

15 MS. BEAZLEY: That's correct.

16 MS. PATRICK: So that is the first type.

17 The secretary thing is the DMV locations.  
18 Does the Secretary of State's office monitor? We have  
19 gotten tons of complaints from citizens. I registered  
20 take when I changed my driver's license. I never got  
21 my card. Are those locations monitored to make sure  
22 that they're turning those cards in to the Secretary of  
23 State's office?

24 MS. BEAZLEY: There is no way that we could  
25 monitor because when a person goes -- let me explain a

1 little bit.

2           The Department of Public Safety is named in  
3 the federal legislation, the Federal National Voter  
4 Registration Act as a deputy registrar for the purpose  
5 of registering its citizens. Not just in Georgia,  
6 that's everywhere.

7           When one goes to renew their driver's  
8 license, or if you are a new resident and you come to  
9 the State of Georgia and you get a driver's license,  
10 those examiners have a responsibility under the law to  
11 ask those people, do you wish to register to vote in  
12 Georgia?

13           The process that they use is a paperless  
14 process. They have a signature that's an electronic  
15 type signature. If the person says yes, I wish to  
16 register to vote, they get certain information that's  
17 required on the voter registration card that may not be  
18 required on the driver's license. That is an indicator  
19 -- and they mark a little box -- that is an indicator  
20 that the person wishes to register to vote. That is  
21 the only way we would know that someone registered at  
22 DMV.

23           Now, those are sent to our office. We, of  
24 course, ship them back to the counties that they really  
25 are residents in.



1                   We had a lot of complaints about that. We  
2                   have for several years written to the Department of  
3                   Public Safety and asked them to stress to their  
4                   examiners the importance of documenting that  
5                   information properly when a person comes in to register  
6                   to vote and get their license.

7                   We have the capability of checking with the  
8                   Department of Public Safety to determine whether or not  
9                   the application showed that a person said yes or no  
10                  when that question was asked.

11                  I think we verified 450 requests on election  
12                  day, and our lines were also busy, but we tried to be  
13                  as accessible as possible.

14                  We were doing e-mails to DMV and also  
15                  telephone calls. They were very helpful. I think out  
16                  of the 450, we may have had about 65 that somehow we  
17                  never got their application and they were allowed to  
18                  vote.

19                  We had about 35, I think, that didn't even  
20                  have a driver's license in Georgia who insisted that  
21                  they registered to vote when they got their driver's  
22                  license, and they were not.

23                  And the others were marked no. There is a  
24                  box on that information at DMV that says, "Do you wish  
25                  to register to vote?" And then there is also a -- and

1 you check yes or no. And there is a box that says  
2 "Oath," and they are to take a little oath.

3 The oath is put on the wall. We provide  
4 those oaths for them. We have no control over DMV  
5 other than to try to work with them to include the work  
6 that maybe is being done by their examiners.

7 We had written a letter prior to the  
8 registration deadline stressing to the DMV to please,  
9 please, try to get the correct information in it. And  
10 I want to tell you that as I was leaving for this  
11 meeting tonight I happened to look in my in box and I  
12 was in a meeting this afternoon.

13 I have a letter from the Department of  
14 Public Safety, and I'd like to read you what this  
15 letter says because this is the only way that we're  
16 going to be able to correct the problem with DMV.

17 It's addressed to me and it says, "This  
18 office is in receipt of the correspondence you sent  
19 regarding the registration of voters by the Department  
20 of Public Safety driver's examiners.

21 We've also been contacted by citizens who  
22 state that they have gone into our facilities and left  
23 with the impression that they had been registered to  
24 vote only to find out later that they were not.

25 As this seems to be a continuous and

1 mounting problem, may I suggest that we come together  
2 to seek solutions? At your earliest convenience I  
3 would like to have my training supervisors meet with  
4 your staff to discuss how we may solve this problem."  
5 And that is signed Colonel Robert Hightower.

6 And we have volunteered our services in the  
7 past to train their supervisors, and so they are now  
8 willing for us to come in and assist with the training  
9 of those supervisors.

10 MS. PATRICK: Let me ask you another  
11 question. When the Secretary of State's office sends  
12 applications or forms back to the county, is a time  
13 frame established? Do the counties have a certain time  
14 frame to get those inputted, or are they left to do  
15 that at will?

16 MS. BEAZLEY: Well, when there is a voter  
17 registration deadline, they work frantically just  
18 practically around the clock to get them in by the  
19 deadline date.

20 When they are received by our office we do a  
21 one-day turnaround as nearly as possible, and we work  
22 overtime late into the night getting those cards in.

23 And the Metro area, I say, again, Fulton  
24 picks up their cards, I think every day, and we even  
25 delivered some to Gwinnett, and to Clayton, and to Cobb

1 because we wanted them to have them just as soon as we  
2 could get them in and out of our office.

3 MS. PATRICK: I understand that, but is  
4 there an established time line, or do they have two  
5 weeks? Three weeks? 30 days prior to the deadline?

6 MS. BEAZLEY: No. Well, they have to get it  
7 in prior to the deadline or else they cannot get their  
8 electors when it goes to the polls.

9 MS. PATRICK: So they don't have a time lime  
10 prior to the deadline?

11 MS. BEAZLEY: No, they do not.

12 MS. PATRICK: Okay. In your conversation --

13 MR. SLAYTON: If I could just add on to  
14 that. Looking at the experience, the NAACP did a heck  
15 of a job registering voters this time, and if we look  
16 back at, like, the numbers we got measuring from  
17 January all the way to the deadline, October 10th, we  
18 had one big number.

19 If we look at September 1st through October  
20 10th, what is it, 40 days, we had another big number.  
21 We had about 150,000 new registered voters. But if we  
22 look at October 1st through October 10th, we had about  
23 100,000, and therein lies some of the problems.

24 Linda had to go out and hire some, I mean,  
25 emergency staff to come in. And I think that's to the

1 credit of people like the NAACP and other groups, but I  
2 think part of what we need to do is to find a better  
3 way to anticipate.

4 I don't think that's going to stop. I think  
5 that in the future we will continue to see as a trend  
6 that that last 10 days we're going to register 10 times  
7 more than we registered in the last 30 days prior to  
8 that.

9 And so I don't know what the solution is,  
10 but what I will commit to you is that we will search  
11 and look and find a solution to deal with that -- that,  
12 that big jump in registration that last 10 days because  
13 it does put pressure on the whole system.

14 MS. PATRICK: And I'm looking for a  
15 solution, an educational piece. What I'm trying to get  
16 at with the state patrol director in your conversation  
17 with them, can you at least talk about when a citizen  
18 registered or think they're registering that they will  
19 say to the citizen if you have not received your card  
20 in three weeks, four weeks, please check? That will  
21 help us.

22 MS. BEAZLEY: That is some of the things  
23 that we're going to do, and let me just tell you this.  
24 In the last session of the General Assembly that was  
25 recommendation that the examiner get some type of

1 written sheet to the person when they registered.

2           And that was extremely expensive to DMV  
3 because they had gotten rid of all of their printers,  
4 and it would have cost them around \$2 million to  
5 re-invent the wheel so that they can print something,  
6 but they are very willing to work with us, and I'm sure  
7 that we can improve that area of registration.

8           MS. PATRICK: Yeah. We all have to work  
9 together.

10           MS. BEAZLEY: Yes, we do.

11           MS. PATRICK: Because I am a deputy  
12 registrar, and that's one thing that I always do is to  
13 tell the citizen if you don't get your card -- I think  
14 that will help us because what I'm hearing here tonight  
15 a lot of folks didn't get a card, but they should have  
16 been told to check, and with that I'm going to cut off  
17 my comments and let someone else speak.

18           But mainly precinct size, not on the list,  
19 having a valid voter registration card, not on the  
20 list, being turned away, those were some of the really  
21 bad things that we had in DeKalb County. Thank you.

22           MS. BEAZLEY: Thank you.

23           REVEREND WHITE: Thank you, Ms. Patrick.  
24 And that comment represents so many others, and on the  
25 basis of that we went over the two minutes.

1                   MR. BOND: Before we get to the next  
2 question, I had a question from Mr. Epps, vice  
3 president in the office of the Secretary of State's  
4 office.

5                   For all people who have registered in some  
6 form or fashion and went to the polls, what is the  
7 recourse now? What do they do now?

8                   MR. SLAYTON: I'm sorry?

9                   MR. BOND: Let me just say for those who  
10 might have received cards who weren't on the list and  
11 for others who were certainly registered, they didn't  
12 appear on the list on the polls, do they have a  
13 recourse?

14                  MR. SLAYTON: The easy answer is the  
15 election that happened November 7 is over. There will  
16 be no more voting in that election unless we have -- I  
17 think we got some runoffs. Unless something happens in  
18 the runoffs, but there will be no more there.

19                  But in terms of future elections, I mean, if  
20 they raise an issue, now that will get clarified. And  
21 in some cases we already know that people are going to  
22 have to go back and re-register. There is no record of  
23 it.

24                  In cases where there is a record of it --  
25 and we do have cases like this lady. Had a card

1 established, a card submitted, but for some reason they  
2 didn't show up on the voter rolls. Now, those folks  
3 will be able to vote in the upcoming elections. But,  
4 Linda, can you add to that?

5 MS. BEAZLEY: Yes, sir. Mr. Bond, if they  
6 have a voter registration card -- and let me back up  
7 and say that we had calls that you students had cards  
8 dated 10-10. Is that pretty much the truth? Your card  
9 was dated October 10th? Is this appropriate? I'd like  
10 to ask her.

11 MS. LEE: We registered August, the last  
12 week of August. However, when I realized that I didn't  
13 get a card I registered again, and my card was dated  
14 10-10 because I registered again.

15 MS. BEAZLEY: Okay. My question to you is,  
16 were you ever found on the list?

17 MS. LEE: No. No.

18 MS. BEAZLEY: And that's Fulton County?

19 MS. LEE: Mm-hmm.

20 MS. BEAZLEY: It would be my thinking that  
21 if you got a card you are on their records somewhere,  
22 is that not correct, Mr. Sullivan?

23 Excuse me. But let me say, too, that we had  
24 a number of students who were not able to get in to any  
25 of the offices and so they called our office.



1                   They had a card, it was dated 10-10-2000.  
2                   It did not have a voting location on it, but we talked  
3                   to a poll manager, and we let five go in and vote at  
4                   one time based on the fact that they had that voter  
5                   registration card and that their names were not on the  
6                   list, but we authorized them to go ahead and let them  
7                   vote because they had that card.

8                   And I didn't know if maybe there was a  
9                   supplemental listing that they may have been placed on.  
10                  John, if you don't mind.

11                  MR. BOND: Mr. Sullivan, you can join us up  
12                  here in case there may be others just joining us.

13                  MR. SULLIVAN: Sure. Ms. Champion found out  
14                  about this meeting this afternoon and she already had  
15                  plans, but I changed my plans so that I could be here  
16                  tonight.

17                  I'm like y'all, I'm searching for solutions.  
18                  Telling people that want to vote that they can't just  
19                  breaks my heart.

20                  Ms. Lee, I know what happened on hers. I  
21                  researched it and her registration date was entered  
22                  incorrectly. Instead of 10-8, it was entered as 10-18.  
23                  The slash between the 10 and the eight looked like a  
24                  one, and we received 36,774 applications in October,  
25                  after October 1. Those 36,744 (sic) all got entered.

1 We worked 14 hour days, seven days a week.

2           You know, that somebody is not on the list  
3 is just not acceptable. Of course, working those long  
4 hours we make a few mistakes. And Ms. Lee, we entered  
5 her registration date incorrectly. 10-18 was after the  
6 deadline and, therefore, her name did not print on the  
7 electors list even though the card was printed and sent  
8 to her. And so that was just an error in typing.

9           You know, I can't say how much I apologize  
10 for that, but that's what happened in her case.

11           Others, I know that everything we entered on  
12 October 23, the state computer lost. They, again, the  
13 onslaught of all the registrations in 159 counties were  
14 entered, we overran the file space and everything we  
15 entered that day was lost and we had to re-enter it.

16           And, of course, we haven't gotten everything  
17 alphabetized yet and I have to go back through that  
18 list and verify that all of those did get re-entered.

19           And so there may be a few errors there, but  
20 the volume we're dealing with, we're trying to be 100  
21 percent accurate because we know that it's somebody's  
22 right to vote that we're dealing with.

23           REVEREND WHITE: Okay. Now, the bottom line  
24 is everyone who has registered now this last election,  
25 as we know, is done with. Will they get their voting

1 cards?

2 MS. BEAZLEY: Well, I would suggest that if  
3 they had not received the card and they think that they  
4 registered, and you're sure you registered somewhere  
5 and you did not receive a card, if you even  
6 re-registered, and you can pick up those forms at the  
7 college, or we can send them to you if you want to call  
8 us. They are everywhere. But your college should have  
9 forms.

10 REVEREND WHITE: How are you going to get  
11 that word out to people that are in those situations?

12 MS. BEAZLEY: Well, the only situation that  
13 was brought to our attention in the elections division  
14 was the students at Spelman and Clark that had cards.

15 We felt like if you got the card you were on  
16 a list somewhere, and we couldn't find you in every  
17 instance except those five that I don't know who they  
18 were. You may have been some of them, I don't know,  
19 but if they got the voter registration card, I would  
20 suggest that you tell them to call the Fulton County --  
21 if it's the Fulton County office -- and verify the fact  
22 that you are on their list.

23 If they say that you are not on their list,  
24 then I would suggest that you go ahead and fill out  
25 another voter registration card.

1                   Now, once that card is entered it may show  
2 up that it's a duplicate card by the time you put all  
3 of the information in it. And as Mr. Sullivan said,  
4 they were overwhelmed with the number of voter  
5 registration applications that came in at the last  
6 minute. Every county was. And there were some errors  
7 made and it was almost impossible to be error free, I  
8 realize.

9                   REVEREND WHITE: One other thing was, now,  
10 for those who had not received cards --

11                   MS. BEAZLEY: Those who have not received  
12 cards, if you have not received a card yet I would  
13 recommend that you re-register. Fill out another form.

14                   REVEREND WHITE: Okay. Yes, Michael.

15                   MR. BOND: I was going to say this: Not  
16 just to the students, but to any other person who may  
17 be watching the program, or listening to our  
18 conversation, that the Atlanta branch would be more  
19 than happy to help you facilitate another voter  
20 registration drive to get those persons that did not  
21 receive cards, or had difficulty, or unsure about their  
22 registration, that you contact their office at (404)  
23 761-1266. We will be glad to come back out and help  
24 facilitate that.

25                   MR. SULLIVAN: Reverend White.

1 REVEREND WHITE: Yes.

2 MR. SULLIVAN: One of the things, we have  
3 about 6,000 applications in Fulton that were too late.  
4 Most of which were postmarked on 10-11, the day after  
5 the deadline. They were probably mailed on 10-10, but  
6 the post office processed them after midnight, and so I  
7 assume that as soon as we enter those that a lot of  
8 these people that think they should have gotten  
9 registered will have gotten registered. It's just that  
10 the postmark made their application too late for this  
11 election.

12 MS. BASS: Oh, I'm sorry. My name is Mia  
13 Bass. I just wanted to address what Ms. Beazley said.

14 I think I speak on behalf of the other  
15 students from Spelman and Clark that are here. The  
16 fact that we should have to register again is really  
17 unacceptable. I registered one time. I was registered  
18 with an organization. I'm not sure if it's affiliated  
19 with the NAACP or not.

20 MR. BOND: No.

21 MS. BASS: They are not? I'm not sure who  
22 they are affiliated with. And, once again, yesterday  
23 morning I spoke with our vice president of student  
24 affairs, Dr. Zenobia Hikes, and she spoke to one of the  
25 members of Spark, and they said that they turned in

1 those voter registration forms.

2           And so I think I speak on behalf of the 400  
3 freshman students who registered that day. We would  
4 still like an explanation as to what happened.

5           MS. THOMAS: I can answer that. I'm sorry,  
6 my name is Alisha Thomas. I remember that day. I was  
7 on the program that day as well when you all were  
8 registering.

9           I believe what the problem was, was that the  
10 individuals who -- from Spark who took the applications  
11 were not deputy registrars.

12           MS. BASS: Deuptized, right. That's what I  
13 know.

14           MS. THOMAS: And if I'm correct, the people  
15 who are not deputized turn in forms, all of those are  
16 invalid, and I believe that is what happened.

17           MR. BOND: That's right. Mr. President.

18           MR. SLAYTON: I was about to say just before  
19 you stepped up that we did have some horror stories of  
20 people with good intentions who thought they were doing  
21 a good thing.

22           For example, like I said before, Kroger  
23 stores in this state was going to register voters.  
24 There was an assistant manager at one Kroger store in  
25 this state who decided that on this one day he would

1 take all of the forms that had been put into a bin for  
2 the postman to pick up and take them down to the local  
3 voter elections office on his way home.

4 Well, he did that, and guess what. By law,  
5 that local elections officer could not accept them  
6 because that person that brought them was not a  
7 deputized registrar.

8 And we have a good number of examples from  
9 around the state like that where we had good hearts  
10 with good intentions, but those good intentions ended  
11 up with some horror stories, and this may be one of  
12 those where your form was just rendered invalid.

13 Now, what I will say, and somebody asked how  
14 can we get the word out? Well, I can commit to you  
15 that voter education is something that we take  
16 responsibility for, and we've heard enough here tonight  
17 to think that a press release from your Secretary of  
18 State that kind of clarifies that as a result of what  
19 we have heard here tonight is something that we can do.

20 And as Linda said, I mean, the only remedy  
21 is to re-register, and that's something that we can  
22 encourage people in this state to do if they are, like  
23 you, who registered, don't have a precinct card.

24 So, I mean, if you don't have a precinct  
25 card and you registered by October 10th, something's

1 wrong. If you registered by the 10th, you should have  
2 heard from your local elections official. If you have  
3 not, that's a good signal that you are not registered  
4 and something happened to it. You can go back and try  
5 to track it, but the easier solution would be to  
6 re-register, and we certainly can put a press release  
7 out to that effect.

8 MS. BASS: Okay.

9 MR. SLAYTON: And we'll be willing to do it  
10 jointly with you.

11 MR. SULLIVAN: Reverend, Spark told me that  
12 they had registered 87, and that they mailed it in in  
13 one envelope, and as a designee of a university  
14 president they are like a deputy registrar who could do  
15 that.

16 I checked with the Secretary of State's  
17 office to be sure that they did not, you know, reject  
18 any envelope coming from Spelman. "Oh, no. If it's  
19 from a college we would know that it was the university  
20 President's designee and we would just process it and  
21 send it right on through."

22 And so, you know, I don't know what  
23 happened. You know, there were so many students not  
24 registered because Spark said they only registered 87,  
25 is the number they had.



1                   And they, of course, did not write down the  
2 names because registration forms are confidential. You  
3 can't be copying stuff off of them. And so they don't  
4 know who the 87 were.

5                   And so when you say 400, I don't know what  
6 organization did that. Spark said many organizations  
7 participated in registration that week; that they were  
8 only on the tail end of it. And so I don't know who  
9 else did it.

10                  REVEREND WHITE: And let me say this: Our  
11 office is willing to assist in re-registering. Now, we  
12 have some re-register forms here tonight with the  
13 registrars here tonight for those who are present, but  
14 we will assist you in getting that work out.

15                  MS. BASS: Okay. The number 400 is really  
16 an approximation. There are about 600 of us in the  
17 freshman class, and a good majority of them were in  
18 sisters chapel that night when we registered. And like  
19 I said, myself as well as many other people did not  
20 receive anything, and what is unfortunate is that we  
21 had other opportunities after that to register, but  
22 since we thought that we were registered through the  
23 school we didn't do anything about it.

24                  REVEREND WHITE: Okay. The best thing that  
25 we can do now is work to correct that and we will work

1 with you on that.

2 MS. BASS: Okay. Thank you.

3 MR. WHITE: Now, those others who are  
4 speaking, let me let you be very brief because we have  
5 two others who are registered. You had a question?

6 MS. PETERS: Yes. My name is Demia Peters  
7 again, and my question to Ms. Beazley and to  
8 Mr. Slayton.

9 What about those students who again, as I  
10 said before, SGA in conjunction with the NAACP  
11 registered almost 2000 students to vote. Now, within  
12 that 2000 many of those students did receive cards;  
13 however, a few didn't, and this was in the same batch  
14 and so we know that there was a deputy registrar  
15 person.

16 We know that there was the same group of  
17 people who did receive cards. And so why would some  
18 receive cards and others not?

19 And then the second part of my question is  
20 in regards to Fulton County. One of the opportunities  
21 we had there on the college campus is not everybody is  
22 registered in the same county, and one thing we found  
23 was that administrators and different faculty members  
24 that voted in other counties, if they did or did not  
25 have a card, or were not on the list the registrar --

1 the precinct called the county and they were given  
2 permission over the phone by whoever was a county  
3 representative; however, students were not given that  
4 same courtesy, and so could you please address that?

5 MS. BEAZLEY: I might defer -- are most of  
6 those 2000 that you say in Fulton County?

7 MS. BASS: Yes, ma'am.

8 MS. BEAZLEY: They were? Okay. I will  
9 probably defer to Mr. Sullivan to answer that because I  
10 can't answer why some got cards and some didn't, and  
11 when they were all together.

12 On the second part of the question, a county  
13 registrar has the authority by law to add a person to  
14 the list on election day. They are the only person  
15 that can authorize a person's name to be added to the  
16 list.

17 They may have had an error on their list,  
18 but if a student was not on that list and there was an  
19 error made a student would have been placed on the  
20 list, but the county registrar is the proper person to  
21 authorize that person to be added to the list.

22 If you went to a precinct and the poll  
23 manager called back to the office, that was the exact  
24 correct thing to do. And they are the only people that  
25 can authorize an addition to the list or a deletion

1 from the list.

2 MR. SULLIVAN: We had a new telephone  
3 answering machine with 16 lines answering the phone on  
4 election day. We got it in about a week before the  
5 election. If somebody entered their birthdate and  
6 their house number, it could tell them where their  
7 polling place was in most instances.

8 Of course, there were some duplicates so  
9 only about 97 percent of the voters were in that file.

10 If they didn't use the automated part and,  
11 you know, hit zero to talk to us, we had about 20 lines  
12 that were being answered. And we had an additional 10  
13 lines on an unlisted number for poll managers to call,  
14 and so we were answering calls furiously all day long.

15 If there was a mistake or something, we were  
16 authorizing names to be added to the list. Not  
17 everybody could get through because in a 12-hour day,  
18 you know, we could only answer so many hundreds of  
19 calls. And so if we would have had, you know, 100 more  
20 phones that day, it wouldn't have been enough with all  
21 the problems we had.

22 The biggest problem was the DPS  
23 registrations. People went to get driver's license and  
24 they swear up and down that they said yes, but these  
25 were marked no. I think the only solution to that is

1 if the driver's license has printed on it that person  
2 became a registered voter or they didn't.

3 The person in their own hand had something  
4 that said they did not become a voter then they can do  
5 something about it.

6 The next biggest problem was all of these  
7 people that, you know, I registered and we never got  
8 anything. We entered everything that we had. And so  
9 what could have happened to hundreds or more? I'm at a  
10 loss. I really want to know.

11 The registration is very easy now, but we do  
12 not have the same control that we used to when you had  
13 to appear before a deputy registrar and you had to show  
14 I.D. You got a receipt on election day. If everything  
15 was lost, you had your receipt.

16 And now with mail-in registration there is  
17 no way to do a receipt. If somebody could come up with  
18 a brilliant answer, I want to hear it. I want to go to  
19 the legislature and ask them for a good solution.

20 Telling people they can't vote, that's not  
21 my bag at all. We worked hard so that people can vote.

22 MR. WHITE: Okay. Now, let me do this. I'm  
23 going to have to -- I've got two people who have not  
24 been heard. I want to get those questions for those  
25 who are coming back, but I do think that in the

1 interest of fairness let me hear these people who have  
2 not yet spoken.

3 I've got two more who need to speak, and  
4 then we will address the other response to the  
5 questions that you will have, and then let me limit our  
6 responses to be concise a little bit more because we're  
7 running into a time factor here. Yes.

8 MS. THOMAS: I just want to interject. I  
9 see the people are starting to leave. Particularly for  
10 the young people. I know that we have been talked  
11 about in the past that we don't go out and vote, and  
12 for the first time for some of us we actually did go  
13 out and vote and then were turned away.

14 I want to encourage you to please, please go  
15 back, and I hope that the Fulton County Secretary of  
16 State's office, everybody that's hearing this, be  
17 prepared because we will be back. So there is no need  
18 for it not to have enough ballots. There is no need  
19 for not enough voting booths. All of that needs to be  
20 taken care of because we will be back.

21 So everybody who is in this room and  
22 everybody that's watching this, please stay encouraged  
23 and I will feel -- I have faith in our system and know  
24 that they will be prepared for us because we will be  
25 back.

1                   REVEREND WHITE: Okay. Very good. And I  
2 might also mention Mr. Tim Robinson has forms for those  
3 who would like to register tonight. I do need to hear  
4 from Mr. Thomas Ball, and then Soraya Mekerta, and then  
5 we'll get the other questions.

6                   MR. BALL: Good evening. My name is Thomas  
7 Ball, B-A-L-L, 8526 Hightower Trail, Snellville,  
8 Georgia 30039, and my county is Gwinnett. I'm not sure  
9 of the precinct. Nor am I sure of a lot of these  
10 things written on my voter registration card.

11                   This is like a fair like when you go  
12 somewhere and you pay for the ride you should be  
13 allowed to --

14                   REVEREND WHITE: Speak a little louder.

15                   MR. BALL: I feel like when you go pay for a  
16 ride you should be allowed to ride, but if you can't  
17 ride you should get your money back.

18                   I went down to vote, and my wife had gone  
19 out earlier to find out where we could vote. She  
20 started out at 7:00 o'clock. She found the exact place  
21 that she was able to vote about 1:00 o'clock that  
22 afternoon. She called me and told me, well, if you  
23 come now the line is short. I was on call that day.  
24 She said, "If you come now you can vote." Because it  
25 wasn't that many folks. It was about 3:00 o'clock.

1                   We actually vote at the North Church park in  
2 Lithonia. It's now called Snellville.

3                   I went into the poll. I tried to vote.  
4 They told me that my name was not on the list. I know  
5 I'm a registered voter. My wife and I registered  
6 together.

7                   They said that my name was not on any of the  
8 rosters. And so I asked, "Well, what should I do? How  
9 about you just letting me vote now and then you guys  
10 take care of it later because I pay a lot of money, you  
11 know, like you guys take, like, one-third of my check  
12 every payday. And so, you know, I paid to ride and so  
13 I want to ride."

14                   And so what happens is that no one could  
15 tell me where I could vote, or what should I do? And  
16 so I just sat there. And so I guess that was pretty  
17 intimidating to the poll workers.

18                   The next thing I know, the police showed up.  
19 They gathered around me, you know. Started flexing on  
20 me, you know. And so I said, "Well, what's up?" They  
21 told me, "Well, you're going to jail. You've got to  
22 leave because you're not here voting." And I said,  
23 "Well, jail, so be it."

24                   And so I got locked up. I spent a lot of my  
25 time staying out of the police presence. I came to



1 Georgia so that I wouldn't go to jail. I'm from New  
2 York, and my chance to go to Georgia.

3 And here I go to vote. I get arrested.  
4 Locked up. People looking at me like I'm on drugs or  
5 something like that. I was humiliated. I still  
6 haven't voted. And so what do I do now?

7 I got a court case, you know. People I work  
8 with -- I work around highly sensitive equipment. They  
9 don't want to hear about me going to jail, you know?  
10 What do I do? Here I am right now. I want to know  
11 what's up?

12 MR. SLAYTON: I think that's probably one of  
13 those cases that we need to deal with probably out of  
14 the limelight, and we'll just take your case, I'll just  
15 talk to you individually, and we will deal with your  
16 county and your issue.

17 MR. BALL: You're saying out of the  
18 limelight.

19 MR. SLAYTON: Well, let me put it this way:  
20 I can't resolve your problem right now.

21 MR. BALL: Okay.

22 MR. SLAYTON: There is a lot of information  
23 that we don't have, and so what I'm saying to you is  
24 that we will be willing to work with you to work it  
25 back through to see what the problem is, and then to

1 see if we could come up with a remedy that's  
2 satisfactory.

3 MR. BALL: If it wasn't for -- you know, I  
4 am not a member of the NAACP, but I want to join  
5 tonight. Because I know we're a team. I'm not on a  
6 team. I'm like a lone person, you know. I realize now  
7 that you need to be on a team. I want to be on a team.  
8 And so you're saying I understand your situation, you  
9 know, this is sad, man.

10 REVEREND WHITE: And what we're going to do  
11 is we'll make sure -- we'll follow this through with  
12 you.

13 MR. SLAYTON: Where did you register, sir?

14 MR. BALL: My wife and I registered in '96,  
15 I'm not exactly sure, but I believe it was in Decatur,  
16 if I'm not mistaken. You know, we moved from Decatur  
17 to Lithonia.

18 MR. SLAYTON: Oh, I see. So you have voted  
19 before?

20 MR. BALL: Yes. Well, the fact that where I  
21 live is like Rockdale, DeKalb, and Gwinnett all the  
22 same, and so there is some confusion sometimes, you  
23 know. Dekalb sends, you know, wants me to come down,  
24 you know, to be on their jury.

25 MR. SLAYTON: And you moved from one address

1 after you voted to another address?

2 MR. BALL: I voted -- I mean, I have been  
3 living in the same area and I voted in that area.

4 MR. SLAYTON: The same address?

5 MR. BALL: Yes, but they moved the polling  
6 place.

7 MR. SLAYTON: Well, let's deal with your  
8 problem. I want to see you when we break.

9 MR. BALL: So what do I do?

10 REVEREND WHITE: If you could stay here.

11 MR. SLAYTON: Or take a card and call me,  
12 either way. Your choice.

13 MR. BALL: I'll take a card. I'll wait,  
14 too.

15 REVEREND WHITE: Thank you. Soraya Mekerta.

16 MS. MEKERTA: Good evening. My name is  
17 Soraya Mekerta, S-O-R-A-Y-A-, M-E-K-E-R-T-A. My  
18 address is 1814 Ogden Woods Drive, Southwest, Atlanta  
19 Georgia 30331. My precinct is No. 7 in Fulton County.

20 Some of the things that I wanted to say have  
21 already been stated, and so I am not going to repeat  
22 them, but I have three comments and I'll try to be  
23 brief.

24 The first is, indeed, the question that we  
25 are looking for solutions and we are hoping to be able

1 to restore hope, particularly in young people and  
2 particularly for the young voters who thought that they  
3 were going to vote and going to be able to vote for the  
4 first time.

5           And I speak as a concerned citizen, as a  
6 naturalized citizen, and as an educator. And the first  
7 thing I want to say is as an educator. As an educator,  
8 I can testify to the excitement with my students. I  
9 teach at Spelman College, and I also am teaching the  
10 freshman orientation seminar, and one of the themes, we  
11 have many themes, in this seminar for this year is  
12 women as world citizens.

13           And we try to, in this theme, instill in the  
14 young women the idea that as citizens of the world we  
15 have responsibilities, and among these many  
16 responsibilities we have what are known as civic  
17 duties. I don't know the proper term for the  
18 elections, and I can testify to the level of excitement  
19 among the young students to the idea of voting.

20           And we are talking about students who are,  
21 as it was stated earlier, much aware that large  
22 offenses were shed so that the rest of us could vote  
23 today, and so there was so much enthusiasm.

24           And I voted early that day, and I wore my  
25 little tag that said that I voted. And as I would go

1 through my teaching day I would see my students' faces  
2 completely disillusioned. Completely alarmed. Some of  
3 them angry. Some of them disgusted. Many puzzled, not  
4 understanding what happened.

5           And so as we are trying to find solutions,  
6 and as we are trying to restore hope, I see the  
7 contradiction. How can we as educators as concerned  
8 citizens, how can we and anyone on this body tonight,  
9 how can we even think that we can, indeed, look at  
10 young people in the eyes, or anyone who was not able to  
11 vote and say, look, we're going to make things better.  
12 We're looking for solutions. This time your vote did  
13 not count, or cannot count, or does not count.

14           How, as an educator, do I instill in the  
15 generation of young people that do not really believe  
16 so wholeheartedly in the democratic process? That do  
17 not really believe in the way we do politics these days  
18 in the United States of America. And so how do we  
19 restore the hope?

20           And I was very happy to hear the comment  
21 that the young lady from the NAACP made that we must  
22 restore hope, and we must look for solutions and ways  
23 in which we are going to be able to go back to the  
24 young people and say let's give it one more time.  
25 Let's make sure that people are registered.

1                   Secondly, as a naturalized citizen, I would  
2 like to say this. Obviously, I have an accent. I  
3 became the citizens -- a citizen of the United States  
4 of America, I believe, in 1985 or 1986.

5                   I have been voting ever since because I  
6 wholeheartedly believe in democracy processes. Even  
7 when they do not work, I still believe in them.

8                   So I want to say this: The people that  
9 help, and I realize they are volunteers, we need to do  
10 a better work in terms of the training of these people.

11                   Not at this election, but just the previous  
12 one. When I went to vote, lucky me, I was on the list  
13 the last time, not this time. I was on the list the  
14 last time, and the ladies helping out in that precinct  
15 looked at me very puzzled, three of them, and said,  
16 "Oh, aliens cannot be here today." And I said, "Well,  
17 I'm not an alien, I'm a citizen and, indeed, I am a  
18 registered voter, and I'm sure my name is on the list."

19                   And I was told, "Well, no. What do they  
20 call them, residents?" And another one said, "Yes,  
21 resident aliens." And so now with great assertiveness,  
22 though three of them were telling me that resident  
23 aliens cannot vote, and I explained that I knew that,  
24 that resident aliens indeed cannot vote, but that I am  
25 a citizen, and I can vote, and my name is on the list.

1                   And then a different lady indeed found my  
2 name, and as I proceeded to go to vote to my booth the  
3 three ladies were still talking as if I had tried to,  
4 you know, sneak in to vote or something.

5                   And so I think we need to sensitize our  
6 citizens and friends that we are a large vocal  
7 community and some of them -- some of us citizens do  
8 come along with an accent.

9                   And so I wonder what would have happened if  
10 -- and this brings me to my third point. This time I  
11 was not on the list, and let me tell you what happened.  
12 I moved in a new subdivision recently. I am married.  
13 My husband and I went to the local public library. We  
14 registered within hours of each other. Because of our  
15 jobs, he registered in the morning and I registered in  
16 the afternoon.

17                   He did receive his yellow voter registration  
18 card. I did not. A few days later, and we live at the  
19 same address, let me point out, a few days later I  
20 received a letter from the city telling me that my  
21 address, that my address did not exist and, therefore,  
22 I was not supposedly in existence.

23                   And so intrigued, highly intrigued, I looked  
24 again at my husband's yellow card to make sure that it  
25 was his name, there was not a mistake. It's a new

1 subdivision.

2 I called the city and eventually after  
3 talking to three different people I was able to get  
4 through to folks who seemed to know what was going on.  
5 And because it is a new subdivision, apparently our  
6 same address, it's a house, has two different  
7 addresses, apparently.

8 And so although my husband registered at the  
9 same address I did, and we wrote the exact same thing  
10 on the card, when they sent his yellow card it was a  
11 slightly different address. Instead of a drive it  
12 simply said road.

13 And so mine, apparently the person who  
14 handled my card didn't look into some sort of details  
15 as the one who handled my husband's must have, and  
16 decided that particular address did not exist.

17 Now, the mailman does put the address, and  
18 the phone company does send us a bill at the address  
19 that I put on the card. And so I just wondered when I  
20 voted the previous four years ago and now what would  
21 have -- and so eventually the city did send me a  
22 letter. They said there was no time to send me the  
23 yellow card, but they sent me a letter to be presented  
24 to the poll manager who would then know what to do with  
25 it.



1           And, of course, I was praying that person  
2 would be enlightened and knowledgeable and would indeed  
3 know what to do with it, because you can imagine when  
4 people have waited hours and here I am with a special  
5 letter and a foreign accent asking a poll manager.

6           And people initially didn't know what to do  
7 with the letter, and eventually -- and I hope my vote  
8 did count, but I was able to go into the poll and vote  
9 and I hope, indeed, it did count.

10          And so these are the three points that I  
11 wanted to make, but I want to believe in democracy.  
12 And I am an educator, which means that I want to  
13 believe that I also have the ability to have some  
14 influence on the young people today.

15          And the young people today are dealing with  
16 so many difficulties and stresses and disillusionment  
17 of all sorts. How can we say well this time, your  
18 first time, that you were so excited about, it simply  
19 cannot and will not count?

20          And I am saying that I want to be in the  
21 position where I believe and where I can say your vote  
22 does count, and will count.

23          I know certain things have been said where,  
24 apparently, it's too late because of the percentages of  
25 Georgia, but we are individuals. Our students are

1 individuals. How can we tell them because of  
2 percentages, because this is a state that predominantly  
3 votes Republican, how can we say to anyone, regardless  
4 if they intended to vote Republican or Democratic, how  
5 can we tell that person well the percentages mean more  
6 than you do with your vote?

7           And how can we believe that this person  
8 will, indeed, go back and vote the next time? Thank  
9 you.

10                           (Applause)

11           REVEREND WHITE: Very well put. Let me  
12 thank everyone for speaking. I think one thing that  
13 this does show, and I'm happy to see this, and that is  
14 the fact that we are -- we are serious about our right  
15 to vote and we seriously want our votes counted, and I  
16 can agree with you that our young people especially  
17 need to know that even though the first time has been a  
18 little discouraging that we're going to do everything  
19 that we can, and this is the reason that the NAACP  
20 called the meeting tonight.

21           We were aware of the problem and we wanted  
22 to hear the problem so that we can help solve that, and  
23 we will do everything we can.

24           Okay. Can I give you just a couple of  
25 minutes? Go ahead.

1 MR. SLAYTON: Let me add very quickly if I  
2 could that sensitivity to differences is something that  
3 is very important to your Secretary of State. She's  
4 not waiting around. The fact is, she's already moved  
5 on that issue.

6 It used to be a year ago if you registered  
7 to vote in this state you checked one or two things:  
8 I'm a white person, I'm a black person. Well, that's  
9 no longer the two options that you have.

10 Because of her sensitivity already, we're  
11 able to register people and count people as Caucasian,  
12 as black, African-American, as Asian, Pacific Islander,  
13 and as Hispanic. Then we got another other category.

14 And so I think your points are well made and  
15 I'm really glad to have heard a different accent here  
16 tonight because when you look at what is happening in  
17 Georgia, all of us need to be a little more sensitive  
18 because we do have more than Caucasians and  
19 African-Americans that make up our state. Thank you.

20 REVEREND WHITE: Very good. Yes, sir.

21 MR. PHELPS: Good evening. My name is Ed  
22 Phelps. I'm with Black Politics dot.com.

23 REVEREND WHITE: Would you spell your name,  
24 so she can have it, sir?

25 MR. PHELPS: E-D, P as in Peter, H-E-L-P-S.

1 We've heard from across the country, actually, reports  
2 very similar to what's coming in here about the people  
3 who had registered to vote, had voter registration  
4 cards, but because of various technicalities were  
5 prohibited from voting.

6 My question to the panel is, what is the  
7 rationale for someone who has registered and received a  
8 registration card, which would indicate that their  
9 paperwork has been in process properly, to then have to  
10 appear on a list when they show up to vote?

11 That's something that -- that's an  
12 explanation that I know that we're getting asked about  
13 a lot and if you could shed some light on it, I would  
14 appreciate it.

15 MR. SULLIVAN: Okay. What happens lots of  
16 times somebody becomes disqualified. They have been  
17 convicted of a felony and they are no longer qualified.

18 Somebody registers to vote in Fulton next  
19 month, moves to DeKalb, then the next month moves back  
20 to Fulton. They're registered in DeKalb in the  
21 meantime, but when they moved back to Fulton they  
22 didn't register again.

23 And so they are registered over in DeKalb  
24 but just because they got an old Fulton card doesn't  
25 mean that they're still a Fulton voter.

1                   And so having a card doesn't mean that  
2                   you're currently registered even if it's a recent card  
3                   because you can register today in one county and  
4                   tomorrow in the next, and the next day in the next, and  
5                   the next. I mean, you could register five times within  
6                   a week if you change your residence each day and it can  
7                   still be legal.

8                   MR. PHELPS: Thank you.

9                   MR. SLAYTON: And even beyond that, if it's  
10                  somebody that has an older card and never voted within  
11                  the past three or four years, and they show up to the  
12                  polls, and there are two lists at each poll. There is  
13                  an active voter list and an inactive voter's list, and  
14                  oftentimes we -- and, in fact, people have showed up to  
15                  the polls with a card and looked on the active voters  
16                  list and they weren't there. And we had a couple to  
17                  actually leave, but they were told to go back there  
18                  because their names appeared on something called an  
19                  inactive voters list.

20                  MR. PHELPS: So there also is a time limit  
21                  on if you're even at the same address, because we've  
22                  got a couple of reports in Florida of people who had  
23                  registered to vote back in the early '90s, been at the  
24                  same address, but failed to vote. I believe it was  
25                  '90 -- in the previous election, were turned away.

1 REVEREND WHITE: Mr. Slayton.

2 MR. SLAYTON: Well, let me ask --

3 MS. BEAZLEY: You say this is Florida?

4 MR. PHELPS: Yeah.

5 MS. BEAZLEY: We're not discussing anything  
6 about Florida right now.

7 MR. PHELPS: But this is just the overall  
8 issue so that people understand that. They not only  
9 have to register, but they also have to check back, or  
10 participate, or else they become inactive?

11 MS. BEAZLEY: Well, when the Motor Voter law  
12 went into effect January 1, 1985, the roles have not  
13 been heard since that time. Previous law stated that  
14 each odd numbered year after every general election you  
15 would look at your voter roles, purge those voters who  
16 had not voted in one election for the previous three  
17 years.

18 So, actually, if you voted in every  
19 presidential election you would stay on the list. That  
20 law was repealed, and when the Motor Voter was  
21 implemented there has not been a purge procedure.

22 The first time there will be a purge for  
23 non-voting will be after this election this November,  
24 and they will begin to be purged in 2001.

25 MR. PHELPS: And can people check with the

1 Secretary of State's office, their poll Secretary of  
2 State's office?

3 MS. BEAZLEY: Well, the county will notify  
4 those voters that they are being purged and they could  
5 re-register, I'm sure.

6 MR. SULLIVAN: It's a no contact process  
7 now. Used to, it was based on voting, now it's based  
8 on no contact. If you register, address change, sign a  
9 petition, anything, then that's a contact.

10 If we don't hear from you in three years  
11 you're sent a notice. If you don't respond then you're  
12 on the inactive list for four years, two federal  
13 elections.

14 And so after seven years of inactivity you  
15 may actually get deleted but, again, you'll get a  
16 notice.

17 And so in Georgia we've always given  
18 notices. In some states they didn't used to do that,  
19 but federal law now you have to do a notice before you  
20 can delete somebody.

21 And so, you know, somebody on the inactive  
22 list. They're right there. The list has now been  
23 combined in the next couple of elections and so it's  
24 all one list together. So it's not two places to look  
25 in anymore.

1                   If your name is there, active or inactive,  
2                   it doesn't matter. If your name is on the list you get  
3                   to vote. If you ever vote you're automatically flipped  
4                   back to active. The computer handles that for us.

5                   MR. PHELPS: It sounds like that's an area  
6                   that has some complexity to it. I'd like to request a  
7                   copy of that information to make sure that it gets on  
8                   this site so that the people will know that they have  
9                   to follow up and try to make sense of that because it's  
10                  not something that you find out about and hear about in  
11                  the normal channels of communication, and so I would  
12                  appreciate some input on where to get that and we'll  
13                  get that out there. Thank you.

14                 REVEREND WHITE: Thank you sir. Yes, sir.

15                 MR. TAYLOR: President White, good evening.  
16                 To the board members, citizens, good evening. I've  
17                 been hearing a lot --

18                 REVEREND WHITE: Give us your name.

19                 MR. TAYLOR: Oh, I'm sorry. Barton J.  
20                 Taylor, B-A-R-T-O-N, J., last name Taylor, T-A-Y-L-O-R.  
21                 I reside at 642 Beckwith Street, B-E-C-K-W-I-T-H,  
22                 street, that's Southwest, Atlanta, zip 30314. My  
23                 precinct, I'm not sure about, Fulton County, and I'm in  
24                 Representative District 49, and Senate District 42.

25                 MR. BOND: Where do you vote, sir?



1 MR. TAYLOR: Huh?

2 MR. BOND: Where do you vote?

3 MR. TAYLOR: I vote -- I don't know my  
4 voting position -- I voted at the United Methodist  
5 church across the street from Morris Brown College.

6 MR. BOND: I think that's 3-E or 3-D.

7 REVEREND WHITE: Sir?

8 MR. TAYLOR: I've been hearing a lot of  
9 issues going on, and I sympathize with you, but I just  
10 wanted to offer a couple of solutions that you may want  
11 to look at because I don't want to keep pointing at who  
12 spilled the milk, but let's all clean up the milk and  
13 move on and prosper as a state.

14 The first thing is, there needs to be a  
15 disclosure base of registers, groups and individuals.  
16 What I'm hearing from the student population is there  
17 are some groups that registered to vote, they never got  
18 their cards, or they got there late.

19 There needs to be some type of vehicle where  
20 they can look up to see if this group is legitimate  
21 that they be registrars because what may happen is we  
22 may have different predatory groups come and say we're  
23 registering to vote. All they're doing is creating a  
24 marketing business and we don't want that to happen.  
25 Where those people are active, it can happen. It's

1 probably happening now, we just don't know it

2 The second thing. We need to embrace more  
3 technology. 54 percent of the households in Atlanta  
4 alone has a computer, according to the current U.S.  
5 Census reports. There needs to be a Web site to check  
6 the voter registration.

7 MR. SULLIVAN: Yes, there is.

8 MR. TAYLOR: I'm not talking about the vote  
9 smart, but the official State of Georgia Web site where  
10 you can look at to see where you vote at, are you  
11 registered to vote, and you can embrace that with the  
12 Georgia technology, of course. And, also, find out  
13 where your polling place was.

14 I worked with Ms. Peters from the  
15 Clark-Atlanta University. It's kind of hard to call  
16 and find out who votes where. And they're very  
17 understaffed and they're very swamped around election  
18 time. And so, realistically, you only get scatter  
19 town, and that's not very effective. And people not  
20 getting cards and things like that.

21 It's kind of sad that they can't vote, but  
22 the realism that they are very understaffed and they  
23 need some help. And so I think this will cut down on  
24 the inquiries into the office.

25 Lastly, this is the most important, there

1 needs to be a sweeping election reform bill. It needs  
2 to include a uniform balloting system. A uniform  
3 voting card. Uniform policies for counting precincts.  
4 And uniform punitive codes when they don't follow the  
5 law.

6 I'm hearing a lot of disparities across the  
7 state about how they vote, where they vote, when they  
8 vote. There needs to be someone taking responsibility.  
9 We can't assume that the counties are all operating on  
10 a fair basis, and so we need to assume that, or let's  
11 look at our Secretary of State office to assume that  
12 responsibility, but it has to be somewhere written in  
13 law.

14 And so I implore you to contact your state  
15 Representative and your state Senator and ask for this.  
16 Not just asking for more money, but for some real  
17 legislation to reform this.

18 And last but not least, earmark the funds  
19 that's allocated to counties. When they don't comply,  
20 you're not eligible for this fund. It's just that  
21 simple.

22 I don't know what else is important in this  
23 state, country, than the right to choose your leaders.  
24 If we're not administering that right, then what are we  
25 administering at all? Thank you. .

1 (Applause)

2 REVEREND WHITE: Very good, thank you.

3 MR. ROBINSON: Good meaning. My name is Tim  
4 Robinson. First of all, I would like to acknowledge  
5 Reverend White --

6 REVEREND WHITE: Why don't you spell your  
7 name for the court reporter?

8 MR. ROBINSON: Okay. Tim Robinson, and my  
9 address is 910 Forest Overlook Trail, Southwest  
10 Atlanta, 30331. I don't know my precinct number, but I  
11 vote on Danforth across -- Danforth and Cascade is  
12 where my precinct is located.

13 My question is to the county registrar's  
14 office. I've heard complaints tonight and clear  
15 product how many are about the backlog that the office  
16 experienced leading up to the election.

17 I'm just concerned, or just want to know why  
18 there wasn't more consideration given to the amount of  
19 ballots that were coming to you? You had a precedent  
20 with all the ballots coming in in October, and the  
21 first of October why wasn't there more concern given to  
22 bringing on more staff to help accommodate getting the  
23 process done is one of the questions that I had.

24 The second question, and this is my final  
25 question, is the workers who actually work at the

1 precincts, how are they selected? What criteria? What  
2 is used to determine who is serving these precincts?

3 My precinct was very backed up. We had a  
4 lot of backlog of people doing part of the things, some  
5 of the inadequacies of some of the workers that were  
6 there. I'm not sure if they get paid or if they are  
7 doing it as a volunteer, but certainly I think for this  
8 type of process there needs to be some consideration or  
9 training provided for those workers. Thank you.

10 REVEREND WHITE: Thank you.

11 MR. SULLIVAN: The backlog of work in 1992,  
12 we got about 40,000 applications in two weeks before  
13 the books closed, and the books closed October 5. By  
14 the seventh we had all the forms in our office because  
15 deputy registrars had turned in the forms directly to  
16 us, and they had to return them immediately.

17 And then the ones that were at the libraries  
18 came in interoffice mail within a couple of days, and  
19 so we had everything ready to enter.

20 With mail registration, of course, the books  
21 didn't close until October 10th, and then they are  
22 mailed to the Secretary of State and postmarked as  
23 timely. The Secretary of State is going to receive it  
24 within the next few days. We were getting it daily  
25 from them.

1                   And so we actually received the bulk of the  
2 registrations around October 15th. About a week or two  
3 later than we would have previously, but mail  
4 registration --

5                   MR. ROBINSON: This is '92?

6                   MR. SULLIVAN: This is '92 versus this year.

7                   MR. ROBINSON: Okay.

8                   MR. SULLIVAN: And so we got everything in.  
9 Mail registration is very convenient, but it kind of  
10 slows things down. We had 25 temps this year, which is  
11 an additional eight than we had back in 1992,  
12 anticipating a large quantity.

13                   We got everything entered timely, the  
14 elector's list was printed on time. And so, you know  
15 everything we got we entered.

16                   The ones that were postmarked too late, of  
17 course, they're in our too late batch. As soon as we  
18 have the run-off election, you know, Tuesday after  
19 Thanksgiving, you know, then we'll be able to enter all  
20 of those.

21                   And so those are awaiting right now, but  
22 they will be entered very soon and people will get  
23 cards.

24                   And the post office had a holiday on  
25 Columbus Day. That slowed down the mail a lit bit.

1 Probably caused some to be postmarked a day later than  
2 they would have normally, and so some people missed the  
3 deadline just because of the post office.

4 But, you know, if you wait until the last  
5 day to register you're risking the deadline. If you  
6 had registered a month earlier then it would have been  
7 fine.

8 The other question about workers at the  
9 polls. You know, I have poll worker applications with  
10 me tonight. Anybody who would like to be a poll  
11 worker, hey, I've got an application. We will be glad  
12 to put you on our list. They are paid \$70 on up to  
13 about \$200. And so, you know, we need workers.

14 MR. WESLEY: My name is Dino Wesley is  
15 W-E-S-L-E-Y, and I -- part of the question that you  
16 were saying is right. Poll workers are paid \$70.  
17 They're there from 7:00 at least 6:30, 7:00, probably  
18 until about 9:00, two hours after the polls close.

19 With this election a lot of them were there  
20 until 11:00 or 12:00. They got paid that same \$70.  
21 They had to wait two weeks to get that \$70, and so that  
22 was less than \$5.00 an hour.

23 Really, the poll workers are paid less than  
24 minimum wage, and all of a sudden we want to put them  
25 on an avenue of an expert in voting procedures. And so

1 that's one of the things that we need to deal with  
2 right there.

3 MS. BEAZLEY: May I respond to that?

4 REVEREND WHITE: Yes, ma'am.

5 MS. BEAZLEY: The law requires that the poll  
6 workers be trained, and that is something that we're  
7 very much concerned about, and we do state-wide  
8 training for our election superintendents and, in turn,  
9 they train their own people.

10 But whether or not this group knows it, we  
11 had legislation passed in the '97 session of the  
12 General Assembly that allows the 16 and 17 year old to  
13 work at the polls on election day.

14 And I wanted to tell this lovely lady with  
15 this beautiful accent I would have detained you longer  
16 at my table had I been working just to hear you speak.

17 And I don't know if you are aware, but  
18 students can work at the polls, and I think that's a  
19 wonderful way to get younger people involved in the  
20 process.

21 And they, of course, are not registered  
22 voters, 16 year olds, and so the law was changed that  
23 in order to work at a polling place you no longer have  
24 to be a registered voter but a resident of the county.

25 And so I would encourage this group to seek



1 out young people who are willing to work at the polls  
2 on election day, and work with your school board to  
3 allow them to be out of school and give them credit for  
4 being there for working at the polls.

5 And we are doing all we can to encourage a  
6 younger group of people to work at the polls. And this  
7 gentleman is exactly right. They don't, in some  
8 instances, even hardly make minimum wage because of the  
9 hours that's spent there. And we have complaints, and  
10 as hard as I hate to say it, we had complaints,  
11 "Everywhere we went there were old people working at  
12 the polls."

13 Well, the election superintendents have to  
14 stay at those polling places and they have to go with  
15 what they have, and if they don't have any better  
16 that's who they have to staff the polls with.

17 And so I would just encourage you folks, I  
18 don't know if you know that you're eligible to work at  
19 the polls. I know that Fulton County advertises in the  
20 paper for poll workers.

21 This whole state is in dire need of a new  
22 group of poll workers.

23 MR. WESLEY: Who set the wages for the poll  
24 workers?

25 MS. BEAZLEY: The individual counties set

1 the wages for the poll workers, and they range from  
2 lower than that to much higher. And then the managers  
3 make more than the assistant managers, who make more  
4 than the clerks.

5 REVEREND WHITE: Okay. Now, and let me say  
6 again, we're coming up on our dismissal time at 9:00  
7 o'clock. Mr. Robinson, are you satisfied now?

8 MR. ROBINSON: Yes, sir.

9 REVEREND WHITE: Okay. Okay. So we're  
10 going to get these two comments and we'll have a wrap  
11 up. And then we're going to -- okay.

12 MR. TRAMMELL: Muhammed, M-U-H-A-M-M-E-D,  
13 T-R-A-M-M-E-L-L. I just wanted to add one closing  
14 thought. Just as Ms. Beazley just stated, to become a  
15 poll worker all you have to do is be a resident.

16 To me that's all it should be to vote, be a  
17 resident, be a citizen, you know? To my understanding,  
18 voting is a right, not a privilege. It's a difference  
19 between the two, and the consensus of what I've gotten  
20 here tonight is that people were inhibited from voting  
21 as if it was a privilege, but it is a right. You can't  
22 lose that. You have to keep that in mind that voting  
23 is a right and not a privilege.

24 REVEREND WHITE: Okay.

25 (Applause)

1                   MR. WILLIAMS: Good evening. My name is  
2 Maceo Williams, M-A-C-E-O, Williams. I'm a certified  
3 lobbyist in the State of Georgia, and one of my clients  
4 is cosmetologists.

5                   This particular year we did a joint venture  
6 with the NAACP on getting the vote out, and I want to  
7 say I believe it was very successful. One thing I  
8 think that -- I'm here for a suggestion.

9                   My suggestion is to work grass roots more  
10 effectively than it has been in the past. Throughout  
11 the state I've dealt with different distributors in the  
12 music industry, and some of them I worked with on this  
13 particular project, but one consensus was that  
14 cosmetologists that participated in the register to  
15 vote as well as the get out the vote, they were  
16 thrilled.

17                   We did a campaign where we awarded them an  
18 initiative, an incentive, but they were so glad to  
19 participate, and they want to participate more, and  
20 they want to participate twice a year if possible.

21                   I talked to people down in the Savannah  
22 area, the Augusta area, down in Columbus, even Albany,  
23 and one thing for sure is there is no competition. I  
24 ran to sisters from different distributors, through  
25 different manufacturing companies, and they all got

1 along together where any other time there would be  
2 competition from the marketplace.

3 But this one marketplace there is the  
4 people, no matter what the people want. There are some  
5 of those who might be interested in becoming poll  
6 workers. I would like to get that information from  
7 you, okay? The form.

8 And I would like to know about this '97 bill  
9 that you were speaking about, Ms. Beazley. Could you  
10 please elaborate on this, the bill that got passed back  
11 in '97 and what type of bill it was, the House, the  
12 Senate, or what?

13 MS. BEAZLEY: I think it was the Senate  
14 bill, and that bill provided that 16 and 17 year olds  
15 would be allowed to work their polling place. And it  
16 also changed the law that previously required persons  
17 who were poll workers to be registered voters.

18 So you just have to be a resident of the  
19 county and at least 16 years of age, and read and write  
20 the English language in order to be a poll worker.

21 MR. WILLIAMS: Okay. One other thing is the  
22 fact that it was noted something about the ex-felons  
23 couldn't participate. Is that couldn't participate as  
24 long as they were still in the system, or is that  
25 duration even after they're out of the system?

1 MS. BEAZLEY: I'm not sure I followed your  
2 question.

3 MR. SULLIVAN: Felons -- when you're  
4 convicted you lose your right to vote, but then once  
5 you complete your sentence and probation you're  
6 eligible to register to vote again.

7 MR. WILLIAMS: Okay. I just wanted to know  
8 that.

9 MR. SLAYTON: According to Georgia law,  
10 you've got to go request it. It's not automatic.

11 REVEREND WHITE: Thank you very much.

12 MR. BOND: When you say request it, do they  
13 have to fill out a form, or what do they have to do? I  
14 mean, register when they get the opportunity to  
15 register?

16 MR. SLAYTON: No. Actually, there are two  
17 forms that are managed by your Department of  
18 Corrections and your Department of pardons and paroles,  
19 and those were the two agencies in the state government  
20 where people leave the custody of the state and go back  
21 into the system.

22 And in both cases there are two things that  
23 they have to request the right to do. One is to bear  
24 arms. You have to physically submit, write on a piece  
25 of paper I want my right to bear arms restored. The

1 other is the right to vote. They have to physically  
2 write down I want my right to vote to be restored.

3 And in the probation system now I know it is  
4 part of the counseling that a probationer gets once  
5 they leave probation and go back to the free world.

6 And I also know that in the Pardons and  
7 Parole Board system, it's part of the parole officer's  
8 responsibility now to have a counseling session with  
9 that person and to let them know that they can do that,  
10 and they have the forms right there, but it is  
11 something that they have to request.

12 REVEREND WHITE: Okay. Yes.

13 MS. PEELER: I'm Mary Peeler. I'm the  
14 Georgia State director for the NAACP National Voter  
15 Fund, and on election day our office served as like a  
16 command center for the State of Georgia for the NAACP,  
17 and we received a lot of complaints on that day, and  
18 tonight I want to submit 17 complaints that we have  
19 received on election day, and we are still receiving  
20 complaints that are coming in from around the state and  
21 we will be submitting those as well.

22 REVEREND WHITE: Thank you. And thank you  
23 for what you did on election day, too. Okay. Last  
24 statement.

25 MR. WESLEY: Where do we go from here? We

1 heard a lot of things tonight, but we need to get some  
2 closure to where we go from here.

3 I think from the Fulton County Election  
4 Board they say we need workers. We need to look at  
5 raising fees if we're going to get workers to get the  
6 kind of workers that we want. We also need to staff  
7 the process and anticipate those kind of numbers coming  
8 in.

9 From the Secretary of State, I think it's  
10 the educational part that we need to look at. Looking  
11 at the book that was put out by Fulton County and the  
12 presidential candidate, there was an over-vote of 3,537  
13 people that were over-voted. That means that they  
14 voted for too many people; is that correct? The  
15 over-vote? The under-vote was 15,493 people. That  
16 means that they didn't vote for a candidate at all.

17 And so voter education is very prevalent in  
18 the State of Georgia on election day. Also, the  
19 admendments, we didn't touch on that, and that was a  
20 big part of the reason for the long lines. People was  
21 in line trying to read the amendments. We need to have  
22 some kind of way to get the amendments out faster.

23 We heard a lot about the young people. A  
24 lot of people are not here tonight because this is  
25 Thanksgiving. They're gone home. And I talked to

1 young people that. I met a young lady, Ms. Lawson, who  
2 lived on Milton Avenue, two blocks away from  
3 Clark-Atlanta, student at Clark-Atlanta University,  
4 right next to the president of Morehouse house. Her  
5 polling place was Emmanuel Baptist Church in Carver  
6 Homes, which is about 15 miles away.

7 I had another young lady, another Clark  
8 student that went over to Hickman Hall at Morris Brown.  
9 She went in at 6:15, she came out at 9:30.

10 I had the president of SGA at Spelman  
11 College said it took her three hours with a card in her  
12 hand to vote. That's why we hear a lot about the  
13 students being disillusioned about this process, and I  
14 listened to them while they were here and a lot of them  
15 are saying that this is unacceptable because they did  
16 what they thought that they were to do, the correct  
17 thing.

18 What we have to do now is bring faith back  
19 in the system. And we again go back to where do we go  
20 from here? And I think we all need to work together to  
21 come up with solutions to solve these situations so  
22 that we don't have this same thing next year when we  
23 have other political races. Thank you.

24 REVEREND WHITE: Okay. And part of what you  
25 were saying was part of the wrap that I was going to do



1 because some of the things that I heard tonight, and  
2 some things were already mentioned before you got here,  
3 we think possible solutions can be found.

4 We can consider Saturday voting, more than  
5 one day of voting, early voting, standardized voting  
6 which we heard someone -- I heard 15-day early  
7 registration. As it's already been suggested, we can  
8 do a better job with the voter education; that our  
9 supervisors be more thoroughly trained.

10 I voted absentee because I had to be in  
11 Baton Rouge, Louisiana, on voting day, and that whole  
12 State of Louisiana has a holiday. The voting day is a  
13 holiday, which takes some of the pressure off of people  
14 who are going to work. We might as well put that in as  
15 a suggestion, as possible solutions.

16 What I do want to say is I don't want you to  
17 think that I've taken lightly, or we have taken lightly  
18 anything that has been said tonight. We do have  
19 representatives here from the NAACP and, as you know,  
20 we were very interested in this election. It was very  
21 painful for me to hear that anybody's vote was  
22 disallowed.

23 Now, one of the things that I did want to  
24 clarify when I mentioned the percentages, I was only  
25 mentioning the way that this has been interpreted by

1 the powers that be. That was not my position. I want  
2 that clear because I'm looking at the Florida results  
3 now and I'm terrified that thousands of voters might be  
4 disqualified. Think of the message that that sends to  
5 voters.

6 We are trying to increase voter interest and  
7 what we are seeing will create voter apathy, and so  
8 we're going on the record as saying we're going to do  
9 everything that we can assist the Secretary of State's  
10 office. We're going to complete -- we're going to  
11 continue to hear these complaints. We're going to  
12 forward them to you.

13 And tonight all of our statements have been  
14 recorded by a court reporter, so you know it's not  
15 going to drop here. So we're going to look into all of  
16 these.

17 And I want to thank Mr. Michael Julian Bond,  
18 who is our deputy director of programs at the NAACP for  
19 both facilitating, doing all that was needed to pull  
20 this together. And, Mr. Bond, is there anything that  
21 you want to say at this time?

22 MR. BOND: Well, first thank you, Dr. White.  
23 And I want to say thank you for the representatives  
24 that we have from the Secretary of State's office, and  
25 thank you from Fulton County.

1                   And, no, this is not the end. Our efforts  
2                   from the National Voter Fund here in the Atlanta  
3                   Metropolitan region and throughout Georgia, from my  
4                   estimate from us just seeing the numbers that  
5                   Mr. Wesley has Fulton County, that in certain areas of  
6                   voter turnout, I know my own district went up at least  
7                   22 percent.

8                   And so people are at least very, very  
9                   interested in participating in voting, and one of the  
10                  things that I was always told is the things that mean  
11                  the most to you is what people will keep you away from,  
12                  and so we have to continue to remind people that their  
13                  right to vote is their right, but it's also a  
14                  responsibility, and we have to guard that  
15                  responsibility very, carefully. And we have to make  
16                  sure that we have other forums like this.

17                  And so this is, I believe, good for  
18                  informational purposes to receive information from the  
19                  public. I'm sure we'll have the cooperation of Fulton  
20                  County and Secretary of State's office and some of the  
21                  other electoral boards in some of the other counties  
22                  and try to hold some voter education forums to educate  
23                  people about challenge ballots, about the process about  
24                  how to apply to be poll workers, about how to make sure  
25                  that -- the numbers, do check their registration so

1 that we can head these problems off in the future.

2 I think it is interesting this will be the  
3 first year that we have the courage. There are a lot  
4 of people who were kind of riding free and comfortable  
5 who may not have been participating in the process of  
6 voting who probably won't be aware until they get a  
7 notice, and if they're fortunate through the mail, or  
8 what have you, that they do get a notice that we make  
9 sure that every person -- that every individual is  
10 registered to vote, is a participating voter.

11 And I also want to say that any person or  
12 group or organization that is within the sound of our  
13 voice that the NAACP, along with our coalition, is more  
14 than willing to come to your corporation to stage a  
15 voters registration drive any day of the week, seven  
16 days a week during our voter registration drive during  
17 the months of the September and October.

18 There are many people that called us, that  
19 we just could not physically get to every group that  
20 called us to register people to vote because we were  
21 out trying to register so many people, but we did have  
22 great cooperation with the local media, particularly  
23 the radio stations and some of the television stations  
24 about promoting our voter registration efforts, and we  
25 will continue to do that.

1                   And so this is not the end, and we encourage  
2                   any person who may not have come to the forum who has  
3                   not contacted our office, or the Secretary of State's  
4                   office as of yet to contact us again at (404) 761-1266.  
5                   That's (404) 761-1266, which is the number to the  
6                   Atlanta branch office.

7                   And, also, (404) 688-8868, which is the  
8                   regional office. And what's the number here? (404)  
9                   524-2809 is the number to the NAACP voter fund office,  
10                  and I'd like to ask that officials from the Secretary  
11                  of State's office and Fulton County to give out their  
12                  numbers as well so that we can call them and get the  
13                  information or clarification on different issues that  
14                  they may have.

15                  But other than that, I thank them for coming  
16                  out, and I thank members of the public for coming to  
17                  participate. And we do have, along with the Voter  
18                  Fund, we received literally over 300 calls in our  
19                  office in the last few weeks since election day that  
20                  we'll also be passing along to the Secretary of State's  
21                  office, and to Fulton County so that we can get all of  
22                  these issues addressed and on the table.

23                  And I also suggest as a preliminary action  
24                  before the General Assembly convenes here in January  
25                  that we speak to members of our metropolitan delegation

1 about some of these very similar issues; that we can  
2 help the Secretary of State's office lobby for these  
3 effective changes.

4           Because it seems to me I can understand how  
5 in the past when Georgia was more of a rural kind of  
6 disjointed state where people were more in their  
7 enclaves and not necessarily connected why you would  
8 want these local control in the hands of the counties,  
9 but now that we're becoming more urban there are many  
10 people here, the issues are becoming more  
11 sophisticated, our system is becoming more  
12 sophisticated.

13           And so I think that we need to get with the  
14 Secretary of State's office again and lobby all of  
15 these people in the state House and the state Senate to  
16 make these changes probably standardizing them across  
17 county lines throughout the state.

18           I believe that getting them to the table  
19 since they're the people who have the power to make the  
20 decision and to get lobbying now and early I think will  
21 be a very proactive move so that we can avoid some of  
22 these problems in the future.

23           Again, I want to thank everybody for coming  
24 out. If they have any questions or concerns, they can  
25 still call the NAACP office and we will come to

1       wherever you are to register your vote.

2                 I am a deputy registrar. I have been doing  
3 this for a long time. I enjoy doing it and anybody  
4 that needs it, whether it's Spelman College, Morris  
5 Brown.

6                 And also the issue about the polling  
7 precincts. The county, I believe it's the county Board  
8 of Elections decides where those precincts are, and so  
9 I think why you have so many people voting at  
10 Clark-Atlanta University is because some of these  
11 precincts used to have huge populations in them, but  
12 they combined them because the populations in some  
13 precincts have shrunk.

14                But probably they need to just revise the  
15 precinct maps and just combine some of the precincts  
16 rather than having four or five different people voting  
17 in different locations because we had some of that  
18 confusion out at the -- at the Walter White and  
19 Anderson Park where Walter White used to be a polling  
20 place with some seven -- I think 1,200 and six -- 800  
21 to 1,200 homes, now a lot of them are Anderson Park.

22                A lot of people didn't know that and no one  
23 from the elections office put up a notice, and so we  
24 kind of drew up a poster board and put a sign on the  
25 precinct office so people would know.

1                   It's that kind of thing. It's not just  
2                   Fulton County, but they did show up, but we were glad  
3                   to see them. But it happened in other counties. This  
4                   is a state-wide problem, as it was mentioned earlier.

5                   So we would want to thank you all for  
6                   coming, but this will not be final action. We want to  
7                   get the phone numbers.

8                   MS. BEAZLEY: (404) 656-2871. The number  
9                   for the state elections division. That's (404)  
10                  656-2871.

11                  REVEREND WHITE: Okay. Thank you. You  
12                  wanted to make a statement?

13                  MS. THOMAS: Very quickly. I know we all  
14                  want to get out of here. I want to thank all of you  
15                  that did come out, and I know that you speak on behalf  
16                  of thousands of people across this state, and  
17                  particularly this city.

18                  Don't leave here feeling powerless. Know  
19                  that if you are a registered voter you are a  
20                  stakeholder. So that means that all of these people  
21                  that we put in office, even if you did not directly put  
22                  these people in office, they are accountable to you.

23                  So like Michael Bond said, it's important  
24                  that you talk to your elected officials and stay on  
25                  them. Hold them accountable for things that you want



1 done. You are a stakeholder and it's our  
2 responsibility to make sure that we have the leaders  
3 that we want and things run the way that they should.

4 REVEREND WHITE: Let me thank you, and that  
5 sounds very well. And that puts a period. Do I --

6 MR. WESLEY: Fulton County.

7 MR. SULLIVAN: Fulton County voter  
8 registration is (404) 730-7072. That's (404) 730-7072,  
9 and I'm John Sullivan. My direct line is (404)  
10 730-7035. I'm not always at my desk, but I do return  
11 all of my messages.

12 REVEREND WHITE: Very good. And you got a  
13 number?

14 MR. SLAYTON: No, sir, Dr. White. I just  
15 wanted to say on behalf of all of us at the Secretary  
16 of State's office, we really appreciate you all  
17 inviting us to participate in this forum tonight.

18 REVEREND WHITE: Let me thank you for  
19 coming, and I say God bless you. You are dismissed.

20 By the way, there was a suggestion, also,  
21 for the Secretary of State's office, a suggestion about  
22 the mailing out the sample ballots to all registered  
23 voters in the State of Georgia.

24 (Hearing concluded at 9:07 p.m.)

25

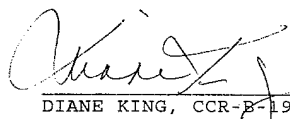
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C E R T I F I C A T E

STATE OF GEORGIA:  
COUNTY OF COBB:

I hereby certify that the above and foregoing proceedings were taken down, as stated in the caption, and reduced to typewriting under my direction, and that the foregoing pages 1 through 110 represent a true, correct, and complete transcript of said proceedings.

This, the 4th day of December, 2000.

  
\_\_\_\_\_  
DIANE KING, CCR-B-1957

My commission expires the 3rd day of March, 2003.

1335

PUBLIC HEARING BEFORE THE DEKALB COUNTY NAACP

SUBJECT: Dekalb County Voting Difficulties  
DATE : Saturday, December 16, 2000  
PLACE : Stoneview Elementary School  
2629 Huber Street  
Lithonia, Georgia  
TIME : 10:00 a.m.

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**BENSON & ASSOCIATES**  
COURT AND DEPOSITION REPORTERS



218 GLADE ROAD  
SUITE 11  
JACKSON, GEORGIA 30233  
(770) 228-3654

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A P P E A R A N C E S

JOHN EVANS, Chairman  
CONGRESSWOMAN CYNTHIA MCKINNEY  
TERRELL SLAYTON, JR., Assistant Secretary of  
State  
HELEN BUTLER, NAACP  
DWIGHT BROWER, Election Pole Coordinator

<u>Exhibit</u>	<u>Description</u>
No. 1	Ltr. from Dayton S. Hedges, Jr. to Congresswoman Cynthia McKinney
No. 2	November 7, 2000 Election Summary
No. 3	Ltr. from Ineta Griffin to Mr. John Evans dated 11/8/2000
No. 4	Ltr. from Annie L. Simmons to Mr. John Evans dated 11/30/2000
No. 5	Ltr. from Camille Green dated 11/15/2000
No. 6	Ltr. from Shevawn Carter dated 11/15/2000
No. 7	Ltr. from Barbara Lane to Mr. John Evans dated 11/16/2000
No. 8	Ltr. from Linda Latimore to Ms. Florietta D. Taylor dated 11/27/2000
No. 9	Ltr. from Earlinda White to Mr. John Evans
No. 10	Ltr. from Robert T. Jones to Mr. John Evans dated 11/14/2000
No. 11	Ltr. from Elnor Shepherd to NAACP dated 11/13/2000
No. 12	Ltr. from Kathryn Gable to NAACP dated 11/8/2000
No. 13	Ltr. from Florietta Taylor dated 11/10/2000
No. 14	Composite Exhibit Signed Release Forms

1                   MR. JOHN EVANS: My name is John  
2                   Evans and we are calling this public hearing to  
3                   order. The public hearing will entail  
4                   discussing those things that happened during the  
5                   election that we want to get a public record of.

6                   And subsequently with all the  
7                   testimony that we hear here today, with all the  
8                   written letters that we've received in the mail  
9                   and all the verbal comments that we may have  
10                  heard that relate to the election, we are gonna  
11                  put all of that in a package and make  
12                  recommendations to the Board of Registration of  
13                  Elections on Wednesday and subsequently the  
14                  Secretary of State and the Justice Department.

15                  And basically that's the procedure  
16                  that we are planning to use. We will be taking  
17                  information not only up until we prepare the  
18                  report for Wednesday, December 20th, but we'll  
19                  also be taking additional information from  
20                  anyone who wants to turn it in so that we can  
21                  include it in subsequent reports and then  
22                  provide whatever addendum we may need to provide  
23                  for areas that we did not have that information  
24                  in the beginning.

25                  So what we'll do now is have -- We

1 will all stand for a moment of silent prayer.

2 Will we all stand, please.

3 (Prayer)

4 MR. EVANS: I think in relationship  
5 to what has happened over the past six or seven  
6 hours with regard to the killing of the Sheriff  
7 Derwin Brown, that we ought to be concerned  
8 about that, be concerned about his family and  
9 children and pray that the investigation will be  
10 very broad and that certainly they will bring  
11 justice and closure to that situation. This is  
12 a very tragic situation and we just want to  
13 acknowledge and recognize that as we proceed.  
14 Thank you.

15 What we have as an agenda will be  
16 opening prayer, we've already had, introduction  
17 of panel and participants and then we'll set the  
18 ground rules. We'll have the public hearing,  
19 closing comments, announcements and then a  
20 closing prayer.

21 And what we'll do since all the  
22 participants are not here, we will have a word,  
23 three minutes, from those who are here and then  
24 whoever wants to testify, they will then come  
25 and sign a consent form that Mr. Jocco Baccus

1 has and then we'll speak.

2 Of course, the proceedings then will  
3 be recorded by a court reporter and we are  
4 taping it. And prayerfully, the person who is  
5 gonna video all of this may soon show up. So  
6 we'll now proceed.

7 Would you like to start it off?

8 MR. DWIGHT BROWER: Good morning.  
9 My name is Dwight Brower and I'm an employee  
10 with the DeKalb County Board of Voter  
11 Registration and Elections.

12 First of all, my job, of course,  
13 there at the Board of Registration and Elections  
14 are actually to maintain the voter records, et  
15 cetera, that pertain to all of the registered  
16 voters in DeKalb County.

17 In addition to that, we are also  
18 responsible for resourcing the polling places.  
19 There are 167 polling facilities in DeKalb  
20 County. Of course, we are required to actually  
21 hire temporary employees who actually resource  
22 or man those facilities who actually conduct the  
23 election.

24 Additionally, we are responsible for  
25 making sure that all of our polling facilities



1 are actually operated -- ran and operated in  
2 accordance with the Georgia Election Code.

3 MR. EVANS: Thank you so much.

4 Now, for anybody who wants to  
5 testify now, will you please come on and sign  
6 the consent agreement.

7 And before we do that, we have  
8 Congresswoman Cynthia McKinney, who is now here.  
9 And we will ask her to give some brief remarks  
10 and then we will proceed with some public  
11 comments. And then as the participants come in,  
12 we will then have them make their remarks and  
13 then we'll continue to do the public hearing as  
14 we see fit.

15 MS. CYNTHIA MCKINNEY: Thank you,  
16 Mr. Chairman. And I want to thank those of you  
17 who have come out to receive the testimony  
18 today.

19 We know that anytime that there is  
20 an allegation or a suspicion that voting rights  
21 have been tampered with, we must defend our  
22 rights vigorously. And we must make sure that  
23 no one be allowed to tamper with our right to  
24 vote.

25 Now, we've been shocked by some news

1 this morning that is truly sad for all of us.  
2 But we, even in our sadness, still have to deal  
3 with the business of voting rights.

4 Now, I think the presidential  
5 election of the year 2000 will be noted as the  
6 year that people began to recognize that not  
7 only do we have a right to vote, but we have a  
8 right to have our votes counted.

9 And so we have to pay attention to  
10 what we do prior to election day, what the  
11 authorities do on election day, what they do  
12 after we actually cast our ballot in terms of  
13 counting our votes and the preservation of that  
14 precious right to vote.

15 The Voting Rights Act will expire --  
16 certain portions of the Voting Rights Act will  
17 expire in the year 2007. If this is what we are  
18 faced with now in the year 2000, can you imagine  
19 what the year 2007 is going to look like if we  
20 are not vigilant.

21 We have redistricting.  
22 Redistricting is an important aspect of our  
23 protections under the Voting Rights Act. And we  
24 have redistricting coming up, actually maps are  
25 being drawn right now. And DeKalb County, the

1 Congressional, State Legislative, county  
2 commissions, school boards, all of the districts  
3 that people run from will be redistricted.

4 And as far as Congressional  
5 redistricting is concerned, if it was illegal to  
6 divide DeKalb County for racial reasons in 1996,  
7 it will be illegal for DeKalb County to be  
8 divided in the year 2001.

9 Now, we know that there are some  
10 people who want to divide DeKalb County already.  
11 It is in the rumor mill. They want to divide  
12 DeKalb County. But the precedent for preserving  
13 DeKalb County has been set and, therefore, we  
14 must be vigilant on all aspects of the Voting  
15 Rights Act.

16 It used to be that it was the poll  
17 tax, literacy tax, but now it could be the  
18 failure of leadership to appropriate the funds  
19 so that you don't have to stand in line for  
20 hours or so that you can make sure that there --  
21 that the polling precinct is not one that is  
22 over-crowded.

23 We had people who were standing in  
24 lines, standing outside exposed in the weather  
25 for hours and hours and hours while right down

1 the street a few yards away open building that  
2 could have been used as a polling place. Who  
3 makes these decisions. Who appropriates the  
4 funds. Who failed to appropriate the funds.  
5 These are all questions that you need to have  
6 answers for.

7           And this doesn't need to happen  
8 again. We know in 1996 there was a record  
9 turnout on the south side of the county. But we  
10 also know that we have had more residents come  
11 into the south side of the county. The  
12 population has exploded in the south side of the  
13 county.

14           For those who plan, then there  
15 should be planning so that when a presidential  
16 election year comes, that that increase in the  
17 number of voters at each precinct is -- is  
18 accounted for in the planning.

19           We had cases where people literally  
20 had accidents because the roads were crowded.  
21 Dangerous situations ensued where people were  
22 trying to walk across road construction in order  
23 to get into precincts just so that they could  
24 vote. And then when they got there, it was hour  
25 after hour after hour, sometimes standing

1 outside.

2 So we know that there is a request  
3 that is pending before the new CEO and the new  
4 Board of Commissioners for an update in  
5 equipment so that the technology that DeKalb  
6 County uses can process people quickly and that  
7 that technology would be perhaps akin to what is  
8 used in Cobb and Gwinnett counties or maybe it  
9 may be even something more sophisticated.

10 But the request is in the budget.  
11 The budget has been submitted to the County  
12 Commission and now we need to follow the  
13 Commission to make sure that the funds are  
14 appropriated.

15 Voter suppression is against the  
16 Voting Rights Act. Just like the poll tax,  
17 literacy tax, minority vote dilution are all  
18 against the Voting Rights Act. Anything, any  
19 policy that is adopted by any governing body  
20 that has the effect of suppressing the minority  
21 vote, that is a violation of the Voting Rights  
22 Acts.

23 And so that's why we requested the  
24 Department of Justice to come down here and take  
25 testimony, as they are in the process of doing,

1 from people who have been affected by what  
2 happened in this presidential election. Because  
3 we don't expect it to happen again, not on our  
4 watch and I'm very happy that you've come.  
5 Thank you.

6 I presume you're in charge.

7 MR. EVANS: Thank you,  
8 Congresswoman, for those comments.

9 Coming in now is Mr. Terrell  
10 Slayton, who is the Assistant Secretary of State  
11 for the State of Georgia. Thank you for coming.  
12 And when you're ready, we want you to make a few  
13 comments. We'll let you get your breath.

14 MR. TERRELL SLAYTON: Yes, we're  
15 ready.

16 MR. EVANS: All right. Come on,  
17 unless you want to sit down and take this.

18 MR. SLAYTON: What did my  
19 Congresswoman do? Did she stand?

20 MS. CYNTHIA MCKINNEY: I didn't have  
21 a choice.

22 MR. TERRELL SLAYTON, JR.: Well,  
23 Bro. John Evans, I am gonna stand up and follow  
24 my leadership.

25 Good morning. I kind of expected to

1 see a bigger crowd here, but with a court  
2 reporter that's not so very important, because I  
3 think from a few people can come just an  
4 enormous amount of information. And so I think  
5 even with the activities that we experienced at  
6 this school on election day, that will give us a  
7 pretty good start I think in looking back at  
8 what happened on November 3rd.

9 We really appreciate, John, you  
10 inviting the Secretary of State's office to be  
11 part of this public hearing this morning.

12 This is about the fourth public  
13 hearing that we've been formally involved in  
14 since the election. And in the others, we've  
15 been able to kind of categorize some of the  
16 problems that we had on election day. And based  
17 on what we have heard so far -- if we hear  
18 nothing else this morning, based on what we have  
19 heard so far, the Secretary of State Cathy Cox  
20 has made the commitment literally to take the  
21 problems of the election that we experienced and  
22 to develop a response to them.

23 Long lines, I mean, everybody  
24 complained about long lines throughout Georgia  
25 in the African-American community. And Cathy

1 Cox has already began to develop what we're  
2 gonna call now an advance voting bill. We might  
3 not use the word early voting. And she's not  
4 coming back to tell you I told you so either,  
5 since she did have an early voting proposal in  
6 the General Assembly in the last two years and  
7 it failed both times.

8 But we think with what we have heard  
9 thus far -- She met with many members of our  
10 General Assembly when they met in Athens just a  
11 week ago and we think we will have an advance  
12 voting bill that would allow all of us to go to  
13 the polls.

14 We're going back to 45 days y'all,  
15 but I expect that when they find the pass, maybe  
16 about 15 days early and maybe also offer a  
17 couple of opportunities between 5:00 o'clock and  
18 8:00 o'clock at night for you to go down to your  
19 local election office and vote and on weekends  
20 prior to the election, a couple weekends out.  
21 So that's one thing that she is committed to  
22 responding with out of this election.

23 The other thing is the -- just the  
24 realization of how many over votes and how many  
25 under votes came with certain kinds of equipment



1 -- voting equipment. And so it doesn't take a  
2 rocket scientist to think that common voting  
3 equipment in this State is a good thing and that  
4 common voting equipment would allow us,  
5 especially if it's electronic, to experience  
6 election day in a faster way. We don't wait all  
7 night for these returns to come in.

8 And so we can expect that Cathy Cox  
9 will be dropping a common voting equipment bill  
10 in this year's General Assembly that's upcoming  
11 as well.

12 Right now, we've got -- we've still  
13 got paper ballots in a couple county in Georgia.  
14 We still use them. We've still got the  
15 Leiberman machine, even though they stopped  
16 making that thing back prior to 1950. And even  
17 the ones that are out there, they are  
18 cannibalizing them to fix the ones that remain.  
19 So they are a problem. And like here in DeKalb  
20 County, the punch card system is in use for  
21 about 600,000 voters in Georgia. And then the  
22 one that most voters are using in Georgia today  
23 is something called the optical scan equipment.

24 But Cathy Cox is going to develop a  
25 proposal to use some electronic based equipment,

1 because all four of these are problem prone.  
2 All four of these we had problems of over votes  
3 and under votes in Georgia this year. And we're  
4 trying to get a handle on that right now,  
5 analyzing that to see what it is really telling  
6 us and she's gonna use that as a rationale to  
7 develop some specific proposals for a specific  
8 type of equipment. And we will be talking with  
9 the technology community to really finalize what  
10 that really is. That's the third thing -- or  
11 the next thing.

12 And finally, the one other big thing  
13 that she's gonna do out of this election is to  
14 sponsor an initiative that we're just going to  
15 call right now election reform, Congresswoman.  
16 We don't know what election reform is. It is  
17 out of forums like this that we will define  
18 election reform. It will give us the issues  
19 that will be debated in the committees,  
20 structure of the General Assembly and the  
21 General Assembly itself. And though we do  
22 commit to you, though, that we are going to  
23 introduce an election reform system and we're  
24 not going to exclude the municipal law. There  
25 is a body of law in this state that governs

1       municipal elections. We tried to merge that  
2       with county law and state law a couple years  
3       ago, but still there are a couple of areas where  
4       it is still great. And so we want to throw that  
5       into our election reform package.

6                But in conclusion, what I will say  
7       to you is that we will continue to characterize  
8       these problems. We will continue to try to  
9       develop a response to them and we're not going  
10       to wait. This January when the General Assembly  
11       convenes, your Secretary of State will be right  
12       there lobbying for an educational reform package  
13       that's designed to deal with the kinds of  
14       problems that we experienced on this election  
15       day.

16                Thank you, John.

17                MR. EVANS: All right. For those  
18       who -- I'd just like to recognize Helen Butler,  
19       the National Voting Project for the NAACP.  
20       Raise your hand. And for those who want to  
21       testify, we're ready to start. All you need to  
22       do is come up and sign the consent form. And  
23       what we'll try to do is just get to the  
24       substance of the complaint so we'll have enough  
25       information to categorize where we think the

1 most serious problems are. And of course, from  
2 that we will be using it as a basis for making  
3 recommendations.

4 I think -- If there are others who  
5 need to speak, then you can just come on up as  
6 you see fit and sign the consent form. That  
7 just tells us that we can utilize this  
8 information in any form that we want to.

9 Just kind of pass them on up Bro.  
10 Jocco and then we'll start the proceedings.  
11 Yeah. You can take it over there and fill it  
12 out. And pass it to those who need to fill it  
13 out. Come right up.

14 For the record now, just state your  
15 name, address. Please print your name under  
16 your signature.

17 JERRY WYATT,

18 Being first duly sworn, testified as follows:

19 MR. JERRY WYATT: Good morning. My  
20 name is Jerry, that's, J-e-r-r-y, last name is  
21 Wyatt.

22 I serve as a constitutional officer  
23 for the Georgia Republican Party. I am  
24 currently the second vice chairman of the State  
25 Executive Committee of the Georgia Republican

1 Party in my second term.

2 And I am here this day because of  
3 information that I received about a hearing  
4 taking place at the Stoneview community  
5 regarding the intimidation by the Republican  
6 party at the Stoneview community.

7 On election day I served as a poll  
8 watcher, a multi poll watcher in the south  
9 DeKalb area roaming from different precincts in  
10 the south DeKalb area. And Stoneview was one of  
11 those precincts that I did attend.

12 There were two Republican poll  
13 watchers here at the Stoneview Community. Both  
14 of them were elderly white women from the  
15 Georgia Republican party working as poll  
16 watchers.

17 Now, what I did witness here was  
18 chaos. And it was chaos that was not as a  
19 results of any intimidation or the results of a  
20 concerted effort by the Georgia Republican  
21 party. I brought some material with me that I'm  
22 sure Ms. Brown is quite familiar with that. It  
23 was distributed in the black community by the  
24 NAACP voter project.

25 This information, one, says, Georgia

1       Republicans are against hate crime bills and it  
2       shows an elderly black woman on one side which  
3       to me is on the line of race baiting. That came  
4       from the NAACP.

5               There is another piece that came  
6       from the NAACP with a picture of a young lady  
7       from Texas whose father, James Burgess, was  
8       killed in Texas by Caucasians. On the back of  
9       it, it has a picture of her grandson. This,  
10      too, came from the NAACP. And I again say that  
11      this is race baiting.

12             There was another piece that listed  
13      a black woman, a black child that talked about  
14      education and the process that the Republicans  
15      have as it relates to education. Here again,  
16      this is a race piece.

17             There is a piece here that has a  
18      police officer stopping a black man and this too  
19      gives you some information that came from the  
20      NAACP and it too is what I consider a race  
21      baiting piece.

22             Then there is this picture of Renee  
23      with a picture of a pickup truck with a chain  
24      attached to it and it talks about the fact that  
25      her father was killed and it seems as if it

1 happens all over again. This, too, is what I  
2 consider a race piece.

3 Now, the thing that I found  
4 interesting about many of these pieces is that  
5 they came to black females in the black  
6 community. Now, if this information had been  
7 distributed by the white community urging white  
8 people to respond to a election process in fear  
9 of what black people would have done, I'm almost  
10 certain that the NAACP would have raised holy  
11 hell. The news media would have raised holly  
12 hell and not one time was there any local  
13 coverage about this information.

14 And I would venture to say that if  
15 this information came out in Georgia, it also  
16 came out in the rest of the country preferably  
17 in the southeast in particular.

18 Now, on the election night when I  
19 attended the Stoneview Elementary School, I did  
20 say sow that there was chaos. I just happened  
21 to bring my camcorder with me to record some of  
22 the activity that was outside. And what I can  
23 say with unequivocal truth that the persons that  
24 I witnessed on the outside were persons that  
25 were campaign workers of Congresswoman Cynthia

1       Congresswoman Cynthia McKinney. The reason why  
2       I know they were campaign workers of  
3       Congresswoman Cynthia McKinney is because the  
4       prior Saturday myself along with other persons  
5       who were campaigning for Sonny Warren were on  
6       Candler Road and Congresswoman Cynthia McKinney  
7       and some of the very same people that were here  
8       raising hell outside of the Stoneview Community  
9       were here.

10               Congresswoman Cynthia McKinney was  
11       here. She had a T-shirt on, on the outside,  
12       Congresswoman Cynthia McKinney's father, State  
13       Representative Billy McKinney was on the inside.  
14       And as the chairman of the DeKalb County Board  
15       of Elections mentioned to me, he was inebriated.  
16       In short, he was drunk. And he insisted that  
17       State Representative Billy McKinney leave the  
18       premises because he was drunk.

19               Now, I would say to you that the  
20       polls were closed. They close at 7:00 o'clock.  
21       Congresswoman Cynthia McKinney was here with a  
22       bull horn in her hand. For what purpose, I have  
23       no idea. This is not her voting precinct nor is  
24       it the voting precinct of State Representative  
25       Billy McKinney. And I will venture to say that



1 it was not the voting precinct of several of the  
2 people that were here.

3 As a matter of fact, when I came in,  
4 one of Congresswoman Cynthia McKinney's workers  
5 said to me, he says, we know you. You're with  
6 Sonny Warren. I corrected him. I said, I am a  
7 constitutional officer with the Georgia  
8 Republican Party.

9 On election night that gentleman was  
10 here. He said to me, he said, y'all really  
11 worked us this time. I said to him, we will be  
12 in your face every two years making sure that  
13 south DeKalb has bipartisan representation. We  
14 are not Democrat lackeys. We are registered  
15 voters and we have the right and the option to  
16 choose candidates of our choice and they do not  
17 have to be Democrat elected candidates.

18 Now, what I say is that -- what I do  
19 know to be a fact and if redistricting proves to  
20 be true to me, I had a conversation with State  
21 Representative Billy McKinney in 1998. And  
22 State Representative Billy McKinney said to me  
23 that Congressman John Linder made a deal with  
24 him. And that deal was that if the Republicans  
25 did not have a candidate in the 2000 election

1 for the Fourth Congressional District, that the  
2 Democratic party, black Democrats in particular,  
3 would not support the gubernatorial ticket.

4 Now, it was unfortunate that the  
5 Georgia Republican Party could not get Sonny  
6 Warren to withdraw from that contest. Guy  
7 Milner, candidate for governor, said to me  
8 personally that he didn't want Sonny Warren in  
9 the race. The Georgia Republican Party did not  
10 support Sonny Warren.

11 And what Billy McKinney said to me  
12 was the deal that John Linder cut with him was  
13 that when redistricting came along that they  
14 would cut the Dunwoody precincts out of the  
15 Fourth Congressional district thereby making  
16 south DeKalb predominately black, the Fourth  
17 District, and we would have our little black  
18 district where we wouldn't have to contend with  
19 the conservative Republicans from Dunwoody.

20 Now, I don't know if that is going  
21 to happen. But if it does happen, then what  
22 State Representative Billy McKinney said to me  
23 in relationship to the relationship that he had  
24 with Congressman John Linder holds truth.

25 Now, in south DeKalb, I say to you

1 and I say to you again, that we are not being  
2 served by the Democratic Party. I say to you  
3 and I say again that until we have bipartisan  
4 representation in south DeKalb within the GOP  
5 and within the Democratic party, then and only  
6 then will we be able to exercise our political  
7 muscles.

8 I don't see how we can constantly  
9 tell people of color to vote for Democrats  
10 simply because they are Democrats.

11 One thing, Mr. Evans, and I'll sit  
12 down.

13 Now, to show you where I am. There  
14 was an incident in DeKalb County where we're  
15 supposed to be a morale people and our people  
16 simply vote for people simply because they are  
17 Democrats. And I don't think that that is  
18 justice to our people.

19 Now, if we're talking about the  
20 problem and if you look around here and you look  
21 at the people that are here and then you  
22 consider the people that say that there was a  
23 problem, yes, there is a problem and that  
24 problem is education. And when we get people to  
25 the point where they can think rather than going

1 straight down a democratic column, we'll be all  
2 right.

3 And one thing, Mr. Evans, just one  
4 thing and I understand this is a hearing but we  
5 don't have a ton of people here.

6 Now, we had an incident regarding --

7 MR. EVANS: Hold on a minute. Hold  
8 on a minute now.

9 The basis for you stopping has  
10 nothing to do with the number of people here.  
11 We want you to address the issues about voting  
12 and I am gonna give you another 30 seconds and  
13 we'll move on.

14 MR. JERRY WYATT: Thank you. My  
15 name is Jerry Wyatt and I appreciate having the  
16 opportunity to speak to you.

17 MR. EVANS: Thank you so much. Next  
18 speaker.

19 MS. BARBARA LANE: Hello. My name  
20 is Barbara Lane.

21 MS. BARBARA LANE,  
22 Being first duly sworn, testified as follows:

23 MS. BARBARA LANE: I'm in House  
24 District 71 assigned to the Stoneview Elementary  
25 School precinct. On November 7th 2000, I waited

1 in line five hours to vote. I'm gonna repeat  
2 that. I waited in line five hours to vote. I  
3 arrived at the polls with my daughter at 5:00  
4 p.m. It wasn't until 10:00 p.m. that I was able  
5 to cast my vote. It took me five hours to  
6 exercise my Constitutional right to vote.

7 The main problem the way I saw it  
8 was an insufficient number of voting booths.  
9 There were only eight booths available to those  
10 of us in House District 71 which has about 2,500  
11 registered voters at Stoneview precinct. There  
12 were eight booths set up on one side of the room  
13 for District 71 and then there were eight booths  
14 on the other side of the room for District 75,  
15 because Stoneview is a split precinct.

16 House District 75 only has about  
17 1,000 registered voters, but they had the same  
18 number of booths that we had. District 71 had  
19 about five times as many voters to show up as  
20 the other district. Four of the booths for  
21 District 75 were continually vacant.

22 Voters repeatedly asked the precinct  
23 clerks if we could use the vacant booths, but we  
24 were told no. It took me two hours just to make  
25 my way to the table to show the clerk my I.D.

1       When she determined I was in District 71, she  
2       sent me to the next line to vote which meant  
3       going back outside the building in the other  
4       line and it started raining on us because the  
5       lines were -- The voting booths were on this  
6       side of the room. The line to vote was coming  
7       down the middle across the stage here back down  
8       the hallway down one side of the hall and then  
9       back up the other side of the hall and out the  
10      door and wrapping around the building a couple  
11      of times.

12                 After voters in District 75 showed  
13      their I.D. they proceeded immediately to the  
14      voting booths where they were able to vote  
15      before people in District 71 who had arrived two  
16      hours before they did.

17                 Now, that is more than  
18      disenfranchised. That is abuse. I think it is  
19      an understatement for me to say that I was not  
20      provided the same equitable opportunity to  
21      exercise my right to vote as other Georgians.  
22      When right here in my own precinct I waited  
23      three hours longer than those individuals in  
24      District 75.

25                 My friends in Gwinnett County spent

1 all of 15 minutes to vote. Now, over the past  
2 29 years I have voted in five different states,  
3 but I have only waited in long lines here in  
4 Georgia.

5 I ask everyone present here today  
6 please do everything in your power to improve  
7 the election system. The value of my vote  
8 should not be dependent on the county I live in.

9 I thank you for your time today.

10 MR. SLAYTON: Ms. Lane, can I ask  
11 you a couple of questions?

12 MS. LANE: Yes.

13 MR. SLAYTON: Thank you for your  
14 testimony. You did an excellent job of  
15 characterizing your experience on election day.  
16 But let me have a conversation with you about  
17 just one part of that experience.

18 It took you a couple of hours just  
19 to get in and show your I.D. and then they sent  
20 you, as you stated, back out. You got here at  
21 5:00 o'clock and so it was around 7:00 o'clock  
22 when you were sent back out of the building to  
23 get into the District 71 line?

24 MS. LANE: That's correct. About  
25 8:00 o'clock I was still in line. I could see

1       it was gonna take me over a couple of hours, so  
2       that's when I called the NAACP. And if they  
3       hadn't have come over, then we wouldn't have the  
4       extra booths. It was after 10:00 o'clock that  
5       the Board of Elections brought additional booths  
6       in. But that should have been done at 10:00  
7       a.m. not 10:00 p.m.

8                     And the folks outside were not  
9       campaign workers. They were voters trying to  
10      get in here to vote because I was out there with  
11      my daughter.

12                    MR. SLAYTON: Were you one of the  
13      ones that got locked out of the building when  
14      the doors got closed?

15                    MS. LANE: No. I was out there at  
16      10:30 when Channel 11 came and everything. But  
17      I saw the guy. He was in here earlier and went  
18      out to check on his son. You know, I guess he  
19      left him out there because he didn't expect it  
20      to take this long. But he was in here earlier  
21      and he was locked out.

22                    MR. SLAYTON: Thank you very much.

23                    MR. BROWER: Excuse me. Ms. Lane, I  
24      have a question. I want to make sure I  
25      understand.



1                   You were sent back outside to get  
2 into the line for District 71?

3                   MS. LANE: 71. We had two lines.  
4 There was one line for everyone coming in the  
5 building. It was extended outside and then it  
6 was wrapped around the other side of the  
7 hallway, you know, the two hallways here. So  
8 the first line coming in it was wrapped all  
9 around both sides of the hallway and then it  
10 came in to the tables here and you showed your  
11 I.D.

12                   If you were in District 71, then  
13 that line to vote -- Our booths were over here.  
14 So that line -- it was extended all the way  
15 across the stage back out down this side of the  
16 hallway and then back out the door. So I had to  
17 go back outside. The people in District 75  
18 after they came in and showed their I.D., they  
19 immediately proceeded to the booths. Now, all  
20 these other people had been here a couple hours  
21 before them.

22                   MR. BROWER: Thank you.

23                   MR. EVANS: Next person.

24                   If you want to speak, please fill  
25 out the release and have it ready so when your

1. time comes you can just pass it in and be sworn  
2 in.

3                   Print your name up under your  
4 signature.

5                   MS. DEIDRA JOHNSON,  
6 Being first duly sworn, testified as follows:

7                   MS. DEIDRA JOHNSON: My name is  
8 Deidra Johnson, spelled, D-e-i-d-r-a. And I am  
9 here to share with you my experience as a poll  
10 worker at Stone Ridge Elementary School.

11                   We had on record 2300 registered  
12 voters on the books and we had 15 --  
13 approximately 1550 that actually voted at that  
14 precinct to date. This is a split poll and we  
15 had district 80 and 045.

16                   For District 80 there were eight  
17 booths. And before noon one malfunctioned. So  
18 we only had seven booths for that day. And  
19 District 045 there were only four booths  
20 available for the voters and one was a handicap  
21 booth. And also in the area where a lot of  
22 people that were -- like, stood in lines and  
23 then they come in and find out that they're not  
24 on the list then have to go somewhere else to  
25 register, I was -- I felt, I guess, inferior or

1 whatever, not good because at the end of the day  
2 I was proposed to challenge with a challenge  
3 ballot and I really had no knowledge or training  
4 in that area.

5 And also my co-workers I felt like  
6 it should have been -- should have had more of a  
7 customer service type attitude or personality,  
8 because there were some instances where the  
9 voters got upset and frustrated and instead of  
10 them coming in to diffuse it, then things  
11 escalated but it didn't get out of control or  
12 anything like that.

13 So that was my experience.

14 MR. SLAYTON: Before you leave, let  
15 me ask you two questions.

16 You were a poll worker at which  
17 precinct? You were a poll worker at which  
18 precinct?

19 MS. JOHNSON: Stone Ridge  
20 Elementary.

21 MR. SLAYTON: Stone Ridge?

22 THE WITNESS: Yes.

23 MR. SLAYTON: And District 80 is the  
24 one that had eight booths, one broke down?

25 MS. JOHNSON: Right.

1                   MR. SLAYTON: And what was the other  
2 district that had four booths?

3                   MS. JOHNSON: 45.

4                   MR. SLAYTON: 45 -- District 45?

5                   MS. JOHNSON: Right.

6                   MR. SLAYTON: So it was a split  
7 precinct as well?

8                   MS. JOHNSON: Exactly.

9                   MR. SLAYTON: Was it school based?  
10 Was it in one of our high schools or elementary  
11 schools?

12                   MS. JOHNSON: Elementary school.

13                   MR. SLAYTON: Elementary. Okay.

14 Thank you.

15                   MS. SANDRA HOLLY,

16 Being first duly sworn, testified as follows:

17                   MS. SANDRA HOLLY: Good morning. My  
18 name is Sandra Holly and I vote in Gresham  
19 Elementary School precinct, and I, too,  
20 experienced a lot of -- I guess it was a time  
21 thing. I, too, experienced where you go in one  
22 line for about an hour and you check your I.D.,  
23 then you go to another line for about an hour to  
24 get a ballot, then you go to the line where you  
25 vote. So we had three lines actually that we

1 had to go into at Gresham.

2 I got there at 7:00 o'clock in the  
3 morning. It took probably about three hours  
4 until about 10:00 o'clock. And having voted in  
5 other areas -- I see we are doing a lot to try  
6 to take care of this. But then we go to other  
7 areas, you can go to the voting booth and you  
8 click, click, click, push vote, the curtains go  
9 behind you, you come out and you're done.

10 So I was really amazed about the  
11 voting system that we have here in south Georgia  
12 as well and I hope that the State Secretary  
13 Cathy and the DeKalb County office work towards  
14 improving our equipment that we have here in the  
15 Georgia area.

16 MR. SLAYTON: Again, I'm sorry.  
17 Maybe I'm just not paying attention here. But  
18 your name again?

19 MS. HOLLY: Sandra Holly.

20 MR. SLAYTON: Sandra Holly?

21 MS. HOLLY: Correct. And I vote in  
22 Gresham. Well, Gresham Elementary. I think it  
23 is Precinct 71. I don't know.

24 MR. SLAYTON: You voted under the  
25 Gresham --

1 MS. HOLLY: -- Elementary School.  
2 MR. SLAYTON: And you said that  
3 there were three lines. One was an I.D. line --  
4 MS. HOLLY: One was the I.D. line,  
5 you go in and get your I.D. checked to make sure  
6 -- one was the I.D. line. You go and get your  
7 I.D. checked and then on the little, like, piece  
8 of paper, then you have to go in another line  
9 where you get a ballot that you have to have and  
10 then they had another line that we had to go  
11 into to actually punch the ballot.  
12 And at one point our lines were so  
13 long that some of them were going out of the  
14 doors. And I guess there's a rule that you  
15 can't take the ballot that you have in your hand  
16 outside the doors. So our pollster had to take  
17 that line and he had us going in, like, three  
18 different lines so that the people with ballots  
19 wouldn't go outside that door because at one  
20 point people with ballots were going outside the  
21 door.  
22 MR. SLAYTON: Thank you.  
23 MR. EVANS: Who is next? For those  
24 who want to speak, you have to fill out a  
25 consent form. They are passing them out to

1 those who want to speak.

2 JOHN W. SAWYER,

3 Being first duly sworn, testified as follows:

4 MR. JOHN W. SAWYER: I thought it  
5 might be useful to you to have a little bit of  
6 baseline for what I see as some of the problems,  
7 even in districts where people would think that  
8 things ran fairly well.

9 Now, I vote in Lake Ridge High  
10 School, which I think is a predominantly  
11 Republican district. And even at about 2:00  
12 o'clock in the afternoon, which is a time which  
13 you would think things should just move right on  
14 through, it took me approximately 50 minutes to  
15 vote. That included starting up in a line where  
16 they handed you the preliminary little form to  
17 sign out, but the table was up at the front of  
18 the line, no table at the back of the line. So  
19 people were trying to understand do I stop here,  
20 where do I go next or do I take it in the back  
21 and write it on somebody's back or something  
22 like that.

23 Then, of course, the thing that  
24 amazed me. I've voted in every presidential  
25 election since '72 in four different states and

1 this is the only state I've ever been in where  
2 you have to go through five tables just to get  
3 to a voting machine. For the life of me, I  
4 don't understand it.

5 I voted in, believe it or not, Texas  
6 which does it a lot better, Maryland and North  
7 Carolina and I've never run into these kind of  
8 problems.

9 Now, I wanted to testify to one  
10 other thing which wasn't this election, but I  
11 think it's relevant.

12 And I am gonna have to apologize. I  
13 believe it was the last election I voted in  
14 prior to this one. But I believe it was the  
15 run-off in the primary.

16 And what happened, I did one stupid  
17 little thing. And I realized how easy it will  
18 be to cause catastrophe at the wrong time  
19 because this was a low-volume election.

20 You know, they have these votermatic  
21 style cards and they hand be the ballot and for  
22 some reason for the life of me I don't know why,  
23 my first reaction was to tear it into. Now,  
24 after I tore it into, I thought, now what.  
25 Well, I will go ahead and put it in the machine



1 and voted and if they don't like it that way, I  
2 can always ask for another ballot.

3           So I stuck it in the machine and the  
4 instant I stuck it in the machine I thought,  
5 good God, with the thing torn off the top  
6 there's no way to pull it out of here. So I  
7 went ahead and punched it and thought, all  
8 right. No big. I'll go ask the poll people to  
9 help me get it out.

10           Well, they said with the older style  
11 of that setup, you could unscrew a screw in the  
12 back and pull that thing out. But they couldn't  
13 figure out any way to pull that ballot out. So  
14 the whole booth had to be taken down.

15           Now, you could imagine if one person  
16 did that in the election -- in a presidential  
17 election all, you know, somebody would have to  
18 do even if they wanted to do it intentionally is  
19 stick that thing in there that way and they have  
20 taken a booth down and what can anybody do about  
21 it, you know, with all the volume problems you  
22 had now you've lost a booth. I mean, the system  
23 is just ridiculously antiquated.

24           And I guess my feeling is that when  
25 any group of people who share your feelings

1 about a particular candidate especially  
2 nationwide, can't get in, can't get to vote, we  
3 are all disenfranchised.

4 And right now I've had it. So --

5 MR. SLAYTON: And your name again,  
6 sir?

7 MR. SAWYER: My name is John Sawyer  
8 and as I said, Lake Ridge High School, a  
9 district on Briarcliff Road.

10 MR. EVANS: Next speaker.

11 MS. ZEPORA W. ROBERTS,  
12 Being first duly sworn, testified as follows:

13 MS. ZEPORA W. ROBERTS: Good  
14 morning. My name is Zepora W. Roberts. I am  
15 first vice president of the DeKalb NAACP. And  
16 as part of the get-out-the-vote effort, I  
17 started receiving phone calls at the NAACP  
18 office on Monday, November the 6th.

19 One of the first calls and  
20 complaints that came in, we received two on that  
21 day, were from voters that had registered at the  
22 State Patrol office or, well, at the Kroger  
23 centers at the -- for the State Patrol which  
24 said that their -- they could not find their  
25 cards or nothing.

1                   So I started -- after the second  
2 call, I started jotting these calls down. And  
3 then that Monday night as I was watching  
4 television I says, well, on one of the major  
5 news channels and apparently that was a big  
6 problem, because it was on the news that night,  
7 and I don't remember or recall which one, that  
8 the same thing had happened and had occurred  
9 with a lot of applications being lost from  
10 voting when they went to get their driver's  
11 license.

12                   Then on Tuesday, bright and early we  
13 started receiving several calls from, I remember  
14 specifically, Flat Shoals Elementary School  
15 where the people were complaining about long  
16 lines, long waits. And when I received the  
17 second call from there, I spoke to our  
18 president, Mr. Evans, and told him, I said,  
19 John, we have this -- a reoccurring problem. I  
20 think we need to go over there.

21                   So he immediately got up and drove  
22 over there to find out to see what the problem  
23 was at Flat Shoals Elementary.

24                   And all these calls I knew that it  
25 was important that I just started documenting.

1                   Now I have got here -- now I know  
2 through Johnson .V. Miller and Chavey Reno and,  
3 of course, my familiarity with the political  
4 process that a Supreme Court Justice is just a  
5 person just like the rest of us. They make  
6 contributions to political entities and they get  
7 rewarded.

8                   There is no presumption that these  
9 people don't have partisan interests.  
10 Everything about the way they are selected is  
11 partisan.

12                   Now this Chief Justice William  
13 Rehnquist, wrote as a law clerk at the time of  
14 the Brown versus Board of Education decision,  
15 this is what he wrote. I think Plusey versus  
16 Ferguson, the legal foundation for mandatory  
17 segregation was right and should be reaffirmed.

18                   This is what William Rehnquist wrote  
19 when he was a young kid. So we should  
20 understand what we are up against and we should  
21 not be fooled by anybody who comes and tries to  
22 sell us a false bill of goods.

23                   Clarence Thomas voted with them  
24 before, voted with them this time, will continue  
25 to vote with them for the rest of his life and

1 he is not one of us and we need to understand  
2 that. And we should not allow people to be  
3 elected or selected to represent our community  
4 who are not of, from and by and a part of our  
5 community.

6 Now, I have had my say Mr. Evans.  
7 Thank you very much.

8 MR. EVANS: You know they always say  
9 that when we have a controversy, we come  
10 together. And that's unfortunate but I will  
11 tell you what, it's real. And for those of us  
12 who don't read much and don't research much, we  
13 could never know about that statement. As a law  
14 clerk -- and I always say that the worse  
15 segregationists that we have are young folk.

16 There is no doubt in my mind that my  
17 experiences have always told me that the worst  
18 segregationists are young folk. And you have to  
19 start that mess early. I mean, most of us are  
20 not converted after we get older.

21 So I say that to say that most of us  
22 don't read much of anything. We don't go to the  
23 library. We don't research the issues and  
24 consequently we don't know much about history  
25 and especially our own history as it comes to

1 where we are right now in 2000, as far as being  
2 able to vote and how we got here.

3 There were some people talking about  
4 the Electoral College. We were not even in  
5 existence when they made that rule. So they  
6 couldn't have been talking about us. They were  
7 just talking about the people who were not as,  
8 what, well to do and they did not want them to  
9 really run this system. So they designed  
10 something to help out and we are the recipient  
11 of that in 2000 plus other things. And of  
12 course I don't think it's happened in over a  
13 hundred years.

14 But the point is we are now in a  
15 position to deal with election reform and we  
16 shouldn't leave anything out. I mean, we know  
17 what the problems are and it is time for us to  
18 take action.

19 Number one, the NAACP wants to say  
20 and let you know how much we appreciate you  
21 coming out and being a part of this public  
22 hearing today. You can say what you want, but  
23 if you don't make some noise, nobody is gonna  
24 listen to you. You can say what you want to,  
25 but if you don't make some noise and let them

1 know you exist and that you are concerned about  
2 what you are concerned about, they won't hear  
3 you and they won't pay any attention to you.

4           So I am hoping that we will have,  
5 Ms. Peeler, like you say across the country,  
6 especially with NAACP branches taking notes of  
7 the problems in their communities and coming up  
8 with some kind of vehicle to make sure that  
9 these concerns are put in the right hands.  
10 Especially those who make decisions for us in  
11 this country.

12           It's so very important. You just  
13 cannot overemphasize the fact that we must take  
14 this crisis, and this was a crisis. None of us  
15 would have ever predicted in this country that  
16 we would not have had a president the night of  
17 November 7th. Nobody. But it happened and it  
18 happened for a reason and we need to take  
19 advantage of that reason and do something about  
20 it.

21           So we are glad that you came. We  
22 certainly are glad that the panelists came, the  
23 justice department, congresswoman, secretary of  
24 state's office and the board of registration of  
25 elections. They are here. They heard our

1 concerns and we hope and pray that all of these  
2 concerns will be put in the proper perspective  
3 so that we can get something done about it.

4 We are going to stay on the battle  
5 field and do everything we can. I guess Zepora  
6 and I got what you call bus riding sores. We  
7 have been riding the bus so much in the last  
8 three weeks going to Florida, New York and  
9 dealing with the issues that we know exist.

10 And we just want to let you know  
11 that we appreciate you coming out. We are gonna  
12 stay here another 20 minutes, until 1:00 for  
13 purposes of listening to somebody who might come  
14 in as far as we are concerned. I guess  
15 officially those of us can depart the place, but  
16 the court reporter and I will stay here until  
17 1:00 o'clock to make sure we capture everything  
18 that anybody wants to say. And we want to make  
19 sure that this opportunity for anybody who wants  
20 to say something else that's already spoke and  
21 we will also hear from Ms. Peeler. Come right  
22 down.

23 MS. MARY L. PEELER: Good afternoon  
24 to everyone. We have been getting -- we have  
25 been getting a lot of questions from the media



1 and from individuals about where do we go from  
2 here.

3 Well, for all intensive purposes, it  
4 seems that the election itself has been decided  
5 on a presidential level, but right NAACP, the  
6 NAACP national voter fund, and our coalition  
7 partners, we cannot afford to let the battle  
8 stop here because there is a lot of things that  
9 will be happening in this country for years to  
10 come. It will be based on what we do this year.

11 So we have to put an actual plan  
12 into place. Election 2000 should have served as  
13 a wake-up call for many of us not only for that  
14 there is a need for election reform, but there  
15 is a need for more education in the general  
16 community about the election process itself and  
17 the importance of voting.

18 So number one, the NAACP will be  
19 holding public hearings like this one all across  
20 the country. We are working on those and  
21 planning those now.

22 Number two, there is a lot of people  
23 that want to see black folks sitting at home on  
24 election day. So our next step has to be to  
25 make sure that we get people who are not

1 registered, registered. So on January the 15th  
2 we are kicking off another major voter  
3 registration campaign in this country. And we  
4 cannot afford for those people who have been  
5 disimpardoned, disenfranchised about the whole  
6 process, who got upset about this election to,  
7 say, well, our vote is not gonna count anyway.

8 We have got to come back in even  
9 more overwhelming numbers. Overwhelming numbers  
10 again.

11 We also have to make sure,  
12 congresswoman, that people who have been  
13 incarcerated, who have been in the system know  
14 what their rights are. So NAACP in this region  
15 has already instituted a program where we are  
16 addressing the rights of prisoners. And we have  
17 actually been into some prisons doing voter  
18 registration.

19 So there is a lot of work to be  
20 done. The bottom line is there is enough work  
21 out here for each and every one of us to do  
22 every day. We don't have to sit there and wait  
23 for other organizations, other groups to come on  
24 board and join in.

25 If every one of us would go back and

1 take the message to our families, our friends,  
2 our acquaintances about the importance of  
3 voting, then we can serve as a catalyst to make  
4 sure that this would never happen in this  
5 country again.

6 And we are going to be pushing and  
7 working with the secretary of state's office,  
8 working with the general assembly to make sure  
9 that election reform happens because we cannot  
10 afford to be back at the same place four years  
11 from now.

12 MS. LINDA DuBOSE: My name is Linda  
13 DuBose and I was a poll watcher at a location in  
14 South Dekalb just south on Panola Road. Just  
15 south of I-20. And I can't remember the name  
16 right now.

17 MS. LINDA D. DuBOSE,  
18 Being first duly sworn, testified as follows:

19 MS. LINDA D. DuBOSE: So I was a  
20 poll watcher. And what I want to say about that  
21 is this. I arrived at my station about 7:15  
22 a.m. and I was there through -- straight through  
23 until about 9:00 o'clock p.m. that evening.

24 When I arrived, we were at capacity.  
25 The space was at capacity. People were lined up

1 and I counted that there were 18 machines.

2 In the time that I had to simply  
3 observe the whole operation, there are a number  
4 of things I want to report. One, is that the  
5 personnel that were there were fairly organized  
6 and very committed, working really hard in  
7 keeping things on track. Yet, the lines that  
8 were there at 7:15 a.m., these lines were long  
9 enough to keep people in line probably  
10 approaching 2 hours. That never diminished  
11 throughout the course of the day.

12 So as I observed, I noticed that the  
13 real issue there was the number of polling  
14 stations. If you didn't have any more polling  
15 stations, there was no way you were ever gonna  
16 make those lines move any faster. And no time  
17 during the whole day did it -- was the time that  
18 a person had to spend voting, less than two  
19 hours. And sometimes it went to like 3 and a  
20 half.

21 The other thing that I want to make  
22 a comment about is what was happening with the  
23 people themselves. There was an effort to help  
24 people who were, like, elderly or handicapped.  
25 Kind of take them out of the line and take them

1 to the front of the line. So that was going on.  
2 But probably because the room was so full, there  
3 could have been a lot more of that. And, of  
4 course, every time you put somebody in the front  
5 of the line, that just delay the work of the --  
6 I mean, the amount of time that other people had  
7 to stay in line.

8 So we were not really efficient in  
9 terms of supporting people who were elderly or  
10 handicapped or had small children.

11 I did encounter conversations late  
12 in the day on the back end when people were  
13 coming back from work where people were actually  
14 turning around. I just can't stay. People who,  
15 for whatever reason, they weren't on the voting  
16 poll. They were in the wrong location. But  
17 given the time of day, they didn't have time to  
18 wait in the line for an hour or so, find out  
19 that they were in the wrong place and then get  
20 in their cars and make it to their correct  
21 polling place before the polls were closed.

22 So to me what I really want to say  
23 is that it was -- the conditions were excessive  
24 for voting. When people set out to vote, they  
25 don't necessarily intend to spend three to four

1 hours doing it. And it was just -- it was very  
2 disappointing that we were turning people away  
3 who didn't have the opportunity to vote.

4 It seemed like the issues could have  
5 been resolved by having more voting machines.  
6 Definitely more voting machines. Probably a  
7 larger facility. So that's the commentary I  
8 wanted to make.

9 (Time now is 1:00 p.m)

10 (Proceedings Concluded)

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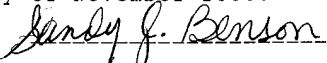
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C E R T I F I C A T E

G E O R G I A :  
CLAYTON COUNTY:

I hereby certify that the foregoing proceedings were stenographically recorded by me, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction and supervision; that the foregoing transcript represents a true and correct transcript of the evidence given by said witness upon said hearing; and I further certify that I am not kin or counsel to the parties in the case, am not in the regular employ of counsel for any of said parties, nor am I in any way interested in the result of said case.

This 19th day of November 2000.

  
SANDY J. BENSON  
Certified Court Reporter

<p>Page 1</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 PUBLIC HEARING BEFORE THE DEKALB COUNTY NAACP</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 SUBJECT: DeKalb County Voting Difficulties</p> <p>13 DATE : Saturday, December 16, 2000</p> <p>14 PLACE : Stoneview Elementary School</p> <p>15 2629 Huber Street</p> <p>16 Lithonia, Georgia</p> <p>17 TIME : 10:00 a.m.</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 3</p> <p>1</p> <p>2</p> <p>3 <u>I N D E X</u></p> <p>4 <u>Exhibit</u></p> <p>5 Description</p> <p>6 No. 1 Ltr. from Dayton S. Hedges, Jr.</p> <p>7 To Congresswoman Cynthia McKinney</p> <p>8</p> <p>9 No. 2 November 7, 2000 Election Summary</p> <p>10</p> <p>11 No. 3 Ltr. from Ideta Griffin to Mr. John</p> <p>12 Evans dated 11/8/2000</p> <p>13</p> <p>14 No. 4 Ltr. from Annie L. Simmons to Mr. John</p> <p>15 Evans dated 11/30/2000</p> <p>16</p> <p>17 No. 5 Ltr. from Camille Green dated</p> <p>18 11/15/2000</p> <p>19</p> <p>20 No. 6 Ltr. from Shevawn Carter dated</p> <p>21 11/15/2000</p> <p>22</p> <p>23 No. 7 Ltr. from Barbara Lane to Mr. John</p> <p>24 Evans dated 11/16/2000</p> <p>25</p> <p>26 No. 8 Ltr. from Linda Latimore to Ms.</p> <p>27 Florietta D. Taylor dated 11/27/2000</p> <p>28</p> <p>29 No. 9 Ltr. from Ear Linda White to Mr. John</p> <p>30 Evans</p> <p>31</p> <p>32 No. 10 Ltr. from Robert T. Jones to Mr. John</p> <p>33 Evans dated 11/14/2000</p> <p>34</p> <p>35 No. 11 Ltr. from Elnor Shepherd to NAACP</p> <p>36 dated 11/13/2000</p> <p>37</p> <p>38 No. 12 Ltr. from Kathryn Gable to NAACP</p> <p>39 dated 11/8/2000</p> <p>40</p> <p>41 No. 13 Ltr. from Florietta Taylor dated</p> <p>42 11/10/2000</p> <p>43</p> <p>44 No. 14 Composite Exhibit</p> <p>45 Signed Release Forms</p>
<p>Page 2</p> <p>1</p> <p>2</p> <p>3 <u>A P P E A R A N C E S</u></p> <p>4</p> <p>5 JOHN EVANS, Chairman</p> <p>6 CONGRESSWOMAN CYNTHIA MCKINNEY</p> <p>7 TORRELL SLAYTON, JR., Assistant Secretary of</p> <p>8 State</p> <p>9 HELEN BUTLER, NAACP</p> <p>10 DWIGHT BROWER, Election Pole Coordinator</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 MR. JOHN EVANS: My name is John</p> <p>2 Evans and we are calling this public hearing to</p> <p>3 order. The public hearing will entail</p> <p>4 discussing those things that happened during the</p> <p>5 election that we want to get a public record of.</p> <p>6</p> <p>7 And subsequently with all the</p> <p>8 testimony that we hear here today, with all the</p> <p>9 written letters that we've received in the mail</p> <p>10 and all the verbal comments that we may have</p> <p>11 heard that relate to the election, we are gonna</p> <p>12 put all of that in a package and make</p> <p>13 recommendations to the Board of Registration of</p> <p>14 Elections on Wednesday and subsequently the</p> <p>15 Secretary of State and the Justice Department.</p> <p>16</p> <p>17 And basically that's the procedure</p> <p>18 that we are planning to use. We will be taking</p> <p>19 information not only up until we prepare the</p> <p>20 report for Wednesday, December 20th, but we'll</p> <p>21 also be taking additional information from</p> <p>22 anyone who wants to turn it in so that we can</p> <p>23 include it in subsequent reports and then</p> <p>24 provide whatever addendum we may need to provide</p> <p>25 for areas that we did not have that information</p> <p>in the beginning.</p> <p>So what we'll do now is have -- We</p>



<p style="text-align: right;">Page 5</p> <p>1 will all stand for a moment of silent prayer.                  2 Will we all stand, please.                  3 (Prayer)                  4 MR. EVANS: I think in relationship                  5 to what has happened over the past six or seven                  6 hours with regard to the killing of the Sheriff                  7 Derwin Brown, that we ought to be concerned                  8 about that, be concerned about his family and                  9 children and pray that the investigation will be                  10 very broad and that certainly they will bring                  11 justice and closure to that situation. This is                  12 a very tragic situation and we just want to                  13 acknowledge and recognize that as we proceed.                  14 Thank you.                  15 What we have as an agenda will be                  16 opening prayer, we've already had, introduction                  17 of panel and participants and then we'll set the                  18 ground rules. We'll have the public hearing,                  19 closing comments, announcements and then a                  20 closing prayer.                  21 And what we'll do since all the                  22 participants are not here, we will have a word,                  23 three minutes, from those who are here and then                  24 whoever wants to testify, they will then come                  25 and sign a consent form that Mr. Jocco Baccus</p> <p style="text-align: right;">Page 6</p> <p>1 has and then we'll speak.                  2 Of course, the proceedings then will                  3 be recorded by a court reporter and we are                  4 taping it. And prayerfully, the person who is                  5 gonna video all of this may soon show up. So                  6 we'll now proceed.                  7 Would you like to start it off?                  8 MR. DWIGHT BROWER: Good morning.                  9 My name is Dwight Brower and I'm an employee                  10 with the DeKalb County Board of Voter                  11 Registration and Elections.                  12 First of all, my job, of course,                  13 there at the Board of Registration and Elections                  14 are actually to maintain the voter records, et                  15 cetera, that pertain to all of the registered                  16 voters in DeKalb County.                  17 In addition to that, we are also                  18 responsible for resourcing the polling places.                  19 There are 167 polling facilities in DeKalb                  20 County. Of course, we are required to actually                  21 hire temporary employees who actually resource                  22 or man those facilities who actually conduct the                  23 election.                  24 Additionally, we are responsible for                  25 making sure that all of our polling facilities</p>	<p style="text-align: right;">Page 7</p> <p>1 are actually operated -- ran and operated in                  2 accordance with the Georgia Election Code.                  3 MR. EVANS: Thank you so much.                  4 Now, for anybody who wants to                  5 testify now, will you please come on and sign                  6 the consent agreement.                  7 And before we do that, we have                  8 Congresswoman Cynthia McKinney, who is now here.                  9 And we will ask her to give some brief remarks                  10 and then we will proceed with some public                  11 comments. And then as the participants come in,                  12 we will then have them make their remarks and                  13 then we'll continue to do the public hearing as                  14 we see fit.                  15 MS. CYNTHIA MCKINNEY: Thank you,                  16 Mr. Chairman. And I want to thank those of you                  17 who have come out to receive the testimony                  18 today.                  19 We know that anytime that there is                  20 an allegation or a suspicion that voting rights                  21 have been tampered with, we must defend our                  22 rights vigorously. And we must make sure that                  23 no one be allowed to tamper with our right to                  24 vote.                  25 Now, we've been shocked by some news</p> <p style="text-align: right;">Page 8</p> <p>1 this morning that is truly sad for all of us.                  2 But we, even in our sadness, still have to deal                  3 with the business of voting rights.                  4 Now, I think the presidential                  5 election of the year 2000 will be noted as the                  6 year that people began to recognize that not                  7 only do we have a right to vote, but we have a                  8 right to have our votes counted.                  9 And so we have to pay attention to                  10 what we do prior to election day, what the                  11 authorities do on election day, what they do                  12 after we actually cast our ballot in terms of                  13 counting our votes and the preservation of that                  14 precious right to vote.                  15 The Voting Rights Act will expire --                  16 certain portions of the Voting Rights Act will                  17 expire in the year 2007. If this is what we are                  18 faced with now in the year 2000, can you imagine                  19 what the year 2007 is going to look like if we                  20 are not vigilant.                  21 We have redistricting.                  22 Redistricting is an important aspect of our                  23 protections under the Voting Rights Act. And we                  24 have redistricting coming up, actually maps are                  25 being drawn right now. And DeKalb County, the</p>
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Page 9	<p>1 Congressional, State Legislative, county</p> <p>2 commissions, school boards, all of the districts</p> <p>3 that people run from will be redistricted.</p> <p>4 And as far as Congressional</p> <p>5 redistricting is concerned, if it was illegal to</p> <p>6 divide DeKalb County for racial reasons in 1996,</p> <p>7 it will be illegal for DeKalb County to be</p> <p>8 divided in the year 2001.</p> <p>9 Now, we know that there are some</p> <p>10 people who want to divide DeKalb County already.</p> <p>11 It is in the rumor mill. They want to divide</p> <p>12 DeKalb County. But the precedent for preserving</p> <p>13 DeKalb County has been set and, therefore, we</p> <p>14 must be vigilant on all aspects of the Voting</p> <p>15 Rights Act.</p> <p>16 It used to be that it was the poll</p> <p>17 tax, literacy tax, but now it could be the</p> <p>18 failure of leadership to appropriate the funds</p> <p>19 so that you don't have to stand in line for</p> <p>20 hours or so that you can make sure that there --</p> <p>21 that the polling precinct is not one that is</p> <p>22 over-crowded.</p> <p>23 We had people who were standing in</p> <p>24 lines, standing outside exposed in the weather</p> <p>25 for hours and hours and hours while right down</p>	Page 11
Page 10	<p>1 the street a few yards away open building that</p> <p>2 could have been used as a polling place. Who</p> <p>3 makes these decisions. Who appropriates the</p> <p>4 funds. Who failed to appropriate the funds.</p> <p>5 These are all questions that you need to have</p> <p>6 answers for.</p> <p>7 And this doesn't need to happen</p> <p>8 again. We know in 1996 there was a record</p> <p>9 turnout on the south side of the county. But we</p> <p>10 also know that we have had more residents come</p> <p>11 into the south side of the county. The</p> <p>12 population has exploded in the south side of the</p> <p>13 county.</p> <p>14 For those who plan, then there</p> <p>15 should be planning so that when a presidential</p> <p>16 election year comes, that that increase in the</p> <p>17 number of voters at each precinct is -- is</p> <p>18 accounted for in the planning.</p> <p>19 We had cases where people literally</p> <p>20 had accidents because the roads were crowded.</p> <p>21 Dangerous situations ensued where people were</p> <p>22 trying to walk across road construction in order</p> <p>23 to get into precincts just so that they could</p> <p>24 vote. And then when they got there, it was hour</p> <p>25 after hour after hour, sometimes standing</p>	Page 12

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1 see a bigger crowd here, but with a court  
 2 reporter that's not so very important, because I  
 3 think from a few people can come just an  
 4 enormous amount of information. And so I think  
 5 even with the activities that we experienced at  
 6 this school on election day, that will give us a  
 7 pretty good start I think in looking back at  
 8 what happened on November 3rd.  
 9 We really appreciate, John, you  
 10 inviting the Secretary of State's office to be  
 11 part of this public hearing this morning.  
 12 This is about the fourth public  
 13 hearing that we've been formally involved in  
 14 since the election. And in the others, we've  
 15 been able to kind of categorize some of the  
 16 problems that we had on election day. And based  
 17 on what we have heard so far -- if we hear  
 18 nothing else this morning, based on what we have  
 19 heard so far, the Secretary of State Cathy Cox  
 20 has made the commitment literally to take the  
 21 problems of the election that we experienced and  
 22 to develop a response to them.  
 23 Long lines, I mean, everybody  
 24 complained about long lines throughout Georgia  
 25 in the African-American community. And Cathy

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1 Cox has already began to develop what we're  
 2 gonna call now an advance voting bill. We might  
 3 not use the word early voting. And she's not  
 4 coming back to tell you I told you so either,  
 5 since she did have an early voting proposal in  
 6 the General Assembly in the last two years and  
 7 it failed both times.  
 8 But we think with what we have heard  
 9 thus far -- She met with many members of our  
 10 General Assembly when they met in Athens just a  
 11 week ago and we think we will have an advance  
 12 voting bill that would allow all of us to go to  
 13 the polls.  
 14 We're going back to 45 days y'all,  
 15 but I expect that when they find the pass, maybe  
 16 about 15 days early and maybe also offer a  
 17 couple of opportunities between 5:00 o'clock and  
 18 8:00 o'clock at night for you to go down to your  
 19 local election office and vote and on weekends  
 20 prior to the election, a couple weekends out.  
 21 So that's one thing that she is committed to  
 22 responding with out of this election.  
 23 The other thing is the -- just the  
 24 realization of how many over votes and how many  
 25 under votes came with certain kinds of equipment

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1 -- voting equipment. And so it doesn't take a  
 2 rocket scientist to think that common voting  
 3 equipment in this State is a good thing and that  
 4 common voting equipment would allow us,  
 5 especially if it's electronic, to experience  
 6 election day in a faster way. We don't wait all  
 7 night for these returns to come in.  
 8 And so we can expect that Cathy Cox  
 9 will be dropping a common voting equipment bill  
 10 in this year's General Assembly that's upcoming  
 11 as well.  
 12 Right now, we've got -- we've still  
 13 got paper ballots in a couple county in Georgia.  
 14 We still use them. We've still got the  
 15 Leiberman machine, even though they stopped  
 16 making that thing back prior to 1950. And even  
 17 the ones that are out there, they are  
 18 cannibalizing them to fix the ones that remain.  
 19 So they are a problem. And like here in DeKalb  
 20 County, the punch card system is in use for  
 21 about 600,000 voters in Georgia. And then the  
 22 one that most voters are using in Georgia today  
 23 is something called the optical scan equipment.  
 24 But Cathy Cox is going to develop a  
 25 proposal to use some electronic based equipment,

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1 because all four of these are problem prone.  
 2 All four of these we had problems of over votes  
 3 and under votes in Georgia this year. And we're  
 4 trying to get a handle on that right now,  
 5 analyzing that to see what it is really telling  
 6 us and she's gonna use that as a rationale to  
 7 develop some specific proposals for a specific  
 8 type of equipment. And we will be talking with  
 9 the technology community to really finalize what  
 10 that really is. That's the third thing -- or  
 11 the next thing.  
 12 And finally, the one other big thing  
 13 that she's gonna do out of this election is to  
 14 sponsor an initiative that we're just going to  
 15 call right now election reform, Congresswoman.  
 16 We don't know what election reform is. It is  
 17 out of forums like this that we will define  
 18 election reform. It will give us the issues  
 19 that will be debated in the committees,  
 20 structure of the General Assembly and the  
 21 General Assembly itself. And though we do  
 22 commit to you, though, that we are going to  
 23 introduce an election reform system and we're  
 24 not going to exclude the municipal law. There  
 25 is a body of law in this state that governs

<p style="text-align: right;">Page 17</p> <p>1 municipal elections. We tried to merge that  2 with county law and state law a couple years  3 ago, but still there are a couple of areas where  4 it is still great. And so we want to throw that  5 into our election reform package.  6 But in conclusion, what I will say  7 to you is that we will continue to characterize  8 these problems. We will continue to try to  9 develop a response to them and we're not going  10 to wait. This January when the General Assembly  11 convenes, your Secretary of State will be right  12 there lobbying for an educational reform package  13 that's designed to deal with the kinds of  14 problems that we experienced on this election  15 day.  16 Thank you, John.  17 MR. EVANS: All right. For those  18 who -- I'd just like to recognize Helen Butler,  19 the National Voting Project for the NAACP.  20 Raise your hand. And for those who want to  21 testify, we're ready to start. All you need to  22 do is come up and sign the consent form. And  23 what we'll try to do is just get to the  24 substance of the complaint so we'll have enough  25 information to categorize where we think the</p> <p style="text-align: right;">Page 18</p> <p>1 most serious problems are. And of course, from  2 that we will be using it as a basis for making  3 recommendations.  4 I think -- If there are others who  5 need to speak, then you can just come on up as  6 you see fit and sign the consent form. That  7 just tells us that we can utilize this  8 information in any form that we want to.  9 Just kind of pass them on up Bro.  10 Jocco and then we'll start the proceedings.  11 Yeah. You can take it over there and fill it  12 out. And pass it to those who need to fill it  13 out. Come right up.  14 For the record now, just state your  15 name, address. Please print your name under  16 your signature.  17 JERRY WYATT,  18 Being first duly sworn, testified as follows:  19 MR. JERRY WYATT: Good morning. My  20 name is Jerry, that's, J-e-r-r-y, last name is  21 Wyatt.  22 I serve as a constitutional officer  23 for the Georgia Republican Party. I am  24 currently the second vice chairman of the State  25 Executive Committee of the Georgia Republican</p>	<p style="text-align: right;">Page 19</p> <p>1 Party in my second term.  2 And I am here this day because of  3 information that I received about a hearing  4 taking place at the Stoneview community  5 regarding the intimidation by the Republican  6 party at the Stoneview community.  7 On election day I served as a poll  8 watcher, a multi poll watcher in the south  9 DeKalb area roaming from different precincts in  10 the south DeKalb area. And Stoneview was one of  11 those precincts that I did attend.  12 There were two Republican poll  13 watchers here at the Stoneview Community. Both  14 of them were elderly white women from the  15 Georgia Republican party working as poll  16 watchers.  17 Now, what I did witness here was  18 chaos. And it was chaos that was not as a  19 results of any intimidation or the results of a  20 concerted effort by the Georgia Republican  21 party. I brought some material with me that I'm  22 sure Ms. Brown is quite familiar with that. It  23 was distributed in the black community by the  24 NAACP voter project.  25 This information, one, says, Georgia</p> <p style="text-align: right;">Page 20</p> <p>1 Republicans are against hate crime bills and it  2 shows an elderly black woman on one side which  3 to me is on the line of race baiting. That came  4 from the NAACP.  5 There is another piece that came  6 from the NAACP with a picture of a young lady  7 from Texas whose father, James Burgess, was  8 killed in Texas by Caucasians. On the back of  9 it, it has a picture of her grandson. This,  10 too, came from the NAACP. And I again say that  11 this is race baiting.  12 There was another piece that listed  13 a black woman, a black child that talked about  14 education and the process that the Republicans  15 have as it relates to education. Here again,  16 this is a race piece.  17 There is a piece here that has a  18 police officer stopping a black man and this too  19 gives you some information that came from the  20 NAACP and it too is what I consider a race  21 baiting piece.  22 Then there is this picture of Renee  23 with a picture of a pickup truck with a chain  24 attached to it and it talks about the fact that  25 her father was killed and it seems as if it</p>
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1 happens all over again. This, too, is what I  
 2 consider a race piece.  
 3 Now, the thing that I found  
 4 interesting about many of these pieces is that  
 5 they came to black females in the black  
 6 community. Now, if this information had been  
 7 distributed by the white community urging white  
 8 people to respond to a election process in fear  
 9 of what black people would have done, I'm almost  
 10 certain that the NAACP would have raised holy  
 11 hell. The news media would have raised holy  
 12 hell and not one time was there any local  
 13 coverage about this information.  
 14 And I would venture to say that if  
 15 this information came out in Georgia, it also  
 16 came out in the rest of the country preferably  
 17 in the southeast in particular.  
 18 Now, on the election night when I  
 19 attended the Stoneview Elementary School, I did  
 20 say to you that there was chaos. I just  
 21 happened to bring my camcorder with me to record  
 22 some of the activity that was outside. And what  
 23 I can say with unequivocal truth that the  
 24 persons that I witnessed on the outside were  
 25 persons that were campaign workers of

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1 Congresswoman Cynthia McKinney. The reason why  
 2 I know they were campaign workers of  
 3 Congresswoman Cynthia McKinney is because the  
 4 prior Saturday myself along with other persons  
 5 who were campaigning for Sonny Warren were on  
 6 Candler Road and Congresswoman Cynthia McKinney  
 7 and some of the very same people that were here  
 8 raising hell outside of the Stoneview Community  
 9 were here.  
 10 Congresswoman Cynthia McKinney was  
 11 here. She had a T-shirt on, on the outside,  
 12 Congresswoman Cynthia McKinney's father, State  
 13 Representative Billy McKinney was on the inside.  
 14 And as the chairman of the DeKalb County Board  
 15 of Elections mentioned to me, he was inebriated.  
 16 In short, he was drunk. And he insisted that  
 17 State Representative Billy McKinney leave the  
 18 premises because he was drunk.  
 19 Now, I would say to you that the  
 20 polls were closed. They close at 7:00 o'clock.  
 21 Congresswoman Cynthia McKinney was here with a  
 22 bull horn in her hand. For what purpose, I have  
 23 no idea. This is not her voting precinct nor is  
 24 it the voting precinct of State Representative  
 25 Billy McKinney. And I will venture to say that

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1 it was not the voting precinct of several of the  
 2 people that were here.  
 3 As a matter of fact, when I came in,  
 4 one of Congresswoman Cynthia McKinney's workers  
 5 said to me, he says, we know you. You're with  
 6 Sonny Warren. I corrected him. I said, I am a  
 7 constitutional officer with the Georgia  
 8 Republican Party.  
 9 On election night that gentleman was  
 10 here. He said to me, he said, y'all really  
 11 worked us this time. I said to him, we will be  
 12 in your face every two years making sure that  
 13 south DeKalb has bipartisan representation. We  
 14 are not Democrat lackeys. We are registered  
 15 voters and we have the right and the option to  
 16 choose candidates of our choice and they do not  
 17 have to be Democrat elected candidates.  
 18 Now, what I say is that -- what I do  
 19 know to be a fact and if redistricting proves to  
 20 be true to me, I had a conversation with State  
 21 Representative Billy McKinney in 1998. And  
 22 State Representative Billy McKinney said to me  
 23 that Congressman John Linder made a deal with  
 24 him. And that deal was that if the Republicans  
 25 did not have a candidate in the 2000 election

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1 for the Fourth Congressional District, that the  
 2 Democratic party, black Democrats in particular,  
 3 would not support the gubernatorial ticket.  
 4 Now, it was unfortunate that the  
 5 Georgia Republican Party could not get Sonny  
 6 Warren to withdraw from that contest. Guy  
 7 Milner, candidate for governor, said to me  
 8 personally that he didn't want Sonny Warren in  
 9 the race. The Georgia Republican Party did not  
 10 support Sonny Warren.  
 11 And what Billy McKinney said to me  
 12 was the deal that John Linder cut with him was  
 13 that when redistricting came along that they  
 14 would cut the Dunwoody precincts out of the  
 15 Fourth Congressional district thereby making  
 16 south DeKalb predominately black, the Fourth  
 17 District, and we would have our little black  
 18 district where we wouldn't have to contend with  
 19 the conservative Republicans from Dunwoody.  
 20 Now, I don't know if that is going  
 21 to happen. But if it does happen, then what  
 22 State Representative Billy McKinney said to me  
 23 in relationship to the relationship that he had  
 24 with Congressman John Linder holds truth.  
 25 Now, in south DeKalb, I say to you

<p style="text-align: right;">Page 25</p> <p>1 and I say to you again, that we are not being                  2 served by the Democratic Party. I say to you                  3 and I say again that until we have bipartisan                  4 representation in south DeKalb within the GOP                  5 and within the Democratic party, then and only                  6 then will we be able to exercise our political                  7 muscles.                  8 I don't see how we can constantly                  9 tell people of color to vote for Democrats                  10 simply because they are Democrats.                  11 One thing, Mr. Evans, and I'll sit                  12 down.                  13 Now, to show you where I am. There                  14 was an incident in DeKalb County where we're                  15 supposed to be a morale people and our people                  16 simply vote for people simply because they are                  17 Democrats. And I don't think that that is                  18 justice to our people.                  19 Now, if we're talking about the                  20 problem and if you look around here and you look                  21 at the people that are here and then you                  22 consider the people that say that there was a                  23 problem, yes, there is a problem and that                  24 problem is education. And when we get people to                  25 the point where they can think rather than going</p> <p style="text-align: right;">Page 26</p> <p>1 straight down a democratic column, we'll be all                  2 right.                  3 And one thing, Mr. Evans, just one                  4 thing and I understand this is a hearing but we                  5 don't have a ton of people here.                  6 Now, we had an incident regarding --                  7 MR. EVANS: Hold on a minute. Hold                  8 on a minute now.                  9 The basis for you stopping has                  10 nothing to do with the number of people here.                  11 We want you to address the issues about voting                  12 and I am gonna give you another 30 seconds and                  13 we'll move on.                  14 MR. JERRY WYATT: Thank you. My                  15 name is Jerry Wyatt and I appreciate having the                  16 opportunity to speak to you.                  17 MR. EVANS: Thank you so much. Next                  18 speaker.                  19 MS. BARBARA LANE: Hello. My name                  20 is Barbara Lane.                  21 MS. BARBARA LANE,                  22 Being first duly sworn, testified as follows:                  23 MS. BARBARA LANE: I'm in House                  24 District 71 assigned to the Stoneview Elementary                  25 School precinct. On November 7th 2000, I waited</p>	<p style="text-align: right;">Page 27</p> <p>1 in line five hours to vote. I'm gonna repeat                  2 that. I waited in line five hours to vote. I                  3 arrived at the polls with my daughter at 5:00                  4 p.m. It wasn't until 10:00 p.m. that I was able                  5 to cast my vote. It took me five hours to                  6 exercise my Constitutional right to vote.                  7 The main problem the way I saw it                  8 was an insufficient number of voting booths.                  9 There were only eight booths available to those                  10 of us in House District 71 which has about 2,500                  11 registered voters at Stoneview precinct. There                  12 were eight booths set up on one side of the room                  13 for District 71 and then there were eight booths                  14 on the other side of the room for District 75,                  15 because Stoneview is a split precinct.                  16 House District 75 only has about                  17 1,000 registered voters, but they had the same                  18 number of booths that we had. District 71 had                  19 about five times as many voters to show up as                  20 the other district. Four of the booths for                  21 District 75 were continually vacant.                  22 Voters repeatedly asked the precinct                  23 clerks if we could use the vacant booths, but we                  24 were told no. It took me two hours just to make                  25 my way to the table to show the clerk my I.D.</p> <p style="text-align: right;">Page 28</p> <p>1 When she determined I was in District 71, she                  2 sent me to the next line to vote which meant                  3 going back outside the building in the other                  4 line and it started raining on us because the                  5 lines were -- The voting booths were on this                  6 side of the room. The line to vote was coming                  7 down the middle across the stage here back down                  8 the hallway down one side of the hall and then                  9 back up the other side of the hall and out the                  10 door and wrapping around the building a couple                  11 of times.                  12 After voters in District 75 showed                  13 their I.D. they proceeded immediately to the                  14 voting booths where they were able to vote                  15 before people in District 71 who had arrived two                  16 hours before they did.                  17 Now, that is more than                  18 disenfranchised. That is abuse. I think it is                  19 an understatement for me to say that I was not                  20 provided the same equitable opportunity to                  21 exercise my right to vote as other Georgians.                  22 When right here in my own precinct I waited                  23 three hours longer than those individuals in                  24 District 75.                  25 My friends in Gwinnett County spent</p>
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1 all of 15 minutes to vote. Now, over the past  
 2 29 years I have voted in five different states,  
 3 but I have only waited in long lines here in  
 4 Georgia.  
 5 I ask everyone present here today  
 6 please do everything in your power to improve  
 7 the election system. The value of my vote  
 8 should not be dependent on the county I live in.  
 9 I thank you for your time today.  
 10 MR. SLAYTON: Ms. Lane, can I ask  
 11 you a couple of questions?  
 12 MS. LANE: Yes.  
 13 MR. SLAYTON: Thank you for your  
 14 testimony. You did an excellent job of  
 15 characterizing your experience on election day.  
 16 But let me have a conversation with you about  
 17 just one part of that experience.  
 18 It took you a couple of hours just  
 19 to get in and show your I.D. and then they sent  
 20 you, as you stated, back out. You got here at  
 21 5:00 o'clock and so it was around 7:00 o'clock  
 22 when you were sent back out of the building to  
 23 get into the District 71 line?  
 24 MS. LANE: That's correct. About  
 25 8:00 o'clock I was still in line. I could see

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1 it was gonna take me over a couple of hours, so  
 2 that's when I called the NAACP. And if they  
 3 hadn't have come over, then we wouldn't have the  
 4 extra booths. It was after 10:00 o'clock that  
 5 the Board of Elections brought additional booths  
 6 in. But that should have been done at 10:00  
 7 a.m. not 10:00 p.m.  
 8 And the folks outside were not  
 9 campaign workers. They were voters trying to  
 10 get in here to vote because I was out there with  
 11 my daughter.  
 12 MR. SLAYTON: Were you one of the  
 13 ones that got locked out of the building when  
 14 the doors got closed?  
 15 MS. LANE: No. I was out there at  
 16 10:30 when Channel 11 came and everything. But  
 17 I saw the guy. He was in here earlier and went  
 18 out to check on his son. You know, I guess he  
 19 left him out there because he didn't expect it  
 20 to take this long. But he was in here earlier  
 21 and he was locked out.  
 22 MR. SLAYTON: Thank you very much.  
 23 MR. BROWER: Excuse me. Ms. Lane, I  
 24 have a question. I want to make sure I  
 25 understand.

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1 You were sent back outside to get  
 2 into the line for District 71?  
 3 MS. LANE: 71. We had two lines.  
 4 There was one line for everyone coming in the  
 5 building. It was extended outside and then it  
 6 was wrapped around the other side of the  
 7 hallway, you know, the two hallways here. So  
 8 the first line coming in it was wrapped all  
 9 around both sides of the hallway and then it  
 10 came in to the tables here and you showed your  
 11 I.D.  
 12 If you were in District 71, then  
 13 that line to vote -- Our booths were over here.  
 14 So that line -- it was extended all the way  
 15 across the stage back out down this side of the  
 16 hallway and then back out the door. So I had to  
 17 go back outside. The people in District 75  
 18 after they came in and showed their I.D., they  
 19 immediately proceeded to the booths. Now, all  
 20 these other people had been here a couple hours  
 21 before them.  
 22 MR. BROWER: Thank you.  
 23 MR. EVANS: Next person.  
 24 If you want to speak, please fill  
 25 out the release and have it ready so when your

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1 time comes you can just pass it in and be sworn  
 2 in.  
 3 Print your name up under your  
 4 signature.  
 5 MS. DEIDRA JOHNSON,  
 6 Being first duly sworn, testified as follows:  
 7 MS. DEIDRA JOHNSON: My name is  
 8 Deidra Johnson, spelled, D-e-i-d-r-a. And I am  
 9 here to share with you my experience as a poll  
 10 worker at Stone Ridge Elementary School.  
 11 We had on record 2300 registered  
 12 voters on the books and we had 15 --  
 13 approximately 1550 that actually voted at that  
 14 precinct to date. This is a split poll and we  
 15 had district 80 and 045.  
 16 For District 80 there were eight  
 17 booths. And before noon one malfunctioned. So  
 18 we only had seven booths for that day. And  
 19 District 045 there were only four booths  
 20 available for the voters and one was a handicap  
 21 booth. And also in the area where a lot of  
 22 people that were -- like, stood in lines and  
 23 then they come in and find out that they're not  
 24 on the list then have to go somewhere else to  
 25 register, I was -- I felt, I guess, inferior or

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1 whatever, not good because at the end of the day  
 2 I was proposed to challenge with a challenge  
 3 ballot and I really had no knowledge or training  
 4 in that area.  
 5 And also my co-workers I felt like  
 6 it should have been -- should have had more of a  
 7 customer service type attitude or personality,  
 8 because there were some instances where the  
 9 voters got upset and frustrated and instead of  
 10 them coming in to diffuse it, then things  
 11 escalated but it didn't get out of control or  
 12 anything like that.  
 13 So that was my experience.  
 14 MR. SLAYTON: Before you leave, let  
 15 me ask you two questions.  
 16 You were a poll worker at which  
 17 precinct? You were a poll worker at which  
 18 precinct?  
 19 MS. JOHNSON: Stone Ridge  
 20 Elementary.  
 21 MR. SLAYTON: Stone Ridge?  
 22 THE WITNESS: Yes.  
 23 MR. SLAYTON: And District 80 is the  
 24 one that had eight booths, one broke down?  
 25 MS. JOHNSON: Right.

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1 MR. SLAYTON: And what was the other  
 2 district that had four booths?  
 3 MS. JOHNSON: 45.  
 4 MR. SLAYTON: 45 -- District 45?  
 5 MS. JOHNSON: Right.  
 6 MR. SLAYTON: So it was a split  
 7 precinct as well?  
 8 MS. JOHNSON: Exactly.  
 9 MR. SLAYTON: Was it school based?  
 10 Was it in one of our high schools or elementary  
 11 schools?  
 12 MS. JOHNSON: Elementary school.  
 13 MR. SLAYTON: Elementary. Okay.  
 14 Thank you.  
 15 MS. SANDRA HOLLY,  
 16 Being first duly sworn, testified as follows:  
 17 MS. SANDRA HOLLY: Good morning. My  
 18 name is Sandra Holly and I vote in Gresham  
 19 Elementary School precinct, and I, too,  
 20 experienced a lot of -- I guess it was a time  
 21 thing. I, too, experienced where you go in one  
 22 line for about an hour and you check your I.D.,  
 23 then you go to another line for about an hour to  
 24 get a ballot, then you go to the line where you  
 25 vote. So we had three lines actually that we

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1 had to go into at Gresham.  
 2 I got there at 7:00 o'clock in the  
 3 morning. It took probably about three hours  
 4 until about 10:00 o'clock. And having voted in  
 5 other areas -- I see we are doing a lot to try  
 6 to take care of this. But then we go to other  
 7 areas, you can go to the voting booth and you  
 8 click, click, click, push vote, the curtains go  
 9 behind you, you come out and you're done.  
 10 So I was really amazed about the  
 11 voting system that we have here in south Georgia  
 12 as well and I hope that the State Secretary  
 13 Cathy and the DeKalb County office work towards  
 14 improving our equipment that we have here in the  
 15 Georgia area.  
 16 MR. SLAYTON: Again, I'm sorry.  
 17 Maybe I'm just not paying attention here. But  
 18 your name again?  
 19 MS. HOLLY: Sandra Holly.  
 20 MR. SLAYTON: Sandra Holly?  
 21 MS. HOLLY: Correct. And I vote in  
 22 Gresham. Well, Gresham Elementary. I think it  
 23 is Precinct 71. I don't know.  
 24 MR. SLAYTON: You voted under the  
 25 Gresham --

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1 MS. HOLLY: -- Elementary School.  
 2 MR. SLAYTON: And you said that  
 3 there were three lines. One was an I.D. line --  
 4 MS. HOLLY: One was the I.D. line,  
 5 you go in and get your I.D. checked to make sure  
 6 -- one was the I.D. line. You go and get your  
 7 I.D. checked and then on the little, like, piece  
 8 of paper, then you have to go in another line  
 9 where you get a ballot that you have to have and  
 10 then they had another line that we had to go  
 11 into to actually punch the ballot.  
 12 And at one point our lines were so  
 13 long that some of them were going out of the  
 14 doors. And I guess there's a rule that you  
 15 can't take the ballot that you have in your hand  
 16 outside the doors. So our pollster had to take  
 17 that line and he had us going in, like, three  
 18 different lines so that the people with ballots  
 19 wouldn't go outside that door because at one  
 20 point people with ballots were going outside the  
 21 door.  
 22 MR. SLAYTON: Thank you.  
 23 MR. EVANS: Who is next? For those  
 24 who want to speak, you have to fill out a  
 25 consent form. They are passing them out to



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1 those who want to speak.  
 2 JOHN W. SAWYER,  
 3 Being first duly sworn, testified as follows:  
 4 MR. JOHN W. SAWYER: I thought it  
 5 might be useful to you to have a little bit of  
 6 baseline for what I see as some of the problems,  
 7 even in districts where people would think that  
 8 things ran fairly well.  
 9 Now, I vote in Lake Ridge High  
 10 School, which I think is a predominantly  
 11 Republican district. And even at about 2:00  
 12 o'clock in the afternoon, which is a time which  
 13 you would think things should just move right on  
 14 through, it took me approximately 50 minutes to  
 15 vote. That included starting up in a line where  
 16 they handed you the preliminary little form to  
 17 sign out, but the table was up at the front of  
 18 the line, no table at the back of the line. So  
 19 people were trying to understand do I stop here,  
 20 where do I go next or do I take it in the back  
 21 and write it on somebody's back or something  
 22 like that.  
 23 Then, of course, the thing that  
 24 amazed me. I've voted in every presidential  
 25 election since '72 in four different states and

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1 this is the only state I've ever been in where  
 2 you have to go through five tables just to get  
 3 to a voting machine. For the life of me, I  
 4 don't understand it.  
 5 I voted in, believe it or not, Texas  
 6 which does it a lot better, Maryland and North  
 7 Carolina and I've never run into these kind of  
 8 problems.  
 9 Now, I wanted to testify to one  
 10 other thing which wasn't this election, but I  
 11 think it's relevant.  
 12 And I am gonna have to apologize. I  
 13 believe it was the last election I voted in  
 14 prior to this one. But I believe it was the  
 15 run-off in the primary.  
 16 And what happened, I did one stupid  
 17 little thing. And I realized how easy it will  
 18 be to cause catastrophe at the wrong time  
 19 because this was a low-volume election.  
 20 You know, they have these votermatic  
 21 style cards and they hand be the ballot and for  
 22 some reason for the life of me I don't know why,  
 23 my first reaction was to tear it into. Now,  
 24 after I tore it into, I thought, now what.  
 25 Well, I will go ahead and put it in the machine

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1 and voted and if they don't like it that way, I  
 2 can always ask for another ballot.  
 3 So I stuck it in the machine and the  
 4 instant I stuck it in the machine I thought,  
 5 good God, with the thing torn off the top  
 6 there's no way to pull it out of here. So I  
 7 went ahead and punched it and thought, all  
 8 right. No big. I'll go ask the poll people to  
 9 help me get it out.  
 10 Well, they said with the older style  
 11 of that setup, you could unscrew a screw in the  
 12 back and pull that thing out. But they couldn't  
 13 figure out any way to pull that ballot out. So  
 14 the whole booth had to be taken down.  
 15 Now, you could imagine if one person  
 16 did that in the election -- in a presidential  
 17 election all, you know, somebody would have to  
 18 do even if they wanted to do it intentionally is  
 19 stick that thing in there that way and they have  
 20 taken a booth down and what can anybody do about  
 21 it, you know, with all the volume problems you  
 22 had now you've lost a booth. I mean, the system  
 23 is just ridiculously antiquated.  
 24 And I guess my feeling is that when  
 25 any group of people who share your feelings

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1 about a particular candidate especially  
 2 nationwide, can't get in, can't get to vote, we  
 3 are all disenfranchised.  
 4 And right now I've had it. So --  
 5 MR. SLAYTON: And your name again,  
 6 sir?  
 7 MR. SAWYER: My name is John Sawyer  
 8 and as I said, Lake Ridge High School, a  
 9 district on Briarcliff Road.  
 10 MR. EVANS: Next speaker.  
 11 MS. ZEPORA W. ROBERTS,  
 12 Being first duly sworn, testified as follows:  
 13 MS. ZEPORA W. ROBERTS: Good  
 14 morning. My name is Zepora W. Roberts. I am  
 15 first vice president of the DeKalb NAACP. And  
 16 as part of the get-out-the-vote effort, I  
 17 started receiving phone calls at the NAACP  
 18 office on Monday, November the 6th.  
 19 One of the first calls and  
 20 complaints that came in, we received two on that  
 21 day, were from voters that had registered at the  
 22 State Patrol office or, well, at the Kroger  
 23 centers at the -- for the State Patrol which  
 24 said that their -- they could not find their  
 25 cards or nothing.

<p style="text-align: right;">Page 41</p> <p>1 So I started -- after the second  2 call, I started jotting these calls down. And  3 then that Monday night as I was watching  4 television I says, well, on one of the major  5 news channels and apparently that was a big  6 problem, because it was on the news that night,  7 and I don't remember or recall which one, that  8 the same thing had happened and had occurred  9 with a lot of applications being lost from  10 voting when they went to get their driver's  11 license.  12 Then on Tuesday, bright and early we  13 started receiving several calls from, I remember  14 specifically, Flat Shoals Elementary School  15 where the people were complaining about long  16 lines, long waits. And when I received the  17 second call from there, I spoke to our  18 president, Mr. Evans, and told him, I said,  19 John, we have this -- a reoccurring problem. I  20 think we need to go over there.  21 So he immediately got up and drove  22 over there to find out to see what the problem  23 was at Flat Shoals Elementary.  24 And all these calls I knew that it  25 was important that I just started documenting.</p>	<p style="text-align: right;">Page 43</p> <p>1 people. She said, no, I can assure you it's not  2 that many people in that line. It's only about  3 50 to 100. I says, okay. And so I accepted  4 that, you know, thinking that she was on top of  5 it.  6 When I closed up the NAACP office  7 that night about 9:15, I left there and went  8 around to Congresswoman Cynthia McKinney's  9 office. And when I got there I guess about 9:20  10 and, you know, meeting and greeting people and  11 then I saw people, heard people talking about  12 the problem at Stoneview. And it struck a nerve  13 -- a chord with me because I knew that there had  14 been one earlier. And some of the people were  15 saying they were going over there. So I says,  16 well, I am gonna jump in the car and go with  17 them because I know we had received this call  18 earlier.  19 So we left, you know, Congresswoman  20 McKinney's office about -- it was about 9:40,  21 9:45 and we drove over here. And sure enough  22 when I walked through that door, I know that I  23 saw about 500 people in line and people were  24 very upset; people were talking about leaving  25 because they had been waiting for so long, four</p>
<p style="text-align: right;">Page 42</p> <p>1 So the calls were coming in so fast for rides to  2 the polls and the basic things that I was trying  3 to get was the problem, the name of the person,  4 telephone number and the precinct. And it just  5 went on like that, you know, all day with us  6 receiving those phone calls.  7 We received one from a lady here in  8 Stoneview. I received one about -- I can't  9 remember the time or anything but I know she was  10 saying -- if my memory serves me right, it was  11 about 10 minutes after 7:00. And she said that  12 we needed somebody to come over here to  13 Stoneview. And she said there's about 1 to  14 2,000 people in line and said that we're having  15 problems voting. There is no air in the  16 building and we only have four booths.  17 So I tried to get her name. She was  18 calling from a cell phone. And whatever the  19 time frame was, that's when I called Ms. Linda  20 Latimore and told her about the problem here at  21 Stoneview. She informed me that she was aware  22 of the problem, that she had dispatched one of  23 her people here.  24 And she said that -- I says, well,  25 what about the lady said that there's 1 to 2,000</p>	<p style="text-align: right;">Page 44</p> <p>1 to five hours in line.  2 And then when I walked in here,  3 there were children all over the floor, running  4 around, there were people lined up, sitting all  5 up here, headed all around here, only had one  6 table back here in this area with only one voter  7 registration book.  8 And at the time that I came in here,  9 it was only one person sitting at that table,  10 but later on when -- I saw two people sitting  11 there. So that was a hold-up. And I only saw a  12 few booths over here, saw booths over here but  13 nobody was using these. And I mean, people were  14 just -- they had a right to be upset.  15 And then I saw, you know, everybody  16 just running around. No one in control and I  17 was looking for the poll manager. And I really  18 never saw the poll manager here at this site  19 until about an hour later. But I did see the  20 assistant manager because she was at the door  21 out here.  22 And when people were talking about  23 leaving, I don't know what happened, but we knew  24 that we didn't want this to happen. So somebody  25 or I joined in and we started to chant, you</p>

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1 know, saying, we want to vote. We want to vote.  
 2 I don't know who started it, but I sure joined  
 3 in to help. That was to kind of boost them and  
 4 give them some support because we felt, you  
 5 know, from way back when this is what people  
 6 want you to do. They don't want us to vote as  
 7 black people even here in America today.  
 8 And Congresswoman McKinney, I will  
 9 tell you what I am really upset about. We being  
 10 black folks or African-Americans are the only  
 11 group of people who is not recognized as a U.S.  
 12 citizen because we have to go every 25 years to  
 13 have the Voting Rights Act, you know, renewed.  
 14 Now, you tell me just when and how  
 15 long are we gonna have to be here? I was born  
 16 and reared in this country. People can come  
 17 over from everywhere and they can come in and  
 18 get their rights, you know, enacted and  
 19 restored. They don't have to come before the  
 20 Congress and the U.S. Justice Department to have  
 21 that renewed. They get their votes -- their  
 22 right to vote. They get it and they don't have  
 23 to worry about it again.  
 24 But here it is in the year 2000 we  
 25 as black people still have to come every 25

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1 years to get it.  
 2 Now, am I not a citizen? What is  
 3 it? What is it? What is it about me that they  
 4 don't want me to vote? And what is it that I  
 5 have to prove every 25 years that I am worthy?  
 6 And I can give Bill Clinton credit  
 7 for doing a lot of things, but he didn't address  
 8 this issue. And I want to see George W. if he  
 9 is a compassionate conservative and he wants to  
 10 be inclusive of all people, then take this  
 11 message back to him and tell him to do the right  
 12 thing. Show me what he is gonna do. Give me my  
 13 rights. Remove that because we are citizens of  
 14 the U.S. and we should not have to go through  
 15 this.  
 16 But getting back, I guess Stoneview  
 17 this was what one of the -- Oh, and earlier one  
 18 of our members of the executive board, Karen  
 19 Fitzpatrick, had called me about this particular  
 20 location. And she was here where the poll  
 21 managers and people were -- No, it was not this  
 22 location. It was Pine Ridge. That's where she  
 23 was. She called because the poll manager and  
 24 the poll workers were not sensitive to anyone  
 25 that was voting, trying to get people -- and the

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1 biggest problem everybody's coming in with their  
 2 I.D., voter registration cards in hand, going up  
 3 to there and some of them been voting at this  
 4 place all this time, but when they get up to the  
 5 vote to have their names verified, nothing on  
 6 the book.  
 7 I then when Karen called me and she  
 8 said, Zepora, you have got to do something  
 9 because people are leaving.  
 10 So I sent -- I called Linda Latimore  
 11 again. And that was the other thing. On that  
 12 day, there was one number for DeKalb County  
 13 voter registration. I had started calling that  
 14 number again on Monday, November 6th. I was  
 15 never, never able to get through to that one  
 16 number. Then when I was taking people -- I took  
 17 some people to the polls at Columbia Elementary.  
 18 They had a problem over there that morning.  
 19 So I asked Ms. Copeland I says,  
 20 well, when you have a problem, what number do  
 21 you call to get through. She gave me the same  
 22 number and it escapes me. I should never forget  
 23 it. They only -- They had to call the same  
 24 number. Been calling for days to try to get  
 25 through to the voter registration office,

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1 couldn't get through.  
 2 So when you got a problem, what are  
 3 they gonna do. Nothing. You have to get it  
 4 resolved. And I just thank God that we at the  
 5 NAACP were there to try to help do whatever we  
 6 could.  
 7 So, you know, those were some of the  
 8 major problems. I'm trying my best to remember  
 9 everything because as I understand some of you  
 10 are here from the Justice Department and I know  
 11 what my congresswoman is doing.  
 12 So we just need you to hear, you  
 13 know, in addition to what has been articulated  
 14 to her. But this whole system needs to be and  
 15 it must be revamped and reorganized. And we are  
 16 gonna do everything that we can to make sure  
 17 that people are registered to vote and that  
 18 there is voting education as well as the  
 19 registration. And once we get that done, we are  
 20 gonna get you to the polls to vote.  
 21 And after going to Tallahassee for  
 22 the past two weeks, I can assure you we are  
 23 highly charged. And this -- this part of  
 24 history will never repeat itself again. We are  
 25 gonna make sure of that. We have a right and we

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1 have a need to do that.  
 2 So anybody have any questions to  
 3 help me, John, remember, refresh all the things  
 4 we went through?  
 5 MR. EVANS: You can always come back  
 6 if you remember some things.  
 7 MR. SLAYTON: I do have a question I  
 8 would like to ask.  
 9 Ms. Roberts, thank you. That was  
 10 real good in terms of trying to recall all of  
 11 that. There are three areas here. In  
 12 retrospect, not so much that day but even the  
 13 experience you have had since then with  
 14 understanding more about the people who  
 15 registered at the DMV and showing up to the  
 16 polls, not maybe even having an I.D. cards and  
 17 not able to vote or not having I.D. cards -- I  
 18 mean, not having voter precinct cards before you  
 19 get there. Would you characterize that as a lot  
 20 or a few or not so many in terms of experience  
 21 here in DeKalb County and calls you all got at  
 22 the NAACP?  
 23 MS. ROBERTS: Mr. Slayton, it was a  
 24 lot. And you know had Georgia -- we been in the  
 25 same situation as Florida, we would still be

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1 fighting today.  
 2 And I am glad you asked me that  
 3 question because I was able to -- once I was  
 4 finally able to get through, I know how I got  
 5 through to Ms. Latimore. I dispatched Angela  
 6 Patrick from our office to go over to her  
 7 office. And Angela called me back with her --  
 8 Ms. Latimore's pager number and a different  
 9 number, so I paged her.  
 10 And in -- I found out that the  
 11 people at Pine Ridge who had their I.D. but was  
 12 not on the books, Ms. Latimore was able to look  
 13 it up. They were in the computer and this is  
 14 what the poll managers and things were not  
 15 allowed to get through to find out. So all of  
 16 these people were turned away.  
 17 I had a young lady to call me from  
 18 -- that worked at Delta Airlines at the airport  
 19 had been in line in her voting precinct was  
 20 right there on Memorial Drive at the  
 21 Presbyterian Church. She was incensed because  
 22 she had been voting at that location and she got  
 23 up there and they told her the same thing and  
 24 she called the NAACP to complain. So I told her  
 25 to get off work and go back.

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1 And the other thing, a lot of people  
 2 that waited in line they found out that after  
 3 waiting for a long period of time this was not  
 4 even the poll and the site they were supposed to  
 5 be voting on. And in some instances, we had a  
 6 lot of that and in some instances once they got  
 7 finally told that this is not where you are  
 8 supposed to vote, well, the polls would have  
 9 been closed by the time they reached the other  
 10 destination.  
 11 So you can't tell me that some of  
 12 this stuff was not done by design. I believe  
 13 that it was. I just can't really prove it but  
 14 the proof is in the pudding because our people  
 15 were denied the right to vote in vast numbers.  
 16 MR. SLAYTON: Would you say that is  
 17 also true for the people that you got calls who  
 18 registered at Kroger?  
 19 MS. ROBERTS: Oh, yes. Most  
 20 definitely.  
 21 MR. SLAYTON: One other question,  
 22 Ms. Zepora. I'm sorry.  
 23 On the night that you visited this  
 24 school -- this precinct in this school where we  
 25 are this morning and you characterized what you

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1 encountered when you first arrived outside and  
 2 then when you came in, about what time was it  
 3 when you came to Stoneview?  
 4 MS. ROBERTS: When I got to  
 5 Stoneview, it was right around 10:00 or about 10  
 6 minutes after 10:00. It just took us to drive  
 7 from Congresswoman's McKinney's office to here.  
 8 It was I know three or four car loads of us, you  
 9 know, that came and it was about that time.  
 10 And then later on while -- when I  
 11 was here, I finally saw -- I saw Sam Tillman  
 12 come in. And I know him because -- you know,  
 13 from the Elections Board. And he came in and  
 14 started trying to restore some kind of order by  
 15 getting people to line up here and, you know,  
 16 get them moving chairs and things and putting  
 17 them over here for people to sit that had been  
 18 here. People were running around everywhere.  
 19 And there were three Republicans  
 20 here. I remember Jill Chambers and I don't know  
 21 the other two ladies' name, but they didn't help  
 22 things. Because there was one Jamaican lady  
 23 that was with us. She was so incensed about  
 24 what was going on and she was voicing her  
 25 opinion loudly. And one of these Republicans

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1 instead of her leaving the woman alone and  
 2 letting her fizzle out on her own, she was  
 3 prompting, asking questions, making comments to  
 4 fuel and instigated words. But by that time I  
 5 am still standing over here observing  
 6 everything.  
 7 But when Sam came in, he kind of got  
 8 some order. And then people kind of -- I think  
 9 with all of us being here and they did see two  
 10 ladies who had on NAACP shirts and hats and they  
 11 felt better when they said, well, the NAACP is  
 12 in the house. And we feel better and we know  
 13 something is going to be done now.  
 14 The only thing they wanted to do was  
 15 to vote and they just wanted some help for being  
 16 able to vote. Then later on I saw you come in  
 17 and I saw some people bring --  
 18 MR. SLAYTON: For the record, who is  
 19 you?  
 20 MS. ROBERTS: Mr. Terrell Slayton.  
 21 And you came in with a little bull horn and you  
 22 were heard. And that helped to calm the people  
 23 down further.  
 24 And then we saw -- I saw about three  
 25 or four additional voting polls being brought

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1 in. It looked like this one must have been out  
 2 of order right here, because that's where I  
 3 stood and never saw but one person vote on it  
 4 the whole time I was here.  
 5 So I don't know. I couldn't  
 6 understand that. But that's just about it.  
 7 MR. SLAYTON: Thank you.  
 8 MR. EVANS: Thank you. Next  
 9 speaker.  
 10 MS. DORETHA McGLORY,  
 11 Being first duly sworn, testified as follows:  
 12 MS. DORETHA McGLORY: I voted at  
 13 this precinct -- Pardon me. Doretha McGlory.  
 14 This is my polling place.  
 15 I arrived here at 5:00 o'clock that  
 16 evening to vote. I had come that morning, but I  
 17 was running late for work so I decided to come  
 18 back afterwards. I looked at my watch purposely  
 19 to see how long it was going to take me to vote.  
 20 I got here at 5:00. And I am the  
 21 young lady that called you on the cell phone  
 22 because it was a problem here. I also was  
 23 concerned that DeKalb County Police wasn't here.  
 24 There had been an accident down at the foot of  
 25 the hill and it was just a lot of confusion.

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1 When I came in, I told the assistant  
 2 manager or whatever that they needed to contact  
 3 the authorities because there is a problem  
 4 outside. Anyway, upon getting in line, you  
 5 know, it quickly filled up behind me. People  
 6 apparently had gone and picked up their children  
 7 straight from work and came because there were a  
 8 lot of children here. I must say the kids for  
 9 the most part were very well mannered because it  
 10 was a long wait and it was hot in here.  
 11 I came out of the polling place at  
 12 9:30. So I stood in line four and-a-half hours  
 13 to vote. I was number 1,109 because they will  
 14 write the number on the little ballot. And that  
 15 is, I guess, given if there is any mistake. But  
 16 generally I was the 1100th person to come  
 17 through here. And I know behind me there had to  
 18 be at least 4 or 500 people because the line  
 19 was, like, out the door and, you know, that kind  
 20 of thing.  
 21 And I do recall Congressman  
 22 McKinney, your father, coming in and there was  
 23 just pandemonium. I mean, you know, people were  
 24 clapping because we had -- we had been sitting  
 25 all on the stage and I said this is ridiculous.

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1 I have never had to wait this long to vote. But  
 2 I had it in my mind set that I didn't care how  
 3 long it was. I was gonna stand right there and  
 4 I was going to vote.  
 5 So it didn't seem like the people  
 6 that were in charge -- no disrespect meant to  
 7 them. They had no control over the situation.  
 8 Better yet as one lady said behind me, just  
 9 didn't give a about the situation. I raised it  
 10 to the assistant manager. She was all in a huff  
 11 and that kind of thing. I said, well, why don't  
 12 you call for re-enforcements. I said, why don't  
 13 you try and get someone over here to, you know,  
 14 to get some of these people out of the line.  
 15 Get some more polling places.  
 16 And apparently two precincts vote in  
 17 this school here. Apparently this particular  
 18 precinct only has like I think 300 voters. So  
 19 if you were from that precinct, you were able to  
 20 go right in, sign, to right out the door.  
 21 So we were saying, well, why can't  
 22 we use those and they went on to explain that  
 23 the way they are set up, there are different  
 24 house seats and things like that so you can't  
 25 use those particular ones. So we stood.

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1 People on the most part I really  
 2 felt really thought that something was afoot  
 3 because it didn't make sense. It shouldn't take  
 4 you four and-a-half hours to vote. It really  
 5 shouldn't.  
 6 Like I said, I was concerned that  
 7 they were gonna be questioning you if you were  
 8 the correct voter. That's why I brought  
 9 everything, my birth certificate, my Social  
 10 Security card because I didn't want to hear them  
 11 tell me, well, you are not on the poll. No.  
 12 You are gonna let me vote. I am not gonna move.  
 13 And a few people behind me, they did have that  
 14 problem. They had voted. Had gotten -- said,  
 15 well, you are not on the list. I said, well, I  
 16 was told that you can do a challenge. The lady  
 17 said you are not supposed to give advice. I  
 18 said, well, I'm just telling her what I heard  
 19 that if you were challenged at the poll, they  
 20 still have to allow you to vote. You just swear  
 21 that you are the person and you should be  
 22 allowed to vote.  
 23 So I am glad that I was called to  
 24 come here today to speak to the issue in this  
 25 situation. For one thing this school is not

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1 adequate to serve this particular precinct.  
 2 It's not. There is only one way in and one way  
 3 out; cars just jammed up; you can't get out. It  
 4 was just total chaos.  
 5 And I think that more training --  
 6 definitely more training should be done with the  
 7 people who are the managers or overseeing the  
 8 particular precincts because they were totally  
 9 unprepared and just did not know the way to  
 10 coordinate to get more order to the situation.  
 11 So as I said, I am thankful for  
 12 being invited here today to have my say because  
 13 it does help to vent.  
 14 So I don't know if anyone has any  
 15 questions for me.  
 16 MR. BROWER: Ma'am, what would you  
 17 characterize as a major problem or impediment to  
 18 you being able to cast your vote in a timely  
 19 manner?  
 20 MS. MCGLODY: I would say that it  
 21 was the lack of voting booths and, as I said, I  
 22 think the people who were placed in charge of  
 23 this -- when they saw that the situation was  
 24 getting out of hand -- when I got here at 5:00,

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1 been dispatched then. It shouldn't have taken  
 2 for Congresswoman McKinney and her dad and all  
 3 of them to come here. It just seemed like they  
 4 just sat and just waited for things to just go  
 5 crazy.  
 6 It's just like if you see somebody  
 7 heading towards the bridge and gonna fall off,  
 8 would you just stand there and wait until they  
 9 fall off and then call for someone to help. You  
 10 would probably call before then.  
 11 So I just think it was bad judgment  
 12 on the parts of the individuals. I don't know  
 13 how people get those jobs or how they are placed  
 14 in those positions, but if they are gonna be put  
 15 there, I think they need more training. If they  
 16 see a situation occurring like once that line  
 17 got that long, you know, in your mind  
 18 logistically you cannot service that many people  
 19 because you only got "X" number of booths, then  
 20 at 3:00 or 4:00 o'clock. Because the lady said  
 21 the line had been standing here full like that  
 22 all day. You shouldn't wait or better yet they  
 23 never did call anybody.  
 24 It was only through the efforts of  
 25 say myself and other people calling to NAACP and

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1 Congressman McKinney's office to let them know  
 2 we have got a problem over here. We need for  
 3 someone to come and address the problem because  
 4 the managers and the polling people they didn't  
 5 seem to be concerned.  
 6 I guess they figured, well, you  
 7 know, it's not our fault. We are here to do our  
 8 job, but it is not our fault if it is not  
 9 logistically working in terms of getting the  
 10 people in and out. And they were frustrated,  
 11 too.  
 12 I think that they just kind of threw  
 13 these people into these positions and they do  
 14 not give them any training. You need training  
 15 to do that. Especially with something as  
 16 important as this.  
 17 As far as the balloting and stuff --  
 18 see, I am real neurotic, I guess, because I did  
 19 hold my ballot to make sure all my holes were  
 20 punched. Because I know that that can happen.  
 21 Because I am from Chicago first of all, so  
 22 people always make a big joke about me being  
 23 from there. But the point is that this is  
 24 important. This is very serious and you need to

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1 are doing. I said I'm trying to make sure all  
 2 of my holes are punched for the people that I  
 3 wanted to vote for.  
 4 So it was just a bad situation. I  
 5 am glad that nothing really serious happened in  
 6 the way of any kind of true altercation or  
 7 anyone getting physically hurt. But that  
 8 particular situation was very volatile and it  
 9 had the potential to do that.  
 10 But my people I am very proud of  
 11 them. Most of them did stay in the line and  
 12 they said they were not leaving until they could  
 13 vote.  
 14 Thank you.  
 15 MR. EVANS: Next speaker. Let me  
 16 make sure -- Hello. Let me make sure now. Did  
 17 everybody who had an opportunity to speak make  
 18 sure that your name and address and phone number  
 19 is on that sheet so that if there is any need  
 20 for future contact we can do that.  
 21 Next speaker.  
 22 TALMUL PARKER,  
 23 Being first duly sworn, testified as follows:  
 24 MR. TALMUL PARKER: I just wanted to  
 25 come up and say I did not vote here.

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1 MR. EVANS: What is your name?  
 2 MR. PARKER: My name is Talmul  
 3 Parker, Talmul, T-a-l-m-u-l, Parker. And I just  
 4 turned 18 in September of 2000. And this is my  
 5 first time voting and I must say it has been  
 6 exciting and I have enjoyed it. I have enjoyed  
 7 everything that has happened, but basically with  
 8 the presidential election I have been watching  
 9 CNN and covering it because I think that when I  
 10 read this letter, one thing stood out to me. It  
 11 said that it is evident that across America  
 12 every vote should count. And I voted at Flat  
 13 Shoals -- not Flat Shoals, at South DeKalb  
 14 Y.M.C.A. and I am just here with Ms. Capers.  
 15 The reason I am here up here standing is that I  
 16 am a young person and I am covering the election  
 17 and I do vote and I am gonna exercise my right  
 18 to vote and I just wanted to say on my behalf of  
 19 me and my friend here that every vote should  
 20 count.  
 21 I don't know what took place here.  
 22 I did come down here and participate in the  
 23 activities that was going on to get the people's  
 24 votes counted. I just wanted to assure that  
 25 this kind of thing wouldn't happen again.

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1 So I just wanted to come up and say  
 2 that I am in support of the people that are up  
 3 here complaining and exercising their complaints  
 4 to you all about the issues that took place on  
 5 November 7th. And I am in support of getting  
 6 whatever we need to do to make sure that this  
 7 does not happen again. That's basically all I  
 8 wanted to say.  
 9 MR. EVANS: Let me ask you one  
 10 question.  
 11 MR. PARKER: Yes.  
 12 MR. EVANS: At the polling place  
 13 where you voted, did you see anything that you  
 14 feel you need to share with us?  
 15 MR. PARKER: No. When I went to  
 16 vote, I didn't have any problems. I didn't have  
 17 to wait that long. I believe I voted for who I  
 18 voted for. I voted Democratic, but I hope I  
 19 voted but I don't know. But this was my  
 20 intention. But I didn't have any problems. I  
 21 wasn't turned away and nothing of that nature.  
 22 So I think everything went okay. I didn't see  
 23 anything that might have disturbed me.  
 24 MR. EVANS: Thank you so much.  
 25 Next speaker.

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1 Have ya'll filled out the sheets.  
 2 Anybody who wants to speak now, the sheets are  
 3 being passed around. You need to fill out the  
 4 sheet.  
 5 Is there anybody who wants to speak  
 6 that has the sheet filled out?  
 7 Well, we will give you an  
 8 opportunity to come back as soon as -- I think  
 9 these proceedings are very important and you  
 10 need to share with us those specifics that you  
 11 experienced and so that we can make sure we  
 12 profile all this information into something that  
 13 is meaningful.  
 14 Ms. Deidra Johnson, where is she?  
 15 Could you just come up and tell us  
 16 what precinct again you worked at and maybe what  
 17 your position was?  
 18 MS. JOHNSON: Deidra Johnson. I  
 19 wanted to clarify that. I actually worked at  
 20 Redan Elementary School as an assistant poll  
 21 manager. And the problems I was speaking in  
 22 terms of -- as far as the workers, I was  
 23 actually referring to the manager and the other  
 24 assistant manager that I worked with that day.  
 25 So can I add my -- I just have a

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1 couple other comments, specifics -- Can I go  
2 ahead?  
3 MR. EVANS: Go ahead.  
4 MS. JOHNSON: We had -- It was a  
5 young man that had registered through the Tom  
6 Joiner Morning Show. And I was -- he didn't  
7 have his voter registration card. And when he  
8 came, I tried to call the election office to  
9 verify that they had him on record so that he  
10 could vote. And it took about 45 minutes for me  
11 to actually get someone on the line. And once  
12 we were on the line, this was like before 7:00,  
13 before the polls closed but it was, like,  
14 actually until about 9:00 or 9:15 before I could  
15 -- they told me that they had no record of him  
16 and he couldn't vote. So he didn't get the  
17 opportunity to exercise his right to vote.  
18 Also the longest wait time that I  
19 heard someone say they were in line for like  
20 three and-a-half hours at that location.  
21 MR. EVANS: Thank you so much.  
22 All right are we ready? Next  
23 speaker.  
24 MS. OLIVIA JONES,  
25 Being first duly sworn, testified as follows:

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1 MS. OLIVIA JONES: My name is  
2 Olivia Jones and I am in the 55th Senate  
3 District with Senator Gloria Butler and I also  
4 vote at the Knollwood Elementary School. And I  
5 -- it did take about an hour or so for me to get  
6 in to vote, which usually it takes about maybe  
7 10 minutes.  
8 And there were several -- three or  
9 four tables that you had to stop at before you  
10 got to actually vote. There was one guy who  
11 evidently maybe he was having problems earlier  
12 because he told me to hold up my ballot to make  
13 sure that the holes were punched in my ballot  
14 and that something had occurred earlier where  
15 the holes were not being punched all the way  
16 through.  
17 So there were some problems -- that  
18 indicated to me that there was some problems,  
19 but my holes were punched because I made sure I  
20 punched them very hard. However, there was  
21 something that happened earlier and he did say  
22 that someone had a problem.  
23 The other thing I wanted to point  
24 out was that I was very, very proud to see the  
25 turnout from the African-American community,

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1 very proud of that effort. The get-out-to-vote  
2 was tremendous and we just kind of overwhelmed  
3 the system and that's what I am very proud of.  
4 Also very excited about what  
5 happened and very sad about it at the same time.  
6 Because I was excited during the whole process  
7 to find out all of the things that actually go  
8 on. The votes that are not being counted. The  
9 votes that are being thrown out. The votes I  
10 mean, I just thought that every vote counted.  
11 Maybe I was just very naive and just didn't  
12 know. But I really believed that every vote  
13 should count and I still do. And I didn't know  
14 that this was going on. And this has been going  
15 on all along. This is not just happening. It  
16 didn't just happened just because Bush and Gore  
17 is running for president.  
18 And it is just, you know, the  
19 hypocrisy of the whole thing. And then all of a  
20 sudden now it is out in the open and I'm very  
21 happy about that, that now people know exactly,  
22 you know, what's really going on. Our votes are  
23 not being counted.  
24 You know, so I am glad that it came  
25 out and everybody is aware of it now and that

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1 everybody is getting behind this thing to make  
2 sure that every vote count. People died for  
3 this.  
4 And then to piggyback on what Zepora  
5 said about this thing. Every 25 years that we  
6 have to renew our right to vote. I mean, that  
7 is absolutely -- I mean, what's up. I mean, we  
8 have people who are in these positions who know  
9 that this is going on. What are we doing about  
10 it? How long does it have to go on? I mean,  
11 you know, I am really upset about that part  
12 because I can't believe that in 2000 we have  
13 officials who know about this. I am still  
14 learning, but this is something that's not new  
15 and we are still having to renew our right to  
16 vote every 25 years. My God, I mean, it is so  
17 disrespectful. I don't like it. I don't like  
18 the fact that, you know, in our communities --  
19 Excuse me. I am a little bit upset still.  
20 But in our communities that we still  
21 are not having the right to vote. So you know,  
22 but I am glad we are all here and I think -- was  
23 there one other thing that I wanted to talk  
24 about.  
25 I think that pretty much covers it,



<p style="text-align: right;">Page 73</p> <p>1 resolving racial and ethnic conflict.                  2 We have been quite busy leading up                  3 to this election and that time between the vote                  4 and now down in Florida as you would guess.                  5 Most of my staff have been down in Florida. I                  6 have been down there three times myself because                  7 we were preoccupied in Florida. But that does                  8 not mean that Florida is the only place that the                  9 kinds of things were taken place.                  10 I have all kinds of complaints about                  11 people who were not able to vote when they                  12 arrived at one precinct. They told them they                  13 were supposed to be at another when that was the                  14 precinct at which they had been voting all of                  15 these years. That kind of thing. And there                  16 were so many machines down. I noted some myself                  17 and called to get some of them repaired or what                  18 have you.                  19 We were notably not enough workers                  20 at the polls to take care of the size of the                  21 vote that was there. I don't know how that                  22 could be because I think everybody who works                  23 publicly knew that that vote was coming out.                  24 You know, I don't know how any public person                  25 could not have known that that vote was coming</p> <p style="text-align: right;">Page 74</p> <p>1 out. And I go even further. I don't know how                  2 any public people in the black community that                  3 didn't know that the black vote was gonna come                  4 out. That was indicated two or three weeks                  5 before time and it did come out. And it                  6 disturbs all of us that oftentimes you didn't get                  7 a chance to vote.                  8 A whole bunch of young people over                  9 at the Clark Atlanta Youth or in the Atlanta                  10 youth system that came out to vote and couldn't                  11 vote. And one of the things that always bother                  12 me is that when those of you and those of all of                  13 us who work to encourage people to vote and then                  14 it turns out they cannot vote, that has to                  15 disturb you.                  16 The NAACP and many other                  17 organizations did a great job of encouraging                  18 people to vote and registering people to vote                  19 and many other organizations. And yet when                  20 those people showed up, for some reason or                  21 another, the opportunity to vote was not there.                  22 I am just saying that we, in this                  23 magnificent country, have to find a way to                  24 address that. The right to vote is premier.                  25 The right to vote and those of us</p>	<p style="text-align: right;">Page 75</p> <p>1 who was running around the country back in the                  2 '60s dodging and running and, yes, I do mean                  3 running and dodging.                  4 I was down in Louisiana and in                  5 Arkansas and East Texas running trying to get                  6 people the right to vote and then I was running                  7 around down there trying to make a determination                  8 of the need for federal registrars in North                  9 Louisiana where it was kind of dangerous in                  10 those days.                  11 I am glad I was young and I am glad,                  12 Brother Evans, I grew up in the country because                  13 in the country I learned how to run fast because                  14 I could catch rabbits in that sense and I                  15 learned how to survive sometime by making a                  16 quick exit.                  17 But that's neither here nor there.                  18 What I am trying to say to emphasize the                  19 importance of voting and it's been important to                  20 our struggle all the time and it is still                  21 important to our struggle. That's why we must                  22 work hard and successfully to see that that vote                  23 is protected and that the right to vote occurs                  24 when it comes time to vote. And that's all I                  25 came to say. And we in the Community Relations</p> <p style="text-align: right;">Page 76</p> <p>1 Service with the very small staff that we do                  2 have, we work unceasingly to try to assure that                  3 the rights of people are not trampled upon.                  4 I was talking to my staff down in                  5 Florida yesterday and there is still going to be                  6 a great deal of unrest across this country as a                  7 result of their right to vote and the things                  8 that have come up.                  9 So I say to those of you who are in                  10 authority, we will be working with you and call                  11 upon us to do anything you think that we can do                  12 and we will be ready to do that. Thank you very                  13 much.                  14 MS. MCKINNEY: Thank you, Mr.                  15 Sutton. I do appreciate the fact that you are                  16 here to hear the voices of our constituent. I                  17 know you have been working overtime. You have                  18 been very busy with the events down in Florida.                  19 But the fact of the matter is that Florida's                  20 isn't the only place where the right to vote has                  21 been jeopardized. So we appreciate the fact                  22 that you are here.                  23 I do want the record to reflect that                  24 we did place a call to the Department of Justice                  25 as well as I wrote a letter to the Justice</p>
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<p style="text-align: right;">Page 77</p> <p>1 Department. I wrote a letter to the president                  2 complaining about the conditions that were                  3 visited upon my constituents and I appreciate                  4 the fact that the president sent -- forwarded                  5 the information over to the Justice Department                  6 and the Justice Department sent an investigator                  7 down here to quarry people as to what their                  8 experiences were.                  9 I just am concerned and I would like                  10 the record to reflect that I am concerned that                  11 perhaps what we are seeing is a new type of                  12 minority voter suppression and that this then                  13 needs to be entered into your record as you                  14 return your comments back to the Justice                  15 Department. That the Voting Rights Act, while                  16 it may have at one time pertained only to poll                  17 taxes, literacy tests and the like, the                  18 perspective of the ways in which minority votes                  19 are suppressed has been broadened and so when a                  20 jurisdiction then fails to appropriate the kinds                  21 of funds to accommodate the kind of growth that                  22 we have seen in Dekalb County, then -- and the                  23 result is not on one occasion that the procedure                  24 was overwhelmed, but on two successive                  25 occasions. The 1996 presidential election</p> <p style="text-align: right;">Page 78</p> <p>1 should have been a training ground for people                  2 who oversee the elections process.                  3 But it was not because the year 2000                  4 was worse than the situation that occurred in                  5 1996. Failure to appropriate funds to                  6 accommodate new voters that results in the kind                  7 of abuse of the voting process for minorities to                  8 me is voter suppression and should be covered                  9 under the Voting Rights Act and could be and                  10 ought to be construed by the voting rights                  11 office of the Department of Justice as a form of                  12 minority voter suppression to be investigated                  13 and prevented.                  14 MR. OZELL SUTTON: I know that -- I                  15 know that knowing you and your concerns have                  16 been registered already. But I shall take them                  17 back again. And thank you very much.                  18 MR. EVANS: Thank you so much. Next                  19 speaker. While the next speaker is coming up,                  20 I'd like to recognize Ms. Mary Peeler, who is                  21 the southeast director of the National Voter                  22 Fund of the NAACP. Please raise your hand.                  23 Stand up.                  24 MS. WILLIE A. CAPERS:                  25 Being first duly affirmed, testified as follows:</p>	<p style="text-align: right;">Page 79</p> <p>1 MS. WILLIE A. CAPERS: I was hoping                  2 the brother would wait and hear me out before he                  3 left. He was questioning other people. I                  4 wanted to make sure he heard what I had to say.                  5 This is a sad day in Dekalb County                  6 this morning. It is truly a sad day.                  7 MR. EVANS: What is your name?                  8 MR. SLAYTON, JR.: What is your                  9 name?                  10 MS. WILLIE A. CAPERS: Alfreida                  11 Capers.                  12 It is a sad day because of the event                  13 that took place just last night with our sheriff                  14 elect and he himself did have some complaints                  15 about the voting process that took place.                  16 I want to commend our Congresswoman                  17 Cynthia McKinney. She did not lose the election                  18 and that's not the reason that she is here is                  19 because she lost and want to raise a little                  20 sand. She is here because she is truly                  21 concerned about our voting process and our                  22 voting rights in Dekalb County.                  23 I do know that Stoneview was not the                  24 only school and the only voting place that                  25 experienced a lot of traumas and mishap. People</p> <p style="text-align: right;">Page 80</p> <p>1 not allowed to vote because they were not on the                  2 polls and people not there to give them the                  3 information that they should have been given to                  4 tell them that they should challenge. That did                  5 not happen to a great deal of people on election                  6 day.                  7 And I think that in addition to                  8 improving the process, we need to add someone                  9 there that will speak for the people in the                  10 event that this should ever happen again. There                  11 was no one there in a lot of those voting polls                  12 to inform the person that you need to challenge.                  13 People turned away and left because they had no                  14 knowledge of what else to do except face that                  15 defeat.                  16 I want to commend and give honor to                  17 our congresswoman again for the letter that I                  18 received at my home last week about a week and a                  19 half or so ago informing me how -- of how she                  20 has informed the president and others of the                  21 situation that had taken place here.                  22 That letter was not negative towards                  23 any office or officer. It merely stated what                  24 needed to be done. She did not attack anyone                  25 and I want to thank you Congresswoman Cynthia</p>
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<p style="text-align: right;">Page 81</p> <p>1 McKinney for all that you do and all that you 2 will do. God bless you. 3 MR. SLAYTON, JR.: Ms. Capers, if 4 you would indulge me a minute. I heard 5 something that kind of excited me a little bit. 6 Sounds new. Say more about this notion of 7 having an advocate for the people at the polls. 8 You are not talking about another poll worker in 9 the context of which we find those now and you 10 are not talking about another poll watcher in 11 the context of which we find them now. 12 Talk to me a little bit about what 13 you see the role of this person you call an 14 advocate for the voter at each precinct. I'd 15 like to hear a little bit more about that? 16 MS. CAPERS: Okay. An advocate 17 would merely do what a new voter -- just like 18 Tamul. When Tamul walked in his very first 19 time, walking into a precinct to vote, was 20 anyone there to guide him through that process. 21 Was he guided through that process in high 22 school? No. 23 There needs to be an advocate there 24 that would guide a first-time voter through the 25 process so that they go -- and like he said, I</p> <p style="text-align: right;">Page 82</p> <p>1 don't know but I know what I intended to do. 2 That person would have someone who is objective 3 and has his interest at heart and helping him to 4 facilitate and carry out what he came in the 5 voting place to do. 6 The other thing that an advocate 7 would be able to do is that if a person came in 8 and they are at the wrong precinct, that person 9 should have access to information that would 10 guide the individual to the corrected precinct. 11 In addition, another role -- major 12 role that they will play is that if a person is 13 not on the roll, they should be given the 14 information that they may not know that they can 15 challenge and have them to actually go look in 16 the computer at the main office and say, well, 17 okay, he is on this -- he is registered here and 18 let him go ahead and vote. Let him go ahead and 19 vote and then his name come up after they get in 20 their challenge. Okay. We will see if he is 21 actually a registered voter. 22 And also a lot of people that 23 registered when they go get their driver's 24 license and so forth, they are not on the polls 25 because one of the workers that enrolled them --</p>	<p style="text-align: right;">Page 83</p> <p>1 that did the registration on-site missed 2 something. Those people need to be informed. 3 That may not be the -- a role of the 4 advocate but that should be something that an 5 advocate would check out to say, well, let me 6 see if you have any ballots -- any applications 7 here that have been thrown out for any reason. 8 Let's check these and contact these people and 9 let them know that there is a certain problem. 10 We need you to dot this "I" or cross this "T" 11 for us and then you are registered. 12 MR. EVANS: Thank you so much. Next 13 speaker. 14 MS. ROBERTS: Zepora W. Roberts. I 15 tried to make me a note this time of some 16 additional things that occurred on November 6th 17 and 7th. And we did receive calls at the NAACP 18 office about police blockades. And I 19 specifically remember when we had sent -- when I 20 had sent out two people to go and pick up this 21 lady in Ellenwood or somewhere around in that 22 area, Angela Patrick called me back and said 23 that they could not get to Flat Shoals 24 Elementary School because the police had blocked 25 off the whole area. Some fender bender. But</p> <p style="text-align: right;">Page 84</p> <p>1 the whole entire street was blocked off and 2 people were -- they could not get through no 3 kind of way to get to that poll. So by the time 4 they were able to get through at 1 or 2 minutes 5 after 7:00, it was too late for them to vote. 6 And I thought that was -- now I received two 7 phone calls about that. 8 Then when I keep reading and finding 9 out things, I found out that kind of thing was 10 occurring in Florida, too, and I am sure it was 11 not the only state that that was occurring. So 12 that needs to be looked at. 13 The other thing was -- and this 14 didn't make that much news. The next day on 15 November 8th at the NAACP office somebody had 16 called in and said there was a box of ballots 17 that was left at Columbia Elementary School that 18 had not been counted. But we didn't jump on 19 that. So I don't know about that, but that's 20 what we -- we did receive a call of that. 21 And I received several calls about 22 this particular instance. People that have 23 served time or committed a crime, I need to know 24 and it needs to be clarified what is the rule 25 here in Georgia or Dekalb County or throughout</p>
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Page 85	<p>1 the nation regarding that because they are being                  2 told that their rights are never, ever restored                  3 although you have served time, you have been                  4 pardoned. You can never, ever vote. That was                  5 one of the -- and this is one of the calls that                  6 I tried -- started on November 6th trying to                  7 call on behalf of a young man to find out just                  8 what it is in Dekalb County. But he said they                  9 are being told this when they go to jail. So                  10 that -- and it all occurs.</p> <p>11 When I was out putting out fliers                  12 for a candidate in my neighborhood there was a                  13 young man walking -- two as a matter of fact                  14 walking in the neighborhood and they told me                  15 that, well, they had been in not to serve, you                  16 know -- it is just for some local things here in                  17 Dekalb County and he said that they told me that                  18 they had been told the same thing.</p> <p>19 So I assured them that I am gonna                  20 start walking to try to find them to make sure                  21 -- to reassure them that they can register to                  22 vote. But now this is being told to especially                  23 black men every where. So that is a big                  24 problem.</p> <p>25 The other thing we received phone</p>	Page 87
Page 86	<p>1 calls about were the elderly and the handicapped                  2 people that were being made to stand -- well,                  3 not made. They were not allowed or told that                  4 you can come to the front of the line. They had                  5 to stand in these long lines for hours just like                  6 everyone else.</p> <p>7 Now if there is -- as I understand                  8 it that there is a rule or a policy, but these                  9 people have to know the policy to know that they                  10 can come up front. But seems to me that a good                  11 poll manager who is efficient and want to move                  12 their lines along would go and get these people,                  13 bring them to the front of the line to help                  14 speed the process and get them out of here.</p> <p>15 In other words, do the right thing.                  16 And we've heard that we need additional training                  17 and, yes, that is sorely needed. And because                  18 there are some strong holds of die heart racists                  19 working and manning these polls here in Dekalb                  20 County and I can give you a list -- well, one                  21 that I know that I have had problems with                  22 although I don't vote there at every election.</p> <p>23 I be carrying people to the polls                  24 and one is right there on Memorial Drive where                  25 these little old people are still manning the</p>	Page 88

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<p>1 the people that had been shut out for moving                  2 their cars because they were fearful that their                  3 cars were going to be, you know, towed away and                  4 this is why they were on the outside and then,                  5 you know, they weren't allowed to come back in                  6 and, you know, to cast their vote.                  7 So in other words, everything that                  8 happened on that day we should -- history just                  9 should not keep repeating itself where we are                  10 concerned.                  11 MR. EVANS: Thank you. Is there                  12 anybody that needs to speak. You have got your                  13 form filled out and everything. Come on up.                  14 Raise your right hand to be sworn                  15 in.                  16 MS. STELLA S. SANFORD: I have it on                  17 the record. Maybe you will take a look at that.                  18 MR. EVANS: Just make a note on the                  19 record that she did not want to be sworn in.                  20 MS. SANFORD: I don't have to swear.                  21 MR. EVANS: We are just gonna make a                  22 note in the record that you did not want to be                  23 sworn in. That is just a release form.                  24 MS. SANFORD: That's a release form                  25 and I have it on that under my signature.</p>	<p>1 anything about the others. I am a senior                  2 citizen and I do exercise my right as being a                  3 senior citizen. I had no problems because I                  4 know my rights. But there were others who did                  5 not know their rights and did not know what to                  6 say or to speak up, and I think they were                  7 intimidated by a lot of areas.                  8 Number one, a lady came in who were                  9 given her -- what is her voting card but when                  10 she went to the place to vote, they didn't have                  11 her name on the list. They told her -- she was                  12 told that she had to go to another place. She                  13 had waited in line for 4 hours, hired somebody                  14 to bring her from one area to the place to vote                  15 and she explained it to the voting supervisor.                  16 The voting supervisor ignored her request. She                  17 said I have been waiting 4 hours in line                  18 already. Here it is 2:00 o'clock and the line                  19 at Terrell Mill was every bit 4 hours long even                  20 at that time. So she had to go to the back of                  21 the line, wait again with her children at home.                  22 She's been all day trying to get just to vote.                  23 I don't know if she stayed and voted or not                  24 because I didn't remain there.                  25 At the Terrell Mill area I do know</p>

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<p>1 MR. EVANS: Go ahead and proceed.                  2 Court reporter, please note on the record that                  3 she did not want to be sworn in on the record.                  4 Go ahead.                  5 MS. SANFORD: But note the fact that                  6 I am Stella Sanford. I am a voter of Dekalb                  7 County. I have signed my signature with all the                  8 legalities for the State of Georgia and the                  9 United States attached to my signature. So I                  10 don't have to raise my hand. Thank you.                  11 Based on the information as it                  12 relates to voting -- I am sorry I was late. I                  13 did not hear what the others had to say. I                  14 don't mean to be repetitious but I might be                  15 repetitious because I didn't hear.                  16 But based on the problems that I saw                  17 and encountered with voting is similar to those                  18 in 1967 back in the State of Louisiana when we                  19 had to go down and patrol the voting so blacks                  20 could come and vote. We don't need that kind of                  21 setting here in Dekalb County, in the United                  22 States as of this day.                  23 But due to the fact -- and I will                  24 name the poll where I attended. That was at                  25 Terrell Mill Elementary School. I don't know</p>	<p>1 that there were incompetent people who were                  2 handling the poll. My suggestion would be to                  3 train the people who are poll representatives,                  4 who are handling the polls, who have the people                  5 coming through and learn how to control so that                  6 the traffic would move quickly because this was                  7 a huge turnout. It is more than the other                  8 turnouts that has ever been to my knowledge at                  9 Terrell Mill School.                  10 But however, they only had just one                  11 person and there were maybe 200 people standing                  12 in line with one little person writing. There                  13 is another way it can be done. Common sense                  14 could have been played in that quite well.                  15 Otherwise, they could have called -- I guess                  16 they could have -- possibly they could have                  17 gotten in touch with the election supervisor.                  18 But I don't know if that is factual or not                  19 because I tried several times to call the                  20 election supervisor's office, no one answered                  21 the phone. I called one of the county                  22 commissioners and asked them to check. They --                  23 no one answered the phone.                  24 So, therefore, we need to know where                  25 these people are on that date because if there</p>

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1 are problems with voting, they need to be  
 2 knowledgeable of it and maybe can take care of  
 3 some of these problems before they bloom out of  
 4 proportion.  
 5 Another situation where a young lady  
 6 told me she says I want to vote. I don't know  
 7 where to go and vote. I said what do you mean.  
 8 Have you registered. She says I registered with  
 9 some place. She told me she registered where  
 10 they were taking registrations for people to be  
 11 eligible to vote at this election.  
 12 I said, well, call the election  
 13 supervisor and find out. No way she could call.  
 14 No answer. So we need to make sure that  
 15 somebody is in place to give these people proper  
 16 direction and go from that point on.  
 17 But I would like to say that in  
 18 order to take care of some of the things that  
 19 has transpired and to prevent them from coming  
 20 forward again is a form of education as it  
 21 relates to voting and that needs to come from  
 22 the top down. Thank you very much.  
 23 MR. EVANS: Thank you very much.  
 24 Anybody else who needs to speak.  
 25 MR. MIKE RAFFAUF: My name is Mike

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1 Raffauf. I am an attorney and I have been doing  
 2 some investigation for Mr. Billy McKinney.  
 3 There is a witness that needs to be here and she  
 4 is not. Her name is Ruby Johnson. She was a  
 5 poll manager at this particular -- at Stoneview.  
 6 She said she was assisted by two a three other  
 7 assistants. So there were two people here.  
 8 She said there was a problem. They  
 9 didn't have enough machines. That was  
 10 apparently from the beginning, but she could not  
 11 get a hold of anybody. Either it was busy or no  
 12 answer. But she never was able to get a hold of  
 13 anybody, but she knew she needed more machines  
 14 but she was not able to do much about it.  
 15 I would say from my own experience  
 16 -- I voted at Hubert Alexander which had 15  
 17 machines. Now I have not been able to get a  
 18 definitive count on how many machines this  
 19 precinct had. I have got anywhere -- people say  
 20 anywhere from 4 top 9, but there was more voters  
 21 in this precinct than there was in the precinct  
 22 that I voted at at Huber Alexander that had 15  
 23 machines. So that's all.  
 24 MR. TERRELL SLAYTON: What is the  
 25 racial makeup of -- that you are --

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1 MR. MIKE RATHER: Of Hubert  
 2 Alexander as far as voters it is probably 50/50.  
 3 Now what the actual registration is, I don't  
 4 know. But clearly it was about 50/50 of the  
 5 voters. It is bordered by Avondale Estates and  
 6 Winnona Park.  
 7 MR. EVANS: Do we have any other  
 8 speakers. And even though it is 10 after 12:00  
 9 and even though we are running out of comments,  
 10 we are prepared to stay here until 1:00 to make  
 11 sure that if anybody else comes, they will have  
 12 an opportunity to speak. Go right ahead.  
 13 MR. SAWYER: I wanted to come back  
 14 up since I was also interested in the idea of  
 15 the voter advocate that was brought about. But  
 16 I feel like, and I guess I will direct it  
 17 especially to you Congresswoman McKinney, since  
 18 the federal government has standing with regard  
 19 to voter rights, it makes sense to me that if  
 20 you are going to encourage that each precinct in  
 21 the country have some sort of voter advocate,  
 22 that federal law focus on the functions of this  
 23 advocate in the sense that there is some sort of  
 24 guidelines about how much time people should be  
 25 waiting, how many servers there are compared to

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1 the number of people waiting.  
 2 And if those guidelines are not  
 3 being met, then whoever the governing supervisor  
 4 of elections might be, that person must have  
 5 somebody available to respond to that voter  
 6 advocate's call and must be able to provide some  
 7 sort of relief. And if they don't provide that  
 8 sort of relief then they would be subject to  
 9 review in federal court.  
 10 I think if you light that fire under  
 11 them, then a lot of this stuff will stop  
 12 happening. That means the state's  
 13 municipalities will start crying unfunded  
 14 mandate. And my vote is let them cry.  
 15 MR. EVANS: Let me ask you this.  
 16 Did you give her your name again?  
 17 MR. SAWYER: Excuse me. I am John  
 18 Sawyer.  
 19 MR. EVANS: Go right ahead.  
 20 MS. LANE: Barbara Lane again. I  
 21 wanted to respond to the attorney's question  
 22 about the number of booths. Since we had 2,500  
 23 registered voters according to Dekalb County  
 24 Board of Elections, we were supposed to have 13  
 25 booths because their rule is that for every 200

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1 voters, you should have 1 booth. And we only  
 2 had 8.  
 3 I mean so what's that fuzzy math or  
 4 what? Well, there were four over here that were  
 5 consistently empty, but we had about, you know,  
 6 8 operating.  
 7 MR. DWIGHT BROWER: If I can respond  
 8 to that. There was a total of 18 voting booths  
 9 sent to Stoneview precinct. There should have  
 10 been 10 in split number 72 and a total of 8 in  
 11 split number 76.  
 12 MS. BARBARA L. LANE: Well, we had an  
 13 equal amount operating and available to the  
 14 people who came in. That's what was available.  
 15 MR. DWIGHT BROWER: And with the  
 16 ratio of 200 -- 1 vote recorder for every 200  
 17 voters, we did, in fact, meet that requirement  
 18 but I think we went above that in terms of -- I  
 19 think we sent out 18 vote recorders. So that --  
 20 MS. LANE: They weren't available.  
 21 MS. MCKINNEY: Is there any way that  
 22 that can be verified as to the number of actual  
 23 operating voting booths that were here because  
 24 if the woman who was voting says that there --  
 25 that has information that's different than yours

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1 and I don't think you were here, then there must  
 2 be some -- there is a discrepancy between your  
 3 records and the actual experience of the voters.  
 4 MS. LANE: There is a discrepancy  
 5 because I was in the office with Linda Latimore  
 6 and she looked at the list. She brought the  
 7 list of the assigned booths over to her desk and  
 8 let me view it. And when she looked at that  
 9 list it showed 9 for District -- sent out for  
 10 District 71. And so she agreed with me that it  
 11 wasn't computed properly.  
 12 Now 6 additional booths were brought  
 13 out after 10:00 o'clock. So I don't if maybe  
 14 that's what you have in your figure you know.  
 15 But initially --  
 16 MS. HELEN BUTLER: But you are  
 17 talking about initially.  
 18 MS. LANE: Initially, right. And  
 19 like I said, she brought the list for the entire  
 20 county over to her desk when I spoke with her a  
 21 couple weeks ago and we didn't have enough and  
 22 she was gonna check into it.  
 23 MR. DWIGHT BROWER: I will certainly  
 24 go back and view that. But as a general rule,  
 25 we send out "X" number with the fireman that

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1 actually deliver. And the poll manager -- that  
 2 he keeps with him or her which would have been  
 3 the 10th one. But I can go back and look at  
 4 that.  
 5 MR. EVANS: Yes, sir.  
 6 MR. BILLY MCKINNEY: There were four  
 7 booths over here. There were four booths over  
 8 here in District 71. Four. After we called --  
 9 after Cynthia McKinney called then when Terrell  
 10 Slayton came, they brought four more booths.  
 11 That was 8 booths. But in the beginning all day  
 12 long there were 4 booths. And when Terrell  
 13 Slayton and the officials came, then they  
 14 brought four more booths. There were 8 booths  
 15 then. Another phone call and they sent three  
 16 more booths. We ended up with 11 booths over  
 17 here. But all day long there were only 4 booths  
 18 for all those people.  
 19 MR. EVANS: Give your name, state  
 20 representative for the record.  
 21 MR. BILLY MCKINNEY: Billy McKinney  
 22 for the record.  
 23 MR. SLAYTON: Let me just add for  
 24 the record. Billy McKinney indicated that there  
 25 were a certain number of booths there in the

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1 beginning and a call to Terrell Slayton got some  
 2 other booths.  
 3 Let me clarify how those other  
 4 booths showed up. And I think the first  
 5 telephone call that we got in the Secretary of  
 6 State's Office was really not to Terrell Slayton  
 7 but it was to the Chief Elections Official of  
 8 Georgia -- well, to the Secretary of State. I  
 9 happened to be in the office that evening. It  
 10 was shortly after 7:00. They were saying it was  
 11 a number of people in line at Stoneview and  
 12 there are not enough machines and we can't get  
 13 through to Linda Latimore's office who is the  
 14 chief elections official here in DeKalb County.  
 15 And we, of course, had a backdoor  
 16 number to Linda. We had her private line. And  
 17 I was able to have one caller on the line in one  
 18 car and used another telephone and got Linda  
 19 Latimore on the line in the other car. And now  
 20 that I know where Linda is, give me a number,  
 21 Linda, where we can call you and put all three  
 22 of us on the telephone. And we were able to do  
 23 that.  
 24 We got three people on the telephone  
 25 and Linda Latimore responded immediately. She

<p style="text-align: right;">Page 101</p> <p>1 got four more booths to come to this precinct.                  2 We thought it would be resolved. About two, two                  3 and a half hours later, we got another telephone                  4 call in our office and at that point in time it                  5 was still we are having problems at Stoneview                  6 and we still don't have enough voting machines.                  7 At that time I came to Stoneview and I observed                  8 for myself and, again, on my cell phone I got                  9 Linda Latimore on her back door line and told                  10 her that what I was observing, we didn't have                  11 enough voting booths here. And immediately --                  12 and both times she didn't hesitate. Let me say                  13 this. She did not hesitate when she understood                  14 there was a problem and she dispatched more                  15 voting machines to this. By this time it is                  16 after 9:30. But still after those voting                  17 machines got in place, the line did move a                  18 little smoother.                  19 But I wanted it clarified that last                  20 comment in terms of how those extra voting                  21 machines showed up in the context of a                  22 conversation with Linda Latimore who is the                  23 chief elections official here in Dekalb County.                  24 MR. EVANS: All right. Are there                  25 any other persons who want to speak? Right now</p> <p style="text-align: right;">Page 102</p> <p>1 Mr. Slayton will make a summary and some                  2 comments.                  3 MR. SLAYTON: Mr. Evans, I just want                  4 to say again thank you very much for the NAACP                  5 for having a forum like this where we can                  6 continue to get first-hand information from                  7 people who had various experiences on election                  8 day.                  9 And some of what I have heard today                  10 we have heard from other voters in Georgia and                  11 we had a chance to look into some of them. Why                  12 did these things happen. And what we have been                  13 able to determine thus far as we are preparing a                  14 report to our governor and to the members of our                  15 general assembly upon the experience of this                  16 election in terms of what happened and even to                  17 stimulate the debate in terms of how we ought to                  18 respond to what happened.                  19 What we know for a fact now is that                  20 we had voter registration problems that we think                  21 were due to a lack of voter education.                  22 For example, it was a good thing                  23 that Kroger store stepped up to the plate and                  24 said that in every one of our stores in Georgia                  25 you can register to vote. That was a good</p>	<p style="text-align: right;">Page 103</p> <p>1 thing. It was not a good thing when a few                  2 assistant managers in those Kroger stores                  3 thought they would do a good deed by picking up                  4 the forms that had been filled out that day for                  5 new registered voters and simply because they                  6 had to go by the board of elections office on                  7 the way home, they figured they would drop them                  8 off. Good intentions. But when they dropped                  9 them off, of course, the local elected officials                  10 would say, wait, are you a deputy registrar.                  11 No. Well, then we can't accept these forms from                  12 you. And that means that there were a stack of                  13 people who thought they were registered to vote                  14 in this election who were not, in fact,                  15 registered due through -- due to just good                  16 intentions. I mean that was a good hearted                  17 individual. But in that case we've got                  18 documented evidence that that happened and there                  19 was no way to register those voters.                  20 And our cry and our plea is that if                  21 anybody in Georgia showed up or should I say                  22 registered to vote for this election, never got                  23 a voter registration form, then you need to go                  24 back and to reregister. That is what we are                  25 saying to those people.</p> <p style="text-align: right;">Page 104</p> <p>1 And next time when we have                  2 opportunities to partner with people like Kroger                  3 to do a massive voter education and voter                  4 registration, I think it is incumbent on us to                  5 do a good job of voter education.                  6 With the state patrol. We have                  7 heard a lot of people who indicated they thought                  8 they registered at the DMV. And we don't know                  9 what has happened. We know that based on the                  10 numbers of people that had problems this                  11 election, that we've got a problem. And we've                  12 got a meeting that's set up and it is -- we are                  13 viewing that as such an important meeting until                  14 I am actually going to go and participate and to                  15 sit down with Colonel Hightower and his staff                  16 and to just see what -- if there are some things                  17 that they can do policy-wise or if there are                  18 some things that we can do in our election                  19 system when we get the referrals over that might                  20 make a difference.                  21 We don't know what the response will                  22 be. But we have enough information to let us                  23 know that we have got a problem at DMV. And the                  24 other notion that has surfaced a lot is this                  25 notion of a challenge ballot. And that people</p>
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1 are using important people's names saying  
 2 Maynard Jackson told us we could issue -- well,  
 3 come over here and tell you poll persons that we  
 4 can vote a challenge ballot even though we are  
 5 registered and we don't have a precinct card.  
 6 Well, not quite.  
 7 In Georgia there is no such thing as  
 8 a challenge ballot and there -- I mean, a lot of  
 9 people believe that there is. And one man got  
 10 arrested at a polling place because he insisted  
 11 that he was gonna vote the challenge ballot and  
 12 he wasn't gonna leave until they arrest him.  
 13 Well, they did. And when he finally found out  
 14 that there was not, but Maynard Jackson told me  
 15 there was. Well, Maynard said to me I didn't  
 16 tell him that.  
 17 But the point is we've got to do a  
 18 better job of educating people about the system,  
 19 what is allowable, what is not allowable. And  
 20 in Georgia we do not have anything that is  
 21 called a challenge ballot.  
 22 If you show up at the poll and your  
 23 name is on the voter rolls and you do not have  
 24 ID, then you can sign a sworn affidavit that you  
 25 are who you are. I swear I am Terrell Slayton

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1 so y'all can let me vote. Yes, that is true.  
 2 And we didn't really have any  
 3 feedback this session that people were not  
 4 allowed to vote by not showing up with ID. That  
 5 was not a problem in our experience and what  
 6 we've heard from other hearings like this across  
 7 the state.  
 8 And the other issue that has  
 9 surfaced time and time again is the notion that  
 10 people who have had a felony conviction cannot  
 11 vote in our state and cannot vote ever. We have  
 12 heard that from across this state. And as we  
 13 have double checked on that, there are two  
 14 things that I can tell you today that there is.  
 15 One is that the Department of Corrections who  
 16 counsel people on the way out of prison and the  
 17 Department of Pardons and Paroles who counsel  
 18 people on their way out of prison indicate that  
 19 everybody who goes from inside the system that  
 20 parole, probation or incarceration to the  
 21 outside back to the free word as they call it,  
 22 are counseled on and they have to sign a little  
 23 piece of paper to say that I have been counseled  
 24 on two things.  
 25 One, if I want my right to bear

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1 firearms restored, I have got to sign this piece  
 2 of paper and ask for it. If I want my right to  
 3 vote to be restored, I have got to sign this  
 4 piece of paper and ask for it.  
 5 So just from the advocacy community,  
 6 pardons and paroles, the Department of  
 7 Corrections are places where they say they have  
 8 systems in place to advise felons of their  
 9 rights and that's in place.  
 10 The other thing is representative --  
 11 some representatives really from Dekalb County,  
 12 I think under the leadership of Barbara Mobley,  
 13 has sponsored a bill in our general assembly to  
 14 simplify this process and to basically say that  
 15 if you are out of jail or if you are out on the  
 16 streets, that you ought to be able to vote. And  
 17 this is very controversial. It is being  
 18 debated. I understand she is going to take that  
 19 concept back to the general assembly again this  
 20 year for further debate based upon the  
 21 experience of this election.  
 22 But I am pointing that out to say  
 23 that there is a place for advocacy on this issue  
 24 in particular and I know Barbara Mobley would  
 25 want to hear your perspective and your point of

Page 108

1 view because it will be helpful to her in the  
 2 debate that takes place as she again tries to  
 3 put something in place to clarify when a felon  
 4 can or cannot vote.  
 5 But in conclusion, just let me say  
 6 to Mary Peeler with the NAACP who has done this  
 7 in several states now and to our NAACP locally,  
 8 advocacy does influence public policy. And I am  
 9 excited today and I want to make sure that those  
 10 that made testimony we have a way to get in  
 11 touch with. Because people have conducted  
 12 themselves in ways today that I think the  
 13 general assembly when they begin to debate this  
 14 issue, election reform, need to hear directly  
 15 from people who -- like the people who spoke  
 16 here today.  
 17 I certainly am going and taking a  
 18 few of your names back and will talk to you  
 19 about being available to testify about your  
 20 experience in front of the appropriate general  
 21 assembly committee. And I just commend you for  
 22 doing a good job. Thank you.  
 23 MS. CYNTHIA MCKINNEY: I also want  
 24 to add my voice to give accommodations to the  
 25 NAACP for doing this hearing but this hearing

Page 109	Page 111
<p>1 just isn't what the NAACP does. For being there                  2 for people who are in need. And John Evans and                  3 Zepora, the officers of the NAACP, thank you                  4 everyday for what you do everyday.                  5 And I'd like to say to Terrell,                  6 thank you for bringing the message about the                  7 secretary of state's election reform package                  8 that we can look forward to as general assembly                  9 convenes next month.                  10 It's my understanding that convicted                  11 felons have to wait ten years in Georgia before                  12 they can get their rights restored. That's what                  13 I was told.                  14 MR. SLAYTON: That's not true.                  15 MS. CYNTHIA MCKINNEY: That's not                  16 true? Well, we do need to have some                  17 clarification on that point because the fact of                  18 the matter is while in Florida they were looking                  19 at dimples and hanging chads, if they had simply                  20 allowed the enfranchisement of those who were                  21 formerly convicted felons, then we would have                  22 had 200,000 votes right there.                  23 Nationwide we have got 13 percent of                  24 all African American men can't vote because of                  25 the intersection of an unjust criminal justice</p>	<p>1 allow prisoners inside the prison to vote. So                  2 it is absolutely outrageous that you come out of                  3 the system, become a good mother, a good father,                  4 a taxpayer and then you can't even choose your                  5 leadership. So there is definitely a problem                  6 with that.                  7 We also, I believe, have a problem                  8 with the electoral system that we have now                  9 period. And that's why I have introduced for                  10 the past, I think, three congresses the Voter's                  11 Choice Act, which would allow states to                  12 implement proportional voting schemes. That is                  13 that if today we have a winner take all system,                  14 so if the candidate gets 49 percent of the vote,                  15 they get zero -- the people who voted for them                  16 get zero percent of the representation.                  17 So it is no wonder that my farmers                  18 down in the farm belt of Georgia felt that in                  19 the old 11th District that I couldn't represent                  20 them because I live in Atlanta because they felt                  21 that incorrectly -- now, of course, they know in                  22 hindsight they wished they still had me -- that                  23 they didn't have anyone who understood where                  24 they came from. And it is only through having a                  25 more -- a fairer system as our emerging</p>
Page 110	Page 112
<p>1 system in the African-American community.                  2 The Department of Justice recently                  3 did a study where they said if you are black,                  4 you are more likely to be stopped, put in jail,                  5 served longer sentence and die in the electric                  6 chair or through injection if you are just                  7 simply -- if you are black.                  8 And so when we've got that kind of                  9 disparate treatment of the African Americans and                  10 other minority communities, certainly the people                  11 who have been victimized by that system                  12 shouldn't be permanently victimized and                  13 marginalized and disenfranchised as a result of                  14 an unfair and unjust system.                  15 So I look forward to working with                  16 Barbara Mobley or whomever it might be on the                  17 state level. But then we also have a                  18 responsibility on the federal level.                  19 And so that's why I have                  20 co-sponsored legislation but I intend to also                  21 sponsor legislation that would clarify this                  22 issue as an amendment to the Voting Rights Act.                  23 That once you've served your time, then you have                  24 a right to be a full citizen.                  25 Other countries in the world even</p>	<p>1 democracies in Ireland and in South Africa and                  2 in Namibia and other countries around the world                  3 are choosing a system that is not like ours                  4 because they understand that the system that we                  5 have is not fair.                  6 So we need electoral reform. We                  7 also need campaign finance reform. These are                  8 all components of what it means to cast a fair                  9 and meaningful vote. Because we can't allow                  10 special interests or people who have money,                  11 people who can buy office to be the leaders of                  12 our community.                  13 The leadership of the community must                  14 be of the community, of, by and for the people.                  15 And so campaign finance reform is as much a                  16 Civil Rights and Human Rights and democracy                  17 issue as is the ability for us to even cast a                  18 vote because the special interest can select the                  19 candidates even before the voters get a chance                  20 to vote on those candidates.                  21 So not voting is never an option.                  22 We've got a long way to go in terms of what we                  23 need to do in terms of electoral reform. It is                  24 too bad that we had to learn the need this way                  25 but thank goodness now we are going to pay</p>

Page 113	<p>1 attention from beginning to end of the voting 2 process.</p> <p>3 I have also, Mr. Chairman, a letter 4 from the constituent, a Mr. Dayton Hedges who 5 had an absentee ballot problem that I would like 6 to submit to the record.</p> <p>7 And while we are doing this for the 8 record -- I have one last thing and then I will 9 cease. The black man has no rights that a white 10 man is bound to respect. That was a Supreme 11 Court decision in 1857, the Dred Scott case.</p> <p>12 The Supreme Court Justice of the 13 United States said the black man has no rights 14 that a white man is bound to respect. Then 15 again in 1896 in Plusey versus Ferguson after 16 the congress passed laws to protect the freed 17 slaves, the Supreme Court came back and said, 18 oh, no. You can't go and protect the rights of 19 the freed slaves. Oh, no. Let's go to this Jim 20 Crow era. And that's what Plusey versus 21 Ferguson did in 1896. What it -- it inaugurated 22 the Jim Crow era and Jim Crow laws. And 23 eventually all of the progress that was made by 24 black people in this country was obliterated 25 from the social, political and economic map.</p>	Page 115
Page 114	<p>1 Now I have got here -- now I know 2 through Johnson .V. Miller and Chavey Reno and, 3 of course, my familiarity with the political 4 process that a Supreme Court Justice is just a 5 person just like the rest of us. They make 6 contributions to political entities and they get 7 rewarded.</p> <p>8 There is no presumption that these 9 people don't have partisan interests. 10 Everything about the way they are selected is 11 partisan.</p> <p>12 Now this Chief Justice William 13 Rehnquist, wrote as a law clerk at the time of 14 the Brown versus Board of Education decision, 15 this is what he wrote. I think Plusey versus 16 Ferguson, the legal foundation for mandatory 17 segregation was right and should be reaffirmed.</p> <p>18 This is what William Rehnquist wrote 19 when he was a young kid. So we should 20 understand what we are up against and we should 21 not be fooled by anybody who comes and tries to 22 sell us a false bill of goods.</p> <p>23 Clarence Thomas voted with them 24 before, voted with them this time, will continue 25 to vote with them for the rest of his life and</p>	Page 116
	<p>1 he is not one of us and we need to understand 2 that. And we should not allow people to be 3 elected or selected to represent our community 4 who are not of, from and by and a part of our 5 community.</p> <p>6 Now, I have had my say Mr. Evans. 7 Thank you very much.</p> <p>8 MR. EVANS: You know they always say 9 that when we have a controversy, we come 10 together. And that's unfortunate but I will 11 tell you what, it's real. And for those of us 12 who don't read much and don't research much, we 13 could never know about that statement. As a law 14 clerk -- and I always say that the worse 15 segregationists that we have are young folk.</p> <p>16 There is no doubt in my mind that my 17 experiences have always told me that the worst 18 segregationists are young folk. And you have to 19 start that mess early. I mean, most of us are 20 not converted after we get older.</p> <p>21 So I say that to say that most of us 22 don't read much of anything. We don't go to the 23 library. We don't research the issues and 24 consequently we don't know much about history 25 and especially our own history as it comes to</p>	
	<p>1 where we are right now in 2000 as far as being 2 able to vote and how we got here.</p> <p>3 There were some people talking about 4 the Electoral College. We were not even in 5 existence when they made that rule. So they 6 couldn't have been talking about us. They were 7 just talking about the people who were not as, 8 what, well to do and they did not want them to 9 really run this system. So they designed 10 something to help out and we are the recipient 11 of that in 2000 plus other things. And of 12 course I don't think it's happened in over a 13 hundred years.</p> <p>14 But the point is we are now in a 15 position to deal with election reform and we 16 shouldn't leave anything out. I mean, we know 17 what the problems are and it is time for us to 18 take action.</p> <p>19 Number one, the NAACP wants to say 20 and let you know how much we appreciate you 21 coming out and being a part of this public 22 hearing today. You can say what you want, but 23 if you don't make some noise, nobody is gonna 24 listen to you. You can say what you want to, 25 but if you don't make some noise and let them</p>	

<p style="text-align: right;">Page 117</p> <p>1 know you exist and that you are concerned about                  2 what you are concerned about, they won't hear                  3 you and they won't pay any attention to you.                  4 So I am hoping that we will have,                  5 Ms. Peeler, like you say across the country,                  6 especially with NAACP branches taking notes of                  7 the problems in their communities and coming up                  8 with some kind of vehicle to make sure that                  9 these concerns are put in the right hands.                  10 Especially those who make decisions for us in                  11 this country.                  12 It's so very important. You just                  13 cannot overemphasize the fact that we must take                  14 this crisis, and this was a crisis. None of us                  15 would have ever predicted in this country that                  16 we would not have had a president the night of                  17 November 7th. Nobody. But it happened and it                  18 happened for a reason and we need to take                  19 advantage of that reason and do something about                  20 it.                  21 So we are glad that you came. We                  22 certainly are glad that the panelists came, the                  23 justice department, congresswoman, secretary of                  24 state's office and the board of registration of                  25 elections. They are here. They heard our</p>	<p style="text-align: right;">Page 119</p> <p>1 and from individuals about where do we go from                  2 here.                  3 Well, for all intensive purposes, it                  4 seems that the election itself has been decided                  5 on a presidential level, but right NAACP, the                  6 NAACP national voter fund, and our coalition                  7 partners, we cannot afford to let the battle                  8 stop here because there is a lot of things that                  9 will be happening in this country for years to                  10 come. It will be based on what we do this year.                  11 So we have to put an actual plan                  12 into place. Election 2000 should have served as                  13 a wake-up call for many of us not only for that                  14 there is a need for election reform, but there                  15 is a need for more education in the general                  16 community about the election process itself and                  17 the importance of voting.                  18 So number one, the NAACP will be                  19 holding public hearings like this one all across                  20 the country. We are working on those and                  21 planning those now.                  22 Number two, there is a lot of people                  23 that want to see black folks sitting at home on                  24 election day. So our next step has to be to                  25 make sure that we get people who are not</p>
<p style="text-align: right;">Page 118</p> <p>1 concerns and we hope and pray that all of these                  2 concerns will be put in the proper perspective                  3 so that we can get something done about it.                  4 We are going to stay on the battle                  5 field and do everything we can. I guess Zepora                  6 and I got what you call bus riding sores. We                  7 have been riding the bus so much in the last                  8 three weeks going to Florida, New York and                  9 dealing with the issues that we know exist.                  10 And we just want to let you know                  11 that we appreciate you coming out. We are gonna                  12 stay here another 20 minutes, until 1:00 for                  13 purposes of listening to somebody who might come                  14 in as far as we are concerned. I guess                  15 officially those of us can depart the place, but                  16 the court reporter and I will stay here until                  17 1:00 o'clock to make sure we capture everything                  18 that anybody wants to say. And we want to make                  19 sure that this opportunity for anybody who wants                  20 to say something else that's already spoke and                  21 we will also hear from Ms. Peeler. Come right                  22 down.                  23 MS. MARY L. PEELER: Good afternoon                  24 to everyone. We have been getting -- we have                  25 been getting a lot of questions from the media</p>	<p style="text-align: right;">Page 120</p> <p>1 registered, registered. So on January the 15th                  2 we are kicking off another major voter                  3 registration campaign in this country. And we                  4 cannot afford for those people who have been                  5 disimpardoned, disenfranchised about the whole                  6 process, who got upset about this election to,                  7 say, well, our vote is not gonna count anyway.                  8 We have got to come back in even                  9 more overwhelming numbers. Overwhelming numbers                  10 again.                  11 We also have to make sure,                  12 congresswoman, that people who have been                  13 incarcerated, who have been in the system know                  14 what their rights are. So NAACP in this region                  15 has already instituted a program where we are                  16 addressing the rights of prisoners. And we have                  17 actually been into some prisons doing voter                  18 registration.                  19 So there is a lot of work to be                  20 done. The bottom line is there is enough work                  21 out here for each and every one of us to do                  22 every day. We don't have to sit there and wait                  23 for other organizations, other groups to come on                  24 board and join in.                  25 If every one of us would go back and</p>

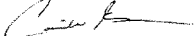
<p style="text-align: right;">Page 121</p> <p>1 take the message to our families, our friends,                  2 our acquaintances about the importance of                  3 voting, then we can serve as a catalyst to make                  4 sure that this would never happen in this                  5 country again.                  6 And we are going to be pushing and                  7 working with the secretary of state's office,                  8 working with the general assembly to make sure                  9 that election reform happens because we cannot                  10 afford to be back at the same place four years                  11 from now.                  12 MS. LINDA DuBOSE: My name is Linda                  13 DuBose and I was a poll watcher at a location in                  14 South Dekalb just south on Panola Road. Just                  15 south of I-20. And I can't remember the name                  16 right now.                  17 MS. LINDA D. DuBOSE,                  18 Being first duly sworn, testified as follows:                  19 MS. LINDA D. DuBOSE: So I was a                  20 poll watcher. And what I want to say about that                  21 is this. I arrived at my station about 7:15                  22 a.m. and I was there through -- straight through                  23 until about 9:00 o'clock p.m. that evening.                  24 When I arrived, we were at capacity.                  25 The space was at capacity. People were lined up</p> <p style="text-align: right;">Page 122</p> <p>1 and I counted that there were 18 machines.                  2 In the time that I had to simply                  3 observe the whole operation, there are a number                  4 of things I want to report. One, is that the                  5 personnel that were there were fairly organized                  6 and very committed, working really hard in                  7 keeping things on track. Yet, the lines that                  8 were there at 7:15 a.m., these lines were long                  9 enough to keep people in line probably                  10 approaching 2 hours. That never diminished                  11 throughout the course of the day.                  12 So as I observed, I noticed that the                  13 real issue there was the number of polling                  14 stations. If you didn't have any more polling                  15 stations, there was no way you were ever gonna                  16 make those lines move any faster. And no time                  17 during the whole day did it -- was the time that                  18 a person had to spend voting, less than two                  19 hours. And sometimes it went to like 3 and a                  20 half.                  21 The other thing that I want to make                  22 a comment about is what was happening with the                  23 people themselves. There was an effort to help                  24 people who were, like, elderly or handicapped.                  25 Kind of take them out of the line and take them</p>	<p style="text-align: right;">Page 123</p> <p>1 to the front of the line. So that was going on.                  2 But probably because the room was so full, there                  3 could have been a lot more of that. And, of                  4 course, every time you put somebody in the front                  5 of the line, that just delay the work of the --                  6 I mean, the amount of time that other people had                  7 to stay in line.                  8 So we were not really efficient in                  9 terms of supporting people who were elderly or                  10 handicapped or had small children.                  11 I did encounter conversations late                  12 in the day on the back end when people were                  13 coming back from work where people were actually                  14 turning around. I just can't stay. People who,                  15 for whatever reason, they weren't on the voting                  16 poll. They were in the wrong location. But                  17 given the time of day, they didn't have time to                  18 wait in the line for an hour or so, find out                  19 that they were in the wrong place and then get                  20 in their cars and make it to their correct                  21 polling place before the polls were closed.                  22 So to me what I really want to say                  23 is that it was -- the conditions were excessive                  24 for voting. When people set out to vote, they                  25 don't necessarily intend to spend three to four</p> <p style="text-align: right;">Page 124</p> <p>1 hours doing it. And it was just -- it was very                  2 disappointing that we were turning people away                  3 who didn't have the opportunity to vote.                  4 It seemed like the issues could have                  5 been resolved by having more voting machines.                  6 Definitely more voting machines. Probably a                  7 larger facility. So that's the commentary I                  8 wanted to make.                  9 (Time now is 1:00 p.m.)                  10 (Proceedings Concluded)                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>
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1                    C E R T I F I C A T E  
2    G E O R G I A :  
3    C L A Y T O N   C O U N T Y :  
4                    I hereby certify that the foregoing  
5    proceedings were stenographically recorded by  
6    me, as stated in the caption, and the questions  
7    and answers thereto were reduced to typewriting  
8    under my direction and supervision; that the  
9    foregoing transcript represents a true and  
10   correct transcript of the evidence given by said  
11   witness upon said hearing; and I further certify  
12   that I am not kin or counsel to the parties in  
13   the case, am not in the regular employ of  
14   counsel for any of said parties, nor am I in  
15   any way interested in the result of said case.  
16                    This 19th day of November 2000.  
17  
18                    \_\_\_\_\_  
19                    SANDY J. BENSON  
20                    Certified Court Reporter  
21  
22  
23  
24  
25

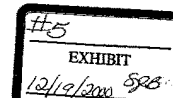
November 15, 2000

**I CAMILLE GREEN A RESIDENT IN DEKALB COUNTY WAS DENIED THE OPPORTUNITY TO VOTE AT THE ELECTION ON NOVEMBER 07, 2000. THIS WOULD HAVE BEEN MY FIRST TIME VOTING IN THIS STATE. I WENT TO STONEVEIW SCHOOL LOCATED ON COVINGTON HWY. AROUND 5:30 PM AND WAITED IN 3 DIFFERENT LINES TILL 9:20 PM TO FIND OUT I WAS IN THE WRONG LOCATION BECAUSE OF REZONING. I ASK FOR A PAPER BALET AND A CHALLENGE BALET AND WAS TOLD THERE WAS NOTHING THAT COULD BE DONE. I FEEL THAT MY RIGHTS WERE TAKEN AWAY. I AM 35 YEARS OLD AND THIS WAS ONE OF MY WORST EXPERIENCE ESPECIALLY TRYING TO ENFORCE MY RIGHT TO VOTE KNOWNING THAT MY FORMER FAMILY FOUGHT FOR THIS RIGHT YEARS AGO. I STILL WOULD LIKE MY VOTE TO BE COUNTED.**

**THANK YOU**



CAMILLE GREEN  
3094 ABERDEEN WAY  
LITHONIA GA. 30038



1420

11/30/00 14:52 FAX

Received Nov. 16, 2000

LINDA W. LATIMORE  
DIRECTOR, VOTER REGISTRATION & ELECTIONS  
(404) 233-4011  
FAX (404) 233-4018



BOARD MEMBERS  
JEFFERY L. BOYD  
DEXTER MITCHELL  
KYLE J. NORSDY  
NANCY QUANSELLERS  
SAMUEL E. TILLMAN

Board of Registration and Elections  
4338 Rossmore Drive  
Decatur, Georgia 30031

November 14, 2000

Primary  Runoff  General Election  Special Election

Dear James D Hedges:

We regret to inform you that your absentee ballot was not counted due to the following reason:

Your absentee ballot arrived too late. It must be in this office by 7:00 PM on Election Day to be counted. We received it on November 14, 2000.

The oath on the back of the envelope was not completed.

The oath on the back of the envelope was not signed.

Sincerely,

ABSENTEE POLL

11.17 Letter to R.E. Wanda Drake



1421

11/30/00 14:52 FAX

002

*Joce*

NOV 30 2000

DAYTON S. HEDGES, JR., 1620 WITHMERE WAY, DUNWOODY, GA 30338  
phone 770-396-6133 fax 770-396-2216 e-mail: dshedges@bellsouth.net

Ms. Cynthia McKinney  
United States House of Representatives  
124 Cannon Office Bldg.  
Washington, DC 20515

Dear Congresswoman McKinney:

Attached please find a copy of a form letter dated November 14, 2000, sent to my son, Major James D. Hedges, a United States Air Force Officer on active duty overseas in the country of Jordan; from the Director Voter Registration & Elections, informing him that his absentee ballot was not counted in the Georgia General Election.

Also included is a copy of the envelope in which the aforementioned letter arrived. It is postmarked November 3, 2000, 4 days before the general election and 11 days before the aforementioned letter!

Major Hedges received his absentee ballot on mid-October, with enclosed instructions that it must be postmarked no later than November 5<sup>th</sup> and received no later than November 14<sup>th</sup>.

I contacted the Voter Registration and Elections office November 16<sup>th</sup> and was informed that absentee ballots had to be in no later than Election Day and there was no difference between overseas military ballots and absentee ballots mailed from within the United States.

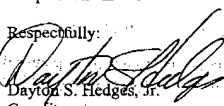
I fail to understand why there is a difference between OCGA 21-2-384 and the enclosed instructions with Major Hedges absentee ballot.

I also fail to understand how a letter dated November 14<sup>th</sup> arrived in an envelope postmarked November 3<sup>rd</sup>!

Major Hedges, a decorated combat veteran of the gulf war and recipient of a Purple Heart for wounds received in the line of duty has been denied his right to vote by at the least, bureaucratic incompetence or at the very worst, deliberate fraud!

I request an answer!

Respectfully:

  
Dayton S. Hedges, Jr.  
Constituent  
November 27, 2000

#1  
EXHIBIT  
SPB  
12/16/2000

11/08/2000

To: Mr. John Evans  
NAACP Director

From: Ineta Kriffin  
Re: Oxidental Election

My Name is Mrs. Ineta Kriffin I am a registered voter in DeKalb County, After work I went to the Poll at Flat Shoals Elem School. I stood in lines for 1 hour, finally got up to desk the voter reg officer look up my name, saw it in the book ask me if this was my address ask for my ID, then she replied you need to go to Clarkston to vote, I ask why she said I dont know, but you need to go to Clarkston. The young lady sitting next to her ask her if she should check she replied no she needs to go Clarkston to vote, I left very upset crying especially since it was 5 min before poll closed.

on 11/8/00 @ 9:30am I called voter reg office they looked up my name, address, SS# + stated I was supposed to vote Indian Creek they also stated they mailed me a notice of change of voting, which I never received if I had I wouldn't have stand in line at least the poll like a dummy, I have call my Senator, Secretary of State + now NAACP. my question is the voter officer should have been able to tell me where to go, Even though I wouldn't have made it in time, + see my name + address + I had ID was in the book on Flat Shoals how could it?

#3  
EXHIBIT  
11/08/2000

1423

FROM: WORLD FINANCE CORP. 11

FAX NO. : 7704411624

Nov. 09 2000 02:12AM P1

#2

thank.

Your Concernation is appreciate

Kate Higgins  
770 441-1339

P.S Here is ~~copy~~ copy of Voter's Certificate I filled  
out, just so you know I tried to Exercise  
my Right as a U.S. Citizen

1424

FROM : WORLD FINANCE CORP. 11

FAX NO. : 7704411624

Nov. 09 2000 02:14AM P1

VOTER'S CERTIFICATE - GENERAL OR SPECIAL ELECTION

DeKalb COUNTY, OR MUNICIPALITY, STATE OF GEORGIA

I hereby certify that I am qualified to vote in the  General Election  General Election Runoff  Special Election  Special Runoff Election

held on Nov 7 192000 and that I have not and will not vote elsewhere in this JURISDICTION in my own name or in any other name.

I understand that making a false statement on this Certificate is a felony under Code Section 21-2-562.

(Print Name As It Appears in Registration List) INETA GRIFFIN Current Residence Address 3789 N Decatur Rd.

Signature [Signature] of Elector DeKalb Co - 30030 K.P.D., Street or Road City, State, Zip

Bulker Stub No. \_\_\_\_\_ Name or initials of Poll Officer receiving Voter's Certificate: \_\_\_\_\_

IN CASE OF PHYSICAL DISABILITY, FILL OUT THE FOLLOWING: I HEREBY CERTIFY THAT THE VOTER IS UNABLE TO SIGN HIS OR HER NAME BY REASON OF THE FOLLOWING: \_\_\_\_\_

Signature of poll officer: \_\_\_\_\_

ELECTION OFFICIAL MUST MARK TYPE OF IDENTIFICATION LISTED BELOW OR THE OATH OF ELECTOR IN PLACE OF REQUIRED IDENTIFICATION MUST BE COMPLETED BY VOTER

- 1)  Valid Georgia driver's license
- 2)  Valid ID card by any state or U.S.
- 3)  Valid U.S. passport
- 4)  Valid govt. employee id with photo
- 5)  Valid employee id with photo
- 6)  Valid student id with photo
- 7)  Valid hunting/fishing license
- 8)  Valid permit to carry gun/shotgun
- 9)  Valid pilot's license
- 10)  Valid U.S. military id card
- 11)  Certified copy of birth certificate
- 12)  Valid social security card
- 13)  Certified maternal/maternal documentation
- 14)  Certified copy of adoption, name/sex change

Oath of Elector in Place of Required Identification completed and attached hereto

Form No. VC-CAM 98

1425

November 30, 2000

Annie L. Simmons  
4104 Chapel Lake Drive  
Decatur, GA 30034

The President of the NAACP  
ATTN: Mr. John Evans (Decatur Branch)  
Suite 180  
3011 Rainbow Drive  
Decatur, GA 30034

Dear Mr. Evans:

In September 2000, I completed and mailed in an absentee ballot for my 18 year old daughter, Mandeshia M. Simmons, to receive an absentee ballot so she could vote in the presidential election on November 7, 2000. My daughter is an eligible voter. She voted in the primary election earlier this year here in Decatur, when she was a senior in high school. As of August 2000, she entered Tuskegee University (Tuskegee, Alabama) as a Freshman.

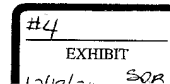
On October 31, 2000, I called the voting election office to affirm that they had sent my daughter her absentee ballot. An election official affirmed that my daughter was mailed the presidential ballot. I called my daughter on the weekend prior to the election, and she informed me that the election office only mailed her the local election ballot. They did not mail her the presidential ballot. I tried to call the election office all day on Monday, November 6, 2000, to no avail. Their telephone was consistently busy. I talked to a polling official at my voting precinct on November 7, 2000. He told me it was too late to do anything about it. But he said I could call and voice my dismay to the election office. I called the number that he gave me, and left a detailed message but no one returned my phone call.

I specifically wrote on my daughter's absentee ballot application that the absentee ballot was needed for the presidential election on November 7, 2000. I am gravely concerned that my daughter and I did what was necessary for her to cast her vote, but she did not receive her ballot. This leaves me to question how many other (especially minority) eligible voters did not receive absentee ballots in the mail.

My daughter did get an opportunity to vote in Alabama only because she had the foresight to work with the NAACP in Alabama, and she was able to get registered in Alabama before the cutoff date. Others perhaps were not as fortunate, and were unable to cast their vote(s). I appreciate the diligent effort that the NAACP has put forth in the presidential election. Every eligible voter should have the opportunity to vote and have their vote counted. If you need any additional information, you may reach me at work at (404) 562-6428 or home at (404) 286-0717.

Sincerely,

*Annie L. Simmons*  
Ms. Annie L. Simmons




11/30/00 14:52 FAX

004

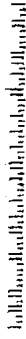


LINDA W. LATIMORE, REGISTRATION AND ELECTIONS DIRECTOR  
 Board of Registration and Elections  
 4380 Memorial Drive  
 Decatur, Georgia 30032



**ADDRESS CORRECTION REQUESTED**

James D. Hedges  
 1620 Withmere Way  
 Dunwoody, GA 30338



3 5 3 3 4 - 2 5 4 1 - 6 5

1427

1/30/00 14:02 FAX  
CYNTHIA A. MCKINNEY  
5th District, Georgia  
COMMITTEE ON INTERNATIONAL  
RELATIONS  
ANATIONAL OPERATIONS AND HUMAN RIGHTS  
WESTERN HEMISPHERE  
COMMITTEE ON  
NATIONAL SECURITY  
MILITARY READINESS



Congress of the United States  
House of Representatives  
Washington, DC 20515-1011

WASHINGTON OFFICE:  
124 CANNON BUILDING  
WASHINGTON, DC 20515  
(202) 225-1605  
FAX (202) 225-0891  
DISTRICT OFFICE:  
246 SYCAMORE STREET  
SUITE 110  
DECATUR, GA 30030  
(404) 377-8900  
FAX (404) 377-8909  
INTERNET ADDRESS:  
cymck@hr.house.gov

From the Office of  
Congresswoman Cynthia McKinney

Facsimile Transmittal

Please Deliver To: Ronda  
From:

- Cynthia A. McKinney
- Elridge D. Cayo
- Jonathan C. Fremont
- Peter Hickey
- Sean P. Nichols
- Mark Perkins
- James M. Romano
- Keya N. Sanders
- Merwyn L. Scott
- Guests

Fax Number: 404-377-6909

Comment: Absentee ballot dispute

Total Pages (including cover page): 4

If you have difficulty receiving this facsimile transmission in its entirety please call (202) 225-1605 for assistance.

Confidentiality Notice: The documents accompanying this facsimile transmission contain confidential or proprietary information belongs to the Office of U.S. Representative Cynthia McKinney. This information is privileged and is directed to the attention and intended solely for the individual or entity named above. If you have received this facsimile transmission in error, please immediately notify us by telephone to arrange for either destruction or return to this office. Thank you for your cooperation.

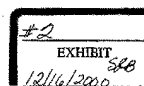


**NOVEMBER 7, 2000  
ELECTION SUMMARY**

The DeKalb County Board of Registration & Elections would like to express sincere appreciation to every citizen that exercised his or her right to vote in this past General Election.

Long lines topped the list of problems we encountered. This was caused by:

- ◆ Citizens' names not appearing on voter registration files. Some of the reasons were:
  - ❖ Web sites encouraging citizens to register to vote through them that were not authorized by the Secretary of State and the Secretary of State never receiving registration information to forward to the counties.
  - ❖ The Department of Motor Vehicles failing to provide the Voter Registration Department with a copy of information needed to input registration information in the system when an individual gets a driver's license and says "Yes" to the question, "Do you want to register to vote?" The citizen does not realize that unless we get the information from DMV he or she is not registered to vote until they show up at the polls on Election Day.
  - ❖ The Statewide Voter Registration System could not handle the heavy last-minute registration and around October 15, dropped everyone that had been entered on that date. We were not notified of this until a day or two later and by then there was no way of determining who had been dropped and who had not. Luckily, most of the dropped voters did receive a precinct card and we were able to provide citizens with a certificate enabling them to return to their precinct and vote.
  - ❖ Unauthorized Voter Registration Drives held at bars, sporting events, through fraternities and civic organization that never turned the registration cards in to the Secretary of State. Again, citizens thought they were registered when, in fact, they were not.
- ◆ Poll managers had difficulty contacting the Voter Registration & Elections Office by telephone to verify voters because the phone lines were overloaded. This was mainly due to:
  - ❖ Citizens calling in to check to see if they were registered to vote.
  - ❖ Voters calling in to find out where their precinct location was.
  - ❖ Voters calling in for directions to precincts.
- ◆ First time voters to Georgia not understanding our voting system.
- ◆ Extremely long ballot and voters unfamiliar with the issues, especially amendments and referendums. This slowed down the process and made for longer time in the voting booths.
- ◆ More than 35,000 new registered voters in the month of October alone in addition to the already rapid growth in DeKalb, especially South DeKalb.
- ◆ Overworked and underpaid poll officials.





-2-

**Stoneview Precinct**

In response to the reported problems experienced at the Stoneview Precinct, all of the above came into play as well as:

- ◆ Voters were given incorrect information by the media, advising them that they could request a "challenge" ballot if their name was not on the voter registration list. This is not an option in Georgia and had to be explained to citizens over and over again.
- ◆ Stoneview is a "Split Precinct" which means there are two House Districts. Citizens complained because the lines were long and certain vote recorders were not being utilized. The reason for this was that one split had a larger turnout than the other split.
- ◆ Certain candidates were notified by their supporters of problems and came out to check on it. Along with them came a multitude of their other supporters who were not registered to vote at that precinct and as numbers of people increased, the noise and intensity of the crowd increased. As time neared 7:00 PM, some of the voters were concerned that they would not be able to vote. Most of the problems at Stoneview were caused by people who were not even registered to vote there. The Chairman of the Board of Registration and Elections, as well as staff members and a representative from the Secretary of State's office went out to the location to investigate and assist. The crowd soon became under control and every voter who was in line at 7:00 PM was allowed to vote. No one that was registered at another precinct was allowed to vote at that location. This was true of every precinct in DeKalb County.

**Preparation for the Future**

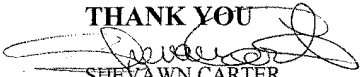
- ◆ We had already included in our 2001 budget request, the Optiscan system currently being used in Cobb & Gwinnett Counties. However, we are also investigating other options available in the marketplace
- ◆ We had already included in our 2001 budget a request for additional staff. In particular, following this past election we could utilize a full-time PR person to help educate voters as well as assist in the training of all poll officials, not just the Managers and Assistant Managers.
- ◆ We anticipate dividing and adding new precincts. Following every General Election, all precincts are evaluated and we will also take the upcoming reapportionment scheduled for 2001 into consideration.
- ◆ We are addressing every complaint we receive
- ◆ We are requesting a full report from every Poll Manager and Assistant Manager. For future elections we will again request an increase in poll worker pay in order to recruit more knowledgeable and capable workers.
- ◆ As is customary following every major election, we will be meeting with the Secretary of State and surrounding Election Supervisors to brainstorm on ways to make the process better and prevent the recurrence of problematic situations.

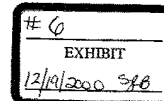
1430

November 15, 2000

I SHEVAWN CARTER A RESIDENT IN DEKALB COUNTY WAS DENIED THE OPPORTUNITY TO VOTE AT THE ELECTION ON NOVEMBER 07, 2000. THIS WOULD HAVE BEEN MY FIRST TIME VOTING IN THIS STATE. I WENT TO STONEVEIW SCHOOL LOCATED ON COVINGTON HWY. AROUND 5:30 PM AND WAITED IN 3 DIFFERENT LINES TILL 9:20 PM TO FIND OUT I WAS IN THE WRONG LOCATION BECAUSE OF REZONING. I ASK FOR A PAPER BALET AND A CHALLENGE BALET AND WAS TOLD THERE WAS NOTHING THAT COULD BE DONE. I FEEL THAT MY RIGHTS WERE TAKEN AWAY. I AM 35 YEARS OLD AND THIS WAS ONE OF MY WORST EXPERIENCE ESPECAILLY TRYING TO ENFORCE MY RIGHTS TO VOTE KNOWING THAT MY FORMER FAMILY FOUGHT FOR THIS RIGHT YEARS AGO. I STILL WOULD LIKE MY VOTE TO BE COUNTED.

THANK YOU

  
SHEVAWN CARTER  
3094 ABERDEEN WAY  
LITHONIA GA. 30038



1431

BARBARA L. LANE  
2492 FIELD SPRING DRIVE  
LITHONIA, GA 30058  
770-981-1783

November 16, 2000

John Evans, President  
NAACP  
3011 Rainbow Dr., Ste. 180  
Decatur, GA 30034

Dear Mr. Evans,

On November 7, 2000, I went to vote at Stoneview Elementary School, Lithonia, Georgia. I arrived at the poll at 5:00pm and stood in line and was not able to vote until 10:00pm. It took me 5 hours of standing in line to exercise my constitutional right to vote.

While November 7, 2000 was an historic election, the problems were numerous. The major problem that caused this horrid situation at my polling site was the neglect to assign even a moderately reasonable amount of voting booths. Only eight booths were assigned to about 1300 voters at my poll. That is about the same amount of booths that my polling site has consistently been assigned over the past several years even though the number of registered voters has probably doubled.

Dekalb County and the State of Georgia has failed me. They have failed to provide me the same fair and equitable voting experience that other Georgia voters received.

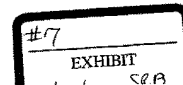
Please assist me to insure that all polling sites are treated fairly and provided adequate voting equipment proportionate with the number of registered voters in their areas. **The value of my vote should not be dependent on the polling site I am assigned.**

I thank you in advance for your assistance in insuring that all Dekalb County voters in the future receives an equally fair voting experience.

Sincerely,



Barbara L. Lane  
Registered Voter

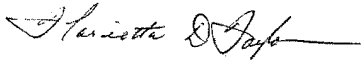


1432

After voting on Tuesday, I sent an E-mail to the Secretary of State regarding this matter. I'm not certain that it went through since the address was given at the bottom of the web page, and I received an error message stating that the site would be closed. Therefore, I am sending a hard copy.

It is hoped that somehow changes will be made in the system to avoid such infractions, frustrations and confusion in the future. A little more patience and knowledge on the part of poll workers would also enhance this process.

Respectfully,

A handwritten signature in cursive script, appearing to read "Fiorietta D. Taylor". The signature is written in black ink and is positioned above the printed name.

Fiorietta D. Taylor

cc: Secretary of State  
Georgia Democratic Party  
Southern Christian Leadership Conference  
NAACP  
National Democratic Committee

1433

**RELEASE**

Undersigned hereby grants to the NAACP, its agents and/or assigns, the right to use undersigned name, likeness and/or any and all information, documentation, pictures, videos, tapes, CD's, photo likeness, or whatever devises which may be utilized by any and all media sources as may be designated or selected by the NAACP. In no event shall the undersigned be depicted as using or endorsing any product, commodity or service without undersigned prior consent.

This the 16 day of DECEMBER, 2000.

DEIDRA JOHNSON

Address

D. Johnson

POB 372988

DECATUR, GA 30037-2988

\_\_\_\_\_

1434

**RELEASE**

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This the 16 day of DECEMBER, 2000.

Address:

8492 FIELD SPRING DR.  
LITHONIA GA 30058

Barbara L. Lane  
BARBARA L. LANE

1435

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This the 16 day of December, 2000.

Address:

2170 Ector Ct.  
Atlanta GA 30345

---

John W. Sawyer  
John W. Sawyer

1436

**RELEASE**

Undersigned hereby grants to the NAACP, its agents and/or assigns, the right to use undersigned name, likeness and/or any and all information, documentation, pictures, videos, tapes, CD's, photo likeness, or whatever devices which may be utilized by any and all media sources as may be designated or selected by the NAACP. In no event shall the undersigned be depicted as using or endorsing any product, commodity or service without undersigned prior consent.

This the 16<sup>th</sup> day of December, 2000.

Address:

2839 Lynda Place  
Decatur, GA  
30032

Zepora W. Roberts  
ZEPORA W. ROBERTS



1437

**RELEASE**

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This the 16 day of December, 2000.

Doretta McGlory  
Doretta McGlory

Address:

2623 Embacadero Dr #297  
Atlanta, Ga 30058

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1438

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This the 10 day of December, 2000.

Address:

2560 Wild Spring Ct  
Decatur GA  
30734

Sandra A. Holly  
Sandra A. Holly

1439

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Undersigned hereby grants to the NAACP, its agents and/or assigns, the right to use undersigned name, likeness and/or any and all information, documentation, pictures, videos, tapes, CD's, photo likeness, or whatever devices which may be utilized by any and all media sources as may be designated or selected by the NAACP. In no event shall the undersigned be depicted as using or endorsing any product, commodity or service without undersigned prior consent.

This the 16 day of December, 2000.

Tahni Parker  
Tahni Parker

Address:

3379

Flat Shoals

Rd Decatur GA

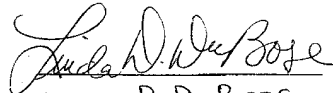
(4) 241-8516

1440

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This the 16<sup>th</sup> day of DECEMBER, 2000.

  
LINDA D. DuBOSE

Address:

LINDA D. DuBOSE  
1327 CARTER ROAD  
DECATUR GA 30030  
404-289-0113

1441

**RELEASE**

Undersigned hereby grants to the NAACP, its agents and/or assigns, the right to use undersigned name, likeness and/or any and all information, documentation, pictures, videos, tapes, CD's, photo likeness, or whatever devices which may be utilized by any and all media sources as may be designated or selected by the NAACP. In no event shall the undersigned be depicted as using or endorsing any product, commodity or service without undersigned prior consent.

This the 16 day of Dec, 2000.

OCGA - 11-1-207  
*[Signature]*  
OCGA 11-3-305(2)(b)(i)

Address

1797 Jerry Mill Rd. SE  
Atlanta, Ga. 30316  
404-370-0598

1442

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Undersigned hereby grants to the NAACP, its agents and/or assigns, the right to use undersigned name, likeness and/or any and all information, documentation, pictures, videos, tapes, CD's, photo likeness, or whatever devices which may be utilized by any and all media sources as may be designated or selected by the NAACP. In no event shall the undersigned be depicted as using or endorsing any product, commodity or service without undersigned prior consent.

This the 16 day of December 2000.

*Willie Alfreda Capers*

Address:

4899 Rock Springs Rd  
Lithonia, GA 30038  
770 593-8664

*Willie Alfreda Capers*

1443

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This the 16 day of Dec, 2000.

Joe H. Bemby  
Joe H. Bemby

Address: Joe Bemby  
1868 Meadow Lane  
Decatur, Georgia 30032  
pager 404-283-4041

1444

**RELEASE**

Undersigned hereby grants to the NAACP, its agents and/or assigns, the right to use undersigned name, likeness and/or any and all information, documentation, pictures, videos, tapes, CD's, photo likeness, or whatever devices which may be utilized by any and all media sources as may be designated or selected by the NAACP. In no event shall the undersigned be depicted as using or endorsing any product, commodity or service without undersigned prior consent.

This the 16 day of December 2000.

\* Olivia M. Jones  
Olivia M. Jones

Address:

1756 McKelzie Dr  
Decatur GA 30032  
Olivia M. Jones



1445

LINDA W. LATIMORE  
DIRECTOR, VOTER REGISTRATION & ELECTIONS  
(404) 298-4020  
FAX (404) 298-4028



BOARD MEMBERS  
JEFFERY L. BOYD  
DEXTER MITCHELL  
EDIE J. NORBURY  
NANCY QUAN-SELLERS  
SAMUEL E. TILLMAN

Board of Registration and Elections  
4389 Memorial Drive  
Decatur, Georgia 30032

November 27, 2000

Ms. Florietta D. Taylor  
3503 Shepherds Path  
Decatur, GA 30034

Dear Ms. Taylor:

Thank you very much for taking the time to advise us about your voting experience at the Flat Shoals Parkway Precinct as well as your sister's at the absentee poll. I am sincerely sorry for your long wait in line and the difficulties you and your sister encountered.

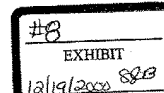
Enclosed is a copy of a summary we prepared that addresses many of the problems encountered on Election Day, along with proactive steps we are taking to improve the voting process in the future.

Please be advised that the DeKalb County Board of Registrations and Elections had already requested funds to be included in the budget to update voting equipment prior to the November 7 election. We are very hopeful this will be approved by the Budget Committee, plus there is a very real possibility that the Secretary of State's office will mandate a statewide system so that every county in Georgia will be using the same method.

Regarding absentee voting, our absentee poll is open 45 days prior to the election. Unfortunately, the days immediately prior to the election were, by far, our busiest. The law requires a written request including the name as registered, address as registered, reason for voting absentee and signature before an absentee ballot can be issued. That was the reason for the application form. The same application form is used for all elections. The only time you would need to indicate party preference on the application would be for a Primary Election, whereas you would vote either in the Democratic or Republican Primary. Since the absentee poll is used by all 167 precincts, ballot label pages are not placed in the voting machine. You are issued the ballot label page that relates to the precinct where you would normally vote, just the same as if you received an absentee ballot by mail. Verbal instructions are given that you punch the hole above the number of the person shown on the ballot label page for which you wish to cast your vote. Thus, you use the ballot label page for voting, along with the ballot. The only other two items you have to keep up with are the two envelopes to insure privacy. The ballot is placed in the white envelope and the white envelope is placed in the yellow envelope on which the voter signs the oath, clocks it in, and places it in the ballot box.

Regarding procedures at the polling place, we are required by the Georgia Election Code to follow certain procedures. These procedures are included in our "Poll Procedure Book" which is thoroughly covered in training sessions for the poll officials. If you would like a copy of the "Poll Procedure Book," I will be happy to provide you with one. Further, if you have any interest in serving as a poll official, we would be more than happy to send you a "Poll Official Questionnaire." We welcome the help of all concerned citizens in this important job.

In reference to the number of voting machines, the law requires that we provide one voting machine per every 200 registered voters in a precinct. At the Flat Shoals Parkway Precinct, there are 1,982 registered voters, which calls for nine voting machines when, in fact, we had a total of 16, seven more than were required. Further, as required by law, three "sample ballots" were posted at each precinct. Again, since this was a General Election, party preference was not a consideration. In Georgia, the only time party preference comes into play is for Primary Elections.

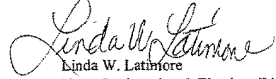


1446

Regarding elderly or disabled voters, Georgia Election Code Section 21-2-409.1 states: *"On election day between the hours of 9:30 A.M. and 4:30 P.M., each elector who is 75 years of age or older or who is disabled and requires assistance in voting as authorized by Code Section 21-2-409, shall, upon request to a poll officer, be authorized at any primary or election to vote immediately at the next available voting compartment or booth without having to wait in line."* Notices to this effect were posted at the polling places.

Again, thank you for your concern. Please know that we will do everything in our power to make the voting experience better for all DeKalb citizens.

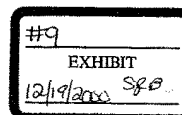
Very truly yours,



Linda W. Latimore  
Voter Registration & Elections Director

cc: Secretary of State  
Georgia Democratic Party  
SCLC  
NAACP  
National Democratic Committee

Mr. Evans my name is  
Korinda C. White, and I'm writing  
to inform you of my voting experience  
Nov. 7, 2000. First I was transferred  
to a different voting pole without  
notification. I was told of this  
change only after standing in line  
for 1 hour and 30 minutes, then  
having to wait at the location  
another 30 minutes to find out  
where I was suppose to go  
vote. My location had been changed  
to Stoneview Elementary School.  
I went about 5:30 and  
after standing in line several  
hours only for my identification  
to be checked, I was told to  
move to another line to actually  
vote. Upon doing so, I reached  
the point where I was next in  
line to get my ballot to cast my  
vote. Nevertheless, I was stalled  
again the young lady in front  
of me with her voters registration

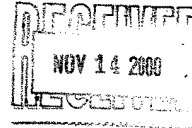


card in hand was told  
 that because her name was not  
 in the "green" book or the "grey"  
 book she could not vote. We  
 were stunned together her  
 and myself started to question  
 why she was being turned away.  
 This young lady had her voters  
 registration card that clearly  
 stated Stoneview Elementary as  
 her voting location, unlike myself  
 I did not have my card but  
 I was in the book. Now from  
 my understanding if you had  
 your voters registration card  
 you would be turned away.  
 This young lady was! This  
 started some questioning  
 among people that were at  
 Stoneview about our polling  
 places and voting strategies.  
 A concerned voter,  
 Earlnola White

Robert T. Jones  
726 Wood Hollow Way  
Stone Mountain, GA 30087

RTJ & Associates

November 14, 2000



John Evans, President  
NAACP  
3011 Rainbow Drive  
Decatur, Georgia 30034

Dear John:

I would like to take this opportunity to share with you my vision of Election 2000.

The fall out from Election 2000 -The Presidential Race -has already started to filter through to me.. As it turned out, this was the Year Of The All American Election—code word: Of, by, and for whites as a show of strength and to send a message , to friend and foe alike to let you know who's in charge here in de land o' cotton and elsewhere. The secondary message was intended to convey the idea that the act of reclamation was accomplished without help from any groups outside the master race, thereby forfeiting any future obligations or demands.

By the same token, this would clear the way to provide a four year agenda that would be a no-brainer. The agenda would include the following: enacting legislation to promote their own selfish interest, dismantling all civil rights entitlements that are currently in place, initiating the voucher program, eliminating all levels of affirmative action programs, and reestablishing the Military Industrial Complex and then getting engaged in saber rattling all over the globe in order to justify its existence.

Traditionally, the black vote has been a unified force in helping to determine the outcome of elections at all political levels - City, County, State and National. The black vote has been responsible for electing at least four Presidents—Kennedy, Johnson, Carter and Clinton. Recently, blacks were instrumental in getting two Governors of Georgia elected -Zell Miller and Roy Barnes. We also played a significant role in the election of our two Senators—Max Cleland and Zell Miller.

It is somewhat of an anomaly that the black vote could be such a vital force in the senatorial campaign but not have any impact on the presidential race in Georgia. At issue here is, why?

Perception Is Reality...

#10  
EXHIBIT  
12/19/2000 SFB

November 14, 2000

Page 2

Voter registration among blacks in the state is as high or higher than it has ever been. Politically, we had clearly defined objectives and a keen sense of direction, and an overwhelming turn out at the polls on election day. So, what happened and why didn't it work this time?

Conventional wisdom might suggest that black voter expectation failed to achieve its potential because of the massive debacle at the polling stations. On the surface, one might have gotten the impression that the problem was caused by some kind of breakdown in planning. Wrong!

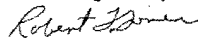
The chaos witnessed by everyone that day was a well-orchestrated plan conceived by somebody in a tactical organization, experienced in these kind of tactics. Regrettably, their mission was a success in that it thwarted the black vote and swung the election in another direction, and of course spelled defeat for Al Gore in carrying the state and winning the much needed electoral votes.

In the military, we learned in strategic training classes that it's not always necessary to kill the enemy to stop him from accomplishing his objective. A simpler tactic, but just as effective, is to deter him to the extent that he will abandon his mission. The election day tactics used at the polls were a classic example of those prior military strategic training classes. And they worked perfectly. The mass confusion created at the polling stations served to deter and frustrate voters to the extent that they abandoned their mission which, in this case, was to vote.

Considering the price black people had to pay in order to gain the right to vote, the Office Of Voter Registration should be held accountable for their role in the dastard act of depriving black voters of the precious right to vote on November 7, 2000. For me, and scores of other blacks this will truly live as a day in infamy.

On behalf of African-Americans and other under represented minorities, I am hereby requesting the NAACP to file a complaint with the United States Department Of Justice against The State Of Georgia and to obtain an Order To Show Cause why The State Of Georgia willfully and unlawfully engaged in acts to deliberately deny the aforementioned persons their civil rights, to wit: The Right To Vote in Election 2000.

Submitted in good faith,



Robert T. Jones

10/04/2000 17:34 7704651893

PAGE 81

NOVEMBER 13, 2000  
 (404)241-8066  
 (404)241-8323

MS ELMOR SHEPHERD  
 816 MARTIN ROAD  
 STONE MOUNTAIN GA 30083  
 (770) 465-1893

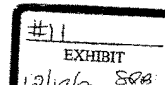
TO: NAACP

SUBJECT: GEORGIA ELECTION 2000

I HAVE A COMPLAINT AGAINST THE 2000 GEORGIA VOTING SYSTEM. ON NOVEMBER 7, 2000 MY HUSBAND, LEROY SHEPHERD, MY NIECE, RETINNA SHEPHERD AND MYSELF, ELMOR SHEPHERD ARRIVED AT ANTIOCH A.M.E. CHURCH AROUND 6:25 P.M. THERE WAS A LONG LINE IN FRONT OF US AND A LONG LINE BEHIND US. WE VOTED AROUND 8:13 P.M. WHEN I WENT TO MISSISSIPPI THIS WEEKEND MY MOTHER INFORMED ME THAT GOV. BUSH WAS ANNOUNCED THE WIN OF THE GEORGIA AROUND 8:00 P.M. NOW I BECAME MORE DISAPPOINTED IN THE VOTING SYSTEM THAN EVER. MY CONCERN IS THE WORKING AMERICAN WHO VOTED AROUND 6:30 TO 8:45 P.M. HOW WAS THESE VOTES COUNTED IN THE 2000 ELECTION? I AM DEVASTATED TO BELIEVE THAT OUR VOTES WAS NOT COUNTED IN THIS IMPORTANT ELECTION. I FEEL THAT AS WORKING AMERICAN CITIZENS THAT OUR CIVIL RIGHTS HAS BEEN VOLTIED AND WE HAVE BEEN DEPRIVED OF OUR VOTING RIGHTS. WE HAVE A MUCH BIGGER PROBLEM THAN FLORDIA I MOVED TO GEORGIA IN 1994. I LISTEN TO MR. HOSEA WILLIAM TELEVISION PROGRAM IN WHICH HE ENCOURAGED THE BLACK AMERICAN TO VOTE HE INFORMED US THAT OUR VOTES WOULD MAKE A DIFFERENCE. NOW MR. WILLIAMS IS IN THE PEDIMONT HOSPITAL. I KNOW AS AN AMERICAN CITIZEN THIS ISSUE CAN NOT REST UNTIL ALL AMERICAN VOTES ARE COUNTED!

SINCERELY,

  
 ELMOR SHEPHERD



1452

11/14/2000 16:07 7784653913  
2000 election

BONNIE CLAYTON

PAGE 94

**Subject: 2000 election**

**Date:** Wed, 8 Nov 2000 18:38:47 -0500

**From:** "kathryn gable" <kgg@mindspring.com>

**To:** <naacpdek@bellsouth.net>

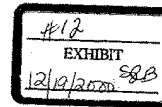
Attention: John Evans

John, thank you for taking my phone call tonight concerning the general election results across the country. I, as stated in my phone call, am outraged that registered voters in South DeKalb County and in Fulton County were unable to vote because of long lines, not enough ballots and loss of voter registration. Also I am concerned that Florida, whose Governor is the brother of the Republican Presidential candidate, is undergoing a "re-count" to determine who our next President will be. I am not one who embraces the "conspiracy theory" simply because of its expediency at times, but this is a major matter that warrants thorough investigation. I urge the NAACP and other governing bodies to examine the causes that lie behind the inability of our conscientious citizens to vote their candidate of choice.

Sincerely,

Kathryn Gable  
1258 Sunderland Court  
Atlanta, GA 30319

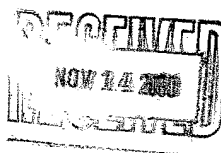
Phone # 770-451-3452





3503 Shepherds Park  
Decatur, Georgia 30034  
November 10, 2000

Board of Registration and Elections  
4380 Memorial Drive  
Decatur, Georgia 30032



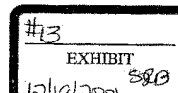
RE: November Election

Sir/Madam:

It is with deep dissatisfaction and frustration that this letter is being written. In all of my years of voting, I have never seen such inefficiency as I observed on Monday and Tuesday for this year's general election.

In the past, I can recall these sayings "Thank God for Alabama and Mississippi," which was referring to those states being on the bottom rung of the ladder for progress. Having lived in Alabama a number of years and being involved in the political process there on the local, county and state levels, please know that Alabama is far more advanced than what I have experienced since being in Georgia. In summarizing these:

1. First of all, there is no privacy. The punch type method on voting stands is a far cry from the voting machines where a curtain insures privacy and levers are pulled to reflect your vote.
2. Much time is spent filling out a form printing your name first and then giving your signature, address, date, type of election, and saying whether or not you are a Democratic or Republican. Really now! Another table already has this information; is this redundant or not?
3. The registration office where absentee voters voted was like a zoo. Organization was null and void; leaving it wide open for any type of voter fraud. A longer form (application) was required to be completed with little room for doing this. I was there to assist my sister who couldn't be available on Tuesday to cast her vote. Adding to the confusion, one had to keep track of several different papers and then punching the card on the machine. Well, the punch holes were above the name of the candidate of your choice, while the hole you assumed would be the one you would punch was closer to the candidate's name, but under the name. This would have given another candidate your vote. Very, very clear? Confusing enough for the educated person; imagine the confusion for the average "Joe."
4. Tuesday was a complete disaster. Since one had to wait in line from 2 to 2 ½ hours and longer, it would have been beneficial for the amendments to be placed at various intervals in order that voters could have been knowledgeable of their contents prior to entering the voting place.
5. After getting inside the door of the gymnasium at my voting precinct, there were only 15 machines for voting, 3 tables for workers, and only 3 persons were allowed to approach the table to (you guessed it) write in the name of the election, county, print your name, sign your signature, write your address and check whether or not you were democrat or republican. All of this for someone to find your name on a pre-printed printout while a line of 200 and more persons circling the building waiting to vote.
6. Evidently, there was no concern given for the elderly, handicapped or blind. I witnessed one blind gentleman being led through these same channels, and one elderly woman (whose legs had given out) being led to a car.



1 So the calls were coming in so fast for rides to  
2 the polls and the basic things that I was trying  
3 to get was the problem, the name of the person,  
4 telephone number and the precinct. And it just  
5 went on like that, you know, all day with us  
6 receiving those phone calls.

7 We received one from a lady here in  
8 Stoneview. I received one about -- I can't  
9 remember the time or anything but I know she was  
10 saying -- if my memory serves me right, it was  
11 about 10 minutes after 7:00. And she said that  
12 we needed somebody to come over here to  
13 Stoneview. And she said there's about 1 to  
14 2,000 people in line and said that we're having  
15 problems voting. There is no air in the  
16 building and we only have four booths.

17 So I tried to get her name. She was  
18 calling from a cell phone. And whatever the  
19 time frame was, that's when I called Ms. Linda  
20 Latimore and told her about the problem here at  
21 Stoneview. She informed me that she was aware  
22 of the problem, that she had dispatched one of  
23 her people here.

24 And she said that -- I says, well,  
25 what about the lady said that there's 1 to 2,000

1 people. She said, no, I can assure you it's not  
2 that many people in that line. It's only about  
3 50 to 100. I says, okay. And so I accepted  
4 that, you know, thinking that she was on top of  
5 it.

6                   When I closed up the NAACP office  
7 that night about 9:15, I left there and went  
8 around to Congresswoman Cynthia McKinney's  
9 office. And when I got there I guess about 9:20  
10 and, you know, meeting and greeting people and  
11 then I saw people, heard people talking about  
12 the problem at Stoneview. And it struck a nerve  
13 -- a chord with me because I knew that there had  
14 been one earlier. And some of the people were  
15 saying they were going over there. So I says,  
16 well, I am gonna jump in the car and go with  
17 them because I know we had received this call  
18 earlier.

19                   So we left, you know, Congresswoman  
20 McKinney's office about -- it was about 9:40,  
21 9:45 and we drove over here. And sure enough  
22 when I walked through that door, I know that I  
23 saw about 500 people in line and people were  
24 very upset; people were talking about leaving  
25 because they had been waiting for so long, four

1 to five hours in line.

2 And then when I walked in here,  
3 there were children all over the floor, running  
4 around, there were people lined up, sitting all  
5 up here, headed all around here, only had one  
6 table back here in this area with only one voter  
7 registration book.

8 And at the time that I came in here,  
9 it was only one person sitting at that table,  
10 but later on when -- I saw two people sitting  
11 there. So that was a hold-up. And I only saw a  
12 few booths over here, saw booths over here but  
13 nobody was using these. And I mean, people were  
14 just -- they had a right to be upset.

15 And then I saw, you know, everybody  
16 just running around. No one in control and I  
17 was looking for the poll manager. And I really  
18 never saw the poll manager here at this site  
19 until about an hour later. But I did see the  
20 assistant manager because she was at the door  
21 out here.

22 And when people were talking about  
23 leaving, I don't know what happened, but we knew  
24 that we didn't want this to happen. So somebody  
25 or I joined in and we started to chant, you

1 know, saying, we want to vote. We want to vote.  
2 I don't know who started it, but I sure joined  
3 in to help. That was to kind of boost them and  
4 give them some support because we felt, you  
5 know, from way back when this is what people  
6 want you to do. They don't want us to vote as  
7 black people even here in America today.

8 And Congresswoman McKinney, I will  
9 tell you what I am really upset about. We being  
10 black folks or African-Americans are the only  
11 group of people who is not recognized as a U.S.  
12 citizen because we have to go every 25 years to  
13 have the Voting Rights Act, you know, renewed.

14 Now, you tell me just when and how  
15 long are we gonna have to be here? I was born  
16 and reared in this country. People can come  
17 over from everywhere and they can come in and  
18 get their rights, you know, enacted and  
19 restored. They don't have to come before the  
20 Congress and the U.S. Justice Department to have  
21 that renewed. They get their votes -- their  
22 right to vote. They get it and they don't have  
23 to worry about it again.

24 But here it is in the year 2000 we  
25 as black people still have to come every 25

1 years to get it.

2 Now, am I not a citizen? What is  
3 it? What is it? What is it about me that they  
4 don't want me to vote? And what is it that I  
5 have to prove every 25 years that I am worthy?

6 And I can give Bill Clinton credit  
7 for doing a lot of things, but he didn't address  
8 this issue. And I want to see George W. if he  
9 is a compassionate conservative and he wants to  
10 be inclusive of all people, then take this  
11 message back to him and tell him to do the right  
12 thing. Show me what he is gonna do. Give me my  
13 rights. Remove that because we are citizens of  
14 the U.S. and we should not have to go through  
15 this.

16 But getting back, I guess Stoneview  
17 this was what one of the -- Oh, and earlier one  
18 of our members of the executive board, Karen  
19 Fitzpatrick, had called me about this particular  
20 location. And she was here where the poll  
21 managers and people were -- No, it was not this  
22 location. It was Pine Ridge. That's where she  
23 was. She called because the poll manager and  
24 the poll workers were not sensitive to anyone  
25 that was voting, trying to get people -- and the

1 biggest problem everybody's coming in with their  
2 I.D., voter registration cards in hand, going up  
3 to there and some of them been voting at this  
4 place all this time, but when they get up to the  
5 vote to have their names verified, nothing on  
6 the book.

7 I then when Karen called me and she  
8 said, Zepora, you have got to do something  
9 because people are leaving.

10 So I sent -- I called Linda Latimore  
11 again. And that was the other thing. On that  
12 day, there was one number for DeKalb County  
13 voter registration. I had started calling that  
14 number again on Monday, November 6th. I was  
15 never, never able to get through to that one  
16 number. Then when I was taking people -- I took  
17 some people to the polls at Columbia Elementary.  
18 They had a problem over there that morning.

19 So I asked Ms. Copeland I says,  
20 well, when you have a problem, what number do  
21 you call to get through. She gave me the same  
22 number and it escapes me. I should never forget  
23 it. They only -- They had to call the same  
24 number. Been calling for days to try to get  
25 through to the voter registration office,

1 couldn't get through.

2           So when you got a problem, what are  
3 they gonna do. Nothing. You have to get it  
4 resolved. And I just thank God that we at the  
5 NAACP were there to try to help do whatever we  
6 could.

7           So, you know, those were some of the  
8 major problems. I'm trying my best to remember  
9 everything because as I understand some of you  
10 are here from the Justice Department and I know  
11 what my congresswoman is doing.

12           So we just need you to hear, you  
13 know, in addition to what has been articulated  
14 to her. But this whole system needs to be and  
15 it must be revamped and reorganized. And we are  
16 gonna do everything that we can to make sure  
17 that people are registered to vote and that  
18 there is voting education as well as the  
19 registration. And once we get that done, we are  
20 gonna get you to the polls to vote.

21           And after going to Tallahassee for  
22 the past two weeks, I can assure you we are  
23 highly charged. And this -- this part of  
24 history will never repeat itself again. We are  
25 gonna make sure of that. We have a right and we



1 have a need to do that.

2 So anybody have any questions to  
3 help me, John, remember, refresh all the things  
4 we went through?

5 MR. EVANS: You can always come back  
6 if you remember some things.

7 MR. SLAYTON: I do have a question I  
8 would like to ask.

9 Ms. Roberts, thank you. That was  
10 real good in terms of trying to recall all of  
11 that. There are three areas here. In  
12 retrospect, not so much that day but even the  
13 experience you have had since then with  
14 understanding more about the people who  
15 registered at the DMV and showing up to the  
16 polls, not maybe even having an I.D. cards and  
17 not able to vote or not having I.D. cards -- I  
18 mean, not having voter precinct cards before you  
19 get there. Would you characterize that as a lot  
20 or a few or not so many in terms of experience  
21 here in DeKalb County and calls you all got at  
22 the NAACP?

23 MS. ROBERTS: Mr. Slayton, it was a  
24 lot. And you know had Georgia -- we been in the  
25 same situation as Florida, we would still be

1 fighting today.

2 And I am glad you asked me that  
3 question because I was able to -- once I was  
4 finally able to get through, I know how I got  
5 through to Ms. Latimore. I dispatched Angela  
6 Patrick from our office to go over to her  
7 office. And Angela called me back with her --  
8 Ms. Latimore's pager number and a different  
9 number, so I paged her.

10 And in -- I found out that the  
11 people at Pine Ridge who had their I.D. but was  
12 not on the books, Ms. Latimore was able to look  
13 it up. They were in the computer and this is  
14 what the poll managers and things were not  
15 allowed to get through to find out. So all of  
16 these people were turned away.

17 I had a young lady to call me from  
18 -- that worked at Delta Airlines at the airport  
19 had been in line in her voting precinct was  
20 right there on Memorial Drive at the  
21 Presbyterian Church. She was incensed because  
22 she had been voting at that location and she got  
23 up there and they told her the same thing and  
24 she called the NAACP to complain. So I told her  
25 to get off work and go back.

1                   And the other thing, a lot of people  
2                   that waited in line they found out that after  
3                   waiting for a long period of time this was not  
4                   even the poll and the site they were supposed to  
5                   be voting on. And in some instances, we had a  
6                   lot of that and in some instances once they got  
7                   finally told that this is not where you are  
8                   supposed to vote, well, the polls would have  
9                   been closed by the time they reached the other  
10                   destination.

11                   So you can't tell me that some of  
12                   this stuff was not done by design. I believe  
13                   that it was. I just can't really prove it but  
14                   the proof is in the pudding because our people  
15                   were denied the right to vote in vast numbers.

16                   MR. SLAYTON: Would you say that is  
17                   also true for the people that you got calls who  
18                   registered at Kroger?

19                   MS. ROBERTS: Oh, yes. Most  
20                   definitely.

21                   MR. SLAYTON: One other question,  
22                   Ms. Zepora. I'm sorry.

23                   On the night that you visited this  
24                   school -- this precinct in this school where we  
25                   are this morning and you characterized what you

1 encountered when you first arrived outside and  
2 then when you came in, about what time was it  
3 when you came to Stoneview?

4 MS. ROBERTS: When I got to  
5 Stoneview, it was right around 10:00 or about 10  
6 minutes after 10:00. It just took us to drive  
7 from Congresswoman's McKinney's office to here.  
8 It was I know three or four car loads of us, you  
9 know, that came and it was about that time.

10 And then later on while -- when I  
11 was here, I finally saw -- I saw Sam Tillman  
12 come in. And I know him because -- you know,  
13 from the Elections Board. And he came in and  
14 started trying to restore some kind of order by  
15 getting people to line up here and, you know,  
16 get them moving chairs and things and putting  
17 them over here for people to sit that had been  
18 here. People were running around everywhere.

19 And there were three Republicans  
20 here. I remember Jill Chambers and I don't know  
21 the other two ladies' name, but they didn't help  
22 things. Because there was one Jamaican lady  
23 that was with us. She was so incensed about  
24 what was going on and she was voicing her  
25 opinion loudly. And one of these Republicans

1       instead of her leaving the woman alone and  
2       letting her fizzle out on her own, she was  
3       prompting, asking questions, making comments to  
4       fuel and instigated words. But by that time I  
5       am still standing over here observing  
6       everything.

7                        But when Sam came in, he kind of got  
8       some order. And then people kind of -- I think  
9       with all of us being here and they did see two  
10      ladies who had on NAACP shirts and hats and they  
11      felt better when they said, well, the NAACP is  
12      in the house. And we feel better and we know  
13      something is going to be done now.

14                      The only thing they wanted to do was  
15      to vote and they just wanted some help for being  
16      able to vote. Then later on I saw you come in  
17      and I saw some people bring --

18                      MR. SLAYTON: For the record, who is  
19      you?

20                      MS. ROBERTS: Mr. Terrell Slayton.  
21      And you came in with a little bull horn and you  
22      were heard. And that helped to calm the people  
23      down further.

24                      And then we saw -- I saw about three  
25      or four additional voting polls being brought

1 in. It looked like this one must have been out  
2 of order right here, because that's where I  
3 stood and never saw but one person vote on it  
4 the whole time I was here.

5 So I don't know. I couldn't  
6 understand that. But that's just about it.

7 MR. SLAYTON: Thank you.

8 MR. EVANS: Thank you. Next  
9 speaker.

10 MS. DORETHA McGLORY,  
11 Being first duly sworn, testified as follows:

12 MS. DORETHA McGLORY: I voted at  
13 this precinct -- Pardon me. Doretha McGlory.  
14 This is my polling place.

15 I arrived here at 5:00 o'clock that  
16 evening to vote. I had come that morning, but I  
17 was running late for work so I decided to come  
18 back afterwards. I looked at my watch purposely  
19 to see how long it was going to take me to vote.

20 I got here at 5:00. And I am the  
21 young lady that called you on the cell phone  
22 because it was a problem here. I also was  
23 concerned that DeKalb County Police wasn't here.  
24 There had been an accident down at the foot of  
25 the hill and it was just a lot of confusion.

1                   When I came in, I told the assistant  
2 manager or whatever that they needed to contact  
3 the authorities because there is a problem  
4 outside. Anyway, upon getting in line, you  
5 know, it quickly filled up behind me. People  
6 apparently had gone and picked up their children  
7 straight from work and came because there were a  
8 lot of children here. I must say the kids for  
9 the most part were very well mannered because it  
10 was a long wait and it was hot in here.

11                   I came out of the polling place at  
12 9:30. So I stood in line four and-a-half hours  
13 to vote. I was number 1,109 because they will  
14 write the number on the little ballot. And that  
15 is, I guess, given if there is any mistake. But  
16 generally I was the 1100th person to come  
17 through here. And I know behind me there had to  
18 be at least 4 or 500 people because the line  
19 was, like, out the door and, you know, that kind  
20 of thing.

21                   And I do recall Congressman  
22 McKinney, your father, coming in and there was  
23 just pandemonium. I mean, you know, people were  
24 clapping because we had -- we had been sitting  
25 all on the stage and I said this is ridiculous.

1 I have never had to wait this long to vote. But  
2 I had it in my mind set that I didn't care how  
3 long it was. I was gonna stand right there and  
4 I was going to vote.

5 So it didn't seem like the people  
6 that were in charge -- no disrespect meant to  
7 them. They had no control over the situation.  
8 Better yet as one lady said behind me, just  
9 didn't give a about the situation. I raised it  
10 to the assistant manager. She was all in a huff  
11 and that kind of thing. I said, well, why don't  
12 you call for re-enforcements. I said, why don't  
13 you try and get someone over here to, you know,  
14 to get some of these people out of the line.  
15 Get some more polling places.

16 And apparently two precincts vote in  
17 this school here. Apparently this particular  
18 precinct only has like I think 300 voters. So  
19 if you were from that precinct, you were able to  
20 go right in, sign, to right out the door.

21 So we were saying, well, why can't  
22 we use those and they went on to explain that  
23 the way they are set up, there are different  
24 house seats and things like that so you can't  
25 use those particular ones. So we stood.



1                   People on the most part I really  
2 felt really thought that something was afoot  
3 because it didn't make sense. It shouldn't take  
4 you four and-a-half hours to vote. It really  
5 shouldn't.

6                   Like I said, I was concerned that  
7 they were gonna be questioning you if you were  
8 the correct voter. That's why I brought  
9 everything, my birth certificate, my Social  
10 Security card because I didn't want to hear them  
11 tell me, well, you are not on the poll. No.  
12 You are gonna let me vote. I am not gonna move.  
13 And a few people behind me, they did have that  
14 problem. They had voted. Had gotten -- said,  
15 well, you are not on the list. I said, well, I  
16 was told that you can do a challenge. The lady  
17 said you are not supposed to give advice. I  
18 said, well, I'm just telling her what I heard  
19 that if you were challenged at the poll, they  
20 still have to allow you to vote. You just swear  
21 that you are the person and you should be  
22 allowed to vote.

23                   So I am glad that I was called to  
24 come here today to speak to the issue in this  
25 situation. For one thing this school is not

1       adequate to serve this particular precinct.  
2       It's not. There is only one way in and one way  
3       out; cars just jammed up; you can't get out. It  
4       was just total chaos.

5                 And I think that more training --  
6       definitely more training should be done with the  
7       people who are the managers or overseeing the  
8       particular precincts because they were totally  
9       unprepared and just did not know the way to  
10      coordinate to get more order to the situation.

11                So as I said, I am thankful for  
12      being invited here today to have my say because  
13      it does help to vent.

14                So I don't know if anyone has any  
15      questions for me.

16                MR. BROWER: Ma'am, what would you  
17      characterize as a major problem or impediment to  
18      you being able to cast your vote in a timely  
19      manner?

20                MS. McGLORY: I would say that it  
21      was the lack of voting booths and, as I said, I  
22      think the people who were placed in charge of  
23      this -- when they saw that the situation was  
24      getting out of hand -- when I got here at 5:00,  
25      it was chaotic. To me, something should have

1       been dispatched then. It shouldn't have taken  
2       for Congresswoman McKinney and her dad and all  
3       of them to come here. It just seemed like they  
4       just sat and just waited for things to just go  
5       crazy.

6                   It's just like if you see somebody  
7       heading towards the bridge and gonna fall off,  
8       would you just stand there and wait until they  
9       fall off and then call for someone to help. You  
10      would probably call before then.

11                   So I just think it was bad judgment  
12      on the parts of the individuals. I don't know  
13      how people get those jobs or how they are placed  
14      in those positions, but if they are gonna be put  
15      there, I think they need more training. If they  
16      see a situation occurring like once that line  
17      got that long, you know, in your mind  
18      logistically you cannot service that many people  
19      because you only got "X" number of booths, then  
20      at 3:00 or 4:00 o'clock. Because the lady said  
21      the line had been standing here full like that  
22      all day. You shouldn't wait or better yet they  
23      never did call anybody.

24                   It was only through the efforts of  
25      say myself and other people calling to NAACP and

1       Congressman McKinney's office to let them know  
2       we have got a problem over here. We need for  
3       someone to come and address the problem because  
4       the managers and the polling people they didn't  
5       seem to be concerned.

6                 I guess they figured, well, you  
7       know, it's not our fault. We are here to do our  
8       job, but it is not our fault if it is not  
9       logistically working in terms of getting the  
10      people in and out. And they were frustrated,  
11      too.

12                I think that they just kind of threw  
13      these people into these positions and they do  
14      not give them any training. You need training  
15      to do that. Especially with something as  
16      important as this.

17                As far as the balloting and stuff --  
18      see, I am real neurotic, I guess, because I did  
19      hold my ballot to make sure all my holes were  
20      punched. Because I know that that can happen.  
21      Because I am from Chicago first of all, so  
22      people always make a big joke about me being  
23      from there. But the point is that this is  
24      important. This is very serious and you need to  
25      take it as such. So I did. The lady said what

1 are doing. I said I'm trying to make sure all  
2 of my holes are punched for the people that I  
3 wanted to vote for.

4 So it was just a bad situation. I  
5 am glad that nothing really serious happened in  
6 the way of any kind of true altercation or  
7 anyone getting physically hurt. But that  
8 particular situation was very volatile and it  
9 had the potential to do that.

10 But my people I am very proud of  
11 them. Most of them did stay in the line and  
12 they said they were not leaving until they could  
13 vote.

14 Thank you.

15 MR. EVANS: Next speaker. Let me  
16 make sure -- Hello. Let me make sure now. Did  
17 everybody who had an opportunity to speak make  
18 sure that your name and address and phone number  
19 is on that sheet so that if there is any need  
20 for future contact we can do that.

21 Next speaker.

22 TALMUL PARKER,

23 Being first duly sworn, testified as follows:

24 MR. TALMUL PARKER: I just wanted to  
25 come up and say I did not vote here.

1 MR. EVANS: What is your name?

2 MR. PARKER: My name is Talmul  
3 Parker, Talmul, T-a-l-m-u-l, Parker. And I just  
4 turned 18 in September of 2000. And this is my  
5 first time voting and I must say it has been  
6 exciting and I have enjoyed it. I have enjoyed  
7 everything that has happened, but basically with  
8 the presidential election I have been watching  
9 CNN And covering it because I think that when I  
10 read this letter, one thing stood out to me. It  
11 said that it is evident that across America  
12 every vote should count. And I voted at Flat  
13 Shoals -- not Flat Shoals, at South DeKalb  
14 Y.M.C.A. and I am just here with Ms. Capers.  
15 The reason I am here up here standing is that I  
16 am a young person and I am covering the election  
17 and I do vote and I am gonna exercise my right  
18 to vote and I just wanted to say on my behalf of  
19 me and my friend here that every vote should  
20 count.

21 I don't know what took place here.  
22 I did come down here and participate in the  
23 activities that was going on to get the people's  
24 votes counted. I just wanted to assure that  
25 this kind of thing wouldn't happen again.

1                   So I just wanted to come up and say  
2                   that I am in support of the people that are up  
3                   here complaining and exercising their complaints  
4                   to you all about the issues that took place on  
5                   November 7th. And I am in support of getting  
6                   whatever we need to do to make sure that this  
7                   does not happen again. That's basically all I  
8                   wanted to say.

9                   MR. EVANS: Let me ask you one  
10                  question.

11                 MR. PARKER: Yes.

12                 MR. EVANS: At the polling place  
13                 where you voted, did you see anything that you  
14                 feel you need to share with us?

15                 MR. PARKER: No. When I went to  
16                 vote, I didn't have any problems. I didn't have  
17                 to wait that long. I believe I voted for who I  
18                 voted for. I voted Democratic, but I hope I  
19                 voted but I don't know. But this was my  
20                 intention. But I didn't have any problems. I  
21                 wasn't turned away and nothing of that nature.  
22                 So I think everything went okay. I didn't see  
23                 anything that might have disturbed me.

24                 MR. EVANS: Thank you so much.

25                 Next speaker.

1                   Have ya'll filled out the sheets.  
2           Anybody who wants to speak now, the sheets are  
3           being passed around. You need to fill out the  
4           sheet.

5                   Is there anybody who wants to speak  
6           that has the sheet filled out?

7                   Well, we will give you an  
8           opportunity to come back as soon as -- I think  
9           these proceedings are very important and you  
10          need to share with us those specifics that you  
11          experienced and so that we can make sure we  
12          profile all this information into something that  
13          is meaningful.

14                   Ms. Deidra Johnson, where is she?

15                   Could you just come up and tell us  
16          what precinct again you worked at and maybe what  
17          your position was?

18                   MS. JOHNSON: Deidra Johnson. I  
19          wanted to clarify that. I actually worked at  
20          Redan Elementary School as an assistant poll  
21          manager. And the problems I was speaking in  
22          terms of -- as far as the workers, I was  
23          actually referring to the manager and the other  
24          assistant manager that I worked with that day.

25                   So can I add my -- I just have a



1 couple other comments, specifics -- Can I go  
2 ahead?

3 MR. EVANS: Go ahead.

4 MS. JOHNSON: We had -- It was a  
5 young man that had registered through the Tom  
6 Joiner Morning Show. And I was -- he didn't  
7 have his voter registration card. And when he  
8 came, I tried to call the election office to  
9 verify that they had him on record so that he  
10 could vote. And it took about 45 minutes for me  
11 to actually get someone on the line. And once  
12 we were on the line, this was like before 7:00,  
13 before the polls closed but it was, like,  
14 actually until about 9:00 or 9:15 before I could  
15 -- they told me that they had no record of him  
16 and he couldn't vote. So he didn't get the  
17 opportunity to exercise his right to vote.

18 Also the longest wait time that I  
19 heard someone say they were in line for like  
20 three and-a-half hours at that location.

21 MR. EVANS: Thank you so much.

22 All right are we ready? Next  
23 speaker.

24 MS. OLIVIA JONES,

25 Being first duly sworn, testified as follows:

1 MS. OLIVIA JONES: My name is  
2 Olivia Jones and I am in the 55th Senate  
3 District with Senator Gloria Butler and I also  
4 vote at the Knollwood Elementary School. And I  
5 -- it did take about an hour or so for me to get  
6 in to vote, which usually it takes about maybe  
7 10 minutes.

8 And there were several -- three or  
9 four tables that you had to stop at before you  
10 got to actually vote. There was one guy who  
11 evidently maybe he was having problems earlier  
12 because he told me to hold up my ballot to make  
13 sure that the holes were punched in my ballot  
14 and that something had occurred earlier where  
15 the holes were not being punched all the way  
16 through.

17 So there were some problems -- that  
18 indicated to me that there was some problems,  
19 but my holes were punched because I made sure I  
20 punched them very hard. However, there was  
21 something that happened earlier and he did say  
22 that someone had a problem.

23 The other thing I wanted to point  
24 out was that I was very, very proud to see the  
25 turnout from the African-American community,

1 very proud of that effort. The get-out-to-vote  
2 was tremendous and we just kind of overwhelmed  
3 the system and that's what I am very proud of.

4 Also very excited about what  
5 happened and very sad about it at the same time.  
6 Because I was excited during the whole process  
7 to find out all of the things that actually go  
8 on. The votes that are not being counted. The  
9 votes that are being thrown out. The votes I  
10 mean, I just thought that every vote counted.  
11 Maybe I was just very naive and just didn't  
12 know. But I really believed that every vote  
13 should count and I still do. And I didn't know  
14 that this was going on. And this has been going  
15 on all along. This is not just happening. It  
16 didn't just happened just because Bush and Gore  
17 is running for president.

18 And it is just, you know, the  
19 hypocrisy of the whole thing. And then all of a  
20 sudden now it is out in the open and I'm very  
21 happy about that, that now people know exactly ,  
22 you know, what's really going on. Our votes are  
23 not being counted.

24 You know, so I am glad that it came  
25 out and everybody is aware of it now and that

1 everybody is getting behind this thing to make  
2 sure that every vote count. People died for  
3 this.

4 And then to piggyback on what Zepora  
5 said about this thing. Every 25 years that we  
6 have to renew our right to vote. I mean, that  
7 is absolutely -- I mean, what's up. I mean, we  
8 have people who are in these positions who know  
9 that this is going on. What are we doing about  
10 it? How long does it have to go on? I mean,  
11 you know, I am really upset about that part  
12 because I can't believe that in 2000 we have  
13 officials who know about this. I am still  
14 learning, but this is something that's not new  
15 and we are still having to renew our right to  
16 vote every 25 years. My God, I mean, it is so  
17 disrespectful. I don't like it. I don't like  
18 the fact that, you know, in our communities --  
19 Excuse me. I am a little bit upset still.

20 But in our communities that we still  
21 are not having the right to vote. So you know,  
22 but I am glad we are all here and I think -- was  
23 there one other thing that I wanted to talk  
24 about.

25 I think that pretty much covers it,

1 but we really should and I am ready to get  
2 behind anybody who's gonna do something about  
3 this. I mean, I want something done, like,  
4 yesterday but, of course, you know, we have to  
5 take the legal route and take one step at a  
6 time. And I am glad that we are here today to  
7 talk about it.

8 I am so proud of someone like  
9 Cynthia McKinney and John Evans in this  
10 community that I know who are doing a great job  
11 in trying to do the right thing and also Zepora.  
12 I am proud of these people. I am glad to know  
13 them and I am just excited about working with  
14 them.

15 MR. SLAYTON: Ms. Jones, if you  
16 could indulge me for one minute. You said it  
17 only took you about an hour to vote on election  
18 day.

19 About what time during the day did  
20 you go to your polling place?

21 MS. JONES: Let me see. I think I  
22 went around 7:00 or 7:30 in the morning. And it  
23 was about -- And that was unusually a long  
24 length of time because I usually go early in the  
25 morning and I am out in a few minutes. But the

1 fact that people were coming -- you know, people  
2 were overwhelming the voting places and they  
3 were out there.

4 There was one lady in line who said  
5 she had a luggage -- big huge, you know, luggage  
6 and she was pulling down the street. It was her  
7 granddaughter with a little small one. She  
8 said, we are gonna miss that flight because we  
9 are voting today and I was proud to hear that.

10 MR. EVANS: Thank you.

11 Next speaker.

12 While he is coming, I'd like to  
13 recognize Mr. Ozell Sutton who is here  
14 representing the Justice Department. Raise your  
15 hand. I want you to say a couple of things  
16 after this speaker.

17 I want you to say a couple  
18 things after this speaker.

19 MR. JOE H. BEMBRY,

20 Being first duly sworn, testified as follows:

21 MR. JOE H. BEMBRY: My name is Joe  
22 Bembry. I voted at Trinity Presbyterian Church  
23 and I think the folks who work at those polls  
24 leave a lot to be desired. Let me give you an  
25 example.

1                   I walked in to Trinity Presbyterian  
2 Church. The first lady that we come into  
3 contact with what she really supposed to have  
4 been done she supposed to have been  
5 demonstrating how you vote. What was she doing?  
6 She was telling folks how to stand and where to  
7 stand and pull your coat off. If you want to  
8 find a reason to get mad and go home and which  
9 some of them done, that was the place to be.

10                   I don't think that -- I think the  
11 peoples who they choose to manage those offices,  
12 they be on ego trips in those offices. They  
13 never have a chance to run anything and control  
14 anybody and they get out of hand.

15                   I visited during the election -- I  
16 was running for office. I visited a lot of  
17 precincts and I find that -- I find that to be  
18 the case in most of the precincts that I  
19 visited. They were just getting into the  
20 argument with citizens and all this kind of  
21 thing.

22                   If you want folks to vote, I think  
23 the first thing we need to do especially our  
24 race, we need to learn how to talk to each  
25 other. You know I got in trouble when the

1 foreigners they can't even speak English and  
2 they can yea, yea and then you go with a good  
3 feeling and when you come in contact with us,  
4 you go away mad. It hurt me to say that, but  
5 that's the truth.

6 MR. EVANS: Thank you. Brother  
7 Sutton, you want to give us a couple of minutes  
8 on your department and what role your department  
9 is gonna play in this whole scheme of things?

10 MR. OZELL SUTTON: Good morning all.  
11 And to our congresswoman, good morning to you  
12 and to all of you.

13 I am Ozell Sutton. I am regional  
14 director of the Community Relations Service U.S.  
15 Department of Justice. And when I found out  
16 that this hearing was going to be, of course,  
17 everybody know that I will show up at anything  
18 that Cynthia calls. That's number one. I have  
19 that kind of respect for her and certainly I  
20 have the respect for that which you are doing.

21 The Community Relations Service was  
22 established under Title 10 of the Civil Rights  
23 Act of 1964. And under that Act we were  
24 mandated to assist communities in resolving  
25 racial and ethnic conflicts, preventing and



1 resolving racial and ethnic conflict.

2 We have been quite busy leading up  
3 to this election and that time between the vote  
4 and now down in Florida as you would guess.  
5 Most of my staff have been down in Florida. I  
6 have been down there three times myself because  
7 we were preoccupied in Florida. But that does  
8 not mean that Florida is the only place that the  
9 kinds of things were taken place.

10 I have all kinds of complaints about  
11 people who were not able to vote when they  
12 arrived at one precinct. They told them they  
13 were supposed to be at another when that was the  
14 precinct at which they had been voting all of  
15 these years. That kind of thing. And there  
16 were so many machines down. I noted some myself  
17 and called to get some of them repaired or what  
18 have you.

19 We were notably not enough workers  
20 at the polls to take care of the size of the  
21 vote that was there. I don't know how that  
22 could be because I think everybody who works  
23 publicly knew that that vote was coming out.  
24 You know, I don't know how any public person  
25 could not have known that that vote was coming

1 out. And I go even further. I don't know how  
2 any public people in the black community that  
3 didn't know that the black vote was gonna come  
4 out. That was indicated two or three weeks  
5 before time and it did come out. And it  
6 disturbs all of us that oftentimes you didn't get  
7 a chance to vote.

8 A whole bunch of young people over  
9 at the Clark Atlanta Youth or in the Atlanta  
10 youth system that came out to vote and couldn't  
11 vote. And one of the things that always bother  
12 me is that when those of you and those of all of  
13 us who work to encourage people to vote and then  
14 it turns out they cannot vote, that has to  
15 disturb you.

16 The NAACP and many other  
17 organizations did a great job of encouraging  
18 people to vote and registering people to vote  
19 and many other organizations. And yet when  
20 those people showed up, for some reason or  
21 another, the opportunity to vote was not there.

22 I am just saying that we, in this  
23 magnificent country, have to find a way to  
24 address that. The right to vote is premier.

25 The right to vote and those of us

1 who was running around the country back in the  
2 '60s dodging and running and, yes, I do mean  
3 running and dodging.

4 I was down in Louisiana and in  
5 Arkansas and East Texas running trying to get  
6 people the right to vote and then I was running  
7 around down there trying to make a determination  
8 of the need for federal registrars in North  
9 Louisiana where it was kind of dangerous in  
10 those days.

11 I am glad I was young and I am glad,  
12 Brother Evans, I grew up in the country because  
13 in the country I learned how to run fast because  
14 I could catch rabbits in that sense and I  
15 learned how to survive sometime by making a  
16 quick exit.

17 But that's neither here nor there.  
18 What I am trying to say to emphasize the  
19 importance of voting and it's been important to  
20 our struggle all the time and it is still  
21 important to our struggle. That's why we must  
22 work hard and successfully to see that that vote  
23 is protected and that the right to vote occurs  
24 when it comes time to vote. And that's all I  
25 came to say. And we in the Community Relations

1 Service with the very small staff that we do  
2 have, we work unceasingly to try to assure that  
3 the rights of people are not trampled upon.

4 I was talking to my staff down in  
5 Florida yesterday and there is still going to be  
6 a great deal of unrest across this country as a  
7 result of their right to vote and the things  
8 that have come up.

9 So I say to those of you who are in  
10 authority, we will be working with you and call  
11 upon us to do anything you think that we can do  
12 and we will be ready to do that. Thank you very  
13 much.

14 MS. MCKINNEY: Thank you, Mr.  
15 Sutton. I do appreciate the fact that you are  
16 here to hear the voices of our constituent. I  
17 know you have been working overtime. You have  
18 been very busy with the events down in Florida.  
19 But the fact of the matter is that Florida's  
20 isn't the only place where the right to vote has  
21 been jeopardized. So we appreciate the fact  
22 that you are here.

23 I do want the record to reflect that  
24 we did place a call to the Department of Justice  
25 as well as I wrote a letter to the Justice

1 Department. I wrote a letter to the president  
2 complaining about the conditions that were  
3 visited upon my constituents and I appreciate  
4 the fact that the president sent -- forwarded  
5 the information over to the Justice Department  
6 and the Justice Department sent an investigator  
7 down here to quarry people as to what their  
8 experiences were.

9 I just am concerned and I would like  
10 the record to reflect that I am concerned that  
11 perhaps what we are seeing is a new type of  
12 minority voter suppression and that this then  
13 needs to be entered into your record as you  
14 return your comments back to the Justice  
15 Department. That the Voting Rights Act, while  
16 it may have at one time pertained only to poll  
17 taxes, literacy tests and the like, the  
18 perspective of the ways in which minority votes  
19 are suppressed has been broadened and so when a  
20 jurisdiction then fails to appropriate the kinds  
21 of funds to accommodate the kind of growth that  
22 we have seen in Dekalb County, then -- and the  
23 result is not on one occasion that the procedure  
24 was overwhelmed, but on two successive  
25 occasions. The 1996 presidential election

1 should have been a training ground for people  
2 who oversee the elections process.

3 But it was not because the year 2000  
4 was worse than the situation that occurred in  
5 1996. Failure to appropriate funds to  
6 accommodate new voters that results in the kind  
7 of abuse of the voting process for minorities to  
8 me is voter suppression and should be covered  
9 under the Voting Rights Act and could be and  
10 ought to be construed by the voting rights  
11 office of the Department of Justice as a form of  
12 minority voter suppression to be investigated  
13 and prevented.

14 MR. OZELL SUTTON: I know that -- I  
15 know that knowing you and your concerns have  
16 been registered already. But I shall take them  
17 back again. And thank you very much.

18 MR. EVANS: Thank you so much. Next  
19 speaker. While the next speaker is coming up,  
20 I'd like to recognize Ms. Mary Peeler, who is  
21 the southeast director of the National Voter  
22 Fund of the NAACP. Please raise your hand.  
23 Stand up.

24 MS. WILLIE A. CAPERS,  
25 Being first duly affirmed, testified as follows:

1 MS. WILLIE A. CAPERS: I was hoping  
2 the brother would wait and hear me out before he  
3 left. He was questioning other people. I  
4 wanted to make sure he heard what I had to say.

5 This is a sad day in Dekalb County  
6 this morning. It is truly a sad day.

7 MR. EVANS: What is your name?

8 MR. SLAYTON, JR.: What is your  
9 name?

10 MS. WILLIE A. CAPERS: Alfreida  
11 Capers.

12 It is a sad day because of the event  
13 that took place just last night with our sheriff  
14 elect and he himself did have some complaints  
15 about the voting process that took place.

16 I want to commend our Congresswoman  
17 Cynthia McKinney. She did not lose the election  
18 and that's not the reason that she is here is  
19 because she lost and want to raise a little  
20 sand. She is here because she is truly  
21 concerned about our voting process and our  
22 voting rights in Dekalb County.

23 I do know that Stoneview was not the  
24 only school and the only voting place that  
25 experienced a lot of traumas and mishap. People

1 not allowed to vote because they were not on the  
2 polls and people not there to give them the  
3 information that they should have been given to  
4 tell them that they should challenge. That did  
5 not happen to a great deal of people on election  
6 day.

7           And I think that in addition to  
8 improving the process, we need to add someone  
9 there that will speak for the people in the  
10 event that this should ever happen again. There  
11 was no one there in a lot of those voting polls  
12 to inform the person that you need to challenge.  
13 People turned away and left because they had no  
14 knowledge of what else to do except face that  
15 defeat.

16           I want to commend and give honor to  
17 our congresswoman again for the letter that I  
18 received at my home last week about a week and a  
19 half or so ago informing me how -- of how she  
20 has informed the president and others of the  
21 situation that had taken place here.

22           That letter was not negative towards  
23 any office or officer. It merely stated what  
24 needed to be done. She did not attack anyone  
25 and I want to thank you Congresswoman Cynthia



1     McKinney for all that you do and all that you  
2     will do. God bless you.

3                   MR. SLAYTON, JR.: Ms. Capers, if  
4     you would indulge me a minute. I heard  
5     something that kind of excited me a little bit.  
6     Sounds new. Say more about this notion of  
7     having an advocate for the people at the polls.  
8     You are not talking about another poll worker in  
9     the context of which we find those now and you  
10    are not talking about another poll watcher in  
11    the context of which we find them now.

12                   Talk to me a little bit about what  
13    you see the role of this person you call an  
14    advocate for the voter at each precinct. I'd  
15    like to hear a little bit more about that?

16                   MS. CAPERS: Okay. An advocate  
17    would merely do what a new voter -- just like  
18    Tamul. When Tamul walked in his very first  
19    time, walking into a precinct to vote, was  
20    anyone there to guide him through that process.  
21    Was he guided through that process in high  
22    school? No.

23                   There needs to be an advocate there  
24    that would guide a first-time voter through the  
25    process so that they go -- and like he said, I

1 don't know but I know what I intended to do.  
2 That person would have someone who is objective  
3 and has his interest at heart and helping him to  
4 facilitate and carry out what he came in the  
5 voting place to do.

6 The other thing that an advocate  
7 would be able to do is that if a person came in  
8 and they are at the wrong precinct, that person  
9 should have access to information that would  
10 guide the individual to the corrected precinct.

11 In addition, another role -- major  
12 role that they will play is that if a person is  
13 not on the roll, they should be given the  
14 information that they may not know that they can  
15 challenge and have them to actually go look in  
16 the computer at the main office and say, well,  
17 okay, he is on this -- he is registered here and  
18 let him go ahead and vote. Let him go ahead and  
19 vote and then his name come up after they get in  
20 their challenge. Okay. We will see if he is  
21 actually a registered voter.

22 And also a lot of people that  
23 registered when they go get their driver's  
24 license and so forth, they are not on the polls  
25 because one of the workers that enrolled them --

1 that did the registration on-site missed  
2 something. Those people need to be informed.

3 That may not be the -- a role of the  
4 advocate but that should be something that an  
5 advocate would check out to say, well, let me  
6 see if you have any ballots -- any applications  
7 here that have been thrown out for any reason.  
8 Let's check these and contact these people and  
9 let them know that there is a certain problem.  
10 We need you to dot this "I" or cross this "T"  
11 for us and then you are registered.

12 MR. EVANS: Thank you so much. Next  
13 speaker.

14 MS. ROBERTS: Zepora W. Roberts. I  
15 tried to make me a note this time of some  
16 additional things that occurred on November 6th  
17 and 7th. And we did receive calls at the NAACP  
18 office about police blockades. And I  
19 specifically remember when we had sent -- when I  
20 had sent out two people to go and pick up this  
21 lady in Ellenwood or somewhere around in that  
22 area, Angela Patrick called me back and said  
23 that they could not get to Flat Shoals  
24 Elementary School because the police had blocked  
25 off the whole area. Some fender bender. But

1 the whole entire street was blocked off and  
2 people were -- they could not get through no  
3 kind of way to get to that poll. So by the time  
4 they were able to get through at 1 or 2 minutes  
5 after 7:00, it was too late for them to vote.  
6 And I thought that was -- now I received two  
7 phone calls about that.

8 Then when I keep reading and finding  
9 out things, I found out that kind of thing was  
10 occurring in Florida, too, and I am sure it was  
11 not the only state that that was occurring. So  
12 that needs to be looked at.

13 The other thing was -- and this  
14 didn't make that much news. The next day on  
15 November 8th at the NAACP office somebody had  
16 called in and said there was a box of ballots  
17 that was left at Columbia Elementary School that  
18 had not been counted. But we didn't jump on  
19 that. So I don't know about that, but that's  
20 what we -- we did receive a call of that.

21 And I received several calls about  
22 this particular instance. People that have  
23 served time or committed a crime, I need to know  
24 and it needs to be clarified what is the rule  
25 here in Georgia or Dekalb County or throughout

1 the nation regarding that because they are being  
2 told that their rights are never, ever restored  
3 although you have served time, you have been  
4 pardoned. You can never, ever vote. That was  
5 one of the -- and this is one of the calls that  
6 I tried -- started on November 6th trying to  
7 call on behalf of a young man to find out just  
8 what it is in Dekalb County. But he said they  
9 are being told this when they go to jail. So  
10 that -- and it all occurs.

11 When I was out putting out fliers  
12 for a candidate in my neighborhood there was a  
13 young man walking -- two as a matter of fact  
14 walking in the neighborhood and they told me  
15 that, well, they had been in not to serve, you  
16 know -- it is just for some local things here in  
17 Dekalb County and he said that they told me that  
18 they had been told the same thing.

19 So I assured them that I am gonna  
20 start walking to try to find them to make sure  
21 -- to reassure them that they can register to  
22 vote. But now this is being told to especially  
23 black men every where. So that is a big  
24 problem.

25 The other thing we received phone

1 calls about were the elderly and the handicapped  
2 people that were being made to stand -- well,  
3 not made. They were not allowed or told that  
4 you can come to the front of the line. They had  
5 to stand in these long lines for hours just like  
6 everyone else.

7 Now if there is -- as I understand  
8 it that there is a rule or a policy, but these  
9 people have to know the policy to know that they  
10 can come up front. But seems to me that a good  
11 poll manager who is efficient and want to move  
12 their lines along would go and get these people,  
13 bring them to the front of the line to help  
14 speed the process and get them out of here.

15 In other words, do the right thing.  
16 And we've heard that we need additional training  
17 and, yes, that is sorely needed. And because  
18 there are some strong holds of die heart racists  
19 working and manning these polls here in Dekalb  
20 County and I can give you a list -- well, one  
21 that I know that I have had problems with  
22 although I don't vote there at every election.

23 I be carrying people to the polls  
24 and one is right there on Memorial Drive where  
25 these little old people are still manning the

1 polls. Longevity has its place. But it comes  
2 to a point when you need to go and they need to  
3 go at that Memorial Drive location right there  
4 on Memorial. That church.

5 We have had several problems there  
6 with these same little people and they are  
7 always trying to get -- trying to keep people  
8 from voting and even on July the 7th I had some  
9 -- I was dropping people off at different sites  
10 and things and here again these little old  
11 people coming out telling these young people,  
12 well, you can't do this or you can't do that.  
13 And when I went in on two occasions to confront  
14 them, they denied that they had told people  
15 that. You know, still these are just little  
16 forums and if our young people don't know any  
17 better, then they become afraid and fearful.

18 But a lot of this is going on and it  
19 is organized because it has been going on for so  
20 long, but they know when to raise their ugly  
21 heads.

22 And as Alfreida was talking and we  
23 did receive calls. People had been listening to  
24 V-103, Kiss 104 and Maynard Jackson and  
25 everybody talking about when you have a problem

1 to utilize the challenge vote -- a challenge  
2 ballot and our people were told that we don't  
3 have it.

4 If we don't have it, I think we need  
5 to have it and Alfreida was on the right track.  
6 Allow these people to vote. Put it in that box  
7 and then deal with it later, but don't deny them  
8 that process or that right.

9 And, yes, every vote should count  
10 and it will count and it should not be counted  
11 -- I press this. Our elected officials should  
12 not be decided by the Supreme Court who is just  
13 as biased as they can be in my estimation.

14 And the other thing at this location  
15 when people went out to move their cars, these  
16 are the people who had been -- they had been  
17 waiting in line here for such a long time.  
18 These are the ones that were not allowed to come  
19 back in here and I contributed them being able  
20 to get back in.

21 When I went to the door and I saw  
22 Congresswoman McKinney out there raising her  
23 voice on their behalf and then when I saw  
24 Terrell Slayton come in and I saw some doors  
25 open up and these people between the two, then



1 the people that had been shut out for moving  
2 their cars because they were fearful that their  
3 cars were going to be, you know, towed away and  
4 this is why they were on the outside and then,  
5 you know, they weren't allowed to come back in  
6 and, you know, to cast their vote.

7 So in other words, everything that  
8 happened on that day we should -- history just  
9 should not keep repeating itself where we are  
10 concerned.

11 MR. EVANS: Thank you. Is there  
12 anybody that needs to speak. You have got your  
13 form filled out and everything. Come on up.

14 Raise your right hand to be sworn  
15 in.

16 MS. STELLA S. SANFORD: I have it on  
17 the record. Maybe you will take a look at that.

18 MR. EVANS: Just make a note on the  
19 record that she did not want to be sworn in.

20 MS. SANFORD: I don't have to swear.

21 MR. EVANS: We are just gonna make a  
22 note in the record that you did not want to be  
23 sworn in. That is just a release form.

24 MS. SANFORD: That's a release form  
25 and I have it on that under my signature.

1                   MR. EVANS: Go ahead and proceed.  
2 Court reporter, please note on the record that  
3 she did not want to be sworn in on the record.  
4 Go ahead.

5                   MS. SANFORD: But note the fact that  
6 I am Stella Sanford. I am a voter of Dekalb  
7 County. I have signed my signature with all the  
8 legalities for the State of Georgia and the  
9 United States attached to my signature. So I  
10 don't have to raise my hand. Thank you.

11                   Based on the information as it  
12 relates to voting -- I am sorry I was late. I  
13 did not hear what the others had to say. I  
14 don't mean to be repetitious but I might be  
15 repetitious because I didn't hear.

16                   But based on the problems that I saw  
17 and encountered with voting is similar to those  
18 in 1967 back in the State of Louisiana when we  
19 had to go down and patrol the voting so blacks  
20 could come and vote. We don't need that kind of  
21 setting here in Dekalb County, in the United  
22 States as of this day.

23                   But due to the fact -- and I will  
24 name the poll where I attended. That was at  
25 Terrell Mill Elementary School. I don't know

1 anything about the others. I am a senior  
2 citizen and I do exercise my right as being a  
3 senior citizen. I had no problems because I  
4 know my rights. But there were others who did  
5 not know their rights and did not know what to  
6 say or to speak up, and I think they were  
7 intimidated by a lot of areas.

8           Number one, a lady came in who were  
9 given her -- what is her voting card but when  
10 she went to the place to vote, they didn't have  
11 her name on the list. They told her -- she was  
12 told that she had to go to another place. She  
13 had waited in line for 4 hours, hired somebody  
14 to bring her from one area to the place to vote  
15 and she explained it to the voting supervisor.  
16 The voting supervisor ignored her request. She  
17 said I have been waiting 4 hours in line  
18 already. Here it is 2:00 o'clock and the line  
19 at Terrell Mill was every bit 4 hours long even  
20 at that time. So she had to go to the back of  
21 the line, wait again with her children at home.  
22 She's been all day trying to get just to vote.  
23 I don't know if she stayed and voted or not  
24 because I didn't remain there.

25           At the Terrell Mill area I do know

1 that there were incompetent people who were  
2 handling the poll. My suggestion would be to  
3 train the people who are poll representatives,  
4 who are handling the polls, who have the people  
5 coming through and learn how to control so that  
6 the traffic would move quickly because this was  
7 a huge turnout. It is more than the other  
8 turnouts that has ever been to my knowledge at  
9 Terrell Mill School.

10 But however, they only had just one  
11 person and there were maybe 200 people standing  
12 in line with one little person writing. There  
13 is another way it can be done. Common sense  
14 could have been played in that quite well.  
15 Otherwise, they could have called -- I guess  
16 they could have -- possibly they could have  
17 gotten in touch with the election supervisor.  
18 But I don't know if that is factual or not  
19 because I tried several times to call the  
20 election supervisor's office, no one answered  
21 the phone. I called one of the county  
22 commissioners and asked them to check. They --  
23 no one answered the phone.

24 So, therefore, we need to know where  
25 these people are on that date because if there

1 are problems with voting, they need to be  
2 knowledgeable of it and maybe can take care of  
3 some of these problems before they bloom out of  
4 proportion.

5 Another situation where a young lady  
6 told me she says I want to vote. I don't know  
7 where to go and vote. I said what do you mean.  
8 Have you registered. She says I registered with  
9 some place. She told me she registered where  
10 they were taking registrations for people to be  
11 eligible to vote at this election.

12 I said, well, call the election  
13 supervisor and find out. No way she could call.  
14 No answer. So we need to make sure that  
15 somebody is in place to give these people proper  
16 direction and go from that point on.

17 But I would like to say that in  
18 order to take care of some of the things that  
19 has transpired and to prevent them from coming  
20 forward again is a form of education as it  
21 relates to voting and that needs to come from  
22 the top down. Thank you very much.

23 MR. EVANS: Thank you very much.  
24 Anybody else who needs to speak.

25 MR. MIKE RAFFAUF: My name is Mike

1       Raffauf. I am an attorney and I have been doing  
2       some investigation for Mr. Billy McKinney.  
3       There is a witness that needs to be here and she  
4       is not. Her name is Ruby Johnson. She was a  
5       poll manager at this particular -- at Stoneview.  
6       She said she was assisted by two a three other  
7       assistants. So there were two people here.

8                 She said there was a problem. They  
9       didn't have enough machines. That was  
10       apparently from the beginning, but she could not  
11       get a hold of anybody. Either it was busy or no  
12       answer. But she never was able to get a hold of  
13       anybody, but she knew she needed more machines  
14       but she was not able to do much about it.

15                I would say from my own experience  
16       -- I voted at Hubert Alexander which had 15  
17       machines. Now I have not been able to get a  
18       definitive count on how many machines this  
19       precinct had. I have got anywhere -- people say  
20       anywhere from 4 top 9, but there was more voters  
21       in this precinct than there was in the precinct  
22       that I voted at at Huber Alexander that had 15  
23       machines. So that's all.

24                MR. TERRELL SLAYTON: What is the  
25       racial makeup of -- that you are --

1                   MR. MIKE RATHER: Of Hubert  
2 Alexander as far as voters it is probably 50/50.  
3 Now what the actual registration is, I don't  
4 know. But clearly it was about 50/50 of the  
5 voters. It is bordered by Avondale Estates and  
6 Winnona Park.

7                   MR. EVANS: Do we have any other  
8 speakers. And even though it is 10 after 12:00  
9 and even though we are running out of comments,  
10 we are prepared to stay here until 1:00 to make  
11 sure that if anybody else comes, they will have  
12 an opportunity to speak. Go right ahead.

13                   MR. SAWYER: I wanted to come back  
14 up since I was also interested in the idea of  
15 the voter advocate that was brought about. But  
16 I feel like, and I guess I will direct it  
17 especially to you Congresswoman McKinney, since  
18 the federal government has standing with regard  
19 to voter rights, it makes sense to me that if  
20 you are going to encourage that each precinct in  
21 the country have some sort of voter advocate,  
22 that federal law focus on the functions of this  
23 advocate in the sense that there is some sort of  
24 guidelines about how much time people should be  
25 waiting, how many servers there are compared to

1 the number of people waiting.

2 And if those guidelines are not  
3 being met, then whoever the governing supervisor  
4 of elections might be, that person must have  
5 somebody available to respond to that voter  
6 advocate's call and must be able to provide some  
7 sort of relief. And if they don't provide that  
8 sort of relief then they would be subject to  
9 review in federal court.

10 I think if you light that fire under  
11 them, then a lot of this stuff will stop  
12 happening. That means the state's  
13 municipalities will start crying unfunded  
14 mandate. And my vote is let them cry.

15 MR. EVANS: Let me ask you this.  
16 Did you give her your name again?

17 MR. SAWYER: Excuse me. I am John  
18 Sawyer.

19 MR. EVANS: Go right ahead.

20 MS. LANE: Barbara Lane again. I  
21 wanted to respond to the attorney's question  
22 about the number of booths. Since we had 2,500  
23 registered voters according to Dekalb County  
24 Board of Elections, we were supposed to have 13  
25 booths because their rule is that for every 200



1 voters, you should have 1 booth. And we only  
2 had 8.

3 I mean so what's that fuzzy math or  
4 what? Well, there were four over here that were  
5 consistently empty, but we had about, you know,  
6 8 operating.

7 MR. DWIGHT BROWER: If I can respond  
8 to that. There was a total of 18 voting booths  
9 sent to Stoneview precinct. There should have  
10 been 10 in split number 72 and a total of 8 in  
11 split number 76.

12 MS. BARBARA L. LANE: Well, we had an  
13 equal amount operating and available to the  
14 people who came in. That's what was available.

15 MR. DWIGHT BROWER: And with the  
16 ratio of 200 -- 1 vote recorder for every 200  
17 voters, we did, in fact, meet that requirement  
18 but I think we went above that in terms of -- I  
19 think we sent out 18 vote recorders. So that --

20 MS. LANE: They weren't available.

21 MS. MCKINNEY: Is there any way that  
22 that can be verified as to the number of actual  
23 operating voting booths that were here because  
24 if the woman who was voting says that there --  
25 that has information that's different than yours

1 and I don't think you were here, then there must  
2 be some -- there is a discrepancy between your  
3 records and the actual experience of the voters.

4 MS. LANE: There is a discrepancy  
5 because I was in the office with Linda Latimore  
6 and she looked at the list. She brought the  
7 list of the assigned booths over to her desk and  
8 let me view it. And when she looked at that  
9 list it showed 9 for District -- sent out for  
10 District 71. And so she agreed with me that it  
11 wasn't computed properly.

12 Now 6 additional booths were brought  
13 out after 10:00 o'clock. So I don't if maybe  
14 that's what you have in your figure you know.  
15 But initially --

16 MS. HELEN BUTLER: But you are  
17 talking about initially.

18 MS. LANE: Initially, right. And  
19 like I said, she brought the list for the entire  
20 county over to her desk when I spoke with her a  
21 couple weeks ago and we didn't have enough and  
22 she was gonna check into it.

23 MR. DWIGHT BROWER: I will certainly  
24 go back and view that. But as a general rule,  
25 we send out "X" number with the fireman that

1 actually deliver. And the poll manager -- that  
2 he keeps with him or her which would have been  
3 the 10th one. But I can go back and look at  
4 that.

5 MR. EVANS: Yes, sir.

6 MR. BILLY MCKINNEY: There were four  
7 booths over here. There were four booths over  
8 here in District 71. Four. After we called --  
9 after Cynthia McKinney called then when Terrell  
10 Slayton came, they brought four more booths.  
11 That was 8 booths. But in the beginning all day  
12 long there were 4 booths. And when Terrell  
13 Slayton and the officials came, then they  
14 brought four more booths. There were 8 booths  
15 then. Another phone call and they sent three  
16 more booths. We ended up with 11 booths over  
17 here. But all day long there were only 4 booths  
18 for all those people.

19 MR. EVANS: Give your name, state  
20 representative for the record.

21 MR. BILLY MCKINNEY: Billy McKinney  
22 for the record.

23 MR. SLAYTON: Let me just add for  
24 the record. Billy McKinney indicated that there  
25 were a certain number of booths there in the

1 beginning and a call to Terrell Slayton got some  
2 other booths.

3           Let me clarify how those other  
4 booths showed up. And I think the first  
5 telephone call that we got in the Secretary of  
6 State's Office was really not to Terrell Slayton  
7 but it was to the Chief Elections Official of  
8 Georgia -- well, to the Secretary of State. I  
9 happened to be in the office that evening. It  
10 was shortly after 7:00. They were saying it was  
11 a number of people in line at Stoneview and  
12 there are not enough machines and we can't get  
13 through to Linda Latimore's office who is the  
14 chief elections official here in Dekalb County.

15           And we, of course, had a backdoor  
16 number to Linda. We had her private line. And  
17 I was able to have one caller on the line in one  
18 ear and used another telephone and got Linda  
19 Latimore on the line in the other ear. And now  
20 that I know where Linda is, give me a number,  
21 Linda, where we can call you and put all three  
22 of us on the telephone. And we were able to do  
23 that.

24           We got three people on the telephone  
25 and Linda Latimore responded immediately. She

1 got four more booths to come to this precinct.  
2 We thought it would be resolved. About two, two  
3 and a half hours later, we got another telephone  
4 call in our office and at that point in time it  
5 was still we are having problems at Stoneview  
6 and we still don't have enough voting machines.  
7 At that time I came to Stoneview and I observed  
8 for myself and, again, on my cell phone I got  
9 Linda Latimore on her back door line and told  
10 her that what I was observing, we didn't have  
11 enough voting booths here. And immediately --  
12 and both times she didn't hesitate. Let me say  
13 this. She did not hesitate when she understood  
14 there was a problem and she dispatched more  
15 voting machines to this. By this time it is  
16 after 9:30. But still after those voting  
17 machines got in place, the line did move a  
18 little smoother.

19 But I wanted it clarified that last  
20 comment in terms of how those extra voting  
21 machines showed up in the context of a  
22 conversation with Linda Latimore who is the  
23 chief elections official here in Dekalb County.

24 MR. EVANS: All right. Are there  
25 any other persons who want to speak? Right now

1 Mr. Slayton will make a summary and some  
2 comments.

3 MR. SLAYTON: Mr. Evans, I just want  
4 to say again thank you very much for the NAACP  
5 for having a forum like this where we can  
6 continue to get first-hand information from  
7 people who had various experiences on election  
8 day.

9 And some of what I have heard today  
10 we have heard from other voters in Georgia and  
11 we had a chance to look into some of them. Why  
12 did these things happen. And what we have been  
13 able to determine thus far as we are preparing a  
14 report to our governor and to the members of our  
15 general assembly upon the experience of this  
16 election in terms of what happened and even to  
17 stimulate the debate in terms of how we ought to  
18 respond to what happened.

19 What we know for a fact now is that  
20 we had voter registration problems that we think  
21 were due to a lack of voter education.

22 For example, it was a good thing  
23 that Kroger store stepped up to the plate and  
24 said that in every one of our stores in Georgia  
25 you can register to vote. That was a good

1 thing. It was not a good thing when a few  
2 assistant managers in those Kroger stores  
3 thought they would do a good deed by picking up  
4 the forms that had been filled out that day for  
5 new registered voters and simply because they  
6 had to go by the board of elections office on  
7 the way home, they figured they would drop them  
8 off. Good intentions. But when they dropped  
9 them off, of course, the local elected officials  
10 would say, wait, are you a deputy registrar.  
11 No. Well, then we can't accept these forms from  
12 you. And that means that there were a stack of  
13 people who thought they were registered to vote  
14 in this election who were not, in fact,  
15 registered due through -- due to just good  
16 intentions. I mean that was a good hearted  
17 individual. But in that case we've got  
18 documented evidence that that happened and there  
19 was no way to register those voters.

20 And our cry and our plea is that if  
21 anybody in Georgia showed up or should I say  
22 registered to vote for this election, never got  
23 a voter registration form, then you need to go  
24 back and to reregister. That is what we are  
25 saying to those people.

1                   And next time when we have  
2                   opportunities to partner with people like Kroger  
3                   to do a massive voter education and voter  
4                   registration, I think it is incumbent on us to  
5                   do a good job of voter education.

6                   With the state patrol. We have  
7                   heard a lot of people who indicated they thought  
8                   they registered at the DMV. And we don't know  
9                   what has happened. We know that based on the  
10                  numbers of people that had problems this  
11                  election, that we've got a problem. And we've  
12                  got a meeting that's set up and it is -- we are  
13                  viewing that as such an important meeting until  
14                  I am actually going to go and participate and to  
15                  sit down with Colonel Hightower and his staff  
16                  and to just see what -- if there are some things  
17                  that they can do policy-wise or if there are  
18                  some things that we can do in our election  
19                  system when we get the referrals over that might  
20                  make a difference.

21                  We don't know what the response will  
22                  be. But we have enough information to let us  
23                  know that we have got a problem at DMV. And the  
24                  other notion that has surfaced a lot is this  
25                  notion of a challenge ballot. And that people



1 are using important people's names saying  
2 Maynard Jackson told us we could issue -- well,  
3 come over here and tell you poll persons that we  
4 can vote a challenge ballot even though we are  
5 registered and we don't have a precinct card.  
6 Well, not quite.

7 In Georgia there is no such thing as  
8 a challenge ballot and there -- I mean, a lot of  
9 people believe that there is. And one man got  
10 arrested at a polling place because he insisted  
11 that he was gonna vote the challenge ballot and  
12 he wasn't gonna leave until they arrest him.  
13 Well, they did. And when he finally found out  
14 that there was not, but Maynard Jackson told me  
15 there was. Well, Maynard said to me I didn't  
16 tell him that.

17 But the point is we've got to do a  
18 better job of educating people about the system,  
19 what is allowable, what is not allowable. And  
20 in Georgia we do not have anything that is  
21 called a challenge ballot.

22 If you show up at the poll and your  
23 name is on the voter rolls and you do not have  
24 ID, then you can sign a sworn affidavit that you  
25 are who you are. I swear I am Terrell Slayton

1 so y'all can let me vote. Yes, that is true.

2 And we didn't really have any  
3 feedback this session that people were not  
4 allowed to vote by not showing up with ID. That  
5 was not a problem in our experience and what  
6 we've heard from other hearings like this across  
7 the state.

8 And the other issue that has  
9 surfaced time and time again is the notion that  
10 people who have had a felony conviction cannot  
11 vote in our state and cannot vote ever. We have  
12 heard that from across this state. And as we  
13 have double checked on that, there are two  
14 things that I can tell you today that there is.  
15 One is that the Department of Corrections who  
16 counsel people on the way out of prison and the  
17 Department of Pardons and Paroles who counsel  
18 people on their way out of prison indicate that  
19 everybody who goes from inside the system that  
20 parole, probation or incarceration to the  
21 outside back to the free word as they call it,  
22 are counseled on and they have to sign a little  
23 piece of paper to say that I have been counseled  
24 on two things.

25 One, if I want my right to bear

1 firearms restored, I have got to sign this piece  
2 of paper and ask for it. If I want my right to  
3 vote to be restored, I have got to sign this  
4 piece of paper and ask for it.

5 So just from the advocacy community,  
6 pardons and paroles, the Department of  
7 Corrections are places where they say they have  
8 systems in place to advise felons of their  
9 rights and that's in place.

10 The other thing is representative --  
11 some representatives really from Dekalb County,  
12 I think under the leadership of Barbara Mobley,  
13 has sponsored a bill in our general assembly to  
14 simplify this process and to basically say that  
15 if you are out of jail or if you are out on the  
16 streets, that you ought to be able to vote. And  
17 this is very controversial. It is being  
18 debated. I understand she is going to take that  
19 concept back to the general assembly again this  
20 year for further debate based upon the  
21 experience of this election.

22 But I am pointing that out to say  
23 that there is a place for advocacy on this issue  
24 in particular and I know Barbara Mobley would  
25 want to hear your perspective and your point of

1 view because it will be helpful to her in the  
2 debate that takes place as she again tries to  
3 put something in place to clarify when a felon  
4 can or cannot vote.

5 But in conclusion, just let me say  
6 to Mary Peeler with the NAACP who has done this  
7 in several states now and to our NAACP locally,  
8 advocacy does influence public policy. And I am  
9 excited today and I want to make sure that those  
10 that made testimony we have a way to get in  
11 touch with. Because people have conducted  
12 themselves in ways today that I think the  
13 general assembly when they begin to debate this  
14 issue, election reform, need to hear directly  
15 from people who -- like the people who spoke  
16 here today.

17 I certainly am going and taking a  
18 few of your names back and will talk to you  
19 about being available to testify about your  
20 experience in front of the appropriate general  
21 assembly committee. And I just commend you for  
22 doing a good job. Thank you.

23 MS. CYNTHIA MCKINNEY: I also want  
24 to add my voice to give accommodations to the  
25 NAACP for doing this hearing but this hearing

1 just isn't what the NAACP does. For being there  
2 for people who are in need. And John Evans and  
3 Zepora, the officers of the NAACP, thank you  
4 everyday for what you do everyday.

5 And I'd like to say to Terrell,  
6 thank you for bringing the message about the  
7 secretary of state's election reform package  
8 that we can look forward to as general assembly  
9 convenes next month.

10 It's my understanding that convicted  
11 felons have to wait ten years in Georgia before  
12 they can get their rights restored. That's what  
13 I was told.

14 MR. SLAYTON: That's not true.

15 MS. CYNTHIA MCKINNEY: That's not  
16 true? Well, we do need to have some  
17 clarification on that point because the fact of  
18 the matter is while in Florida they were looking  
19 at dimples and hanging chads, if they had simply  
20 allowed the enfranchisement of those who were  
21 formerly convicted felons, then we would have  
22 had 200,000 votes right there.

23 Nationwide we have got 13 percent of  
24 all African American men can't vote because of  
25 the intersection of an unjust criminal justice

1 system in the African-American community.

2 The Department of Justice recently  
3 did a study where they said if you are black,  
4 you are more likely to be stopped, put in jail,  
5 served longer sentence and die in the electric  
6 chair or through injection if you are just  
7 simply -- if you are black.

8 And so when we've got that kind of  
9 disparate treatment of the African Americans and  
10 other minority communities, certainly the people  
11 who have been victimized by that system  
12 shouldn't be permanently victimized and  
13 marginalized and disenfranchised as a result of  
14 an unfair and unjust system.

15 So I look forward to working with  
16 Barbara Mobley or whomever it might be on the  
17 state level. But then we also have a  
18 responsibility on the federal level.

19 And so that's why I have  
20 co-sponsored legislation but I intend to also  
21 sponsor legislation that would clarify this  
22 issue as an amendment to the Voting Rights Act.  
23 That once you've served your time, then you have  
24 a right to be a full citizen.

25 Other countries in the world even

1 democracies in Ireland and in South Africa and  
2 in Namibia and other countries around the world  
3 are choosing a system that is not like ours  
4 because they understand that the system that we  
5 have is not fair.

6           So we need electoral reform. We  
7 also need campaign finance reform. These are  
8 all components of what it means to cast a fair  
9 and meaningful vote. Because we can't allow  
10 special interests or people who have money,  
11 people who can buy office to be the leaders of  
12 our community.

13           The leadership of the community must  
14 be of the community, of, by and for the people.  
15 And so campaign finance reform is as much a  
16 Civil Rights and Human Rights and democracy  
17 issue as is the ability for us to even cast a  
18 vote because the special interest can select the  
19 candidates even before the voters get a chance  
20 to vote on those candidates.

21           So not voting is never an option.  
22 We've got a long way to go in terms of what we  
23 need to do in terms of electoral reform. It is  
24 too bad that we had to learn the need this way  
25 but thank goodness now we are going to pay





## **BUSINESS MEETING**

**THURSDAY, AUGUST 2, 2001**

U.S. SENATE,  
COMMITTEE ON RULES AND ADMINISTRATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:05 a.m., in room SR-301, Russell Senate Office Building, Hon. Christopher J. Dodd, (chairman of the committee) presiding.

Present: Senators Dodd, Byrd, Inouye, Feinstein, Torricelli, Schumer, Breaux, Daschle, Dayton, and Durbin.

Staff present: Kennie L. Gill, Staff Director and Chief Counsel; Veronica M. Gillespie, Elections Counsel; Michael Malone, Professional Staff Member; and Carole Blessington, Administrative Assistant.

### **OPENING STATEMENT OF HON. CHRISTOPHER J. DODD, CHAIRMAN, A U.S. SENATOR FROM THE STATE OF CON- NECTICUT**

The CHAIRMAN. The committee will come to order.

Just for purposes of information here, what we are going to do here this morning is to consider the following legislation: S. 565, the "Equal Protection of Voting Rights Act of 2001"; an original resolution providing for members on the part of the Senate of the Joint Committee on Printing and the Joint Committee of Congress on the Library; S.J. Res. 19 and 20, providing for the reappointment of Anne d'Harnoncourt and the appointment of Roger W. Sant, respectively, as Smithsonian Institution citizen regents; S. 829, the "National Museum of African American History and Culture Act of 2001"; and other legislative and administrative matters ready for consideration at the time of markup. I have scheduled the committee to come together at 9 o'clock and to give us an hour for members to come in and come out as their schedules demand, and then at 10 o'clock to vote on the matters that we can on this agenda.

There are a number of other markups occurring all over this building and the other buildings this morning on a number of different issues. And so members are going to have sort of scattered coming in and coming out to express their views on the matters before the committee, I presume principally on the Equal Protection of Voting Rights Act.

So what I intend to do here is open up with some remarks regarding that bill and then if other members come in at that point to allow them to make statements on the bills or any other matters

that may interest them. And then at 10 o'clock, I have asked members to be here in order to vote on the matter itself.

The agenda items include the election reform bill that I have mentioned already. I had hoped this morning that we would have been able to appoint the members of the Joint Committee on Printing and the Library, but as of this morning, I don't have the names from the minority as to who is going to be on those two committees that are part of the Senate Rules Committee, and so we will not be able to proceed with those two resolutions.

The third item, which I hope we are going to be able to get done, is to replace regents on the Smithsonian Institution. Those are relatively minor housekeeping matters, but the Smithsonian needs to have these people replaced, and so that will be a part of agenda as well.

Earlier, I had intended to include a matter to which I am a cosponsor, and that is the African Museum issue. But there have been some issues raised by members concerning that legislation, and rather than get into extensive debate on that here this morning, we are going to try and resolve those issues on the African Museum. And my intention would be that that matter would come up when we return in September for the consideration of the full committee. But I am a cosponsor of that bill. I think it is a good idea. Max Cleland and Sam Brownback of the Senate are principal sponsors here, and the House has also taken a strong action. John Lewis of Georgia is a principal cosponsor of the bill there. So the reason that is not on the agenda this morning is because of some confusion regarding the proposal itself, and we couldn't resolve it prior to today's markup. So that will be on the agenda at a later time.

Let me, if I can, utilize the time that I have before other members arrive to express my views about the election reform process. This is an honor this morning to convene the meeting. This is my first markup as chairman of this committee since I became a part of the majority in the last month or so.

It is not by accident at all, of course, that the principal legislative matter before the committee today concerns election reform. The first item on our agenda is S. 565, the Dodd-Conyers Equal Protection of Voting Rights Act of 2001.

[The bill follows:]

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Equal Protection of Voting Rights Act of 2001”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings.

**TITLE I—ESTABLISHMENT OF COMMISSION ON VOTING RIGHTS AND PROCEDURES**

- Sec. 101. Establishment.
- Sec. 102. Membership of the Commission.
- Sec. 103. Duties of the Commission.
- Sec. 104. Powers of the Commission.
- Sec. 105. Commission personnel matters.
- Sec. 106. Termination of the Commission.
- Sec. 107. Authorization of appropriations for the Commission.

TITLE II—ELECTION TECHNOLOGY AND ADMINISTRATION IMPROVEMENT  
GRANT PROGRAM

- Sec. 201. Establishment of grant program.  
 Sec. 202. Authorized activities.  
 Sec. 203. General policies and criteria for the approval of applications of States and localities; requirements of State plans.  
 Sec. 204. Submission of applications of States and localities.  
 Sec. 205. Approval of applications of States and localities.  
 Sec. 206. Federal matching funds.  
 Sec. 207. Audits and examinations of States and localities.  
 Sec. 208. Reports to Congress and the Attorney General.  
 Sec. 209. Definitions of State and locality.  
 Sec. 210. Authorization of appropriations.

TITLE III—REQUIREMENTS FOR ELECTION TECHNOLOGY AND  
ADMINISTRATION

- Sec. 301. Uniform and nondiscriminatory requirements for election technology and administration.  
 Sec. 302. Guidelines and technical specifications.  
 Sec. 303. Requiring States to meet requirements.  
 Sec. 304. Enforcement by Attorney General.

TITLE IV—MISCELLANEOUS

- Sec. 401. Relationship to other laws.

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) The right to vote is a fundamental and incontrovertible right under the Constitution.

(2) There is a need for Congress to encourage and enable every eligible American to vote by reaffirming that the right to vote is a fundamental right under the Constitution.

(3) There is a need for Congress to encourage and enable every eligible American to vote by reaffirming that the United States is a democratic Government “of the people, by the people, and for the people” where every vote counts.

(4) There is a need for Congress to encourage and enable every eligible American to vote by eliminating procedural, physical, and technological obstacles to voting.

(5) There is a need to counter discrimination in voting by removing barriers to the exercise of the constitutionally protected right to vote.

(6) There is a concern that persons with disabilities and impairments face difficulties in voting.

(7) There are practices designed to purge illegal voters from voter rolls which result in the elimination of legal voters as well.

(8) State governments have already begun to examine ways to improve the administration of elections and to modernize mechanisms and machinery for voting.

(9) Congress has authority under section 4 of article I of the Constitution of the United States, section 5 of the 14th amendment to the Constitution of the United States, and section 2 of the 15th amendment to the Constitution of the United States to enact legislation to address the equal protection violations that may be caused by outdated voting systems.

(10) Congress has an obligation to ensure that the necessary resources are available to States and localities to improve election technology and election administration and to ensure the

integrity of and full participation of all Americans in the democratic elections process.

## **TITLE I—ESTABLISHMENT OF COMMISSION ON VOTING RIGHTS AND PROCEDURES**

### **SEC. 101. ESTABLISHMENT.**

There is established the Commission on Voting Rights and Procedures (in this title referred to as the “Commission”).

### **SEC. 102. MEMBERSHIP OF THE COMMISSION.**

(a) **NUMBER AND APPOINTMENT.**—The Commission shall be composed of 12 members of whom—

(1) 6 members shall be appointed by the President;

(2) 3 members shall be appointed by the Minority Leader of the Senate (or, if the Minority Leader is a member of the same political party as the President, by the Majority Leader of the Senate); and

(3) 3 members shall be appointed by the Minority Leader of the House of Representatives (or, if the Minority Leader is a member of the same political party as the President, by the Majority Leader of the House of Representatives).

(b) **QUALIFICATIONS.**—Each member appointed under subsection (a) shall be chosen on the basis of—

(1) experience with, and knowledge of—

(A) election law;

(B) election technology;

(C) Federal, State, or local election administration;

(D) the Constitution; or

(E) the history of the United States; and

(2) integrity, impartiality, and good judgment.

(c) **PERIOD OF APPOINTMENT; VACANCIES.**—

(1) **PERIOD OF APPOINTMENT.**—Each member shall be appointed for the life of the Commission.

(2) **VACANCIES.**—

(A) **IN GENERAL.**—A vacancy in the Commission shall not affect its powers.

(B) **MANNER OF REPLACEMENT.**—Not later than 60 days after the date of the vacancy, a vacancy on the Commission shall be filled in the same manner as the original appointment was made and shall be subject to any conditions which applied with respect to the original appointment.

(d) **CHAIRPERSON; VICE CHAIRPERSON.**—

(1) **IN GENERAL.**—The Commission shall elect a chairperson and vice chairperson from among its members.

(2) **POLITICAL AFFILIATION.**—The chairperson and vice chairperson may not be affiliated with the same political party.

(e) **DATE OF APPOINTMENT.**—The appointments of the members of the Commission shall be made not later than 45 days after the date of enactment of this Act.

(f) **MEETINGS.**—

(1) IN GENERAL.—The Commission shall meet at the call of the chairperson.

(2) INITIAL MEETING.—Not later than 20 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(3) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(g) VOTING.—Each action of the Commission shall be approved by a majority vote of the entire Commission. Each member shall have 1 vote.

**SEC. 103. DUTIES OF THE COMMISSION.**

(a) STUDY.—

(1) IN GENERAL.—The Commission shall conduct a thorough study of—

(A) election technology and systems;

(B) designs of ballots and the uniformity of ballots;

(C) access to ballots and polling places, including timely notice of voting locations and matters relating to access for—

(i) voters with disabilities;

(ii) voters with visual impairments;

(iii) voters with limited English language proficiency;

(iv) voters who need assistance in order to understand the voting process or how to cast a ballot; and

(v) other voters with special needs;

(D) the effect of the capacity of voting systems on the efficiency of election administration, including how the number of ballots which may be processed by a single machine over a period of time affects the number of machines needed to carry out an election at a particular polling place and the number of polling places and other facilities necessary to serve the voters;

(E) voter registration and maintenance of voter rolls, including the use of provisional voting and standards for re-enfranchisement of voters;

(F) alternative voting methods;

(G) voter intimidation, both real and perceived;

(H) accuracy of voting, election procedures, and election technology;

(I) voter education;

(J) election personnel and volunteer training;

(K)(i) the implementation of title I of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) and the amendments made by title II of that Act by—

(I) the Secretary of Defense, acting as the Presidential designee under section 101 of that Act (42 U.S.C. 1973ff);

(II) each other Federal Government official having responsibilities under that Act; and

(III) each State; and

(ii) whether any legislative or administrative action is necessary to provide a meaningful opportunity for each ab-

sent uniformed services voter (as defined in section 107(1) of that Act (42 U.S.C. 1973ff-6(1))) and each overseas voter (as defined in section 107(5) of that Act (42 U.S.C. 1973ff-6(5))) to register to vote and vote in elections for Federal office;

(L) the feasibility and advisability of establishing the date on which elections for Federal office are held as a Federal or State holiday;

(M) the feasibility and advisability of establishing modified polling place hours, and the effects thereof; and

(N)(i) how the Federal Government can, on a permanent basis, best provide ongoing assistance to State and local authorities to improve the administration of elections for Federal office;

(ii) how the requirements for voting systems, provisional voting, and sample ballots described in section 301 can, on a permanent basis, best be administered; and

(iii) whether an existing or a new Federal agency should provide such assistance.

(2) WEBSITE.—In addition to any other publication activities the Commission may be required to carry out, for purposes of conducting the study under this subsection the Commission shall establish an Internet website to facilitate public comment and participation.

(b) RECOMMENDATIONS.—

(1) RECOMMENDATIONS OF BEST PRACTICES IN VOTING AND ELECTION ADMINISTRATION.—The Commission shall develop specific recommendations with respect to the matters studied under subsection (a) that identify those methods of voting and administering elections studied by the Commission that would—

(A) be convenient, accessible, nondiscriminatory, and easy to use for voters in elections for Federal office, including voters with disabilities, voters with visual impairments, absent uniformed services voters, overseas voters, and other voters with special needs, including voters with limited English language proficiency or who otherwise need assistance in order to understand the voting process or to cast a ballot;

(B) yield the broadest participation; and

(C) produce accurate results.

(2) RECOMMENDATIONS FOR PROVIDING ASSISTANCE IN FEDERAL ELECTIONS.—The Commission shall develop specific recommendations with respect to the matters studied under subsection (a)(1)(N) on how the Federal Government can, on a permanent basis, best provide ongoing assistance to State and local authorities to improve the administration of elections for Federal office, and identify whether an existing or a new Federal agency should provide such assistance.

(3) RECOMMENDATIONS FOR VOTER PARTICIPATION IN FEDERAL ELECTIONS.—The Commission shall develop specific recommendations with respect to the matters studied under subsection (a) on methods—

(A) to increase voter registration;

(B) to increase the accuracy of voter rolls and participation and inclusion of legal voters;

(C) to improve voter education; and

(D) to improve the training of election personnel and volunteers.

(4) **CONSISTENCY WITH ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS.**—The Commission shall ensure that the specific recommendations developed under this subsection are consistent with the uniform and nondiscriminatory election technology and administration requirements under section 301.

(c) **REPORTS.**—

(1) **INTERIM REPORTS.**—Not later than the date on which the Commission submits the final report under paragraph (2), the Commission may submit to the President and Congress such interim reports as a majority of the members of the Commission determine appropriate.

(2) **FINAL REPORT.**—

(A) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the President and Congress a final report that has received the approval of a majority of the members of the Commission.

(B) **CONTENT.**—The final report shall contain—

(i) a detailed statement of the findings and conclusions of the Commission on the matters studied under subsection (a);

(ii) a detailed statement of the recommendations developed under subsection (b) which received a majority vote of the members of the Commission; and

(iii) any dissenting or minority opinions of the members of the Commission.

**SEC. 104. POWERS OF THE COMMISSION.**

(a) **HEARINGS.**—The Commission or, at its direction, any subcommittee or member of the Commission, may, for the purpose of carrying out this title—

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths; and

(2) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, documents, tapes, and materials as the Commission or such subcommittee or member considers advisable.

(b) **ISSUANCE AND ENFORCEMENT OF SUBPOENAS.**—

(1) **ISSUANCE.**—Any subpoena issued under subsection (a) shall be issued by the chairperson and vice chairperson of the Commission acting jointly. Each subpoena shall bear the signature of the chairperson of the Commission and shall be served by any person or class of persons designated by the chairperson for that purpose.

(2) **ENFORCEMENT.**—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order

requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(c) **WITNESS ALLOWANCES AND FEES.**—Section 1821 of title 28, United States Code, shall apply to witnesses requested or subpoenaed to appear at any hearing of the Commission. The per diem and mileage allowances for witnesses shall be paid from funds available to pay the expenses of the Commission.

(d) **INFORMATION FROM FEDERAL AGENCIES.**—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this title. Upon request of the chairperson and vice chairperson of the Commission acting jointly, the head of such department or agency shall furnish such information to the Commission.

(e) **POSTAL SERVICES.**—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(f) **ADMINISTRATIVE SUPPORT SERVICES.**—Upon the request of the chairperson and vice chairperson of the Commission acting jointly, the Administrator of the General Services Administration shall provide to the Commission, on a reimbursable basis, the administrative support services that are necessary to enable the Commission to carry out its duties under this title.

(g) **GIFTS AND DONATIONS.**—The Commission may accept, use, and dispose of gifts or donations of services or property to carry out this title.

(h) **APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.**—Except as otherwise provided in this Act, the Commission shall be subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

#### **SEC. 105. COMMISSION PERSONNEL MATTERS.**

(a) **COMPENSATION OF MEMBERS.**—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) **TRAVEL EXPENSES.**—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) **STAFF.**—

(1) **IN GENERAL.**—The chairperson and vice chairperson of the Commission, acting jointly, may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be



necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The chairperson and vice chairperson of the Commission, acting jointly, may fix the compensation of the executive director and other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The chairperson and vice chairperson of the Commission, acting jointly, may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

**SEC. 106. TERMINATION OF THE COMMISSION.**

The Commission shall terminate 45 days after the date on which the Commission submits its final report and recommendations under section 103(c)(2).

**SEC. 107. AUTHORIZATION OF APPROPRIATIONS FOR THE COMMISSION.**

(a) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this title.

(b) AVAILABILITY.—Any sums appropriated under the authorization contained in this section shall remain available, without fiscal year limitation, until expended.

**TITLE II—ELECTION TECHNOLOGY AND  
ADMINISTRATION IMPROVEMENT  
GRANT PROGRAM**

**SEC. 201. ESTABLISHMENT OF GRANT PROGRAM.**

(a) IN GENERAL.—The Attorney General, subject to the general policies and criteria for the approval of applications established under section 203 and in consultation with the Federal Election Commission, is authorized to make grants to States and localities to pay the Federal share of the costs of the activities described in section 202.

(b) ACTION THROUGH OFFICE OF JUSTICE PROGRAMS AND ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS.—In carrying out this title, the Attorney General shall act through the Assistant Attorney General for the Office of Justice Programs and the Assistant Attorney General for the Civil Rights Division.

**SEC. 202. AUTHORIZED ACTIVITIES.**

(a) **IN GENERAL.**—A State or locality may use grant payments received under this title—

(1) to improve, acquire, or replace voting equipment or technology and improve the accessibility of polling places, including providing physical access for persons with disabilities and to other individuals with special needs, and nonvisual access for voters with visual impairments, and assistance to voters with limited proficiency in the English language;

(2) to implement new election administration procedures to increase voter participation and reduce disenfranchisement, such as “same-day” voter registration procedures;

(3) to educate voters concerning voting procedures, voting rights or voting technology, and to train election personnel; or

(4) upon completion of the final report under section 103(c)(2), to implement recommendations contained in such report under section 103(c)(2)(B)(ii).

(b) **REQUIREMENTS FOR ELECTION TECHNOLOGY AND ADMINISTRATION.**—A State or locality may use grant payments received under this title—

(1) on or after the date on which the voting system requirements specifications are issued under section 302(a), to implement the requirements under section 301(a);

(2) on or after the date on which the provisional voting requirements guidelines are issued under section 302(b), to implement the requirements under section 301(b); and

(3) on or after the date on which the sample ballot requirements guidelines are issued under section 302(c), to implement the requirements under section 301(c).

**SEC. 203. GENERAL POLICIES AND CRITERIA FOR THE APPROVAL OF APPLICATIONS OF STATES AND LOCALITIES; REQUIREMENTS OF STATE PLANS.**

(a) **GENERAL POLICIES.**—The Attorney General shall establish general policies with respect to the approval of applications of States and localities, the awarding of grants, and the use of assistance made available under this title.

(b) **CRITERIA.**—

(1) **IN GENERAL.**—The Attorney General shall establish criteria with respect to the approval of applications of States and localities submitted under section 204, including the requirements for State plans under paragraph (2).

(2) **REQUIREMENTS OF STATE PLANS.**—The Attorney General shall not approve an application of a State unless the State plan of that State provides for each of the following:

(A) Uniform nondiscriminatory voting standards within the State for election administration and technology that—

(i) meet the requirements for voting systems, provisional voting, and sample ballots described in section 301;

(ii) provide for ease and convenience of voting for all voters, including accuracy, nonintimidation, and non-discrimination;

(iii) ensure conditions for voters with disabilities, including nonvisual access for voters with visual impair-

ments, provide the same opportunity for access and participation by such voters, including privacy and independence;

(iv) ensure access for voters with limited English language proficiency, voters who need assistance in order to understand the voting process or how to cast a ballot, and other voters with special needs;

(v) ensure compliance with the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.);

(vi) ensure compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), including sections 4(f)(4) and 203 of such Act (42 U.S.C. 1973b(f)(4) and 1973aa-1a);

(vii) ensure compliance with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.); and

(viii) ensure that overseas voters and absent uniformed service voters (as such terms are defined in section 107 of the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-6)) have a meaningful opportunity to exercise their voting rights as citizens of the United States.

(B) Accuracy of the records of eligible voters in the States to ensure that legally registered voters appear in such records and prevent any purging of such records to remove illegal voters that result in the elimination of legal voters as well.

(C) Voter education programs regarding the right to vote and methodology and procedures for participating in elections and training programs for election personnel and volunteers, including procedures to carry out subparagraph (D).

(D) An effective method of notifying voters at polling places on the day of election of basic voting procedures to effectuate their vote as provided for in State and Federal law.

(E) A timetable for meeting the elements of the plan.

(3) CONSISTENCY WITH ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS.—The criteria established by the Attorney General under this subsection and the State plans required under this subsection shall be consistent with the uniform and nondiscriminatory election technology and administration requirements under section 301.

(c) CONSULTATION.—In establishing the general policies and criteria under this section, the Attorney General shall consult with the Federal Election Commission.

**SEC. 204. SUBMISSION OF APPLICATIONS OF STATES AND LOCALITIES.**

(a) SUBMISSION OF APPLICATIONS BY STATES.—

(1) IN GENERAL.—Subject to paragraph (3), the chief executive officer of each State desiring to receive a grant under this title shall submit an application to the Attorney General at such time, in such manner, and accompanied by such additional information as the Attorney General, in consultation

with the Federal Election Commission, may reasonably require.

(2) CONTENTS OF APPLICATIONS.—Each application submitted under paragraph (1) shall include the following:

(A) STATE PLAN.—A State plan that—

(i) is developed in consultation with State and local election officials;

(ii) describes the activities authorized under section 202 for which assistance under this title is sought; and

(iii) contains a detailed explanation of how the State will comply with the requirements described in section 203(b).

(B) COMPLIANCE WITH FEDERAL MATCHING REQUIREMENTS.—An assurance that the State will pay the non-Federal share of the costs of the activities for which assistance is sought from non-Federal sources that may be accompanied by a request for a waiver of the matching requirements under section 206(b)(2).

(C) ADDITIONAL ASSURANCES.—Such additional assurances as the Attorney General, in consultation with the Federal Election Commission, determines to be essential to ensure compliance with the requirements of this title.

(3) AVAILABILITY OF STATE PLANS FOR REVIEW AND COMMENT.—A State submitting an application under this section shall make the State plan proposed to be included in that application available to the public for review and comment prior to the submission of the application.

(b) SUBMISSION OF APPLICATIONS BY LOCALITIES.—

(1) IN GENERAL.—If a State has submitted an application under subsection (a), a locality of that State may submit an application for assistance to the Attorney General at such time, in such manner, and accompanied by such additional information as the Attorney General, in consultation with the Federal Election Commission, may reasonably require.

(2) CONTENTS OF APPLICATIONS.—Each application submitted by a locality under paragraph (1) shall include the following:

(A) CONSISTENCY WITH STATE PLAN.—Information similar to the information required to be submitted under the State plan under subsection (a)(2)(A) that is not inconsistent with that plan.

(B) NONDUPLICATION OF EFFORT.—Assurances that any assistance directly provided to the locality under this title is not available to that locality through the State.

(C) COMPLIANCE WITH FEDERAL MATCHING REQUIREMENTS.—A description of how the locality will pay the non-Federal share from non-Federal sources that may be accompanied by a request for a waiver of the matching requirements under section 206(b)(2).

(D) ADDITIONAL ASSURANCES.—Such additional assurances as the Attorney General, in consultation with the Federal Election Commission, determines to be essential to ensure compliance with the requirements of this title.

**SEC. 205. APPROVAL OF APPLICATIONS OF STATES AND LOCALITIES.**

(a) APPROVAL OF STATE APPLICATIONS.—

(1) **IN GENERAL.**—The Attorney General, in consultation with the Federal Election Commission, shall approve applications in accordance with the general policies and criteria for the approval of applications established under section 203.

(2) **PUBLICATION OF STATE PLANS AND SOLICITATION OF COMMENTS.**—After receiving an application of a State submitted under section 204(a)(1), the Attorney General shall publish the State plan contained in that application in the Federal Register and solicit comments on the plan from the public. The publication of and the solicitation of comments on such a plan pursuant to this subsection shall not be treated as an exercise of rulemaking authority by the Attorney General for purposes of subchapter II of chapter 5 of title 5, United States Code.

(3) **APPROVAL.**—At any time after the expiration of the 30-day period which begins on the date the State plan is published in the Federal Register under subsection (a), and taking into consideration any comments received under such subsection, the Attorney General, in consultation with the Federal Election Commission, shall approve or disapprove the application that contains the State plan published under paragraph (2) in accordance with the general policies and criteria established under section 203.

(b) **APPROVAL OF APPLICATIONS OF LOCALITIES.**—If the Attorney General has approved the application of a State under subsection (a), the Attorney General, in consultation with the Federal Election Commission, may approve an application submitted by a locality of that State under section 204(b) in accordance with the general policies and criteria established under section 203.

**SEC. 206. FEDERAL MATCHING FUNDS.**

(a) **PAYMENTS.**—The Attorney General shall pay to each State or locality having an application approved under section 205 the Federal share of the cost of the activities described in that application.

(b) **FEDERAL SHARE.**—

(1) **IN GENERAL.**—Subject to paragraphs (2), (3), and (4), for purposes of subsection (a), the Federal share shall be 80 percent.

(2) **WAIVER.**—The Attorney General may specify a Federal share greater than 80 percent under terms and conditions consistent with this title.

(3) **INCENTIVE FOR EARLY ACTION.**—For any recipient of a grant whose application was received prior to March 1, 2002, the Federal share shall be 90 percent.

(4) **REIMBURSEMENT FOR COST OF MEETING REQUIREMENTS.**—With respect to the authorized activities described in section 202(b) insofar as a State or locality incurs expenses to meet the requirements of section 301, the Federal share shall be 100 percent.

(c) **NON-FEDERAL SHARE.**—The non-Federal share of payments under this title may be in cash or in kind fairly evaluated, including planned equipment or services.

**SEC. 207. AUDITS AND EXAMINATIONS OF STATES AND LOCALITIES.**

(a) **RECORDKEEPING REQUIREMENT.**—Each recipient of a grant under this title shall keep such records as the Attorney General,

in consultation with the Federal Election Commission, shall prescribe.

(b) **AUDIT AND EXAMINATION.**—The Attorney General and the Comptroller General, or any authorized representative of the Attorney General or the Comptroller General, shall audit any recipient of a grant under this title and shall have access to any record of a recipient of a grant under this title that the Attorney General or the Comptroller General determines may be related to a grant received under this title for the purpose of conducting an audit or examination.

**SEC. 208. REPORTS TO CONGRESS AND THE ATTORNEY GENERAL.**

(a) **REPORTS TO CONGRESS.**—Not later than January 31, 2003, and each year thereafter, the Attorney General shall submit to the President and Congress a report on the program under this title for the preceding year. Each report shall contain the following:

- (1) A description and analysis of any activities funded by a grant awarded under this title.
- (2) Any recommendation for legislative or administrative action that the Attorney General considers appropriate.

(b) **REPORTS TO THE ATTORNEY GENERAL.**—The Attorney General shall require each recipient of a grant under this title to submit reports to the Attorney General, at such time, in such manner, and containing such information as the Attorney General considers appropriate.

**SEC. 209. DEFINITIONS OF STATE AND LOCALITY.**

In this title:

- (1) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, and the United States Virgin Islands.
- (2) **LOCALITY.**—The term “locality” means a political subdivision of a State.

**SEC. 210. AUTHORIZATION OF APPROPRIATIONS.**

(a) **AUTHORIZATION.**—

(1) **IN GENERAL.**—There are authorized to be appropriated to the Department of Justice such sums as may be necessary for each of fiscal years 2002, 2003, 2004, 2005, and 2006.

(2) **USE OF AMOUNTS.**—Amounts appropriated under paragraph (1) shall be for the purpose of—

- (A) awarding grants under this Act; and
- (B) paying for the costs of administering the program to award such grants.

(3) **FEDERAL ELECTION COMMISSION.**—There are authorized to be appropriated to the Federal Election Commission for each of fiscal years 2002, 2003, 2004, 2005, and 2006 such sums as may be necessary for the purpose of carrying out the provisions of this Act.

(b) **LIMITATION.**—Not more than 1 percent of any sums appropriated under paragraph (1) of subsection (a) may be used to pay for the administrative costs described in paragraph (2)(B) of such subsection.

(c) **SUPPLEMENTAL APPROPRIATIONS.**—There are authorized to be appropriated as supplemental appropriations for fiscal year 2001,

such sums as the Department of Justice and the Federal Election Commission consider necessary to carry out the provisions of this Act.

### **TITLE III—REQUIREMENTS FOR ELECTION TECHNOLOGY AND ADMINISTRATION**

#### **SEC. 301. UNIFORM AND NONDISCRIMINATORY REQUIREMENTS FOR ELECTION TECHNOLOGY AND ADMINISTRATION.**

(a) **VOTING SYSTEMS.**—Each voting system used in an election for Federal office shall meet the following requirements:

(1) The voting system shall permit the voter to verify the votes selected by the voter on a ballot before the ballot is cast and tabulated, and shall provide the voter with the opportunity to correct any error before the ballot is cast and tabulated.

(2) If the voter selects votes for more than one candidate for a single office, the voting system shall notify the voter before the ballot is cast and tabulated of the effect of casting multiple votes for the office, and shall provide the voter with the opportunity to correct the ballot before the ballot is cast and tabulated.

(3) If the voter selects votes for fewer than the number of candidates for which votes may be cast, the voting system shall notify the voter before the ballot is cast and tabulated of the effect of such selection, and shall provide the voter with the opportunity to correct the ballot before the ballot is cast and tabulated.

(4) The voting system shall produce a record with an audit capacity for each ballot cast.

(5) The voting system shall be accessible for individuals with disabilities and other individuals with special needs, including providing nonvisual accessibility for the blind and visually impaired, which provides the same opportunity for access and participation (including privacy and independence) as for other voters, and shall provide alternative language accessibility for individuals with limited proficiency in the English language.

(6) The error rate of a voting system in counting and tabulating ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to the act of the voter) shall not exceed the error rate standards as established in the national Voting Systems Standards issued and maintained by the Office of Election Administration of the Federal Election Commission in effect on the date of enactment of this Act and shall not be inconsistent with respect to the requirements under section 301.

(b) **PROVISIONAL VOTING.**—If the name of an individual who declares to be a registrant eligible to vote at a polling place in an election for Federal office does not appear on the official list of registrants eligible to vote at the polling place, or it is otherwise asserted by an election official that the individual is not eligible to vote at the polling place—

(1) an election official at the polling place shall notify the individual that the individual may cast a provisional ballot in the election;

(2) the individual shall be permitted to cast a vote at that polling place upon written affirmation by the individual before an election official at that polling place that the individual is so eligible;

(3) an election official at the polling place shall transfer the ballot cast by the individual to an appropriate State or local election official for prompt verification of the declaration made by the individual in the affirmation required under paragraph (2);

(4) if the appropriate State or local election official verifies the declaration made by the individual in the affirmation, the individual's vote shall be tabulated; and

(5) the appropriate State or local election official shall notify the individual in writing of the final disposition of the individual's affirmation and the treatment of the individual's vote.

(c) **SAMPLE BALLOT.**—

(1) **MAILINGS TO VOTERS.**—Not later than 10 days prior to the date of an election for Federal office, the appropriate election official shall mail to each individual who is registered to vote in such election a sample version of the ballot which will be used for the election together with—

(A) information regarding the date of the election and the hours during which polling places will be open;

(B) instructions on how to cast a vote on the ballot; and

(C) general information on voting rights under Federal and applicable State laws and instructions on how to contact the appropriate officials if these rights are alleged to be violated.

(2) **PUBLICATION AND POSTING.**—The sample version of the ballot which will be used for an election for Federal office and which is mailed under paragraph (1) shall be published in a newspaper of general circulation in the applicable geographic area not later than 10 days prior to the date of the election, and shall be posted publicly at each polling place on the date of the election.

**SEC. 302. GUIDELINES AND TECHNICAL SPECIFICATIONS.**

(a) **VOTING SYSTEMS REQUIREMENT SPECIFICATIONS.**—In accordance with the requirements of this title regarding technical specifications, the Office of Election Administration of the Federal Election Commission shall develop national Voting Systems Specifications with respect to the voting systems requirement provided under section 301(a).

(b) **PROVISIONAL VOTING GUIDELINES.**—In accordance with the requirements of this title regarding provisional voting, the Civil Rights Division of the Department of Justice shall develop initial guidelines with respect to the provisional voting requirement provided for under section 301(b).

(c) **SAMPLE BALLOT GUIDELINES.**—In accordance with the requirements of this title regarding sample ballots, the Civil Rights Division of the Department of Justice shall develop initial guidelines



with respect to the sample ballot requirement provided for under section 301(c).

**SEC. 303. REQUIRING STATES TO MEET REQUIREMENTS.**

(a) **IN GENERAL.**—Subject to subsection (b), a State or locality shall meet the requirements of section 301 with respect to the regularly scheduled election for Federal office held in the State in 2004 and each subsequent election for Federal office held in the State, except that a State is not required to meet the guidelines and technical specifications under section 302 prior to the publication of such guidelines and specifications.

(b) **TREATMENT OF ACTIVITIES RELATING TO VOTING SYSTEMS UNDER GRANT PROGRAM.**—To the extent that a State has used funds provided under the Election Technology and Administration Improvement grant program under section 202(a) to purchase or modify voting systems in accordance with the State plan contained in its approved application under such program, the State shall be deemed to meet the requirements of section 301(a).

**SEC. 304. ENFORCEMENT BY ATTORNEY GENERAL.**

(a) **IN GENERAL.**—The Attorney General may bring a civil action in an appropriate district court for such relief (including declaratory or injunctive relief) as may be necessary to carry out this title.

(b) **ACTION THROUGH OFFICE OF CIVIL RIGHTS.**—The Attorney General shall carry out this section through the Office of Civil Rights of the Department of Justice.

(c) **RELATION TO OTHER LAWS.**—The remedies established by this section are in addition to all other rights and remedies provided by law.

## **TITLE IV—MISCELLANEOUS**

**SEC. 401. RELATIONSHIP TO OTHER LAWS.**

(a) **IN GENERAL.**—Nothing in this Act may be construed to authorize or require conduct prohibited under the following laws, or supersede, restrict, or limit such laws:

(1) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.).

(2) The Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.).

(3) The Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee et seq.).

(4) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.).

(5) The Americans with Disabilities Act of 1990 (42 U.S.C. 1994 et seq.).

(b) **NO EFFECT ON PRECLEARANCE OR OTHER REQUIREMENTS UNDER VOTING RIGHTS ACT.**—The approval by the Attorney General of a State's application for a grant under title II, or any other action taken by the Attorney General or a State under such title, shall not be considered to have any effect on requirements for preclearance under section 5 of the Voting Rights Act of 1965 or any other requirements of such Act.

The CHAIRMAN. Let me just say for the record, if I can, that there are some of my colleagues who have stated that the disenfranchisement of somewhere between 4 and 6 million American voters last November, according to the MIT/Cal Tech study, is not a civil rights issue in their view, in their minds.

Well, let me just state as clearly as I can here for the record this morning that it is my opinion that when nearly 6 million Americans go to the polls to participate in democracy and are either turned away or do not have their votes counted, and when over 10 million blind Americans cannot cast an independent secret ballot, and when African Americans are 10 times as likely in some precincts to have their votes not counted as other voters, this is not only a civil rights issue, in my view, it is a fundamental constitutional rights issue.

It is my intent to proceed with debate on the four legislative items, as I have mentioned already: the Equal Protection of Voting Rights Act and the other matters on the agenda here this morning involving the Joint Committee on Printing and the Library, as well as the Smithsonian Institution.

Consistent with the rules of the Senate, the committee requires a quorum of seven members before the committee can take action on legislative matters. Once we have ten members of the committee present, we will have a quorum for the purposes of reporting out legislation.

While we are waiting, as I said earlier, I want to talk a few minutes to talk about this bill. It seems to me that election reform, as I have stated it early on, is a legislative priority, mine and many others, since becoming the chairman of this committee. There are many important issues, obviously, that the Senate is going to debate this year—campaign finance reform, the budget, the patients' bill of rights—and all of those are highly worthy priorities. But no measure, in my view, is as fundamental, is as important to the health of our democracy as is the issue of election reform.

Ensuring the equal opportunity to vote and to have that vote counted for all eligible Americans, regardless of race, ethnicity, disability, the language that those voters may speak, or the resources of the community in which they happen to live, should be the highest priority of any democratic body. It goes to the heart of who we are as a people and as a Nation.

Since becoming chairman of the Rules Committee, we have held three hearings on election reform. The first hearing on June 27th focused on the final report and findings on the 2000 Presidential election in Florida issued by the U.S. Commission on Civil Right. The second hearing on June 28th focused on testimony from Members of the House of Representatives who shared their experiences and legislation on election reform. And the last such hearing was a field hearing held in Atlanta, Georgia, on July 23rd that focused on the experiences of ordinary Georgians who told about their ordeals trying to cast their votes and to have their votes counted.

In Georgia, State and local election officials talked about election reform, but mainly noted that if Congress fails to act soon, the opportunity for election reform will be lost for the 2002 election cycle.

That hearing was hosted by Senator Max Cleland of Georgia. What we both heard as Senators was that what happened in Flor-

ida was not unique but could have happened anywhere in the United States, and in many cases did.

Americans were denied their sacred and solemn right to vote, not by the hundreds or even by the thousands, but by the millions. In Georgia, over 94,000 voters—in that one State alone, 94,000 voters that went to the polls in November either did not vote for President or made a mistake that voided their vote counted by the voting machine.

In addition to these hearings, I have not ruled out holding additional hearings after this markup outside of Washington, D.C. The fact that S. 565 is being marked up today does not preclude other such hearings. We will have a formal announcement once the details have been determined.

With the markup today of S. 565, I intend to report this bill to the Senate floor as the major vehicle for debate on election reform. It is important to note that 50 members of the United States Senate have joined me as cosponsors of this bill. In the House, my co-author of the legislation, John Conyers, has nearly 150 bipartisan cosponsors, making this bill the most widely supported election reform measure introduced to date in Congress.

The Majority Leader, Tom Daschle, has committed to bringing this legislation to the Senate floor for debate some time after the August recess. It is my goal to enact bipartisan legislation which will provide resources to the States in time to affect the 2002 elections.

As the newly released Carter-Ford Commission report recognized, in 2000 the American electoral system was tested by a political ordeal unlike any in living memory.

As a matter of fact, I am unaware of any of the 10-plus commissions and agencies that are taking a position that everything was just fine in the 2000 Presidential elections and that we ought to preserve that election cycle as the status quo.

We are all aware that the Presidential election last November highlighted numerous voting technology and administration irregularities or problems that are in dire need of repair.

The right to vote is a fundamental cornerstone, as we all know, of our democracy. Indeed, it is the very foundation upon which our democracy is built. But last fall, and prior to last fall, the cracks in that cornerstone were highlighted when millions of Americans were either ignored, disregarded, or shut out of the democratic process.

Clearly, we need to repair the system that failed millions of Americans. We must ensure that all eligible voters, regardless, as I said earlier, of race, ethnicity, physical disability, language, or the resources of the community in which they live, can fully participate in this democracy by exercising their right to vote.

Again, I want to state on the public record that I found a number of things to agree with in the Carter-Ford report and recommendations. One such statement, and I quote the report, "For Americans, democracy is a precious birthright. But each generation must nourish and improve the processes of democracy for its successors."

I agree with that statement very strongly, and as a Member of the United States Senate and chairman of this committee, I con-

sider it my obligation to try and improve the election system for the preservation of our democracy.

I also want to point out that the Carter-Ford report states that the Commission “takes no position on whether Congress should use the powerful incentive of conditional grants or instead establish requirements or mandates wholly independent of funding.”

Obviously, I believe that if we are talking about securing the most sacred of constitutional rights—the right to vote and participate in this democracy—then we simply cannot leave it to the vagaries of the local level as to whether or not people of color, language minority, or physical disability will have the franchise.

Let me also point out that I am in agreement with the Carter-Ford recommendations that every State should permit provisional voting to ensure that no eligible American is turned away from the polls.

Again, because the right—indeed, the responsibility—to participate in this democracy by voting in Federal elections is so fundamental to who we are as Americans, it is simply insufficient—it is insufficient, in my view—to leave to the discretion of the States when voting for the Presidency of the United States or the national assembly, whether or not these reforms will occur.

I am reminded, of course, those who are students of history, of the great debates that occurred in the 1960s, 1965 particularly with the adoption of the Voting Rights Act. There were those in that debate who strongly argued that it was up to the States to determine whether or not poll taxes and literacy tests should be the subject of a Federal mandate, that these decisions should be left to the localities to decide. Congress in 1965 could have taken the easy route. It could have decided just to pass some legislation including some resources to pass on to the States and leave those fundamental decisions to the localities. That would have been the easy route. And it was a tough battle to pass the Voting Rights Act. There were those who thought it could not be done. And, therefore, because it was going to be difficult to do, maybe they should not try.

Well, I did not come to the United States Senate to do what was easy, necessarily. I think it is my obligation to come and do what is right. Even if I don't necessarily have the votes to do it, I am determined to try. And when I watch as many as 6 million Americans be turned away from the polls because of race and disability and other considerations, then I think it becomes incumbent upon the national assembly, the National Congress, to try and redress that wrong before it happens again.

And so I realize this is a difficult mountain to climb. I am sorry it is not easy. I wish it could be otherwise. But I happen to believe that those who sat in these chairs 35 years ago and passed the Voting Rights Act didn't just do the easy thing, they did the right thing. And in this Congress, as we begin the 21st century, we have no less an obligation or responsibility but to do the right thing again. And to do otherwise would be to deny what happened last fall, what has happened in other jurisdictions beyond Florida, what has happened in other elections. We need to do better.

Our election process is scandalous. It is in shambles, and it desperately needs to be reformed. And this committee and my col-

leagues here today I think are going to take a step in the right direction.

I want to thank John Conyers and others who have been so supportive in the House. I see my colleague from New Jersey, who has been tremendously helpful on this matter already, is here this morning and so I am going to cease my remarks and turn to him and other members who are coming in.

As I have said for the purpose of the record, we will be receiving comments on the matters before us today on the agenda, and then begin to vote at 10 o'clock.

[The prepared statement of Senator Dodd follows:]

1546

Statement of Senator Christopher J. Dodd  
Committee on Rules & Administration  
Business Meeting  
August 2, 2001

**GOOD MORNING. THE COMMITTEE WILL COME TO  
ORDER.**

**IT IS MY DISTINCT HONOR TO CONVENE THIS BUSINESS  
MEETING OF THE RULES & ADMINISTRATION COMMITTEE. IT  
IS A PARTICULAR PLEASURE BECAUSE THIS IS THE FIRST  
SUCH MARK-UP SESSION OF THE COMMITTEE THAT I HAVE  
HAD THE PRIVILEGE OF CHAIRING.**

**IT IS NOT BY ACCIDENT THAT THE PRINCIPLE  
LEGISLATIVE MATTER BEFORE THE COMMITTEE TODAY  
CONCERNS ELECTION REFORM. THE FIRST ITEM ON OUR  
AGENDA IS S. 565, THE DODD/CONYERS "EQUAL PROTECTION  
OF VOTING RIGHTS ACT OF 2001."**

LET ME SAY FOR THE RECORD, THAT THERE ARE SOME OF MY COLLEAGUES WHO HAVE STATED THAT THE DISENFRANCHISEMENT OF SOMEWHERE BETWEEN 4 AND 6 MILLION AMERICAN VOTERS LAST NOVEMBER, ACCORDING THE MIT/CAL-TECH STUDY, IS NOT A CIVIL RIGHTS ISSUES.

LET ME STATE FOR THE RECORD, THAT IT IS THIS SENATOR'S OPINION THAT WHEN NEARLY 6 MILLION AMERICANS GO TO THE POLLS TO PARTICIPATE IN DEMOCRACY AND ARE EITHER TURNED AWAY OR DO NOT HAVE THEIR VOTE COUNTED, AND WHEN OVER 10 MILLION BLIND AMERICANS CANNOT CAST AN INDEPENDENT, SECRET BALLOT, AND WHEN AFRICAN AMERICANS ARE 10 TIMES AS LIKELY IN SOME PRECINCTS TO HAVE THEIR VOTES NOT COUNTED AS OTHER VOTERS, THIS IS NOT ONLY A CIVIL RIGHTS ISSUES, IT IS A FUNDAMENTAL CONSTITUTIONAL RIGHT ISSUE.

**IT IS MY INTENT TO PROCEED WITH DEBATE ON THE 4  
LEGISLATIVE ITEMS ON THE AGENDA, INCLUDING:**

- **S. 565, "THE EQUAL PROTECTION OF VOTING RIGHTS ACT OF 2001," AN ELECTION REFORM BILL THAT WILL STRENGTHEN THE ELECTION PROCESS IN THE UNITED STATES;**
- **SECONDLY, AN ORIGINAL RESOLUTION PROVIDING FOR MEMBERS ON THE PART OF THE SENATE OF THE JOINT COMMITTEE ON PRINTING AND THE JOINT COMMITTEE ON CONGRESS ON THE LIBRARY;**
- **THIRDLY, S.J. RES. 19, PROVIDING FOR THE REAPPOINTMENT OF ANNE d'HARNONCOURT AS A CITIZEN REGENT OF THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION; and**
- **S. J. RES. 20, PROVIDING FOR THE APPOINTMENT OF ROGER W. SANT AS A CITIZEN REGENT OF THE BOARD IF REGENTS OF THE SMITHSONIAN.**



CONSISTENT WITH THE RULES OF THE SENATE, THE COMMITTEE RULES REQUIRE A QUORUM OF 7 MEMBERS BEFORE THE COMMITTEE CAN TAKE ACTION ON LEGISLATIVE MATTERS. ONCE WE HAVE 10 MEMBERS OF THE COMMITTEE PRESENT, WE WILL HAVE A QUORUM FOR PURPOSES OF REPORTING OUT LEGISLATION.

WHILE WE ARE WAITING TO ESTABLISH A QUORUM, I WANT TO MAKE A FEW OPENING REMARKS REGARDING THE ISSUES BEFORE THE COMMITTEE THIS MORNING. OTHER MEMBERS MAY WISH TO MAKE INTRODUCTORY REMARKS AT THIS TIME ALSO.

ONCE WE HAVE 7 MEMBERS PRESENT, SENATORS MAY OFFER AMENDMENTS, INCLUDING A SUBSTITUTE, TO THE FIRST ITEM OF BUSINESS, S. 565. WHEN 10 MEMBERS HAVE ARRIVED, IT WOULD BE MY INTENT TO ENTERTAIN A MOTION TO REPORT THE ITEMS ON THE AGENDA AND WE WILL BE PREPARED TO VOTE TO REPORT THE PENDING MEASURES.

ELECTION REFORM HAS BEEN MY STATED LEGISLATIVE PRIORITY SINCE BECOMING CHAIRMAN OF THE RULES COMMITTEE. THERE ARE MANY IMPORTANT ISSUES THAT THE SENATE WILL DEBATE THIS YEAR -- CAMPAIGN FINANCE REFORM, THE BUDGET, A PATIENTS' BILL OF RIGHTS -- AND ALL OF THOSE ARE WORTHY PRIORITIES. BUT NO MEASURE IS AS FUNDAMENTAL TO THE HEALTH OF OUR DEMOCRACY AS IS THE ISSUE OF ELECTION REFORM.

ENSURING THE EQUAL OPPORTUNITY TO VOTE, AND HAVE THAT VOTE COUNTED, FOR ALL ELIGIBLE AMERICANS — REGARDLESS OF RACE, ETHNICITY, DISABILITY, THE LANGUAGE THAT THEY SPEAK, OR THE RESOURCES OF THE COMMUNITY IN WHICH THEY LIVE — SHOULD BE THE HIGHEST PRIORITY OF ANY DEMOCRATIC BODY. IT GOES TO THE HEART OF WHO WE ARE AS A PEOPLE AND A NATION.

**SINCE BECOMING CHAIRMAN, THE RULES COMMITTEE  
HAS HELD THREE HEARINGS ON ELECTION REFORM:**

- **THE FIRST HEARING ON JUNE 27<sup>TH</sup> FOCUSED ON THE  
FINAL REPORT and FINDINGS ON THE 2000  
PRESIDENTIAL ELECTION IN FLORIDA ISSUED BY  
THE U.S. COMMISSION ON CIVIL RIGHTS;**
- **THE SECOND HEARING ON JUNE 28<sup>TH</sup> FOCUSED ON  
TESTIMONY FROM MEMBERS OF THE HOUSE OF  
REPRESENTATIVES WHO SHARED THEIR  
EXPERIENCES AND LEGISLATION ON ELECTION  
REFORM; AND**
- **THE LAST ONE WAS A FIELD HEARING HELD IN  
ATLANTA, GEORGIA ON JULY 23<sup>RD</sup> THAT FOCUSED  
ON THE EXPERIENCES OF ORDINARY GEORGIANS  
WHO TOLD ABOUT THEIR ORDEALS TRYING TO CAST  
THEIR VOTES AND HAVE THOSE VOTES COUNTED.**

IN GEORGIA, STATE AND LOCAL ELECTION OFFICIALS TALKED ABOUT ELECTION REFORM, BUT MAINLY NOTED THAT IF CONGRESS FAILS TO ACT SOON THE OPPORTUNITY FOR ELECTION REFORM WILL BE LOST FOR THE 2002 FEDERAL ELECTIONS.

THAT HEARING WAS HOSTED BY SENATOR CLELAND FROM GEORGIA. WHAT WE BOTH HEARD AS SENATORS WAS THAT WHAT HAPPENED IN FLORIDA WAS NOT UNIQUE BUT COULD HAVE HAPPENED ANYWHERE IN THE USA.

AMERICANS WERE DENIED THEIR SACRED AND SOLEMN RIGHT TO VOTE, NOT BY THE HUNDREDS, BUT BY THE THOUSANDS OR MILLIONS. IN GEORGIA, OVER 94,000 VOTERS THAT WENT TO THE POLLS IN NOVEMBER, EITHER DID NOT VOTE FOR PRESIDENT, MADE A MISTAKE THAT VOIDED THEIR VOTE COUNTED BY THE VOTING MACHINE.

IN ADDITION TO THESE HEARINGS, I HAVE NOT RULED OUT HOLDING OTHER HEARINGS EITHER IN OR OUTSIDE OF WASHINGTON, D.C. THE FACT THAT S. 565 IS BEING MARKED UP DOES NOT PRECLUDE OTHER HEARINGS. WE WILL HAVE A FORMAL ANNOUNCEMENT OF SUCH ONCE THE DETAILS HAVE BEEN DETERMINED.

WITH THE MARK-UP TODAY OF S.565, I INTEND TO REPORT THIS BILL TO THE SENATE FLOOR AS THE MAJOR VEHICLE FOR DEBATE ON ELECTION REFORM. IT IS IMPORTANT TO NOTE, THAT 50 MEMBERS OF THE SENATE HAVE JOINED ME AS COSPONSORS OF THIS BILL. IN THE HOUSE, MY DISTINGUISHED COAUTHOR HAS NEARLY 150 BIPARTISAN COSPONSORS, MAKING THIS BILL THE MOST WIDELY SUPPORTED ELECTION REFORM MEASURE INTRODUCED TO DATE IN CONGRESS.

THE MAJORITY LEADER HAS COMMITTED TO BRINGING THIS LEGISLATION TO THE SENATE FLOOR FOR DEBATE SOME TIME AFTER THE AUGUST RECESS.

IT IS MY GOAL TO ENACT BIPARTISAN LEGISLATION WHICH WILL PROVIDE RESOURCES TO THE STATES IN TIME TO AFFECT THE 2002 ELECTIONS.

AS THE NEWLY RELEASED CARTER-FORD COMMISSION REPORT RECOGNIZED, IN 2000 THE AMERICAN ELECTORAL SYSTEM WAS TESTED BY A POLITICAL ORDEAL UNLIKE ANY IN LIVING MEMORY.

AS A MATTER OF FACT, I AM UNAWARE OF ANY OF THE 10 PLUS COMMISSIONS AND AGENCIES THAT ARE TAKING A POSITION THAT EVERY THING WAS JUST FINE IN THE 2000 PRESIDENTIAL ELECTIONS AND WE OUGHT TO PRESERVE THAT ELECTION CYCLE AS THE STATUS-QUO.

**WE ARE ALL AWARE THAT THE PRESIDENTIAL ELECTION LAST NOVEMBER HIGHLIGHTED NUMEROUS VOTING TECHNOLOGY AND ADMINISTRATION IRREGULARITIES OR PROBLEMS THAT ARE IN NEED OF REPAIR.**

**THE RIGHT TO VOTE IS A FUNDAMENTAL CORNERSTONE OF OUR DEMOCRACY; INDEED IT IS THE VERY FOUNDATION UPON WHICH OUR DEMOCRACY IS BUILT. BUT LAST FALL, THE CRACKS IN THAT CORNERSTONE WERE HIGHLIGHTED WHEN MILLIONS OF AMERICANS WERE EITHER IGNORED, DISREGARDED OR SHUT OUT OF THE DEMOCRATIC PROCESS.**

**CLEARLY WE NEED TO REPAIR THE SYSTEM THAT FAILED MILLIONS OF AMERICANS LAST FALL. WE MUST ENSURE THAT ALL ELIGIBLE VOTERS, REGARDLESS OF RACE, ETHNICITY, PHYSICAL DISABILITY, THE LANGUAGE THEY SPEAK, OR THE RESOURCES OF THE COMMUNITY IN WHICH THEY LIVE, CAN FULLY PARTICIPATE IN THIS DEMOCRACY BY EXERCISING HIS OR HER RIGHT TO VOTE.**

AGAIN I WANT TO STATE ON THE PUBLIC RECORD THAT I FOUND A NUMBER OF THINGS TO AGREE WITH IN THE CARTER-FORD REPORT AND RECOMMENDATIONS. ONE SUCH STATEMENT – AND I QUOTE – “FOR AMERICANS, DEMOCRACY IS A PRECIOUS BIRTHRIGHT. BUT EACH GENERATION MUST NOURISH AND IMPROVE THE PROCESSES OF DEMOCRACY FOR ITS SUCCESSORS”.

I AGREE. AS A SENATOR AND CHAIRMAN OF SENATE RULES COMMITTEE – THE COMMITTEE OF JURISDICTION – I CONSIDER IT MY OBLIGATION TO LEAD IN IMPROVING THE ELECTION SYSTEM FOR THE PRESERVATION OF OUR DEMOCRACY.

AS A NEWLY EXPECTANT FATHER, I CONSIDER IT MY OBLIGATION TO IMPROVE THE ELECTION SYSTEM FOR THE FUTURE GENERATIONS AS THE SUCCESSORS TO DEMOCRACY.



I ALSO WANT TO POINT OUT THAT THE CARTER-FORD REPORT STATES THAT THE COMMISSION “TAKES NO POSITION ON WHETHER CONGRESS SHOULD USE THE POWERFUL INCENTIVE OF CONDITIONAL GRANTS OR INSTEAD ESTABLISH REQUIREMENTS OR MANDATES WHOLLY INDEPENDENT OF FUNDING.”

OBVIOUSLY, I BELIEVE THAT IF WE ARE TALKING ABOUT SECURING THE MOST SACRED OF CONSTITUTIONAL RIGHTS — THE RIGHT TO VOTE AND PARTICIPATE IN THIS DEMOCRACY — THEN WE SIMPLY CANNOT LEAVE IT TO THE OPTION OF THE STATES AND LOCALITIES AS TO WHETHER OR NOT PEOPLE OF COLOR, LANGUAGE MINORITY, OR PHYSICAL DISABILITY WILL HAVE THE FRANCHISE.

LET ME ALSO POINT OUT THAT I AM IN AGREEMENT WITH THE CARTER-FORD RECOMMENDATION THAT EVERY STATE SHOULD PERMIT PROVISIONAL BALLOTING TO ENSURE THAT NO ELIGIBLE AMERICAN IS TURNED AWAY FROM THE POLLS.

AGAIN, BECAUSE THE RIGHT — INDEED, THE RESPONSIBILITY — TO PARTICIPATE IN THIS DEMOCRACY BY VOTING IN FEDERAL ELECTIONS IS SO FUNDAMENTAL TO WHO WE ARE AS AMERICANS, IT IS SIMPLY INSUFFICIENT TO LEAVE TO THE DISCRETION OF THE STATES WHETHER OR NOT THIS WILL OCCUR.

AS THE CHAIRMAN OF THE RULES COMMITTEE, I AM FOCUSED ON THE FUTURE HERE, NOT THE PAST.

I AM COMMITTED TO WORKING IN A BIPARTISAN FASHION AS THE CHAIRMAN OF THE RULES COMMITTEE ON THIS VERY CRITICALLY IMPORTANT ISSUE, TO ENSURE THAT THE CORNERSTONE OF OUR DEMOCRACY IS ONCE AGAIN SOLID AND STRONG.

I URGE MY COLLEAGUES TO SUPPORT OUR EFFORTS TO ENSURE THAT EVERY ELIGIBLE AMERICAN HAS AN EQUAL OPPORTUNITY TO VOTE AND HAVE THAT VOTE COUNTED.

**OPENING STATEMENT OF HON. ROBERT G. TORRICELLI,  
MEMBER, A U.S. SENATOR FROM THE STATE OF NEW JERSEY**

The CHAIRMAN. With that, let me turn to my colleague from New Jersey.

Senator TORRICELLI. Thank you, Mr. Chairman, very much, and I want to thank you for your leadership on this issue and bringing the committee this far.

The Nation clearly faces an unsustainable situation. A modern, vibrant democracy cannot endure with a great number of its citizens believing that their votes either do not count or count unequally. We can differ whether this is the reality or it is the perception. In either case, it cannot continue.

In my own experience since the last election reviewing election procedures in my State and attempting to learn about them around the country, there is clearly merit to those who doubt the quality of this system. The accuracy of voting equipment that is used is often directly related to the finances, the income of the community in which a person lives. Eighteen percent of the American people are using technology that is nearly 100 years old, pulling mechanical levers that have been pulled for generations and that are prone to breaking.

Thirty-three percent of the American people are using a punch-out system about which the American people have learned a great deal. That has been used for more than 40 years.

There are better systems. There are good systems that assure accuracy and that are being used almost exclusively in high-income areas where local taxpayers can afford them. That is not a fair and working system. It is not what American leadership has had in mind for generations in assuring an equality of vote.

A genuinely modern democracy has achieved little in assuring people the right to vote if they are not able to register. That was the lesson of a generation ago. We have achieved little if people have the ability to register but no ability to cast their vote with confidence that it will be counted, or, as in the instance of last fall, recounted accurately.

There are different approaches of how to deal with a national problem. Like members of the minority, my instinct after the last election was to support a voluntary system of simple Federal grants. I do not believe that the Nation has a great deal in which to take pride in how we have responded to this problem since the Presidential election. A great deal has been written, a fair amount said in the Congress, but the sense of outrage that should have followed a national election when millions of Americans felt disenfranchised never really followed.

It would have been my hope that these many months after a national election that was questionable and where so many Americans felt that they did not have an equal right to participate that State legislatures would have acted by the score, buying machines, reforming systems, changing election procedures. That did not happen. And if the Congress waited another decade, it might happen.

I for one do not want to see the United States Government have another election occur in this Nation where Federal officials are chosen with so little confidence and such inequality.

So while I supported Senator McConnell's legislation in November—indeed, my office wrote the original draft—I am joining with Senator Dodd today. Local communities need to receive grants to immediately implement better technology. We also need mandates to assure that, as soon as practical and possible, these systems are implemented. We also need to ensure that the very best technology is evaluated and made available.

It is a national embarrassment that the Nation was unable to assure an equality of opportunity in voting in the year 2000. It would be unforgivable to an entire generation of American leadership if this situation reoccurred. That is why we are here today.

We are serious about our commitments to our citizens, determined that their rights will be protected as they choose to exercise them, and we will not compromise on those age-old ideals.

So some of what we do today is very practical. We provide money, machines will be bought, studies will be conducted, and some of it is an age-old American idealism. No matter how imperfect our democracy might be, we never cease trying to make it perfect. This is one more step seeking perfection in the equality of every American to cast a vote and have it counted equally.

With that, I now name myself chairman of the entire committee. [Laughter.]

All the grants will go to New Jersey and Louisiana.

The CHAIRMAN. I thought I gave you the chair for a minute there. I thought maybe some new legislation might emerge here, with the combination of New Jersey and Louisiana receiving 50 percent of the Federal budget or something like that.

Senator TORRICELLI. We had already chosen all of it.

The CHAIRMAN. Oh, did you?

Let me turn to my colleague from Louisiana and thank him immensely for being here.

**OPENING STATEMENT OF HON. JOHN B. BREAU, MEMBER, A  
U.S. SENATOR FROM THE STATE OF LOUISIANA**

Senator BREAU. We were dividing up space.

The CHAIRMAN. Good.

Senator BREAU. Thank you, Mr. Chairman.

I think this is an area that we have to proceed very carefully in. I was an original sponsor of the Torricelli and Schumer approach, also sponsored the chairman's bill as well because I really had not yet decided the best course of action with regard to election reform. I think it is desperately needed. I know the States are working on it, and there have been 200 years of history where the States run their election procedures. And I think that if we are going to change that, we have to do so very carefully.

I intend to support the chairman's bill, to bring it to the floor and reserve the right to make a decision on the floor as to which approach I think is the best approach. I am mindful of the National Commission on Federal Elections Reform, the so-called Ford-Carter Commission, which has just made their findings known to the public, and in that report they say that we believe that State governments should have the primary role in the conduct of elections for a simple reason: Federal elections are, as a practical matter, conducted in conjunction with a vast array of State and local elections

across widely varying conditions. And my concern is that one size may not fit all, that different States have different needs and different requirements and different interests. But I think that we have trusted them to find the best parameters in which to conduct their elections.

If we are to decide that Washington knows best, I think we have to be very careful in taking that approach. I know many of the States have made some real efforts and fruitful efforts and positive steps in trying to find the best way to conduct their elections. And each State is different. In my State of Louisiana, we have most of our elections on Saturdays, allowing more people to vote because fewer people do not work on Saturdays. It is difficult on a Tuesday. I mean, the idea of Tuesday being some magical date is nonsensical. I mean, why Tuesday? If you study the history, they tell us that that is when people used to drive their covered wagons to the county seat to do business on Monday, so they decided, well, let's just keep them over and we will have the election the next day on Tuesday. That certainly is not a 21st century requirement today.

Our elections are on Saturday. Many people are off on Saturday, and it allows, I think, easier access to the polls on a day when people are not principally working. That works in Louisiana. And as my colleague from New York just said, it may not work in New York.

But I am concerned about us saying when, where, how, and under what circumstances these elections are to be conducted.

Now, is there a problem? Absolutely. We have seen vivid examples of that, and we are all searching for a solution. So I will continue to work with the chairman, and I intend to support the chairman's bill, to bring it to the floor and have further discussions on this.

I think we are all trying to do the same thing—make the process better—and certainly we all can contribute to that, and I hope to contribute to that effort when we get to the floor.

Thank you.

The CHAIRMAN. I thank my colleague very, very much for those comments. And I would just state again—I stated it before members arrived—that it is my strong hope that we will end up with a good bipartisan bill. I have been in this body for 20 years. I have never passed a major piece of legislation without it being bipartisan. So my hope is we can arrive at a bipartisan solution, and my hope is as well that we will do what is right, and I believe we can do that as well. They are not inconsistent goals.

We are going to be voting around 10 o'clock, and I would hope my colleague would come back at that time.

Let me turn to my colleague from New York and thank him. Senator Schumer has been very active and involved in this issue. I have said this to him privately; I want to say publicly how much I appreciate his support and guidance and work with me on this as we have tried to move forward with the legislation. And so we welcome you to the committee once again, and I want to thank you and Senator Dayton, by the way, for your willingness to serve on these other committees dealing with the Joint Printing and the Library, and I thank you for that. We were going to try and deal with those matters on this agenda as well, but I haven't received the

names yet of the minority who want to be on that. So I will have to delay probably until we come back in September.

But, with that, let me turn to my colleague from New York.

**OPENING STATEMENT OF HON. CHARLES E. SCHUMER,  
MEMBER, A U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator SCHUMER. Well, thank you, Mr. Chairman, and I want to thank you not only for holding this hearing but for your extraordinary leadership on this issue. I was just reminded of it as I was watching your opening statement, and to anyone who thinks that Senator Dodd's involvement in this is, quote, political, they ought to talk to him privately and just understand the passion with which he joins this issue, and his passion for it as well as his exquisite political sense I think are a great combination, and that gives me optimism that we will get something done this year.

We have been talking about this issue since about a week after the November elections, and, again, obviously, we have to do something. The anguish of citizens—we have all seen it; I see it in my State all the time—who try to vote and can't or who then end up realizing they voted for the wrong person is dramatic when you see them. I mean, you know, a guy clad in a flannel shirt, you can see that he has just gotten back from work, he is rushing to get home or to another job, waits on line for an hour, because in New York our voting machines—you can't vote twice, but it takes a long, long time. You know, you can't vote for two people on the same line. But it takes a long, long time to vote because they are old, they are sort of clunky. And to look at the man's face, first-time voter—he was a man of Hispanic background—and then to be turned away saying your card isn't here, and you see the look. And he said to me, "I can't, I got to go to another job. I came back all the way to where I live to vote, and then I have got to go to the other job." That sticks in my head, and I think that scene could be repeated in any place in America all the time.

It is a beautiful thing about America, that people will go out of their way to vote, that they feel a passion about voting, that we sort of realize that our one vote can and does make a difference, that it is our responsibility as a citizen. I think it is felt most keenly in new citizens from countries where they have not been allowed to vote. They are not jaded about this democracy one bit. And, you know, this is—if you had to think of the one reason that the patriots died at Bunker Hill and people died in the Civil War, Union soldiers and Americans from all parts of the country who fought and died in World Wars I and II, above all was the right to vote, because that sets all the other rights—none of the other freedoms and none of the other rights would be here without the right to vote.

So it is something worth fighting for. It is something worth trying to achieve, not just good enough but the best. It is too important an issue to say, well, it is costing money. It is too important an issue to say, well, it creates inconvenience.

So I share, Mr. Chairman, perhaps not as eloquently, but I share your passion on this issue. I think it is really important.

Let's take a look at where we are at. We have made great progress. We are about to move a bill to the floor. We have the

commitment of the Majority Leader that he will move that bill to the floor in this fall as we wrap up the session. There is a bipartisan bill in the House that is moving along, and yesterday I thought it was great that 2 day ago the President endorsed many of the general ideas behind election reform. And I think it would be sort of—I think there are two things going on here.

One, I think it would be a shame if this bill fell to the wayside because of partisan differences. I think that we have almost a moral imperative to get something dramatic done. We have to. And I truly believe we cannot let the perfect be the enemy of the good. The bill that I have sponsored along with Bob Torricelli and Mitch McConnell and Sam Brownback isn't as good, in my opinion, doesn't go as far as I would like a bill to go. And I think there is nothing wrong—in fact, there is something right on this issue of placing mandates on the States. I don't have any problem with that.

When we introduced our bill, there was a different leadership in the House and Senate, and for the 20—whatever it is now, 26 years I have been a legislator, my job is to move things forward and get something done, not just get up on a soapbox and make a speech—although I don't mind that. [Laughter.]

But it is to get something done. So we are in a dilemma here. I believe that a bill, the kind of bill with mandates, if I were kind—of course, that is a contradiction to voting. But if I were the democratic king—small “d”—I would want a bill passed with mandates on the States. I wouldn't leave it up to their whim or their discretion. And I think the idea of moving Senator Dodd's and Congressman Conyers' bill forward is good. I think that is the right thing to do. And at the same time, at this point, I think it will be hard to get it through the Senate, although we should try. We should try mightily. It will probably be even a little harder to get it through the House and get the President to sign it. And so—and I know this because I have talked to Senator Dodd—at some point we will have to sit down and come up, as he said, with a bipartisan bill.

But I think the path we have taken is the right path. Let's not trim our sails early on in the process because this is such an important issue and such an important thing to bring to the voters. And I am confident that we will do two things at once here. We will push as hard as we can to get the most that we can, and then when the timing is propitious, we will come to an agreement, a bipartisan agreement, and get something done. I do not want to end this session without doing anything on election reform. The very fact that it is so urgent and needs mandates also means that we shouldn't leave here and have the 2002 elections and the 2004 elections not be a lot better than the 2000 elections and the elections in the past were.

So the two-track proposal of pushing as far as we can to get as close to Senator Dodd's bill as possible and at the same time realizing that we have to pass a bill—and we may not get everything we want, but we could come pretty close—to me makes a great deal of sense. And that is why I think the strategy that you have pursued this morning, Mr. Chairman, is the right one. I regret that our Republican colleagues are not here to make their arguments,

their valid arguments. I believe that my friends on the Republican side care about—the ones who have sponsored the bills with Senator Torricelli and me care about election reform. They have a different road to roam. But I think we are all going to have to keep working as hard as we can on this issue and then sit down and talk and resolve our differences and get something done.

I thank you, Senator Dodd.

The CHAIRMAN. I thank my colleague from New York for his comments and thoughts. I would just say to him and to others here, I too regret that there is apparently a boycott going on here this morning. At least, that was the announcement yesterday that there would be. I don't know if every single member of the minority has taken that position. I have been here 20 years. I have never seen this happen on other committees I have served on. This bill is open for amendment, to substitution, to other ideas.

There are some 16, I think I counted, election reform bills that have been introduced in the Senate, varying degrees, approaching issues in different ways, and when I think of the people that you just mentioned, Senator Schumer, who stood in line for hours—and I think all of us saw that, people who were turned away. I mentioned the MIT/Cal Tech study which talks about between 4 and 6 million people who stood in line and were turned away. I look across this room here and I see the people who have shown up here this morning, many of whom I know from various constituencies that are deeply interested in this issue. And I will introduce for the record the list of all the various organizations, and there are literally dozens and dozens of them across the country. When I see people in the disability community here, it was hard to get here this morning, I presume, for those from that community. But they wanted to be here because we were about to do something that was important. And I regret that those who could just walk down a hall decided not to come here to participate in this discussion. Even if you don't particularly like this bill, you had another choice. It seems to me that we bear a responsibility, all of us, when something of this magnitude is being discussed and debated, that you be here. That these folks can be here, that they can show up on election day to try to cast a ballot, it saddens me to know that others can't walk down the hall to be participants in a debate and discussion about something as important as this. So I am saddened by it. I know it is not the views of all on the other side, but I guess there is some sort of sense of solidarity here that comes along with these issues from time to time.

I am going to ask unanimous consent that a list of literally dozens of organizations, many of whom are here today, from the AFL-CIO to the American Association of People with Disabilities, the American Association of Mental Retardation, NAACP—there are just so many here. I am not going to read them all, but many of them are represented here in the room today, and I am deeply appreciative of your turning up to express your support for the efforts of doing something about the major flaws in our process and system. So I will ask unanimous consent that be included in the record. Without objection, it is. And a letter from the Leadership Conference on Civil Rights—the Judicial Conference on Civil Rights as well.



1565

[The list and letters follow:]

**S.565/H.R.1170: The Equal Protection of Voting Rights Act of 2001 (Dodd/Convers)**

- **establishes minimum national requirements for Federal elections, effective in 2004, with authorization for appropriations to pay for the 3 Federal requirements:**
  - **Federal standards for voting machines, systems, and technology;**
  - **provisional voting; and**
  - **distribution of sample ballots and voting instructions.**
- creates a **temporary Commission** of 12 members – 6 appointed by the President and 3 each by opposite party leadership in the House and Senate;
- Commission issues a **report and recommendations** for best practices in areas of election technology and administration, voter participation, and Federal responsibility (i.e., appropriate Federal role);
- **creates a grant program for States and localities**, administered by the Department of Justice for funds to purchase updated technology, improve voter registration systems, and educate voters and poll workers prior to the 2004 elections; to ensure accountability, States and localities must submit a **State Plan** describing how such actions will be met. The same program will fund the costs of the Federal requirements for the 2004 Federal elections.
- **Senate Co-sponsors: 51 cosponsors, including Majority Leader Tom Daschle and all Democratic Senators; and 1 independent, Senator James Jeffords**
- **House Cosponsors: over 148 cosponsors, including Congresswoman Connie Morella and Minority Leader Dick Gephardt**
- **Organizations endorsing S. 565/H.R. 1170 include:**
  - AFL-CIO, 6/21/01
  - A. Phillip Randolph Institute, 6/28/01
  - African American Women's Clergy Association, 6/28/01
  - Alpha Kappa Alpha Sorority, Inc., 6/28/01
  - American-Arab Anti-Discrimination Committee, 6/26/01
  - American Association of People with Disabilities 6/21/01
  - American Association on Mental Retardation 6/29/01
  - American Civil Liberties Union 5/23/01
  - American Ethical Union, 6/28/01
  - American Federation of State, County & Municipal Employees, 6/21/01
  - Americans for Democratic Action 5/21/2001
  - Asian American Legal Defense and Education Fund, June 2001
  - Association for Persons in Supported Employment 6/29/01
  - Bazelon Center for Mental Health Law, 6/28/01

Center for Constitutional Rights, 6/28/01  
Church Women United, 6/28/01  
Citizen Action of New York, 6/28/01  
John Conyers, Jr., Ranking Member, House Judiciary Committee, 6/19/01  
Equal Partners in Faith, 6/28/01  
General Board of Church and Society of the United Methodist Church, 6/21/01  
Jewish Council for Public Affairs 5/23/01  
Jewish Labor Committee, 6/28/01  
Eddie Bernice Johnson, Chairwoman, Congressional Black Caucus, 6/19/01  
Lawyers' Committee for Civil Rights Under Law 5/22/01  
Leadership Conference on Civil Rights, 6/28/01  
National Asian Pacific American Legal Consortium, 6/28/01  
National Association for the Advancement of Colored People, 5/22/01  
NAACP Legal Defense & Education Fund, Inc., 6/21/01  
National Association of Developmental Disabilities Councils 6/29/01  
National Association of Protection and Advocacy Systems 6/29/01  
National Congress of American Indians, 6/28/01  
National Council of La Raza, 6/21/01  
National Council on Community Behavioral Healthcare 6/29/01  
National Industries for the Severely Handicapped 6/29/01  
National Organization on Disability 6/29/01  
National Organization of Women, 6/28/01  
Ocean State Action, 6/28/01  
Organization of Chinese Americans, 6/21/01  
Oregon Action, 6/28/01  
Paralyzed Veterans of America 6/29/01  
People for the American Way 5/24/01  
Presbyterian Church, USA, 6/28/01  
Rainbow PUSH Coalition 7/2/01  
Religious Action Center of Reform Judaism, 6/21/01  
The American Diabetes Association 6/29/01  
The ARC 6/29/01  
The Center on Disability and Health 6/29/01  
The Council for Learning Disabilities 6/29/01  
The Council on Quality and Leadership in Supports for People with Disabilities 6/29/01  
The Epilepsy Foundation 6/29/01  
The Learning Disabilities Association 6/29/01  
The Rabbinical Assembly, 6/28/01  
Unitarian Universalist Association of Congregations, 6/28/01  
United Cerebral Palsy Associations, 6/19/01  
United Church of Christ/Justice and Witness Ministries, 6/28/01  
United Methodist General Board of Church and Society, 6/28/01  
US Action, 6/19/01  
Wisconsin Citizen Action, 6/28/01  
Women for Reform Judaism, 6/28/01



## Leadership Conference on Civil Rights

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www.civilrights.org

August 1, 2001

The Honorable Christopher Dodd  
Chairman  
Committee on Rules and Administration  
United States Senate  
Washington, DC 20510

Dear Chairman Dodd,

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest and most diverse civil rights coalition, we want to thank you for your important leadership on the issue of election reform and in particular for your introduction of the "Equal Protection of Voting Rights Act" (S. 565). The LCCR strongly supports S. 565 and we urge you to work for its swift passage out of the Rules and Administration Committee without any weakening amendments.

The right to vote is among the most fundamental of freedoms guaranteed to the people of the United States. Without it, we are neither a republic nor a democracy. Throughout our history, our nation has gradually, and with great difficulty, expanded the franchise to all its citizens, a process that ultimately culminated in the passage of the Voting Rights Act of 1965. However, despite our elimination of yesterday's poll taxes and literacy tests, we still see significant barriers to enfranchisement for many Americans, including racial and ethnic minorities, persons with disabilities, and the elderly, in the forms of outdated punch-card machines and improper vote purges. In order to ensure the integrity of our election process, and ultimately our democracy, we must guarantee that no person is denied access to the ballot.

We were greatly encouraged by the release of the National Commission on Federal Election Reform's report, which further confirms evidence of problems with the current voting system. The recommendations included in the report propose several important remedies, such as felony re-enfranchisement, the use of provisional ballots and making election day a national holiday. However, the panel's recommendations do fall short in providing federal minimum standards and national requirements.

The LCCR strongly endorses the election reform proposals included in the "Equal Protection of Voting Rights Act" which will ensure equal access to

*"Equality In a Free, Plural, Democratic Society"*

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**LEGISLATIVE ASSISTANT**  
**DIRECTOR OF TECHNOLOGY PROGRAMS**  
Brian Komar


(\*Deceased)

The Honorable Christopher Dodd  
August 1, 2001  
Page 2

the electoral process for all voters. The legislation would provide funding for voter education and training for election officials. In addition the bill would also require each state to reexamine, simplify and standardize voter enfranchisement laws. The legislation also calls on states to look into voter intimidation, real or perceived, and to reexamine if they are in full compliance with the Voting Rights Act of 1965. The Equal Protection of Voting Rights Act would also enhance the integrity of absentee ballots, put systems into place to maintain up-to-date voter rolls, establish clear standards for bilingual ballots, create better access for the disabled, provide provisional ballots that are cast pending the outcome of any dispute over a voter's eligibility to vote, and provide the funding necessary to ensure that all changes and upgrades are carried out.

Election reform is not a partisan issue; it is a national imperative. Thank you and your supporters on the Senate Rules Committee for holding a timely "mark-up" on this vital legislation.

Sincerely,



Wade Henderson  
Executive Director



Dr. Dorothy I. Height  
Chairperson



WASHINGTON BUREAU  
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE  
1025 VERMONT AVENUE, N.W. • SUITE 1120 • WASHINGTON, D.C. 20005  
(202) 638-2269 FAX (202) 638-5936

August 1, 2001

The Honorable Christopher Dodd  
Chairman  
Senate Rules and Administration Committee  
305 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Dodd;

I am writing today to let you know of my strong support for S. 565, the "Equal Protection of Voting Rights Act", and to urge you to do all you can to see that it passes out of the Senate Rules Committee and is approved of by the US Senate as a whole **without any weakening amendments**.

The right of every American to vote and to have his or her vote counted is a cornerstone of our democracy. Unfortunately, that right, as well as the basic tenet upon which our nation was founded, was violated for millions of Americans in the 2000 election. Specifically, the November, 2000 Presidential election was rife with problems, and often those problems resulted in the disenfranchisement of ethnic minority voters. As a result of technical and mechanical problems, as well as voter intimidation, voter suppression and voter disenfranchisement **MILLIONS** of Americans were denied their basic right to cast a free vote and to have that vote counted. Furthermore, as numerous studies have shown, many of the voting irregularities occurred disproportionately in communities of color nationwide, so it was ethnic and racial minority Americans who were, in disparate numbers, excluded from having our voices heard.

The serious problems that were exposed in last year's election warrant an equally serious and comprehensive response. We must ensure that every American's right to vote is protected. We need to pass legislation that requires states to meet a minimum set of standards for all voting equipment, the training of poll workers, absentee and bilingual ballots, and voting booth access for the disabled. We also need to make sure that states are complying with the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act and the Motor-Voter Act of 1993.

Like most things that challenge our gift of freedom, we must work hard to ensure that our democratic system retains its integrity. We must require that states meet

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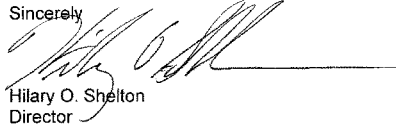
Senator Dodd  
August 1, 2001  
Page 2

uniform, minimum standards to ensure that all Americans may pursue their right to vote, regardless of their ethnic or educational background or the social or economic condition of their community. Unfortunately, Congress must require uniform minimum standards for voting in 2001 just as it required that lunch counters and businesses be integrated some 40 years ago.

This is the last chance we may have for years to address problems that continue to plague us and result in Americans, and specifically ethnic minority Americans, not being able to vote or have their vote counted. If we are to be true to the principles of our democracy, we must require that every state and municipality do much better to ensure that every American who wants to vote can vote, and that their vote is counted.

Thank you for your attention to this matter; I hope that you will contact me soon to let me know what I can do to help you pursue comprehensive election reform.

Sincerely,



Hilary O. Shelton  
Director

HOS/cnk



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**Organizational Co-sponsors of the  
 "EQUAL PROTECTION OF VOTING RIGHTS ACT"**

S. 565 / Senator Christopher Dodd (D-CT)  
 H.R. 1170 / Congressman John Conyers (D-MI)

*(in alphabetical order)*

AFL-CIO	National Asian Pacific American Legal Consortium
A. Phillip Randolph Institute	National Association for the Advancement of Colored People
African American Women's Clergy Association	NAACP Legal Defense & Education Fund, Inc.
Alpha Kappa Alpha Sorority, Inc.	National Association of Developmental Disabilities Council
American Association of People with Disabilities	National Association of Protection and Advocacy Systems
American Association on Mental Retardation	National Coalition on Black Civic Participation
American-Arab Anti-Discrimination Committee	National Congress of American Indians
American Civil Liberties Union	National Council for Community Behavioral Healthcare
The American Diabetes Association	National Council of La Raza
American Ethical Union	National Industries for the Severely Handicapped
American Federation of State, County & Municipal Employees (AFSCME)	National Organization for Women
Americans for Democratic Action	National Organization on Disability
The ARC of the United States	Ocean State Action
Association for Persons in Supported Employment	Oregon Action
Bazelon Center for Mental Health Law	Organization of Chinese Americans
Center for Constitutional Rights	Paralyzed Veterans of America
Center on Disabilities and Health	People for the American Way
Church Women United	Presbyterian Church, USA
Citizen Action of New York	Public Citizen
Council for Learning Disabilities	The Rabbinical Assembly
The Council on Quality and Leadership in Support for People with Disabilities	Unitarian Universalist Association of Congregations
Demos	United Auto Workers
Easter Seals	United Cerebral Palsy Association
Equal Partners in Faith	United Church of Christ / Justice and Witness Ministries
Hadassah, the Women's Zionist Organization of America	United Methodist General Board of Church and Society
Heumann and Associates	US Action
Jewish Council for Public Affairs	Wisconsin Citizen Action
Jewish Labor Committee	Women for Reform Judaism
Lawyers Committee for Civil Rights Under Law	
Leadership Conference on Civil Rights	
Learning Disabilities Association	

Updated: 7/27/01





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San Francisco  
Asian Law Caucus

August 1, 2001

The Honorable Christopher Dodd  
Chairman  
Senate Committee on Rules and Administration  
305 Russell Senate Office Building  
Washington, D.C. 20510

Dear Chairman Dodd:

I am writing today to let you know of my strong support for S. 565, the "Equal Protection of Voting Rights Act," and to urge you to do all you can to see that it passes out of the Senate Rules Committee and is approved of by the U.S. Senate as a whole **without any weakening amendments.**

The right to vote is one that every American holds dear and to have one's vote counted is a cornerstone of our democracy. This sacred democratic right, however, was grossly violated for millions of Americans in the 2000 election. The November, 2000 Presidential election was replete with problems that grossly disadvantaged APA minority communities in general and the Asian Pacific American voting community in particular. Technical and mechanical problems, voter intimidation, voter suppression, and voter disenfranchisement were a few of the reasons minority communities were denied their basic right to cast a free vote and to have that vote counted. In addition, Limited English Proficient (LEP) persons and language minorities faced particular problems associated with untrained poll workers and inaccurate bi-lingual ballot translations. Under current federal law, language assistance is required, yet inadequacies abound and continue to disenfranchise significant portions of the APA community. Finally, as numerous studies have shown, many of the voting irregularities occurred disproportionately in communities of color nationwide, so it was ethnic and racial minority Americans who were, in disparate numbers, excluded from having our voices heard.

The serious problems that were exposed in last year's election warrant an equally serious and comprehensive response. We must ensure that every American's right to vote is protected. Nationally, two-thirds of all Asian Americans speak a language other than English in their homes. Massive campaigns must be launched to explain the voting process in multiple languages and disseminate that information in public places. The Senate's main concern should be to provide adequate language assistance to as many ethnic minority groups as possible so that they can participate fully in the American voting process.

Like most things that challenge our gift of freedom, we must work hard to ensure that our democratic system retains its integrity. We must require that states meet uniform, minimum standards to ensure that all Americans may



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pursue their right to vote, regardless of their ethnic or educational background or the social or economic condition of their community. Unfortunately, Congress must require uniform minimum standards for voting in 2001 just as it required that lunch counters and businesses be integrated some 40 years ago.

This is the last chance we may have for years to address problems that continue to plague us and result in Americans, and specifically ethnic minority Americans, not being able to vote or have their vote counted. If we are to be true to the principles of our democracy, we must require that every state and municipality do much better to ensure that every American who wants to vote can vote, and that their vote is counted.

Thank you for your attention to this matter; I hope that you will contact me soon to let me know what I can do to help you pursue comprehensive election reform.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kush Bambrah".

Kush Bambrah  
Staff Attorney





Justice and Witness Ministries  
A Covenanted Ministry of the United Church of Christ

Bernice Powell Jackson, Executive Minister

Office of Public Life and Social Policy  
Washington, DC

The Collegium of Officers

John H. Thomas  
Office of General Ministries

Edith A. Guffey  
Office of General Ministries

Bernice Powell Jackson  
Justice and Witness Ministries

José A. Melayang  
Local Church Ministries

Dale L. Bishop  
Wider Church Ministries

Justice and Witness  
Ministry Teams

Economic Justice

Human Rights,  
Justice for Women  
and Transformation

Racial Justice

Public Life and  
Social Policy  
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fax: 202.543.5994

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at Bricks  
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Whitakers, NC 27391  
252.437.1723

July 31, 2001

The Honorable Christopher Dodd  
United States Senate  
Washington, DC 20510

Dear Senator Dodd:

The United Church of Christ Justice and Witness Ministries stands in strong support of the fundamental election reform contained in the Equal Protection of Voting Rights Act of 2001 (S. 565). We urge you to pass it out of the Senate Rules and Administration Committee without amendments that would weaken it.

We support the most comprehensive response to problems of voter intimidation and technical and procedural barriers which surfaced across the country in the November 2000 elections. Although some would only have us fix a machine here or a procedure there, the United Church of Christ is only supportive of solutions that set minimum standards for voting equipment, provisions for absentee and bilingual ballots, full access to voting booths of the disabled, and adequate training of poll workers. We also are concerned that states be given direction to comply with the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act and the Motor-Voter Act of 1993.

Only through uniform, minimum standards will all Americans gain their most basic civil right — the right to vote. We are wary of legislation which leaves everything to individual states to decide. Thank God the federal government stepped in some 40 years ago to ensure civil rights in this nation's lunch counters, schools and transportation. It is time for the federal government to step in again.

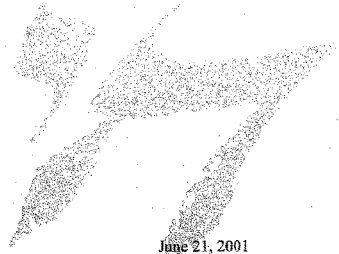
The United Church of Christ, a 1.4 million member mainline Protestant denomination, has consistently echoed the importance of responsible, thoughtful, and faithful participation in the public sphere, including voter empowerment and education efforts. Support of S. 565 is in keeping with that historic witness.

Sincerely,

Rev. Ron Stief, Director  
Washington Office, United Church of Christ.



**RELIGIOUS ACTION CENTER  
OF REFORM JUDAISM**



June 21, 2001

Dear Senator:

On behalf of the Commission on Social Action of Reform Judaism, the public policy arm of North America's largest organized Jewish community, we write in support of the Equal Protection of Voting Rights Act of 2001 (S. 565), sponsored by Senator Christopher Dodd (D-CT). As you may know, this legislation will be marked up in the Senate Rules Committee on Thursday, August 2. We strongly encourage you to act favorably upon S. 565 and vote this legislation out of committee.

As you are well aware, the 2000 presidential election exposed numerous flaws in our nation's election procedures. To address these problems, lawmakers on both sides of the aisle have proposed legislative remedies, and we believe S. 565 is the most comprehensive of the current election reform proposals. The legislation would require that all voting machines for federal, state and local elections meet the same high performance standard by the year 2004. Each voter would have the right to receive a sample ballot before going to the polls, correct errors before his or her ballot is cast and counted, and access a provisional ballot if his or her registration status is in question on Election Day. The bill would also provide for enhanced resources for voter education and poll worker training, establish standards for the use of bilingual ballots, and call on states to examine voter intimidation—real or perceived—so as to ensure compliance with the Voting Rights Act of 1965.

Jewish tradition teaches us that the process of choosing leaders is not a privilege, but a collective responsibility. The Sage Hillel taught "*Al tifros min hatzibur*, Do not separate yourself from the community" (Pirke Avot 2:5). This tradition, combined with our community's history of promoting civil rights and voting rights for all Americans, compels us to redouble our efforts to increase voter registration and participation, and ensure the franchise is protected for all citizens.

Free and fair elections are a cornerstone of our nation's democracy, yet it is easy to forget how frequently in our history the right to vote has been denied to certain groups of citizens. All Americans wishing to vote must be given a meaningful opportunity to do so, and all votes determined to be valid in accordance with established fair standards must be counted accordingly. Congress can enhance protection of these fundamental rights through enactment of meaningful electoral reforms. Thus, we strongly endorse S. 565 and urge you to ensure its passage this Congress.

Respectfully,

Rabbi David Saperstein  
Co-Director,  
Commission on Social Action  
Director,  
Religious Action Center

David S. Davidson  
Chair,  
Commission on Social Action

*The Religious Action Center  
promotes social justice and  
religious liberty by  
mobilizing the American  
Jewish community and  
serving as its advocate  
in the nation's capital*

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Rabbi David Saperstein  
Director and Counselor

Mark J. Pelwin  
Associate Director

David S. Davidson  
Chair  
Commission on Social Action  
of Reform Judaism

Rabbi Daniel Polsky  
Director  
Commission on Social Action  
of Reform Judaism

*The Religious Action Center  
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National Association of  
Temple Educators,  
North American Federation of  
Temple Brotherhoods,  
Women of  
Reform Judaism, and  
North American Federation  
of Temple Youth*



**Lawyers' Committee for  
Civil Rights Under Law**

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August 1, 2001

The Honorable Christopher Dodd  
Chairman  
Senate Committee on Rules and Administration  
United States Senate  
Washington, D.C. 20510

Dear Chairman Dodd:

I am writing on behalf of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") to urge you to make comprehensive electoral reform a national priority and lend your support to S. 565, the "Equal Protection of Voting Rights Act" ("the Act"). The Lawyers' Committee urges you, as a member of the Senate Committee on Rules and Administration, ("Rules Committee") to do all you can to see that this important legislation passes out of the Rules Committee and is approved by the full United States Senate without any weakening amendments.

As you may know, the Lawyers' Committee is a 38 year old nonpartisan, nonprofit civil rights legal organization. It was formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. It is because the principal mission of the Lawyers' Committee is to secure equal justice under law that we support this historic legislation. The Act creates comprehensive and meaningful solutions to the problems that voters all over our nation faced in the 2000 elections. This legislation takes the necessary steps to ensure non-discrimination while providing the needed funds to update technology and train poll workers.

The Lawyers' Committee supports S. 565 because it effectively addresses the myriad problems permeating our electoral system by demanding nondiscrimination in the voting process and ensuring equal access to the ballot for all voters regardless of their race, disability, or status as a language minority. Specifically, the legislation establishes uniform statewide voting procedures, poll worker training, a voter bill of rights, and utilization of provisional ballots. In addition, it creates clear standards for the accommodation of language minorities and disabled voters and provides funding necessary to ensure the implementation of these provisions.

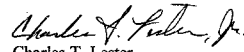
We support the Act because it simply takes the necessary steps to ensure that all states comply with minimal standards as they change the way their citizens vote. It makes sure that, even if states decide not to take federal dollars to change their voting

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

minority and poor voters. The Act requires states to meet common sense standards while allowing states and localities to retain control of the electoral systems that they put in place.

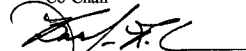
The Lawyers' Committee believes that this legislation is the best means to comprehensive electoral reform. We urge you to support this legislation and vote favorably on it, without any weakening amendments, when it comes before the Rules Committee. The Lawyers' Committee is grateful for your consideration and hopes you will join in our commitment to pass meaningful electoral reform this year. Please feel free to contact one of us, or Anita Hodgkiss, Voting Rights Project Director, or Diane Gross, Public Policy Counsel at (202) 662-8600, if the Lawyers' Committee can be of further assistance in your consideration of this important legislation.

Sincerely,



Charles T. Lester

Co-Chair



Barbara R. Arnwine

Executive Director

1580



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[www.bigvote.org](http://www.bigvote.org)

August 1, 2001

The Honorable Christopher Dodd  
Chairman  
Senate Rules and Administration Committee  
448 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Dodd:

On behalf of the National Coalition on Black Civic Participation, Inc., I am writing to inform you of our support for S. 565, "Equal Protection of Voting Rights Act," and to implore you to do the same. Furthermore, for this bill to effectively benefit the communities that we serve, the Senate Rules and Administration Committee must ratify it without any amendments that may weaken its intent.

For 25 years, the National Coalition on Black Civic Participation has been on the forefront of voting rights issues. That is why we are fully committed to supporting S. 565. S. 565 will help to ensure that every vote is counted and that all citizens are able to exercise their constitutional right to vote by imposing minimum federal standards for all voting equipment, the training of poll workers, absentee and bilingual ballots, and voting booth access for the disabled. S. 565 also provides for the strict enforcement of the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act, and the National Voter Registration Act of 1993.

We cannot afford to miss this opportunity to improve the democratic process for all citizens. S. 565 provides the swift, effective response that is mandated by the gravity of this issue. Thank you in advance for your efforts in ensuring the implementation of this critical piece of legislation. I am looking forward to working with you as we continue our efforts to strengthen our democracy.

Sincerely,

Melanie L. Campbell  
Executive Director & CEO

cc: Richard G. Womack  
Chairman, NCBCP





**General Board of Church and Society of The United Methodist Church**

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August 1, 2001

The Honorable Christopher Dodd  
 Chairman  
 Senate Committee on Rules and Administration  
 305 Russell Senate Office Building  
 Washington, D.C. 20510

Dear Chairman Dodd:

The General Board of Church and Society (GBCS) of the United Methodist Church fully supports S. 565, the "Equal Protection of Voting Rights Act," and I am writing to urge you to continue your efforts to pass this important civil rights legislation out of the Senate Rules Committee as a clean bill, **without any weakening amendments.**

The right to vote in a secret and fair setting is the most basic, fundamental and important Democratic privilege that we have as Americans. The 2000 presidential election, which unfortunately became a national fiasco and international embarrassment, showed that our nation's election system is riddled with confusion, is technically unreliable and tainted with inconsistent local standards. The secret is out that these voting irregularities resulted in voter disenfranchisement, intimidation and suppression of ethnic and racial minority Americans who had their right to vote and have that vote counted denied.

Deficiencies in the nation's electoral process challenge Congress to fix the system by providing a comprehensive response. Americans are expecting Congress to put partisan mistrust and suspicions on both sides of the aisle aside to ensure that every American's right to vote is protected. We believe there is a clear need to pass legislation that requires states to meet national standards. In response to the challenge and need for standards, the GBCS supports the Equal Protection of Voting Rights Act. We support this legislation because it requires states and counties to meet minimum standards to improve voting equipment, the training of poll workers, absentee and bilingual ballots and access to the voting place by the disabled. We also urge you to join us in asking the Department of Justice to ensure that states comply with the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act and the Motor-Voter Act of 1993.

We commend you and thank the Senate for taking the lead in advancing election reform legislation. Thanks for your time on this issue and I look forward to working with you to pass this meaningful federal legislation to repair our nation's broken election system.

Sincerely,

Ken Fealing  
 Director for Civil and Human Rights





## Asian Pacific American Labor Alliance

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For Immediate Release  
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July 25, 2001

### The Asian Pacific American Labor Alliance, AFL-CIO, Supports Passage of the Equal Protection of Voting Rights Act of 2001

The Asian Pacific American Labor Alliance (APALA), AFL-CIO, fully endorses the Equal Protection of Voting Rights Act of 2001 (S.565/H.R.1170) introduced by Senator Christopher Dodd (D-CT) and Congressman John Conyers (D-MI).

According to the Committee for the Study of the American Electorate, 2.5 million of the 101 million voters in the 2000 Presidential election had their votes thrown out. Across the country, many language minority voters, such as Asian Americans and Pacific Islanders (AAPIs), were disenfranchised because election officials refused to provide bilingual ballots or offer language assistance. Antiquated punch-card voting machines in California, most often utilized in areas with high African American, Latino, and AAPI populations, were responsible for thousands of undervotes.

The problems that surfaced during the 2000 Presidential election clearly point to the need for comprehensive election reform in the United States. The Dodd/Conyers legislation establishes a commission on voting rights and procedures, an election technology and administration grant program, and requirements for election technology and administration, including accessible voting systems that meet uniform, nondiscriminatory standards.

"The November 2000 election brought to light numerous flaws in the American electoral system, and forced Americans to take a long, hard look at the way elections are conducted," asserted Guy K. Fujimura, National President of APALA. "Millions who tried to cast votes—including disproportionate numbers of AAPIs—were effectively disenfranchised. The Equal Protection of Voting Rights Act is an extremely relevant piece of legislation at this time, and its passage is imperative if we, as Americans, are to enjoy true democracy. APALA will not be satisfied until systemic change has been achieved."

"We will continue the massive non partisan voter education and registration drives that marked APALA Vote 2000, during which we distributed over 400,000 pieces of literature to AAPIs across the country," declared Jin Sook Lee, Executive Director of APALA. "As we strive to move even larger numbers of AAPIs to the polls in 2002 and beyond, we look for greater assurances that every vote will count. The Dodd/Conyers bill, if passed, would be an important step in the right direction."

*APALA is the first and only national organization of Asian Pacific American trade unionists. Since its inception in 1992, it has endeavored to advance an agenda of civil rights, worker rights, and immigrant rights.*

The CHAIRMAN. With that, let me turn to our colleague from Minnesota and thank him for coming. We have had to build new structures here to accommodate the new members of this committee.

Senator DAYTON. This is the annex.

The CHAIRMAN. This is the annex. This is the children's table.

Senator DAYTON. A different time zone.

The CHAIRMAN. I was the youngest of six children. They always had that little table for me at Thanksgiving meals. I was always put at the little table. [Laughter.]

We welcome you here.

**OPENING STATEMENT OF HON. MARK DAYTON, MEMBER, A  
U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator DAYTON. Being 100th in seniority, I have gotten so used to being at the end of the table, I am just sort of thrilled to see that there is actually an extension that goes beyond me.

Thank you, Mr. Chairman, and I want to join with my colleagues in saluting you and thanking you for your leadership on this very, very important issue. When I was named to this committee at the beginning of this year, I was very excited because of the fact that I thought this was one of the preeminent issues facing our Nation and facing this session of the Congress. And I was frankly very disappointed and frustrated that there was no moving forward on this serious problem during the first months of this year. And if I can borrow Senator Schumer's metaphor, I agree we may have to trim our sails down the road on this through the process. But without your leadership, frankly, I don't think the ship would have left the dock. We were just moored and languished, and nothing was moving forward, and I am astonished, too, at the reaction to your initiative because previously, when the initiative-taking was in other hands, nothing was happening at all. And so I thank you. I think this is very, very urgent that we address this.

As Senator Schumer said, you know, 2002 is soon upon us, then 2004. We cannot in good conscience and good faith to the American people and to the basic integrity of our democracy not address this issue in this year.

I don't think Americans view this matter of election reform as a partisan issue. As others have said, I am one also who has been a cosponsor of some of the bills that have been introduced by my Republican colleagues. This is an American issue. This is not about who won or lost the last election. Next time it could be a State other than Florida. Next time it could be somebody other than a Democrat who is disadvantaged by this failure.

Information has come to light which surprised and horrified me—and others have referred to it here today—that as many as 4 million or 6 million Americans were either denied their right to vote or had their votes not counted or improperly counted, which means that what we experienced in the last Presidential election we cannot write off as a once-a-century phenomenon or even once-a-history phenomenon. This is something that could happen literally every election until we correct it.

If there are 5 million votes out there and we don't know what they were, we are basically telling the American people at the end of each national election we don't know who won. Or our guess is

that somebody won, but we don't really know for sure. I mean, we can't have a democracy under those kinds of irregularities and that kind of inaccuracy. It is inexcusable with the technology we have and everything that is available to us. So we certainly have the capability. We just have to agree on how to proceed and engineer our resources, both human and financial, to get this straightened out. And we owe it to the American people and we owe it to ourselves to straighten it out before the next election.

So, again, I thank you for your leadership, Mr. Chairman, and I am glad to be part of this with you.

The Chairman. Well, I thank you my colleague from Minnesota for your comments and your support of the efforts here today and over the last number of weeks.

Just for the purposes of clarification on the record, in November, November 29th, to be exact—and I will submit the letter for the public record—I wrote a letter to the then-chairman of the Rules Committee asking if he wanted to work together on a bill, November 29th of last year. I never received a response to that letter at the time, which is fine. I understand that can happen.

[The letter follows:]

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MITCH MCCONNELL, KENTUCKY, CHAIRMAN  
JESSE HELMS, NORTH CAROLINA  
TED STEVENS, ALASKA  
JOHN WARNER, VIRGINIA  
THAD COCHRAN, MISSISSIPPI  
RICK SANTORUM, PENNSYLVANIA  
DON HARKLES, OREGON  
TRENT LOTT, MISSISSIPPI  
KAY BAILEY HUTCHISON, TEXAS  
TAMARA SOMERVILLE, STAFF DIRECTOR  
KENNIE L. GILL, DEMOCRATIC STAFF DIRECTOR AND CHIEF COUNSEL  
CHRISTOPHER J. DODD, CONNECTICUT  
ROBERT C. BYRD, WEST VIRGINIA  
DANIEL K. INOUE, HAWAII  
DANIEL PATRICK MOYNIHAN, NEW YORK  
DIANNE FEINSTEIN, CALIFORNIA  
ROBERT G. TORRICELLI, NEW JERSEY  
CHARLES E. SCHUMER, NEW YORK

## United States Senate

COMMITTEE ON  
RULES AND ADMINISTRATION  
WASHINGTON, DC 20510-6325

November 29, 2000

The Honorable Mitch McConnell  
Chairman  
Committee on Rules and Administration  
United States Senate  
Washington, D.C. 20510

Dear Mitch:

I enjoyed spending the day with you recently in Louisville in connection with the McConnell Center for the Study of Leadership. It was good to return to the U of L campus and renew my Kentucky connections.

I was also pleased to read in Roll Call of your intent to hold hearings early in the next Congress to look at reforms of our electoral process. I share your concerns and want to propose that as chair and ranking, we consider drafting comprehensive, bipartisan legislation. Ideally, such legislation would become the basis of the Rules Committee hearings.

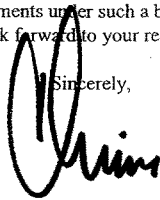
Finally, I want to renew a suggestion which I communicated to your staff prior to Thanksgiving. In light of the unprecedented nature of the presidential election, and the potential changes in leadership in the Senate, there is an immediate and continuing need to reassure the American people that the inauguration of the 43<sup>rd</sup> president will occur without a hitch. To facilitate that, I am proposing that we agree to co-chair the Joint Congressional Committee on Inaugural Ceremonies, effective immediately. I would further suggest that such an arrangement continue for the life of the JCCIC, regardless of who controls the Senate on January 3.

It is time for those of us who revere and cherish this Senate to step forward in a bipartisan manner to discourage the talk of boycotting the inaugural and reassure the public that we can continue to govern with civility. This unprecedented situation calls for unprecedented courage and bipartisanship. I know how deeply you respect this institution and I offer the suggestion of creating a co-chairmanship arrangement out of respect for our friendship and in the hopes of leading by bipartisan example.

The deadlines for making any adjustments under such a bipartisan arrangement are upon us and would require action this week. I look forward to your response.

Sincerely,

*P.S. Let me know what you think.*



The CHAIRMAN. We then convened in January, and there were scheduled 2 days of hearings, of which one was cancelled. So we had one day of hearings. We became the majority I think early in June, and there has been a sense—I am told there is a sense of urgency about all of this, and I don't disagree with it. But you go through a normal process of hearings, which we tried to do. In fact, there was request there be more hearings, but it seemed to me that we are running the risk of—if we didn't get a bill marked up and have a vehicle for consideration on the floor of the Senate, then we would run the risk of having the months in the fall expire without this matter being on the agenda.

And so when I heard a few weeks ago a request that we not do any more hearings but we mark up the bill, I abbreviated the hearing process and scheduled the markup. It was then suggested that I ought not to have the markup but, rather, we ought to have another hearing. It gets a little confusing sometimes to try and sort out what others want.

Let me just take a minute, if I can, and get down to the provisions that are in the Dodd-Conyers bill. It does three major things, I say to my colleague from Minnesota. It creates a temporary commission to study election reform issues and then submit a report with recommendations in those areas. Secondly, it creates a grant program to States and localities for Federal funds to acquire updated voting systems and technology, improve voter registration systems, educate voters and poll workers. And, thirdly, it establishes minimum Federal requirement—minimum Federal requirements—for Federal elections effective 2004, with authorization and appropriations to pay for those requirements.

We are not suggesting in a way here that there ought to be a one size fits all, that the voting of machines of Connecticut become the voting machines of every State. I fully recognize, as the Senator from Louisiana, John Breaux, pointed out, there are differences. There are practices that are different, and we ought to recognize and, in fact, celebrate those differences. But when we are talking about whether or not someone who is disabled can vote, that is not a difference which you tolerate from State to State.

If you cannot reach the voting machines, if you are a quadriplegic and you don't have the choice of a punch card ballot or a machine pulling a lever but, rather, need a voice-activated system, it seems to me that is not important whether you live in New York, New Jersey, Minnesota, or Connecticut. That is a minimum standard that ought to be met.

When you are blind in this country, in the 21st century, the idea that you have to walk in and cast a ballot with someone you don't know peering over it, a private ballot, is something that we ought not celebrate in this country. And yet for 10 million people, that is not the case today. That is a standard, a minimum standard that ought to be available to voters, regardless of where they live in the country.

Now, I would hope that, of course, States would be willing to do all of this. My experience has been that without some requirements of minimum standards, it is not likely to be met. I realize the easier thing to do would be just to pass an appropriations bill and let States come and take the money, and then hope they are going to

do the right thing. But as I pointed out before, in Presidential elections and election for the national assembly, if 48 States or 49 States do it right and one State doesn't, then the value of the ballot cast in those other 49 States is devalued when it comes to choosing the President of the United States or members of the national assembly. If they do it so long that there are voters who are denied the right to vote and the outcome of that election skews or determines who the President of the United States would be—these are national elections we are talking about. And just as I said, in 1965 we passed the Voting Rights Act where there were local practices—in fact, they were celebrated as such. The arguments were not unlike the ones I hear today, over the last number of weeks, that these were local matters that should be left to local decision-making. But because of Lyndon Johnson, who spoke and addressed a Joint Session of Congress calling for a Voting Rights Act because people like John Lewis and others that were beaten on the Pettus Bridge to secure their rights, today we have eliminated those local barriers to voting.

And in light of what we saw last fall, which has occurred for some time—in my own State of Connecticut, we haven't had a new voting in almost a quarter of a century that has been bought. The company doesn't exist any longer that made the equipment. So even if you wanted to repair it, it is almost impossible to do.

Unfortunately, when too often we are seeing at the local level, when the decisions are about a new snowplow or a new ballpark or new voting machines, voting machines sort of come in last. At least, that has been the experience. There is not a constituency that is willing to come up with the resources too often.

Now, a lot of States, in light of what happened last year, are making major improvements, and I want to commend them. The State of Florida, first of all, has moved aggressively to try and address some of the problems that existed there. The State of Georgia, by the way, where we were last week, has taken some major steps to improve the voting practices in that State. Many States are adopting provisional voting, for instance, in the last number of weeks, and I applaud all of that.

So the bill, the mandates we talk about, the three minimum Federal standards—the Federal standards for voting machines and technology, again, I don't think this is a radical idea. It shouldn't be a radical idea that there be a Federal standard on something as fundamental as who gets to vote and whether or not their vote gets counted. States should adopt voting system standards updated and issued by the Federal Elections Commission and tested by the National Association of State Election Directors, an existing organization. These updated standards would go to both the functionality and the performance of voting systems in technology. My best information indicates that at this time over 30 States have already adopted some aspect, if not all of the FEC's voting systems.

Provisional voting is the second requirement in these standards. Fifteen States and the District of Columbia have provisional ballot statutes. Twelve States have statutes that contain some aspect for a provisional process. And about 18 States have no provisional ballot statutes, but they contain some related provisions such as same-

day voter registration. And last, but not least, one State does not require any voter registration.

Distribution of sample ballots and voting instructions is the third and final requirement in these minimum standards. My best information indicates that this time it appears that all States and the District of Columbia have laws providing for sample ballots. However, how these sample ballots are distributed appears to vary from State to State. The fact that you have them but people aren't aware of them then makes it difficult for people to have some idea what they face when they walk in to cast a ballot.

So what our bill does is not establish a one size fits all, as its critics have suggested over and over again. Instead, with the minimum standards and requirements, States will be able to establish election systems and the administration procedures to fit specific needs for their citizens and voters. And as a result, we will repair the systems, in our view, anyway, that failed millions of Americans last fall and have for some time.

We will ensure that all eligible voters, regardless of race, ethnicity, physical disability, the language they speak, or the resources of the community in which they live, can fully participate in our democracy.

Senator Schumer cited the example of that gentleman he saw standing in line in New York. I have often cited the example of a couple of people here in the Washington area who are Cambodian, who don't speak English very well, had become citizens, and registered to vote last fall and planned a celebration with their family and friends on election night because they were going to do something they never imagined they could ever do, and that is, cast a ballot for the President of the United States. In Arlington County, they were turned away on election day. They are shy. They didn't run and get a lawyer. They didn't go downtown to see anybody. They just went home and cancelled the dinner that evening with their friends.

That shouldn't happen in the country, in our view, and that is why provisional voting is so important. It turned out they were registered, but they were turned away. My concern would be not just that they were hurt but also that those in their community would be less inclined to register to vote because of the experience the two members of their community had been subjected to. We need to make sure that people are welcomed when they go to vote, that it is user-friendly, that we welcome the participation of people who come to cast their ballots.

And so, again, our purpose here is not to establish one size fits all. Our purpose here is not to have overly aggressive or overly burdensome mandates. Our desire is to set some minimum standards and provide resources to States on an ongoing, continuing basis so that we never again see the results of last year, what we have seen over the last number of years.

No one is going to design a perfect system. No one has suggested that. But we should be able to improve a system that is so dysfunctional that as many as 6 million people who stood in line and tried to cast a ballot were turned away.

I listened to Corrine Brown in Florida where 26,000 people in her congressional district were turned away; 26,000 people in one



congressional district in Florida tried to cast their ballot and were told that their votes didn't count. I mentioned 94,000 people in Georgia and over 100,000 people in Illinois. You can go State to State. These were people who showed up. I am not talking about the 100 million people who didn't show up who were eligible to vote in this country. That in itself is a disgrace, that only 52 percent of all eligible voters participated in deciding the Presidency and the National Congress and other offices that were on the ballot last fall.

But of the 100 million who showed up, to have thousands, in this case millions of people who had done what we asked them to do or tried to do what we asked them to do as citizens, that is a terrible trend line. And to suggest that somehow just a close vote and some mechanical failures that occurred here, it is deeper, it is more profound than that, and as we all know, there is nothing more sacred, more important.

I have often mentioned that Thomas Paine once said that this is the right upon which all other rights depend, and I know it is not as appealing, there is not huge constituencies writing us letters every day, asking for more money to improve the systems. But if we end up so denigrating the right to vote and to have votes counted and the system falls into such disrepair as it is today, where equipment is so antiquated, so inaccessible to people, then I think we do great, great harm to this democratic process.

And so my determination is to get a good bill, one that will make a difference. I hope it will be a bipartisan bill. I hope the President would support it. This is not about the legitimacy of this Presidency. I know there are some who think that is what we are talking about. I was on the west front of the Capitol on January 20th and helped preside over the inaugural ceremonies. George W. Bush is my President. He is the President of my country. No matter how close the election is, that was the decision. And I support it wholeheartedly. What happened last year was a wake-up call to us. I suspect that had Al Gore won some other State, we wouldn't even be talking about this today. We wouldn't be here today. But because of what happened and the way it worked out, the country became aware of not just a problem in Florida but a national problem. And for this Congress, in light of what occurred, not to do anything or to just merely try and put on a Band-aid fix for it is I think to shrink from our responsibilities.

And so I regret that I have caused some people some difficulty and pain, and I truly regret that my friends here on the minority side have decided not to be here today. This saddens me deeply. I don't know what lessons we instruct young people in this country when we try to encourage them to participate in a democratic process. This bill is open for amendment. It is open for substitution. It is open for debate and discussion. And to not even show up, when I look at the people in this room who I suspect went through a great deal of difficulty to be here today to listen to this debate and to watch its Congress, its national assembly, discuss something as important and as fundamental as this, and those who felt they couldn't walk down the hall or across the street to be here to participate, it deeply, deeply saddens me. I am sad that as my first

responsibility as the chairman of a full committee that this would be the reception we would receive.

With that, we have been joined by my seat mate and dear friend from West Virginia, and I thank you for being here.

Senator BYRD. Mr. Chairman, you mentioned Al Gore and the fact that had he carried one additional small State he would have been President. If he had carried West Virginia, he would have been President. And had we had this bill in law, I would have carried every precinct in West Virginia.

[Laughter.]

The CHAIRMAN. That is a good reason to pass this bill, I tell you.

**OPENING STATEMENT OF HON. ROBERT C. BYRD, MEMBER, A  
U.S. SENATOR FROM THE STATE OF WEST VIRGINIA**

Senator BYRD. There are 1,900 precincts in West Virginia, and I carried all but 7.

Well, what you said about the need for all members to participate brought back recollections of a young man who, in September of 1776, volunteered to go behind the British lines and bring back to his commander-in-chief, George Washington, drawings of the British fortifications, their military emplacements and so on. He was a school teacher. His name was Nathan Hale. George Washington has called for a volunteer to go behind the British lines. It would be a very, very hazardous undertaking, and if caught, the person would be shot as a spy.

Nathan Hale volunteered. And he traveled disguised as a school boy. He was successful in drawing the configurations of the British fortifications. And on the night before he was to return to the American lines, he was arrested as a spy.

Now, of course, the drawings were found in his clothing. The next morning he stood there before the crude gallows. He asked for a Bible. That request was declined. There he stood with his hands tied behind him, and in front of him lay his coffin in which his body would soon be laid to rest.

He was asked by the British commander if he had anything to say. He said, "I only regret that I have but one life to lose for my country." The British commander, whose name was Cunningham, said, "String the rebel up." And Nathan Hale died. He gave his one life for his country.

Can't we give one vote for our country? Nathan Hale gave his only life for his country. Where are those who could give their votes in the interest of this Republic?

I thank you, Mr. Chairman, for conducting this meeting. I can sense how you feel, Mr. Chairman. I think we play the game, some of us, a little too hard. I never ask anybody who comes to my office to be employed what their religion is. I never ask them whether they are Democrat or Republican. We all serve the same country, or should. So I again thank you for holding the meeting.

I tried many times to get legislation passed that would improve the elections and the campaigns in this country. You will eventually prevail.

Thank you very much. I think I will just submit my written statement. I see the Majority Leader is here.

[The prepared statement of Senator Byrd follows:]

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**Statement by Senator Robert C. Byrd  
at Rules Committee Markup of Election Reform  
August 2, 2001**

Mr. Chairman, I thank you for bringing this important matter before the Committee. The right to vote is one of the fundamental components of our Republic. It is the central means by which the American people can influence the direction of government, and thereby the future of the nation. But, as we saw in last year's Presidential election, just casting one's ballot is not the end of the process. Votes must be verified and counted, and done so quickly and accurately so that the American people have confidence in our elections. Preserving the integrity of our voting system is critical to preserving our representative form of government. Over the years, I watched as the percentage eligible voters who actually take the time to go to the polls and cast votes has declined. I find it beyond disappointing that American citizens would fail to exercise this precious right -- in fact, this important responsibility. Yet, I well understand how the spectacle of last year's elections and the irregularities that were widely reported can exacerbate a common misconception that one's vote does not count, a belief that has permeated far too many minds in our nation. The federal government can do more to reignite a passion for citizen participation, and we must do so if we are to pass on our Constitutional form of government to future generations.

I know that this Committee has held several hearings on the subject of election reform -- both under the current Chairman, Senator Dodd, and under the former Chairman, Senator McConnell. Many groups and commissions have released studies of our current voting system along with recommendations as to how to improve it. Some of these commissions, like the one headed by former Presidents Jimmy Carter and Gerald Ford, have suggested some of the very solutions that we find in the bill we are considering. For example, they have suggested allowing provisional voting when the qualifications of voters are called into question.

The idea of making Election Day a holiday has also been proposed by that same commission. I have long felt that there is some merit in that idea, but share the view voiced by many of our citizens that it not be combined with our observance of Veterans Day. Still, I believe that the idea of designating election day as a holiday deserves closer examination.

While our Constitution gives primary responsibility for elections to the State Legislatures, the Constitution also contains a provision specifically stating that Congress may alter election regulations. I think it is critical that we work to enact election reform and take the first step in restoring confidence in our election process.

The CHAIRMAN. Thank you very much, Senator Byrd, and I appreciate your reference to Nathan Hale since I live in the town in Connecticut where he taught. And I live on the very street where the schoolhouse in which he taught exists. In fact, I live in the schoolhouse. [Laughter.]

There was a successor schoolhouse. Nathan Hale taught in a one-room schoolhouse in East Haddam, Connecticut. And when that schoolhouse got too small, they built a two-room schoolhouse down the street. And that was the schoolhouse from 1850 until 1948. And I now live in that schoolhouse. The two-room schoolhouse is my house.

Senator BYRD. Send me a picture of that as a Christmas card, will you?

The CHAIRMAN. I have done that many times, and I know you love that card because you remind me—in fact, one year I put on the Christmas card, I recited—or tried to recite, anyway—the poem about the old schoolhouse. And Senator Byrd, when I came back after the Christmas holidays, told me how much he enjoyed the Christmas card, how much he and his lovely wife, Erma, had enjoyed looking at that old schoolhouse. But as he stood there in front of me, he said, “And that is a wonderful poem about the old schoolhouse. But you left out about four stanzas.” [Laughter.]

And he then recited the entire poem to me, verbatim, without the poem in front of him. So I have never forgotten that. But we take great pride in living in the successor schoolhouse to Nathan Hale’s schoolhouse in Connecticut. I thank you for your wonderful comments.

We are going to vote as soon as we have ten members here, but in the meantime, let me turn to the distinguished Majority Leader and thank him, one, for being a part of this committee—I am very grateful to you, Leader, for joining the Rules Committee, and thank you for being here this morning.

**OPENING STATEMENT OF HON. TOM DASCHLE, MAJORITY LEADER, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA**

Senator DASCHLE. Well, Mr. Chairman, thank you for your leadership on this very, very important issue. No one has put more time and effort into bringing us to the point we are today than has our chairman. I have said it on a number of occasions. But it is no accident that 51 Senators have cosponsored this bill. It happened because of our dedication and interest in the issue, but it happened in large measure because of your leadership. And so I commend you for that, and I thank Senator Schumer and others who have spent so much time getting us to this point.

After Senator Byrd’s statement, I don’t know what else needs to be said. I was, as I always am, in awe of his rhetorical ability, and that was clearly a demonstration again this morning.

I believe that there are so many important reasons why this legislation should move forward, and I heard just a little bit as I was watching the monitor before coming over. Several of our colleagues have made such good remarks. But I can recall a morning in St. Louis a couple of years ago. As we were asking a class of sixth graders why it was important to vote, the very last young boy to

stand up, a young African American boy stood as erect as I have ever seen anybody stand, he said, "It is important to vote because someday I am going to be President of the United States, and I want everybody to support me." [Laughter.]

I love that idealism. I love the motivation that comes in young people who understand the power of a vote, that it can make a young boy in the middle of St. Louis the President of the United States. You can't say that in a lot of countries, but you can say it here.

I am listening to a wonderful book that I read a long time ago, "D-Day" by Stephen Ambrose, as I run in the mornings, and I am reminded again, my father landed on D-Day. My memory of his description of that moment is still so vivid. But as Senator Byrd said so ably, for 200 years we have fought for this right. For 200 years we have done all that we could to ensure that that little boy in St. Louis had the right to dream that he could be President of the United States.

And I don't know if there is anything more important to our democracy than ensuring that those 6 million disenfranchised people, some of whom are in the audience today, who waited hours and hours and hours to be able to vote because they know, just as that sixth grader knows, that that is the essence of democracy. They waited. Now it is our turn to respond to their patience and to their willingness to be participants in democracy.

And as Senator Byrd has said, how ironic it is that on the day we give those who have not had the opportunity to vote the right to vote that our Republican colleagues choose not to vote. I am disappointed because this ought not be a partisan issue. There ought to be real involvement on both sides to ensure that we bring the best bill to the Senate floor and ultimate to the President of the United States. That is what I know the chairman is trying to do. That is what our colleagues are trying to do.

And so I hope that no one can be misled by this effort. I hope that people understand how important this legislation is. And I hope that we can, before the end of this session, complete our work on this critical bill. The people in this room and millions of them all over the country just like them are counting on us to do the right thing, are counting on us to make sure that we keep that idealism alive, are counting on us to make sure that what my father did at Normandy and what thousands and thousands of soldiers did in wars past, will continue as we fight for democracy and make it even better in the years and generations ahead.

I thank the chairman.

The CHAIRMAN. Well, Leader, I thank you immensely, and you have been tremendously helpful on this. And let the record reflect that without the support and backing of the Majority Leader, we would not have achieved the strong cosponsorship of this bill.

As I pointed out, I keep on asking him—my good friend from Arizona, Senator McCain, says, "You can use my name." He won't let me—he has not cosponsored the bill yet, but I can use his name as being supportive of the bill. I am not quite sure what status that is, but I appreciate his rhetorical support of what we are trying to do. So we have bipartisanship to some degree, I guess, but I thank

you immensely for your leadership on this issue and your willingness to join us and support us in these efforts.

We have been joined by two other colleagues, and as soon—

Senator DASCHLE. Mr. Chairman, I have a statement if I could ask that it be inserted in the record.

The CHAIRMAN. Absolutely. And all statements, by the way, all statements and all materials that members would like to include in the record, I will keep the record open for statements and materials that members would like to include, through tomorrow, anyway, so there will be an extra day for people to submit materials.

[The prepared statement of Senator Daschle follows:]

Statement of Senator Tom Daschle  
The Senate Rules committee  
Markup of The Equal Protection of Voting Rights Act  
August 2, 2001

Mr. Chairman,

As you know, election reform is considered by many to be the key civil rights issue of the 107<sup>th</sup> Congress.

By now we are all familiar with stories from the November 2000 presidential election of outdated and unreliable voting technology, confusing ballots, language barriers, lack of voter education and training of pollworkers; and



inaccurate voting lists that prevented legitimately registered voters from casting ballots.

In addition, we have heard reports of police roadblocks and voter intimidation that kept some voters from the polls.

A recent MIT Cal/Tech report estimates that as many as 4 million to 6 million Americans were unable to cast votes, or did not have their votes counted because of faulty equipment, incorrect ballots, and other problems with administration procedures.

When you see statistics like that, it is easy to understand the anger and frustration that attended this past election.

Rather than allow the anger and division that attended the last election to corrode our democracy, we need to use that energy to strengthen it.

Although our federal system leaves it to individual states to conduct their own elections - - and, indeed, many states have begun to look into such reforms -- the federal government has an obligation to ensure that the fundamental constitutional right to vote is protected.

To say that there is no federal role in our election process is to ignore history.

As with the passage of the Voting Rights Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Uniformed and Overseas Citizens Absentee Voting Act, it is clear that Congress has a critical role to play in ensuring that the rights of all citizens are protected, regardless of the state in which they reside. To achieve that goal, states should conform to minimum federal standards that will ensure uniform, nondiscriminatory election procedures throughout the country.

The Dodd/Conyers bill provides the necessary leadership to implement these goals. It requires that states meet uniform nondiscriminatory voting standards that will promote and maintain integrity in the federal election process, and it provides the resources they need to do so.

We cannot sit by and allow Americans to be disenfranchised by disability, by language barriers and by machines that don't work and volunteers too overwhelmed to help.

The report released this week by the National Commission co-chaired by former Presidents Carter and Ford underscores the importance of moving forward to implement a comprehensive set of reforms, and adds yet another voice to the chorus calling for true election reform.

That is our commitment to the American people, and we hope that the President and our Republican colleagues will join us in this effort.

Mr. Chairman, I appreciate and applaud the effort you and your staff have made to bring us to this point, and I look forward to working with you to get this legislation through Congress and to the President's desk.

Thank you again for your leadership on this issue.

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The CHAIRMAN. We have been joined by two of our colleagues. Let me turn to Senator Durbin, who has arrived, and then as soon as the other two members come, we will vote. There is this matter, and then there is the matter of a couple of regents for the Smithsonian. I had hoped as well to include the membership on the Joint Committee on Printing and the Library, but the names have not been submitted by the minority, so we can't do that today. But we will do those two other items as well very, very quickly.

Senator Durbin, thank you.

Senator DURBIN. Chairman Dodd, it is an honor to be here today at my first meeting of the Rules Committee, and I am going to take care just to lean as much to the right and be close to the chairman as possible; otherwise, I will fall off here, never to be heard from again.

[Laughter.]

The CHAIRMAN. For many of our members, this would be a round table here.

**OPENING STATEMENT OF HON. RICHARD J. DURBIN, MEMBER,  
A U.S. SENATOR FROM THE STATE OF ILLINOIS**

Senator DURBIN. I am so happy that this is the first item that we are considering because it is so timely and so important. If you ask most Americans about the last Presidential election and ask them a basic question, Which State ended up voiding more ballots for President than any other State in the Union?, it is likely that they would say Florida. The answer is Illinois. Over 120,000 people in Cook County took time out of their lives to perform their civic duty, with some sacrifice, to be there, to cast a ballot for the President of the United States, and over 120,000 of those ballots were thrown out.

And, unfortunately, that is a story that is repeated across America. We have a situation where people are being denied the right to vote, not by a poll tax, not by being confronted with questions like how many bubbles are there in a bar of soap, but by the simple technology and failure of technology in the voting systems that we use in America.

I am sorry and saddened that our Republican colleagues haven't joined us in this debate because it should not be partisan. I don't know how many ballots across America were going to be cast for President Bush and how many for Vice President Gore. But the fact is whatever the outcome was to be, each American's vote should have been counted. It didn't happen. It didn't happen. And at a time when we beg people to come out and vote, when we have so few who do come out and vote, the fact that we would put barriers to their voting is just downright un-American.

We can change that, and we have to change it by establishing standards, standards of decency, standards of caring, standards of basic competence when it comes to our voting system. And I think this bill is the right bill. It moves in that direction.

I am happy to cosponsor it. I am happy to be part of the Rules Committee to help move it to the Senate floor.

Thank you.

The CHAIRMAN. I thank you very, very much.

Our distinguished friend from California has joined us, and I thank you very much for your leadership and your friendship.

**OPENING STATEMENT OF HON. DIANNE FEINSTEIN, MEMBER,  
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Well, thank you very much. I want to thank you for your leadership, Mr. Chairman. I want to indicate my full support of this bill, and I want to just say a couple of words.

You know, it is often said that the price of freedom is eternal vigilance. Well, in a sense, the price of a democracy is also eternal vigilance, and particularly vigilance about our elections.

We as Americans, I have found, tend to take this democracy so much for granted. And yet it does have its warts. It is a growth process. I mean, as a woman in this body, I often think that we as women didn't have the right to vote until 1920. When our democracy was founded, you know, women didn't have many rights—the right to own property, the right to be educated in certain institutions. Property owners and non-property owners were treated differently. And yet throughout the years, the democracy has been improved.

Well, the fundamental pillar of democracy are free, open, and fair elections. And that has been difficult to achieve. The Voting Rights Act has to take place. And I think still so many people don't really understand how the electoral college functions, that it is possible to win the popular vote and lose the electoral vote. And we saw this happen, and, therefore, every State has to really be vigilant to see that the process works fully and fairly.

And what I like about the bill that you have authored is that there is a mandate in the bill in the sense that fullness and fairness is something that the bill strives to achieve. And I think we need constantly to do that.

So our democracy is only going to progress if we are willing to do these things, and I am really sorry that the other side isn't here today because I think that kind of discussion amongst us, as Republicans and as Democrats, is really important, our knowledge that we have flaws, that we can't be ugly Americans in the sense of being arrogant, that we have got to be open to change. And this bill achieves, I think, a giant step forward in terms of achieving full and fair elections.

So I would like to salute you. I am proud to be a small cosponsor, and hopefully we will get it passed on the floor.

The CHAIRMAN. Well, I thank my colleague from California.

Just so my colleagues know, as we are waiting for Senator Inouye and Senator Breaux, who are voting right now and are on their way over here from the Commerce Committee where we also have a markup, as my colleagues whom I have served with over the years and have known for many years will appreciate, I have gone door to door on this bill, as I am inclined to do, Senator Byrd, when there are matters I care about. And I have literally gone to the Republican Senators and met with them in their offices and gone over the bill and received very good reception about it and they are thinking about it, many of them are. So I want you to know that my efforts here have not been to have 50 Democrats and Jim Jeffords and strong words of support from John McCain, but



to actually go and visit other members and to listen to them and the ideas they would have on this legislation.

Well, I see now we have a full complement. Senator Inouye, we welcome you. We have heard from everyone. If you care to make a comment at all, we would welcome it here this morning.

**OPENING STATEMENT OF HON. DANIEL K. INOUE, MEMBER,  
A U.S. SENATOR FROM THE STATE OF HAWAII**

Senator INOUE. I regret that my colleagues on the other side are not present. This is an important issue, and it is not partisan.

The CHAIRMAN. Well, I thank you for that.

It now appears we have a quorum, so let me entertain a motion to proceed to the bill here. We have the number here for my colleagues, S. 565.

Senator FEINSTEIN. So moved.

The CHAIRMAN. The Equal Protection of Voting Rights Act of 2001. Is there a second?

Senator TORRICELLI. Second.

The CHAIRMAN. I am going to ask that we record the roll on this. I would like the vote record to be there. I would ask the clerk to call the roll, please.

The CLERK. Mr. Byrd.

Senator BYRD. Aye.

The CLERK. Mr. Inouye.

Senator INOUE. Aye.

The CLERK. Mrs. Feinstein.

Senator FEINSTEIN. Aye.

The CLERK. Mr. Torricelli.

Senator TORRICELLI. Aye.

The CLERK. Mr. Schumer.

Senator SCHUMER. Aye.

The CLERK. Mr. Breaux.

Senator BREAUX. Aye.

The CLERK. Mr. Daschle.

Senator DASCHLE. Aye.

The CLERK. Mr. Dayton.

Senator DAYTON. Aye.

The CLERK. Mr. Durbin.

Senator DURBIN. Aye.

The CLERK. Mr. McConnell.

[No response.]

The CLERK. Mr. Warner.

[No response.]

The CLERK. Mr. Helms.

[No response.]

The CLERK. Mr. Stevens.

[No response.]

The CLERK. Mr. Cochran.

[No response.]

The CLERK. Mr. Santorum.

[No response.]

The CLERK. Mr. Nickles.

[No response.]

The CLERK. Mr. Lott.

[No response.]

The CLERK. Mrs. Hutchison.

[No response.]

The CLERK. Mr. Chairman.

The CHAIRMAN. Aye.

The CLERK. Ten ayes.

The CHAIRMAN. I thank my colleagues.

Senator BYRD. How many noes?

The CHAIRMAN. How many noes were there on that? How many noes?

The CLERK. None.

The CHAIRMAN. None?

The CLERK. No one responded.

The CHAIRMAN. Thank you.

I now would just very quickly proceed to entertain motions en bloc on two resolutions, S.J. Res. 19 and S.J. Res. 20, approving the appointment of the two citizen regents of the Board of Directors of the Smithsonian Institution.

[The resolutions follow:]

107TH CONGRESS  
1ST SESSION

## S. J. RES. 19

Providing for the reappointment of Anne d'Harnoncourt as a citizen regent  
of the Board of Regents of the Smithsonian Institution.

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IN THE SENATE OF THE UNITED STATES

JULY, 12, 2001

Mr. COCHRAN (for himself, Mr. FRIST, and Mr. LEAHY) introduced the following joint resolution; which was read twice and referred to the Committee on Rules and Administration

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### JOINT RESOLUTION

Providing for the reappointment of Anne d'Harnoncourt as  
a citizen regent of the Board of Regents of the Smithso-  
nian Institution.

1 *Resolved by the Senate and House of Representatives of the*  
2 *United States of America in Congress assembled, That, in*  
3 *accordance with section 5581 of the Revised Statutes of*  
4 *the United States (20 U.S.C. 43), the vacancy on the*  
5 *Board of Regents of the Smithsonian Institution, in the*  
6 *class other than Members of Congress, occurring by rea-*  
7 *son of the expiration of the term of Anne d'Harnoncourt*  
8 *of Pennsylvania, is filled by reappointment of the incum-*

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1 bent for a term of 6 years. The reappointment shall take  
2 effect on December 29, 2001.

○

## CURRICULUM VITAE

Anne d'Harmoncourt  
(Mrs. Joseph J. Rishel)

Born September 7, 1943  
Washington, D.C.

Present Position: The George D. Widener Director and Chief Executive Officer  
Philadelphia Museum of Art

Education: The Brearley School, New York City, 1949-1961  
Radcliffe College, Cambridge, MA, 1961-1965

Majored in History and Literature of Europe and England since 1740,  
with additional course work in the history of architecture. B.A. thesis on  
comparative aspects of the poetry of Shelley and Holderlin.

B.A. magna cum laude, June 1965

Courtauld Institute of Art, London University, 1965-1967

First year course: Seminar in European art since 1830. Second year:  
specialized research on the period 1900-1915 in Italy, France and  
Germany. M.A. thesis on moral subject matter in mid-19th century  
British painting, with emphasis on the Pre-Raphaelites.

M.A. with distinction, June 1967

Honors: Elected to Phi Beta Kappa in 1964  
Captain Jonathan Fay Prize, Radcliffe College, 1965  
Chevalier dans l'Ordre des Arts et des Lettres, Republic of France, 1995  
Philadelphia Award, 1997

Museum Experience:

1966-1967	Tate Gallery, London. Six months of work as part of Courtauld M.A. thesis, preparing full catalogue entries on 30 Pre-Raphaelite paintings and drawings in the Tate collection.
1967-1969	Philadelphia Museum of Art Curatorial Assistant, Department of Painting and Sculpture
1969-1971	The Art Institute of Chicago Assistant Curator of Twentieth-Century Art
1972-1982	Philadelphia Museum of Art Curator of Twentieth-Century Art
1982-1996	Philadelphia Museum of Art, The George D. Widener Director
1997-	Philadelphia Museum of Art The George D. Widener Director and Chief Executive Officer

Curriculum Vitae, Anne d'Hamoncourt  
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### BIOGRAPHICAL SUMMARY

#### Curator of Twentieth-Century Art

For a decade between 1972 and 1982, Miss d'Hamoncourt served as Curator of 20th Century Art at the Philadelphia Museum of Art. A specialist in the art of Marcel Duchamp, she co-organized a major retrospective exhibition in 1973-74, which originated in Philadelphia and traveled to The Museum of Modern Art, New York and The Art Institute of Chicago. Other exhibitions organized or co-organized by Miss d'Hamoncourt include Futurism and the International Avant-Garde (1980), Violet Oakley (1979), Eight Artists (1978) and John Cage: Scores & Prints (1982). During her tenure as curator, she reinstalled the permanent galleries in the wing of the Museum devoted to 20th-century art, creating rooms specifically dedicated to the work of Duchamp and the sculpture of Brancusi. During her curatorship the Museum made the commitment to building a substantial contemporary collection, acquiring works by Ellsworth Kelly, Dan Flavin, Brice Marden, Agnes Martin, Claes Oldenburg, Katherine Anne Porter, Dorothea Rockburne, James Rosenquist, and Frank Stella, among others.

#### Director

Projects undertaken by the Museum during Miss d'Hamoncourt's directorship to date include a sequence of major exhibitions originated by Museum curators, such as: Sir Edwin Landseer (1982), The Pennsylvania Germans: A Celebration of Their Arts (1983), Masters of 17th-Century Dutch Genre Painting (1984), Federal Philadelphia (1987), Anselm Kiefer (1988), Workers: The Photographs of Sebastião Salgado (1993), Japanese Design (1994) major retrospectives of Brancusi (1995) and Cézanne (1996), The Splendor of 18<sup>th</sup>-Century Rome (2000), Hon'ami Kōjitsu (2000) and Van Gogh: Face to Face (2000). She encouraged a series of scholarly publications devoted to the permanent collections: British Paintings (1986), Oriental Carpets (1988), Northern European Paintings (1990), Paintings from Europe and the Americas: A Concise Catalogue (1994), a new Handbook (1995), and a Handbook to the Museum's textile collections (1998).

Between 1992 and 1995, in a massive building project undertaken to reinstall all of the Museum's European collections, over 90 galleries were renovated and relit, while thousands of works of art were examined, conserved and placed in fresh contexts. During her tenure as director, appointments to the professional staff include senior curators of Prints, Drawings and Photographs and European Decorative Arts, curators of Indian Art, Prints and Twentieth-Century Art, as well as a Senior Curator of Education, a new Librarian and conservators in the fields of decorative arts, furniture, painting and works on paper. Most recently, following her assumption of additional responsibilities in 1997 upon the retirement of Robert Montgomery Scott as President of the Museum, Miss d'Hamoncourt and the newly appointed Chief Operating Officer led the institution through a long-range planning process with a view to celebrating the Museum's 125<sup>th</sup> anniversary in the year 2001 with a number of new initiatives.

In the year 2000, the Museum acquired a landmark building across the street and embarked upon a comprehensive masterplan for its use and the additional steps necessary to meet the Museum's 25-year requirements for new or renovated space. Twenty galleries for modern and contemporary art were renovated and reopened in the fall of 2000. A capital campaign with a goal of \$200 million was formally launched in December 2000, and \$100 million was raised by March of 2001.

Institutional

Boards (Current):

- Regent of the Smithsonian Institution, Washington, D.C.
- Visiting Committee, J. Paul Getty Museum, Malibu, CA
- Academic Trustee for the School of Historical Studies, Institute for Advanced Study, Princeton, NJ
- Board of Directors, The Henry Luce Foundation, Inc., New York, NY
- Board of Trustees, Fairmount Park Art Association of Philadelphia, Philadelphia, PA
- Board of Overseers, Graduate School of Fine Arts, University of Pennsylvania, Philadelphia, PA
- Board of Trustees, Fairmount Park Art Association of Philadelphia, Philadelphia, PA
- Board of Overseers, Graduate School of Fine Arts, University of Pennsylvania, Philadelphia, PA
- Board of Directors, The Georgia O'Keeffe Foundation, Abiquiu, NM

Memberships (Current):

- Trustee, Association of Art Museum Directors
- Advisory Committee, The Fabric Workshop, Philadelphia, PA
- Member, American Philosophical Society, Philadelphia, PA
- Advisory Board, Foundation for French Museums Inc.
- Fellow of the American Academy of Arts and Sciences, Cambridge, MA

Institutional Memberships (Past):

- Museum Panel, National Endowment for the Arts, 1976-78
- Visual Arts Panel, National Endowment for the Arts, 1978-80
- Board of Trustees, Hirshhorn Museum and Sculpture Garden, Washington, D.C., 1974-86
- Museum Program Overview Panel, National Endowment for the Arts, 1986-87

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Indo/U.S. Subcommission on Education and Culture, 1983-87

National Endowment for the Arts, Indemnity Panel, 1985-88

Harvard University Art Museums Visiting Committee, 1983-88

Board of Advisors, Center for Advanced Study in the Visual Arts (CASVA),  
National Gallery of Art, 1987-89

Pennsylvania Council on the Arts, 1992-99

Exhibitions Organized:

Marcel Duchamp. The Philadelphia Museum of Art, The Museum of Modern Art, The Art Institute of Chicago, 1973-74. (Collaboration with Kynaston McShine, The Museum of Modern Art)

Philadelphia: Three Centuries of American Art. Philadelphia Museum of Art, 1976. (One of several collaborators under the direction of Darrel Sewell. Curator of American Art, Philadelphia Museum of Art)

Eight Artists. Philadelphia Museum of Art, 1978.

Violet Oakley. Philadelphia Museum of Art, 1979. (Collaboration with Ann Percy, Philadelphia Museum of Art)

Futurism and the International Avant-Garde. Philadelphia Museum of Art, 1980.

John Cage: Scores and Prints. Whitney Museum of American Art, Albright-Knox Museum, Philadelphia Museum of Art, 1982. (Collaboration with Patterson Sims, Whitney Museum)

Publications:

"Etant Donnés...Reflections on a New Work by Marcel Duchamp." Philadelphia Museum of Art Bulletin (double issue April/June and July/September 1969). Co-author with Walter Hopps.

Introduction to exhibition catalogue for Marcel Duchamp, 1973. Chronology and catalogue entries prepared jointly with Kynaston McShine of The Museum of Modern Art.

"A. E. Gallatin and the Arensbergs: Pioneer Collectors of 20th-Century Art," Apollo, July 1974 (special issue devoted to Philadelphia Museum of Art collections).

132 biographies and catalogue entries in Philadelphia: Three Centuries of American Art, 1976.

"The Cubist Cockatoo: Preliminary Exploration of Joseph Cornell's Hommages to Juan Gris," Philadelphia Museum of Art Bulletin, June 1979



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"The Fist of Boccioni meets Miss FlicFlic ChiapChiap," Art News, November 1980.

Introductory essay to exhibition catalogue for Futurism and the International Avant-Garde (Philadelphia Museum of Art, 1980).

"We have eyes as well as ears," essay for publication accompanying exhibition John Cage: Scores and Prints, 1982.

"Duchamp, 1911-1915," in the exhibition catalogue Marcel Duchamp (Tokyo, The Seibu Museum of Art). Reprinted as "Before the Glass: Reflections on Marcel Duchamp before 1915" in the exhibition catalogue Duchamp (Barcelona: Fundacio Joan Miro, 1984).

Preface to Marcel Duchamp, Notes, arranged and translated by Paul Matisse (Boston: G. K. Hall & Company, 1983).

Preface to Marcel Duchamp, Manual of Instructions for Etant Donnés... (Philadelphia Museum of Art, 1987).

"Paying Attention," in the exhibition catalogue Rolyholyoover / A Circus / John Cage (Los Angeles: Museum of Contemporary Art, 1983).

107TH CONGRESS  
1ST SESSION

## S. J. RES. 20

Providing for the appointment of Roger W. Sant as a citizen regent of the Board of Regents of the Smithsonian Institution.

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IN THE SENATE OF THE UNITED STATES

JULY 12, 2001

Mr. COCHRAN (for himself, Mr. FRIST, and Mr. LEAHY) introduced the following joint resolution; which was read twice and referred to the Committee on Rules and Administration

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### JOINT RESOLUTION

Providing for the appointment of Roger W. Sant as a citizen regent of the Board of Regents of the Smithsonian Institution.

1       *Resolved by the Senate and House of Representatives*  
2 *of the United States of America in Congress assembled,*  
3 That, in accordance with section 5581 of the Revised Stat-  
4 utes of the United States (20 U.S.C. 43), the vacancy on  
5 the Board of Regents of the Smithsonian Institution, in  
6 the class other than Members of Congress, occurring by  
7 reason of the resignation of Howard H. Baker, Jr., of  
8 Washington, D.C., is filled by the appointment of Roger  
9 W. Sant of Washington, D.C. The appointment is for a

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1 term of 6 years and shall take effect on the date of enact-  
2 ment of this joint resolution.

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**Roger W. Sant**

Mr. Sant is Chairman of the Board of the AES Corporation, which he co-founded in 1981. AES is a leading global power company comprised of competitive generation, distribution and retail supply businesses in 27 countries. The company's generating assets include interests in one hundred and sixty six facilities totaling over 58 gigawatts of capacity. AES's electricity distribution network has over 920,000 km of conductor and associated rights of way and sells over 126,000 gigawatt hours per year to over 17 million end-use customers. In addition, through its various retail electricity supply businesses, the company sells electricity to over 154,000 end-use customers. AES is dedicated to providing electricity worldwide in a socially responsible way.

Mr. Sant chairs the Board of The Summit Foundation, and is a Board Member of Marriott International, WWF-International, Resources for the Future, The Energy Foundation, and The National Symphony. He recently stepped down as Chairman of the World Wildlife Fund-US after six years in that capacity and now serves on the National Council.

Prior to founding AES, Mr. Sant was Director of the Mellon Institute's Energy Productivity Center. During this period he became widely known as the author of "The Least Cost Energy Strategy"--where it was shown that the cost of conserving energy is usually much less than producing more fuel.

Mr. Sant earlier served as a political appointee in the Ford administration and was a key participant in developing early initiatives to fashion an energy policy in the US. Before entering government service, he was active in the management or founding of several businesses, and taught corporate finance at the Stanford University Graduate School of Business. He received a B.S. from Brigham Young University and an MBA with Distinction from the Harvard Graduate School of Business Administration.

He is a co-author "Creating Abundance--America's Least-Cost Energy Strategy" by McGraw Hill and numerous articles and publications on energy conservation.

6/7/2001

The CHAIRMAN. S.J. Res. 20 provides for the appointment of Roger Sant to fill the position vacated by our former colleague, Howard Baker, who is now the new Ambassador to Japan. S.J. Res. 19 provides for the reappointment of Anne d'Harnoncourt. Is there a report on those two resolutions? Do we have a report on that?

By the way, I submitted for my colleagues' benefit the backgrounds of these nominees a week or so ago so you could review them and look at them, and I think they have been adopted.

Well, I will consider them en bloc. Is there a motion?

Senator FEINSTEIN. So moved.

The CHAIRMAN. Is there a second?

Senator SCHUMER. Second.

The CHAIRMAN. All those in favor, say aye?

[A chorus of ayes.]

The CHAIRMAN. All those opposed?

[No response.]

The CHAIRMAN. The ayes have it. The two resolutions are adopted en bloc, and I thank all my colleagues for being here. I appreciate it very much, and I thank those who have come here today to hear this discussion and debate.

The committee will stand adjourned.

[Whereupon, at 10:20 a.m., the committee was adjourned.]

