

# ELECTION REFORM: VOLUME 1

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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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# CONTENTS

## VOLUME 1

### ELECTION REFORM

MARCH 14, 2001

Opening statement of:	Page
Hon. Mitch McConnell, Chairman, a U.S. Senator from the State of Kentucky .....	1
Hon. Christopher J. Dodd, Ranking Member, a U.S. Senator from the State of Connecticut .....	3
Hon. Charles E. Schumer, member, a U.S. Senator from the State of New York .....	6
Hon. Mark Dayton, member, a U.S. Senator from the State of Minnesota .	26
Testimony and Statement of:	
A panel consisting of:	
James Gashell, Director of Governmental Affairs, National Federation of the Blind, Baltimore, MD .....	8
R. Doug Lewis, Executive Director, The Election Center, Houston, TX .....	12
A panel consisting of:	
Todd F. Gaziano, Senior Fellow in Legal Studies, The Heritage Foundation, Washington, DC .....	29
Hilary O. Shelton, Director, Washington Bureau, NAACP, Washington, DC .....	39
Juan A. Figueroa, President and General Counsel, Puerto Rican Legal Defense & Education Fund, Inc., New York, NY .....	45
Steven Knack, Professor, Bethesda, MD .....	49
A panel consisting of:	
John Samples, Director, Center for Representative Government, Cato Institute, Washington, DC .....	76
Robert R. Williams, Special Policy Advisor, United Cerebral Palsy Associations, Inc., Washington, DC .....	85
Linda Chavez-Thompson, Executive Vice President, AFL-CIO, Washington, DC .....	93
Deborah M. Phillips, Chairman, The Voting Integrity Project, Arlington, VA .....	97

### REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS ON THE NOVEMBER 2000 ELECTION AND ON ELECTION REFORM ISSUES

JUNE 27, 2001

Opening statement of:	
Hon. Christopher J. Dodd, Chairman, a U.S. Senator from the State of Connecticut .....	113
Hon. Mitch McConnell, Ranking Member, a U.S. Senator from the State of Kentucky .....	117
Hon. Daniel K. Inouye, member, a U.S. Senator from the State of Hawaii	117
Hon. Dianne Feinstein, member, a U.S. Senator from the State of California .....	132
Hon. Robert G. Torricelli, member, a U.S. Senator from the State of New Jersey .....	133
Hon. Charles E. Schumer, member, a U.S. Senator from the State of New York .....	148

IV

	Page
Testimony and statement of:	
A panel consisting of:	
Hon. Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights .....	120
Hon. Abigail Thernstrom, Commissioner, U.S. Commission on Civil Rights .....	134
Testimony and statement of:	
A panel consisting of:	
J. Kenneth Blackwell, Secretary of State, the State of Ohio, Columbus, OH .....	161
Hilary O. Shelton, Director, Washington Bureau, National Association for the Advancement of Colored People, Baltimore, MD .....	166
Raul Yzaguirre, President, National Council of La Raza .....	176
A panel consisting of:	
Carolyn Jefferson-Jenkins, President, League of Women Voters of the U.S., Washington, DC .....	196
Larry Sabato, Director, University of Virginia, Center for Government Studies, Charlottesville, VA .....	208
James C. Dickson, Vice President for Governmental Affairs, American Association of People with Disabilities, Washington, DC .....	216

MEMBERS OF THE HOUSE OF REPRESENTATIVES ON ELECTION REFORM ISSUES

JUNE 28, 2001

Opening statement of:	
Hon. Christopher J. Dodd, Chairman, a U.S. Senator from the State of Connecticut .....	233
Hon. Mitch McConnell, Ranking Member, a U.S. Senator from the State of Kentucky .....	239
Testimony and statement of:	
A panel consisting of:	
Hon. John Conyers, Jr., Ranking Member, House Committee on the Judiciary, a Representative in Congress from the State of Michigan .....	240
Hon. Robert W. Ney, Chairman, House Administration Committee, a Representative in Congress from the State of Ohio .....	246
Hon. Steny H. Hoyer, Ranking Member, House Administration Committee, a Representative in Congress from the State of Maryland ...	255
Hon. Robert Wexler, a Representative in Congress from the State of Florida .....	261
Hon. Roy Blunt, a Representative in Congress from the State of Missouri .....	267
Testimony and statement of:	
A panel consisting of:	
Hon. Eddie Bernice Johnson, a Representative in Congress from the State of Texas .....	278
Hon. Xavier Becerra, a Representative in Congress from the State of California .....	279
Hon. Corrine Brown, a Representative in Congress from the State of Florida .....	296
Hon. Peter Deutsch, a Representative in Congress from the State of Florida .....	315
Hon. Carrie P. Meek, a Representative in Congress from the State of Florida .....	318
A panel consisting of:	
Hon. Dale E. Kildee, a Representative in Congress from the State of Michigan .....	337
Hon. Maxine Waters, a Representative in Congress from the State of California .....	344
Hon. Silvestre Reyes, a Representative in Congress from the State of Texas .....	349
Hon. Charles A. Gonzalez, a Representative in Congress from the State of Texas .....	353

	Page
Testimony and statement of—Continued	
A panel consisting of:	
Hon. Mark Foley, a Representative in Congress from the State of Florida .....	357
Hon. John E. Sweeney, a Representative in Congress from the State of New York .....	363
Hon. Sheila Jackson Lee, a Representative in Congress from the State of Texas .....	373

FIELD HEARING IN ATLANTA, GA ON ELECTION REFORM ISSUES

JULY 23, 2001

Opening statement of:	
Hon. Christopher J. Dodd, Chairman, a U.S. Senator from the State of Connecticut .....	395
Hon. Max Cleland, a U.S. Senator from the State of Georgia .....	398
Testimony of:	
A panel consisting of:	
Hon. Anil Lewis, President of the Atlanta Metropolitan Chapter of National Federation of the Blind, Atlanta, GA .....	403
Diane Smith, voter, Rex, GA .....	412
Juanita Sanders Cribb, voter, Stone Mountain, GA .....	414
A panel consisting of:	
Vernon Jones, Chief Executive Officer, De Kalb County, Decatur, GA .....	426
Hon. A. Von Spakovsky, vice chairman, Fulton County Board of Registration and Elections, Atlanta, GA .....	434
Hon. Cathy Cox, Secretary of State, State of Georgia, Atlanta, GA .....	443
Reverend Doctor Joseph E. Lowery, Chairman, Georgia Coalition for the People's Agenda, Atlanta, GA .....	453

VOLUME 2

APPENDICES

Material submitted for the record on March 14, 2001:	
Appendix 1. "2000 Professional Practices Papers," presented by The Election Center, submitted for the record by Chairman McConnell .....	479
Appendix 2. "Elections: the Scope of Congressional Authority in Election Administration," U.S. General Accounting Office, (March, 2001; GAO-01-470), submitted for the record by Ranking Member Dodd .....	577
Appendix 3. "Elections the Brazilian Way," submitted for the record by Ranking Member Dodd .....	610
Appendix 4. Statement of the Hon. Shelia Jackson Lee, a U.S. Representative from the State of Texas, submitted for the record by Ranking Member Dodd .....	611
Appendix 5. Attachments to the statement of Deborah M. Phillips, Chairman, Voting Integrity Project, submitted for the record .....	628
Appendix 6. Statement of Barbara R. Arnwine, Executive Director, Lawyers' Committee for Civil Rights under Law, March 14, 2001, submitted for the record by Ranking Member Dodd .....	648
Appendix 7. Statement of Raul Yzaguirre, President, National Council of La Raza, submitted for the record by Ranking Member Dodd .....	681
Appendix 8. Statement of Todd A. Cox, Assistant Counsel, NAACP Legal Defense and Educational Fund, submitted for the record by Ranking Member Dodd .....	688
Materials submitted for the record on June 27, 2001:	
Appendix 9. "Motor Voter Out of Control," by Christopher S. "Kit" Bond, The Washington Post, June 27, 2001, submitted for the record by Ranking Member McConnell .....	692
Appendix 10. "Supplemental Statement on USCCR Procedures Pertaining to the Florida Voting Rights Report," submitted for the record by the Hon. Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights .....	693

	Page
Materials submitted for the record on June 27, 2001—Continued	
Appendix 11. “Report on the Racial Impact of the Rejection of Ballots Cast in the 2000 Presidential Election in the State of Florida,” by Allan J. Lichtman, Professor, Department of History, American University, Washington, D.C., June 2001, submitted for the record by the Hon. Mary Frances Berry, Chairperson, U.S. Commission on Civil Rights	722
Appendix 12. “The Florida Election Report: Dissenting Statement by Commissioner Abigail Thernstrom and Commissioner Russell G. Redenbaugh,” submitted for the record by the Hon. Abigail Thernstrom, Commissioner, U.S. Commission on Civil Rights	817
Appendix 13. “Non-Voted Ballots and Discrimination in Florida,” by John R. Lott, Jr., School of Law, Yale University, June 25, 2001, submitted for the record by the Hon. Abigail Thernstrom, Commissioner, U.S. Commission on Civil Rights	875
Appendix 14. “Whose Votes Don’t Count?: An Analysis of Spoiled Ballots in the 2000 Florida Election,” by Philip A. Klinkner, Associate Professor of Government, Hamilton College, submitted for the record by Chairman Dodd	891
Appendix 15. Statement of Marisa J. Demeo, Regional Counsel, Mexican American Legal Defense and Education Fund, June 27, 2001, submitted for the record by Chairman Dodd	915
Appendix 16. Statement of Leadership Conference on Civil Rights, June 27, 2001, submitted for the record by Chairman Dodd	925
Appendix 17. Statement of Barbara R. Arnwine, Executive Director, Lawyers’ Committee for Civil Rights under Law, June 27, 2001, submitted for the record	927
Appendix 18. Statement of Margaret Fung, Executive Director, Asian American Legal Defense and Education Fund, submitted for the record	973
Appendix 19. Statement of LaShawn Warren, Legislative Counsel, American Civil Liberties Union, submitted for the record	977
Appendix 20. Statement of American Association of People With Disabilities, submitted for the record	979
Appendix 21. Statement of Gerald W. McEntee, President, AFSCME, submitted for the record	980
Appendix 22. Statement of General Board of Church and Society, United Methodist Church, submitted for the record	981
Appendix 23. Statement of United Cerebral Palsy Association, submitted for the record	983
Appendix 24. Statement of American-Arab Anti-Discrimination Committee, submitted for the record	986
Appendix 25. Statement of Religious Action Center of Reform Judaism, submitted for the record	987
Appendix 26. Statement of National Asian Pacific American Legal Consortium, submitted for the record	989
Appendix 27. Statement of Consortium for Citizens with Disabilities, submitted for the record	990
Appendix 28. Statement of Alan Reuther, Legislative Director, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, submitted for the record	993
Appendix 29. Statement of Organization of Chinese Americans, submitted for the record	995
Appendix 30. Statement of Joan Claybrook, President, Public Citizen, submitted for the record	996
Appendix 31. Statement of United Church of Christ Justice and Witness Ministries, submitted for the record	998
Appendix 32. Statement of William McNary, President, US Action, submitted for the record	1000
Appendix 33. Statement of NAACP, submitted for the record	1001
Appendix 34. Statement of William Samuel, Director, AFL–CIO, submitted for the record	1004
Appendix 35. Statement of Ralph G. Neas, President, People for the American Way, submitted for the record	1005
Appendix 36. Statement of William F. Welsh II, Chairman, Election Systems & Software, submitted for the record	1007
Appendix 37. Statement of the Hon. John Conyers, Jr., a U.S. Representative from the State of Michigan, submitted for the record	1011

VII

	Page
Materials submitted for the record on June 27, 2001—Continued	
Appendix 38. Statement of the Hon. Christopher J. Dodd, Chairman, a U.S. Senator from the State of Connecticut, submitted for the record .	1012
Appendix 39. “Finding Racial Bias Where There Was None.” National Journal, June 9, 2001, submitted for the record by Ranking Member McConnell .....	1013
Appendix 40. “The Florida Travesty, Cont.,” The Weekly Standard, June 18, 2001, submitted for the record by Ranking Member McConnell .....	1015
Appendix 41. “Boxing With Ballots,” US News and World Reports, June 16, 2001, submitted for the record by Ranking Member McConnell .....	1017
Appendix 42. “Spoiled,” The New Republic, June 25, 2001, submitted for the record by Ranking Member McConnell .....	1018
Appendix 43. Additional questions for the record from Members and answers submitted by witnesses .....	1019

VOLUME 3

Appendix 44. “Voting Irregularities in Florida During the 2000 Presidential Election,” United Commission on Civil Rights, June 2001, submitted for the record .....	1057
Materials submitted for the record on June 28, 2001:	
Appendix 45. Statement of Hon. James R. Langevin, a U.S. Representative from the State of Rhode Island, submitted for the record .....	1205
Appendix 46. [Deleted.]	
Appendix 47. “Advancing Election Reform,” New York Times, July 8, 2001 .....	1208
Materials submitted for the record on July 23, 2001:	
Appendix 48. Statement of Hon. Max Cleland, a U.S. Senator from the State of Georgia, submitted for the record .....	1210
Appendix 49. Letter from the Consortium for Citizens with Disabilities, submitted for the record .....	1212
Appendix 50. Statement of American Society for Quality, submitted for the record .....	1215
Appendix 51. “A Record of Police Intimidation and Arrest of Minority Voters in Cobb County, Georgia on November 7, 2000.” by Laura M. Lester, submitted for the record .....	1221
Appendix 52. “NAACP Voters Public Hearing,” Atlanta City Council Chambers, Atlanta, Georgia, November 21, 2000, submitted for the record in support of testimony by Diane Smith .....	1224
Business meeting.—August 2, 2001:	
Appendix 53. Business Meeting, Thursday, August 2, 2001, Committee on Rules and Administration .....	1525
Opening statement of:	
Hon. Christopher J. Dodd, Chairman, a U.S. Senator from the State of Connecticut .....	1525
Hon. Robert G. Torricelli, member, a U.S. Senator from the State of New Jersey .....	1559
Hon. John B. Breaux, member, a U.S. Senator from the State of Louisiana .....	1560
Hon. Charles E. Schumer, member, a U.S. Senator from the State of New York .....	1562
Hon. Mark Dayton, member, a U.S. Senator from the State of Minnesota .	1583
Hon. Robert C. Byrd, member, a U.S. Senator from the State of West Virginia .....	1590
Hon. Tom Daschle, Majority Leader, a U.S. Senator from the State of South Dakota .....	1593
Hon. Richard J. Durbin, member, a U.S. Senator from the State of Illinois .....	1603
Hon. Dianne Feinstein, member, a U.S. Senator from the State of California .....	1604
Hon. Daniel K. Inouye, member, a U.S. Senator from the State of Hawaii	1605





## **ELECTION REFORM**

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**WEDNESDAY, MARCH 14, 2001**

UNITED STATES SENATE,  
COMMITTEE ON RULES AND ADMINISTRATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:30 a.m., in room SR-301, Russell Senate Office Building, Hon. Mitch McConnell, (chairman of the committee) presiding.

Present: Senators McConnell, Dodd, Schumer, and Dayton.

Staff Present: Tamara Somerville, Staff Director; Andrew Siff, Chief Counsel; Kennie L. Gill, Democratic Staff Director and Chief Counsel; Veronica M. Gillespie, Democratic Elections Counsel; Carole Blessington, Democratic Administrative Assistant; Lory Breneman, Chief Clerk and Jill Szczesny, Deputy Chief Clerk.

### **OPENING STATEMENT OF HON. MITCH McCONNELL, CHAIRMAN, A U.S. SENATOR FROM THE STATE OF KENTUCKY**

The CHAIRMAN. Good morning, everyone. Welcome to the Senate Rules Committee.

The election of the first President of the 21st century was a sobering experience for Americans. As we watched the counting and recounting of the punch cards, people learned about the shortcomings of the punch card systems. As the process dragged on, other questions arose. Many ballots were cast by people not eligible to vote. So many dead people registered to vote and apparently cast ballots—along with many dogs, cats, and other non-humans—that this election seemed like a sequel to “The Night of the Living Dead.” Eligible voters who had lawfully registered were unable to vote because their registrations were never transferred from the motor vehicle authorities to the election authorities. Safeguards designed to prevent such problems failed miserably due to a lack of resources, personnel, and training for those tasked with operating polling places.

People were outraged as American servicemen and women deployed abroad to defend our democracy were denied their right to participate in it. Cunning lawyers, bizarre State and local regulations on absentee registration and voting, as well as inexcusable failures by the military postal services, combined to prevent the counting of many ballots cast by members of our Armed Forces. These were not ambiguous votes with hanging, dimpled, or pregnant chads. The intent of these voters was as clear as the intent of some people to deny their votes.

As the process continued, people were mystified by the many different, subjective standards selected by election officials across the

State of Florida to recount ballots. Many of the ballots were mishandled during the process to the point that chads were falling onto the floors in the counting rooms, creating further confusion as to the intent of the voters. Eventually, the Supreme Court found this process so unreliable, unfair, and chaotic that it declared the recounts unconstitutional. Although subsequent analyses by news organizations, such as the Miami Herald, have confirmed that no amount of recounting under any standard could have changed the outcome, the haphazard and partisan nature of the recount certainly left its mark on the collective psyche of the body politic.

Regrettably, we have also come to learn that the problems were not limited to Florida. In Wisconsin, there were reports, subsequently confirmed by investigators, of party operatives inducing homeless people to take advantage of same-day registration and vote in exchange for cigarettes. While I generally cheer the promotion of one of my home State's products—cigarettes, that is—I draw the line at exchanging cigarettes for votes.

In St. Louis, an election day lawsuit was brought to extend poll closing times. In his court pleadings, the plaintiff, who was registered to vote even though he had been deceased for quite some time urged expanded polling hours so that he and others “similarly situated” could cast their ballots in the November elections. This fact did not deter the trial judge from granting the plaintiff a short-lived victory that was reversed just a few hours later, but not before thousands of illegal votes were cast throughout the city after the polls should have been closed. More recent problems in the St. Louis mayoral race have brought to light that many of the after-hours votes cast in November were based on bogus voter registrations filed just before the Presidential election. Thus, it is not surprising that people openly question the outcome of some of the close elections in Missouri.

In addition to dead people not only registering and voting but bringing lawsuits to protect their franchise, there were serious problems with felons and non-citizens registering and voting in direct contravention of the laws of Florida and many other States. As the Washington Times and other sources have made clear, the ballots of murderers, child molesters, drug dealers, and thieves were counted while many of the votes of our men and women in uniform were not.

The despicable state of voter rolls and the lax enforcement of voter eligibility laws were not unique to Florida and Missouri. Equally serious problems with the voter rolls in California, Indiana, Georgia, and Oklahoma were also documented. Hundreds of counties across the country have more people registered to vote than they have residents of voting age.

As we continue to examine the shortcomings of election administration in America, attention is also turning to the unintentional but nevertheless disturbing disregard of the challenges disabled and elderly voters face in going to the polls. Many seniors and disabled voters are unable to access polling places. Among them are the last members of the “greatest generation” and other disabled veterans who have shed their blood on battlefields across the world to protect our country.

Often, even when elderly, blind, and disabled voters are able to access polling places, they are unable to use the voting equipment inside. Some elderly, blind, and disabled Americans are so discouraged by these barriers that they do not vote at all. Some of those who do vote have no choice but to have someone else mark their ballot for them. When this occurs, these citizens must hope, but can rarely verify, if their ballots were counted according to their wishes and without error. Others are forced to use absentee ballots.

Such barriers to participation by elderly, blind, and disabled Americans must be addressed as part of the effort to bring America's election processes into the 21st century. I am committed to finding workable solutions that will give these citizens access to polling places and polling methods.

Many members of this committee, including myself along with Senator Torricelli, Senators Dodd and Daschle, Senator Schumer, Senator Hutchison, and Senator Stevens, have offered serious and thoughtful legislation aimed at remedying many of the problems that I have just discussed. And we meet here today not as Democrats or Republicans, but as public servants committed to learning about ways to address these issues in a responsible and bipartisan manner.

To those who have alleged that their vote was diluted by fraud and to those who allege that their right to vote was frustrated by the actions of election supervisors, county officials, and poll workers, I plan to work with all of you. I ask you to join me in supporting legislation I will be introducing to guarantee that for the 2002 elections Federal officials will monitor all polling sites where irregularities are alleged to have occurred. This will ensure that if there is any improper or illegal conduct during the next election, it will be documented and prosecuted to the full extent of the law. My legislation will also mandate stiff criminal penalties for vote fraud and voter intimidation. Such a bill is necessary to eliminate any perception that the right to vote can be abridged by fraud or the misconduct of local officials.

The American people will not forgive us if our efforts to solve the problems plaguing our democracy degenerate into partisan maneuvering, sound bites, epithets, and inaction. We must work together to ensure that everyone who is legally entitled to vote is able to do so and everyone who does vote is legally entitled to do so, and does so only once. We can do this if we distinguish facts from fiction, appreciate the complexity of the elections process, and agree that any solutions must in equal parts promote fairness, openness, honesty, and accuracy in American elections.

I now welcome my colleague and ranking member, Senator Dodd, for any opening statement he might like to make.

**OPENING STATEMENT OF HON. CHRISTOPHER J. DODD, RANKING MEMBER, A U.S. SENATOR FROM THE STATE OF CONNECTICUT**

Senator DODD. Well, thank you very much, Mr. Chairman, and let me begin by expressing my appreciation to you for holding this hearing at an early date. The issues of last fall and other elections, but particularly last fall, which received so much attention, clearly warrant our attention. The Commerce Committee has already held

some hearings. There is a number of bills that have been introduced, including one by our colleague from New York, among others. Yesterday John Conyers and I introduced a piece of legislation along with the support of a number of people whom I will mention in my opening statement. There is a deep sense that while everyone has paid attention to what happened last fall, and particularly what happened in Florida, this has been an ongoing problem for some time and it warrants, it seems to me, our attention.

Thomas Paine once said that elections are of paramount interest because they are the cornerstone of our democracy. They are what makes democracy work.

At any rate, I am encouraged by the interest in this topic among our colleagues on the committee. No fewer than 14 bills, I am told, providing for various approaches of election reform have been referred to this committee for consideration, and six of our own members are sponsors of such legislation. And I am hopeful that we can schedule some sort of a business meeting to consider legislation on this in the not too distant future.

The right to vote is, of course, a cornerstone right in a democracy. In the words of Paine, as I mentioned, it is the primary right by which all other rights are protected. Thirty-six years ago tomorrow, on March 15, 1965, President Lyndon Johnson convened a joint session of the United States Congress to call for the passage of what ultimately became the Voting Rights Act. He spoke plainly and forcefully on that evening before a joint session of Congress. "All Americans," he said, "must have the right to vote, and we are going to give them that right. All Americans must have the privileges of citizenship regardless of race, and we are going to give them those privileges of citizenship regardless of race."

Yet the sad message of this last election is that the privileges of citizenship have yet to be fully guaranteed to all Americans. Nor are the barriers to exercising this fundamental right limited to race. Inaccessible polling places and visual ballots disenfranchise the disabled and the blind across this country. Complicated instructions and a lack of trained personnel discourage language minorities and the elderly from fully exercising their right to vote. And even if voters were able to get to the polling place, read the ballot, and cast it, antiquated technology and insufficient machinery denied Americans of all races, languages, and physical abilities the right to have their vote counted.

Mr. Chairman, I am not here to point fingers or suggest that these problems were isolated to just one State or one type of voting system, or even just the last Presidential election. But what happened last November set off alarms across the Nation that threaten to undermine the integrity of our system of democracy.

The fact is there is a fundamental flaw in our Federal election system, and that flaw is the lack of Federal direction, leadership, and resources provided to the States and localities to meet their responsibility as the administrators of Federal elections.

What we learned last November is that it is not good enough to guarantee the right to vote if procedures and technology prevent individuals from exercising that right. And it will take more than just a new mousetrap to fix the problem.

It is time for this committee, this Congress, and this President to establish the minimum requirements necessary to ensure that all Americans who register to the vote and go to the polling place to vote are able to cast their ballots and have their votes counted in Federal elections.

To secure the rights of all Americans to participate in our democracy, I am introducing the Equal Protection of Voting Rights Act of 2001, which establishes three simple national requirements for Federal elections: one, that voting machines and technology meet national standards; two, that States provide for provisional voting; and three, that States provide sample ballots and voting instructions to voters prior to Election Day.

These requirements must be implemented by the 2004 Federal elections, and our bill provides funding to States and localities to achieve that. This legislation also creates a temporary commission to study numerous election reform issues, such as voter intimidation, the feasibility of a national holiday, and alternative methods of voting to facilitate participation.

Finally, the legislation provides grant money to States and localities to replace voting equipment and technology, to make it accessible to those with disabilities, the blind, and those with limited English proficiency, to implement new administrative procedures, to increase participation and reduce disenfranchisement of minorities, to educate voters and train election personnel and volunteers, and to implement recommendations of the commission.

Companion legislation is being introduced in the House by Congressman John Conyers, and our bill is supported by numerous groups, including the National Association for the Advancement of Colored People, the AFL-CIO, the National Federation for the Blind, the National Council of La Raza, the American Civil Liberties Union, and the Leadership Conference on Civil Rights.

The issues highlighted in the last election are not a Democratic or Republican problem. They are an American problem. And I submit to this committee that the solutions to these problems must be appropriately nonpartisan if they are going to succeed.

As the chairman knows, I stand ready to work with him, others on this committee, and our colleagues in the Senate on both sides of the aisle, to fashion bipartisan legislation to ensure that all Americans can participate more fully in this democracy. But such an effort must address the real problems faced by real Americans who felt shut out and were shut out of the polling place or disenfranchised.

The witnesses we have invited to testify today are here to tell us about the barriers that they and their constituents have faced across this country. It is important to hear their stories and understand the very real obstacles Americans are facing in attempting to exercise their vote. This hearing is a strong start on what I hope will be a thorough review of Federal election practices in this Nation. There were numerous witnesses who could not be accommodated here today. In particular, I received requests from over 10 House Members, who in some cases are closer to these issues than members of the United States Senate are and who wish to be heard. I strongly would encourage the Chair and the committee to

schedule some additional hearings—and he has indicated that will be the case—once the campaign finance debate has concluded.

Again, Mr. Chairman, I commend you for holding this hearing. I know there are a lot of issues and the Senate is busy, but no matter could be more important than seeing to it that Americans can exercise their right to vote and participate fully in the election process in this country. For that reason I think this is a very important issue for us to consider.

The CHAIRMAN. Thank you, Senator Dodd.

I think there is no issue that I can recall recently where hearings have been more important than this one because there is great uncertainty on the part of Members of the Senate and House as to just what ought to be done. So I think the hearings will be very educational for us.

It has traditionally been the practice of this committee to only have the chairman and the ranking member making opening statements, but I am encouraged by the fact that there is only one other Senator here at the moment, and Senator Schumer has a bill of his own. So I am going to take a risk here that we don't get stampeded with all the members, each of them wanting to make an opening statement, and call upon him for what I hope will be a brief opening statement so we can get to the witnesses.

**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 appreciate the opportunity to make an opening statement. As you know, I have been involved in this issue since the week after the election, and before that, and I want to thank you and Senator Dodd for holding this hearing, which is, of course, of critical importance to our democracy.

In 1787, Noah Webster, a leading pamphleteer in support of the Constitution, cautioned his new countrymen that elections stood as the "principal bulwark of freedom. Americans," he exhorted us, "never resign that right. It is the Magna Carta of our Government."

In our time, when many have also had to struggle for the right to vote, Justice Hugo Black echoed that sentiment and wrote that, "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."

Sadly, Mr. Chairman, our last election demonstrated that this precious, fundamental right now rests precariously on a foundation of rusting equipment, human error, and official neglect. I look forward to hearing from our witnesses about some of the problems we encountered last November, but many of these issues have been perfectly apparent for quite a while, long before the Florida election.

It is not news that the machines and techniques by which we record our votes are embarrassingly antiquated. In my own State of New York, lever machines, first invented in the 19th century and long out of production, frequently break down, leaving long lines of fuming and frustrated voters of the way we vote.

I voted first in 1969, and I used the same type of machine, maybe the exact same machine itself, this year. The agony of voters

in New York who wait on line for a half hour, 45 minutes, get to the desk and then are told they are at the wrong table, go to another one, and then walk out because they have to go home to take care of the kids or get to work—you see it on their faces—is palpable.

And the punch card machines, which we have heard about in Florida, too, leave many voters without a choice. And, again, this is not news to us. In 1975 and 1988, Roy Saltman at the National Bureau of Standards reported that punch cards were exceedingly inaccurate and should be scrapped.

Nor is it news that other problems have plagued our elections: inadequately maintained lists, ballots that are poorly designed, phone lines too jammed, undertrained and overwhelmed poll workers who make avoidable mistakes, voters in the dark about basic things like where to go, what the ballot looks like, how to use the machines, and what to do if they have questions.

As one member of Governor Jeb Bush's task force said—and Florida is far alone from this; this is astounding to me—“The State spends \$30 million annually to instruct people on how to buy lottery tickets”—\$30 million dollars on how to buy lottery tickets—“but allocates nothing for statewide voter education programs.”

So, Mr. Chairman, I think all of us believe we can improve this lamentable situation, and I want to briefly describe the bipartisan bill that Senator Sam Brownback of Kansas and I have introduced with 11 other Republican and Democratic cosponsors. Our bill, the Federal Election Modernization Act, creates an independent blue-ribbon panel to study the way we vote and make recommendations on better voting machines, mail-in voting, and other new ideas about how to vote. The commission will recommend how we can make sure that the polls are accessible to everyone, including disabled voters and people serving overseas in the Armed Forces, and how we can guarantee that the lists at polling sites include all registered voters so no one is turned away.

To make voting easier for people who work or care for families, the commission will explore whether to expand the days and hours we vote and whether to have an election day holiday, as many other countries do. And it will also consider how to best educate voters in election equipment and other aspects of voting.

When the commission finishes its study, which will be by the end of this year, the bill provides for grant funding to help States and localities implement the commission's recommendations and upgrade their systems. Every year for 5 years we will offer the States up to \$500 million in matching funds to buy new equipment, train poll workers, educate voters, and implement other changes. This is a lot of money, \$2.5 billion, although it is estimated that to upgrade all of our machines would cost \$9 billion. And what could be more important than what was rightly called the Magna Carta of our Government? You can't put a price tag on it.

Because, Mr. Chairman, we recognize the constitutional prerogatives of States in this area, and States in all but nine cases have devolved the task of voting to the localities, the bill does not force anything on any States or counties but lets them choose what aspects of the system they want to reform and makes funds available. They could only use money for the recommended systems, so they

will not be using money on things that won't work. But at the same time, if they don't choose to apply for the matching funds, which would be on a first-come, first-served basis, they won't get them. They won't be forced to do something they don't want to do.

Any bill, Mr. Chairman, that places mandates, Federal mandates, on the States of how to vote I fear will, at the very minimum, go through years of litigation and not update our system by 2004, which I think is all of our goal.

So, Mr. Chairman, I want to thank you and Senator Dodd and others who have introduced bills on voting reform for their commitment to the issue. All of our bills are works in progress, and I think everyone here has their hearts in the right place, and we all want to get something done about it.

Let me close, Mr. Chairman, by saying I look forward to debating the merits of all our bills, because what is most important here is that we decide on the best legislative course and then act quickly and rapidly to repair our system. When it comes to voting, the hard work has already been done. It was done in 1775 at Lexington and 1863 at Gettysburg and 1965 at Selma. By comparison, Mr. Chairman, this is easy. We have to make sure it happens.

Thank you.

The CHAIRMAN. Thank you, Senator Schumer.

I would like to ask our new member of the committee, Senator Dayton, if he has an opening statement, if he would simply put it in the record if he has one.

Senator DAYTON. Thank you, Mr. Chairman. I don't have an opening statement.

The CHAIRMAN. Thank you very much.

All right. We will move ahead with the first panel: James Gashel, Director of Governmental Affairs for the National Federation for the Blind, from Baltimore, and R. Doug Lewis, Executive Director of The Election Center in Houston. I would like to ask both of you to confine your opening statement to 5 minutes, and, Mr. Gashel, I will alert you as to when that 5 minutes is up. The red light will go off, and we would like for you to stop at that point and give us a chance to ask you questions. And we will lead off with Mr. Gashel.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF JAMES GASHEL, DIRECTOR OF GOVERNMENTAL AFFAIRS, NATIONAL FEDERATION OF THE BLIND, BALTIMORE, MARYLAND; AND R. DOUG LEWIS, EXECUTIVE DIRECTOR, THE ELECTION CENTER, HOUSTON, TEXAS**

**STATEMENT OF JAMES GASHEL**

Mr. Gashel. Thank you very much, Mr. Chairman. My name is James Gashel, and I am representing the National Federation of the Blind here today. I have submitted my written statement for the record, and I am just going to briefly summarize it.

Issues surrounding blindness and voting are often very sensitive and, frankly, they tend to arise in virtually every election cycle. I have been Director of Governmental Affairs for the National Federation of the Blind for about 27 years, and these issues come to my office for some form of assistance or resolution.



This problem happens because the technology now in general use in voting forecloses the possibility that most blind people can vote and cast a secret ballot independently. I have never been able to do that, and I started voting in 1968.

I say this is so for approximately 1 million people in our country who, as in my case, are blind, and for an estimated 7 million more who can see some but can't see enough to read a visual display screen on a voting machine or to read the printed ballot.

I should note that many people in this larger group often just stay away from the polls because they don't think they can really participate effectively in the process. We don't want that to happen anymore.

So how do we vote? Well, the most common method is to use an assistant chosen by the voter. An amendment to the Voting Rights Act, which was passed in 1982—and the National Federation of the Blind requested that at that time—has established the practice of voter assistance as the law of the land. Prior to that, observation of a vote for persons who are blind, and the observation was conducted by election judges from each party, was the common practice in many jurisdictions. So the vote certainly wasn't private.

Use of voter assistants personally chosen by the blind or disabled voter is certainly more private, and it is the best method when the technology involved permits nothing else. The voter assistance method is definitely not perfect though, Mr. Chairman; so it should not be abandoned as a matter of right. I say that because, no matter the technology, many people are just going to find using an assistant—that is, someone they trust—to help them with things is more accommodating to them than using technology that they don't necessarily trust. And the point is we want people to vote.

As to technology, voting systems are changing along with all the electronic and information technology that we are coming to use every day. Electronic systems with push buttons and touch screens are now replacing the mechanical voting machines that Mr. Schumer talked about, and the punch card system that has been talked about, and also replacing paper ballots. No matter what the Congress does, I would predict that this trend toward electronic voting systems will accelerate because of the 2000 election.

Mr. Chairman, there are several bills before you which have been referred to, and I particularly want to commend you for expressing your support for a strong disability and nonvisual access provision in this legislation. This is absolutely essential. I also want to commend Senator Dodd, Senator Schumer, and Senator Brownback for including in their bills requirements that contain specific criteria for access to voting technology by persons who can't see, as well as for persons who can see. The important thing about this legislation is that it makes these requirements specific in the bill and applicable to all voting technology, as first included in Senator Schumer's bill, and we thank all of you for embracing that principle.

Your bills may be at odds in certain respects that are broad public policy issues, but we very much appreciate the fact that they are right in line with each other in terms of nonvisual access. And when I say nonvisual access, I want to emphasize the fact that this is good for everyone: people who can see as well as people who can't see. Many people, especially senior citizens, just can't read the

small print on the ballot anymore or the voting machine. Some people just can't read at all. And other people are just confused by the layout of the ballot, as we have heard. So a presentation which is audio and visual together will help everyone.

For blind people, having a voting machine that will talk to me will mean that I will be able to cast a secret ballot for the first time ever. This is really an important principle, and it is important that we establish this principle in all of the legislation passed concerning voting technology.

In the spirit of legislation sponsored by Senator Dodd, Federal employees and the public are now able to have accessible electronic and information technology when they work or obtain services from Federal agencies. The principle I am talking about—nonvisual access in voting—is simply an extension of Senator Dodd's legislation originally passed as part of the Rehabilitation Act amendments in 1998. This is an extension of that principle to voting, which is our most important civic responsibility. of citizenship, and that is, casting our vote. I wait for the day when I will be able to do that both independently and secretly. And with your help, that day will come about.

I thank you.

The Chairman. Thank you very much, Mr. Gashel.

[The prepared statement of Mr. Gashel follows:]

PREPARED STATEMENT OF JAMES GASHEL, DIRECTOR OF GOVERNMENTAL AFFAIRS,  
THE NATIONAL FEDERATION OF THE BLIND

Good morning, Mr. Chairman. My name is James Gashel. I am Director of Governmental Affairs for the National Federation of the Blind. My address is 1800 Johnson Street, Baltimore, Maryland 21230; telephone, (410) 659-9314. On behalf of the Federation and the blind people I represent, I want to begin by expressing my sincere thanks to you and this Committee for the opportunity to participate in this important hearing today.

I believe I last appeared before this Committee in 1984—or perhaps it was 1983—when Congress was considering a bill which later became the Voting Accessibility for the Elderly and Handicapped Act. Several months before that, the National Federation of the Blind was very much involved in the process which led up to the 1982 enactment of amendments to the Voting Rights Act of 1965. The members of the National Federation of the Blind have a strong interest in any legislation affecting the voting process in this country, and we have a proud history of advocacy on behalf of full participation by the blind in our nation's electoral process.

To say that the Presidential election of 2000 is apt to become the catalyst for lasting changes in the way Americans vote is simply to state the obvious. Politics aside, the election of November, 2000, demonstrated to everyone that the most fundamental right and responsibility of citizens in our democracy—choosing our elected representatives—is vulnerable to antiquated methods and technology, especially in closely fought elections. The integrity of the process demands a solution, and the technology now available and becoming available, makes it possible.

Several bills are before you for consideration, but all of them have a common thread. The technology being used to cast and count ballots throughout the United States is not as reliable as we thought it was and certainly not as reliable as it could be. This means that changes in voting technology, already being made in the natural course of events, will be accelerated. It also means that the changes which do result from the present situation are apt to be in place for many decades to come.

This latter point—that the new technology which will emerge will be with us for many years to come—is particularly important to the blind. In 1982, when Congress passed amendments to the Voting Rights Act, we advocated very strongly for a national standard to ensure that persons unable to read the printed ballot or the instructions on the voting machine would be able to have assistance provided by another person of the disabled voter's own choosing. We asked for this standard because of the widespread and objectionable practice of having election judges from each party physically present in the booth to assist a blind voter and monitor the

casting of the ballot. It is an understatement to say that this process was both intimidating and demeaning to the blind voter, leading far too many to stay away from the polls on election day.

Congress agreed with us in finding that it is wrong to subject blind people to the scrutiny of election judges, but the voter assistance provision which was passed with the Voting Rights Amendments of 1982, was only a partial solution. However, it was really the best and most appropriate solution available at that time. That is no longer the case since microchip and digital technology will undoubtedly change the way Americans vote—not only in the next election but far beyond.

In the wake of the 2000 election, states and political subdivisions are scrambling to update their antiquated voting machines with electronic and computer-based voting systems. Arizona is already testing internet voting, and many jurisdictions have purchased touch-screen digital voting machines. Under present law, individual states develop and apply their own standards to approve or “certify” voting systems used in local jurisdictions. This is precisely why Congress must become involved in helping to set the standards applied to voting in the future.

In the case of technology, for example, the needs of blind voters are rarely understood or considered by the states in establishing criteria for certification of new voting systems. Consequently, the principle of “equivalent visual and nonvisual access” has not been adopted as a standard. As a result, virtually all electronic voting technology is unusable by as many as one million people who are blind and millions more who cannot see enough to read a printed ballot or visual display screen on a voting machine.

Section 508 of the Federal Rehabilitation Act as amended in 1998, requires Federal departments and agencies to ensure that their electronic and information technology is accessible to individuals with disabilities. This provision resulted from legislation introduced by Senator Dodd. It means that all electronic and information technology purchased by the federal government must be equipped and configured for effective use by anyone with or without a disability. This law also applies to technology (such as information kiosks) intended for public use.

At this point, Section 508 only has limited applicability to states. Therefore, it really has no direct applicability to voting. However, the principle of section 508—equivalent access—is sound. If section 508 did apply to all governmental entities, including states and local jurisdictions, then equivalent access would be required. In fact, only one state that I know of presently has a law requiring all voting equipment to be accessible to individuals with disabilities. That law was signed by the then Governor of Texas, George W. Bush. Therefore, I guess I can safely claim to have the support of the President of the United States for the point we are making here today.

According to the National Center on Policy Analysis, low voter turnout is primarily due to inconvenient voting procedures. Confirming this, an Ohio study pointed to “intimidating” voting methods as a significant reason why people don’t vote. For blind people these factors are compounded by voting systems which are not only “inconvenient” but unusable. Inaccessible voting systems discourage blind voters from exercising the most fundamental right of citizenship—the right to vote.

Modern technologies (such as synthesized speech and speech activated software) allow electronic information to be accessed through visual and non-visual means. Using these technologies, blind people would be able to vote privately and independently. This is a step beyond the voter assistance provision presently in the Voting Rights Act, which will remain for years to come as the method most preferred by some blind people. However, with the advent of new technology, we can do better. This is especially important for those of us who are becoming accustomed to communicating by means of the computer. This is something we do every day; so why not communicate independently and effectively when we vote.

Mr. Chairman, the expectations and possibilities are changing for all Americans in regard to virtually everything we do. That includes the way we vote, as well. Blind people are not excluded from these advancements. With the possibility now upon us for voting independently and privately—with or without sight—the provision for voter assistance will not be good enough.

Fortunately, this principle has been embraced by most of the bills which address voting process reform. This includes the companion bills introduced by Senator Dodd and Representative Conyers, as well as the earlier bill introduced by Senators Schumer and Brownback. Each of these bills has important provisions relating to standards for voting technology. And, most important of all, the standards called for in these bills would require nonvisual access, so blind people could cast their ballots both independently and in private. Enactment of these requirements as a part of legislation on voting process reform would extend the convenience and benefits of electronic voting systems to sighted and blind voters alike. This is the most impor-

tant principle for blind Americans, Mr. Chairman, and we also appreciate the support you have expressed for it. Therefore, on behalf of the National Federation of the Blind, I thank you.

The CHAIRMAN. Mr. Lewis, we will hear from you now.

#### STATEMENT OF R. DOUG LEWIS

Mr. LEWIS. Thank you. Rather than me reading the statement that I handed out, which we will obviously stand behind, I would like to spend just a few minutes—

The CHAIRMAN. Could you pull the mike a little bit closer?

Mr. LEWIS. Sure. I would like to spend just a few minutes with you going over how complex some of this is and the fact that there are so many things that can go wrong in an election, and we obviously got witness to that in the year 2000.

Certainly, in terms of me testifying to you, you know, there is a tendency to want to do too much here, to try to get too many of the areas covered and to try to go through those, and certainly, to get to the complexities of the election process itself, to explain the technologies that are used in elections, to state unequivocally that elections have to be fair and that all qualified voters have a right to participate in this process, regardless of their race, their age, their health, their education, their disabilities, or their service to our Nation's military.

There is a need to review the media's coverage of election 2000 and how it differs from what actually happened. There is a need to dispel myths that resulted from this election. There is a need to admit that certain of our procedures and policies had not been in our awareness in the past and that we have to do something about that in terms of fixing the problems.

There is a need to examine the reasons for the errors in this process. There is a need to find the appropriate role for each level of government in fixing the problems discovered in this. There is a need to help you understand the barriers that the Nation's elections administrators face in trying to fix these problems. And, most importantly, there is a need to reassure Americans that this process has integrity, that it is administered fairly and responsibly to accurately reflect the public's will.

Elections are so complex in terms of understanding that we have as elections administrators within the Nation authority over not much of this. When you look at it, we have voter registration agencies that don't report to us, don't have to report to us, or are not under our jurisdiction, and yet we have to live with any inequities that they make.

We have buildings that we have to use that are not under our authority, and we have no responsibility, no funding, in order to be able to fix them and make them right and make them do what should be done. And, in fact, most of the time even the ones that are loaned to us, people try to shove us to the most inconvenient place in the building.

We have huge numbers of poll workers who, at most, get one hour or two hours of training, and anything beyond that and anybody who expects that we are going to give more than that is probably sadly mistaken. And when we take a look at it, Los Angeles County, 27,000 poll workers on election day, my home, Houston,

Texas, 8,500 poll workers on election day, you are going to get an uneven application of the law. You are going to get an uneven application of service when you get that. We try to teach them to have the right attitude toward all voters, and yet sometimes that fails miserably.

The voters themselves, we try to explain that they ought to know and they should know and they should read and they should see and we send out sample ballots, and yet when they get to the polls, they still don't know what to do. Now, I don't want to blame the fault of the election process on the voters. That is not the point. The point is that we have no control over them, either. And if we were holding education schools for voters, they are probably not going to come.

We might be able to try to change our attitude some and see if we can't fix a way that we can educate voters in 3 minutes or less while they are in the polling place on how to use the polling device itself, the voting device.

Certainly, our budgets come from other authorities, and most of the time those authorities have little or no understanding of how this process works, and they don't have the time in their own meetings to allow you to explain program budgets so that you can understand them and understand why certain pieces are needed. And certainly some of the problems that came about in this election came as a result not of us not caring, not of us not wanting to do the right thing. Some of them we have been talking to all kinds of authorities about for 20 years, trying to get the systemic problems fixed.

I want you to know that the Nation's elections administrators want to do the right thing. They want to include every voter. They want to make this process work for every voter. These are people who are dedicated to this process so much that they make it work on very little budget, very little understanding, and certainly no "atta boy's." The only time they get called attention to is when it is negative attention.

We are here to help you. We are here to make it work for America's voters. But we are going to need a lot of help from every level of government to do so.

[The prepared statement of Mr. Lewis follows:]

PREPARED STATEMENT OF DOUG LEWIS, EXECUTIVE DIRECTOR, THE ELECTION CENTER

Senators: I am appreciative of the invitation to appear before you. As the director of a nonpartisan, nonprofit organization that specializes in voter registration and election administration issues, we work with the nation's elections administrators at all levels of government to make democracy work.

Our organization, The Election Center, is the premiere elections training organization in America and we offer seminars annually to train election and registration administrators how to do this process better. We train between 600 and 1,000 elections administrators every year in our sessions.

We have been doing this since 1985 when two former staff members of the Federal Election Commission's Clearinghouse for Elections Administration left the FEC to start The Election Center because they felt that the Federal government was never going to put the resources into training better elections administrators. Thanks to a three-year grant of significant funds from the Ford Foundation in those early years, the Center has been able to establish itself as the principal training organization for the nation's elections administrators.

Additionally, we keep state and local governments informed on new trends in elections, we track federal legislation for them, we track court decisions related to elec-

tions and we serve as a resource to state and local governments for research issues related to state election laws and local procedures. We have done surveys for the committees of jurisdiction for the U.S. Congress and have worked closely for many years with the Senate Rules Committee and the House Administration Committee (and its predecessors and subcommittees). We have served as a resource to the U.S. Department of Justice, the General Accounting Office, the U.S. Postal Service, and to the court appointed masters chosen to oversee the Teamsters election. Our work with the U.S. Postal Service resulted in the Postal Service granting a postal logo for identifying Official Elections Mail to the only organization outside of the postal service in its history.

We have trained election officials from other governments throughout the world and, additionally, they have attended conferences and workshops sponsored by us. We also offer a Professional Education Program in conjunction with Auburn University in Alabama where the Auburn master's in public administration faculty teaches most of our 12 core courses which leads to certification of elections professionals with the highest designation that can be earned in our profession: Certified Elections/Registration Administrator (CERA). We started a program six years ago to recognize the best professional practices with our Professional Practices Papers program, a copy of which I have had distributed to you this morning.

And, we serve as the day-to-day management organization (secretariat) for the National Association of State Election Directors (NASED) voting systems program. We work with the voting systems manufacturers and the states to test voting equipment and its software used for tabulating votes and reporting results. We don't do the actual testing, we find and work with Independent Testing Authorities (ITAs) to perform this testing so that voting systems in America meet or exceed the Federal Voting Systems Standards. Hardware and firmware testing are performed by Wyle Laboratories in Huntsville, Alabama. Software testing was performed previously by Nichols Research Labs and when they were purchased by Computer Sciences Corporation, who determined not to continue the voting software testing, all the people who were performing that service at Nichols Research have since moved to PSINet, also in Huntsville, which is our newest software testing lab although with all the same people who did the work for the last four years.

There is a tendency to want to do too much in this testimony to you:

There is a need to explain the complexities of the administration of elections;

There is a need to explain the technologies used in elections;

There is a need to state unequivocally that elections have to be fair and that ALL qualified voters have a right to participate in this process regardless of their race, their age, their health, their education, or their disabilities;

There is a need to review the news media's coverage of election 2000 and how it differs from what actually happened;

There is a need to dispel myths that have occurred as a result of this election;

There is a need to admit that situations occurred that had not been a part of our procedures and awareness in the past and examine some new information that came about as a result of this election;

There is a need to examine the reasons for errors in the process;

There is a need to find the appropriate role for each level of government in finding solutions to the problems;

There is a need to indicate our willingness to assure citizens of both our intent and our practices to make sure this process is fair to all Americans, including African Americans, Hispanic Americans, the disabled, the elderly and our nation's military and overseas citizens;

There is a need to help you understand the barriers that face the nation's elections administrators in conducting elections; and

Most importantly, there is a need to reassure Americans that this process has integrity—that it is administered fairly and responsibly to accurately reflect the public's will in casting and counting ballots.

But the simple fact is that in the time allotted to me to make this presentation, there is not enough time to cover all those issues in sufficient depth so that you can reach good policy decisions related to elections. I will have to hope that the work we have done with your committee staff and, in some cases, with your state staff will begin to show all who are interested that this is a far more complex process than appears to the casual observer.

Elections officials have made this process look simple. In fact, most of you, before this election, had no knowledge of just how complicated and involved it is to make this all come together on election day so that voters can participate. In the past, most people just thought that we opened up the polls on election day, that voters came and voted and that we counted the votes and reported them and then that we had nothing else to do until the next election. Most people have wondered what

elections administrators did with the rest of their time. And before this election, almost no one was willing to listen to just how many months of planning, recruiting, training goes into the process of conducting an American election. Not many of you thought very much about how difficult it is to find suitable polling sites that are accessible to voters, easy enough to find, open enough for the disabled and close enough to the voters that they will actually come.

Not many of you ever considered how difficult it is to recruit enough people to work at the polls on election day. Most of you didn't even know the tremendously large numbers of people that we need to make this process work. For instance, how many of you knew that Los Angeles County, California, has to find, recruit, train, supervise and evaluate 27,000 election day workers? Or that Harris County, Houston, Texas, has to involve more than 8,500 people.

How many of you know what it takes to recruit people to work on election day when the average pay for a 14 to 16-hour day is \$5.00 per hour, and that no matter what we do to find and recruit them, that it is never enough? How many of you know that we are STILL looking for poll workers on election day? And some of the proposals from people who really don't understand the process, want us to extend the number of hours we have those folks work. And, some who really don't understand the process blithely suggest that we just keep the polls open for 48 hours without ever really understanding what that means and what complications it brings to the election.

Has anyone considered that it doubles (24 hours) or quadruples (48 hours) our tasks of staffing the polling site? At a time when we find it exceedingly difficult to staff the polls for 12 or 14 hours? Do you know that our poll workers work an hour before the polls open and usually at least one hour after the polls close? And, almost all of them in the U. S. have to be there all day on the theory that if you change the personnel at the polling site that you might have a different interpretation or administration than other voters received. We don't, in most states, allow for 'shift' changes.

Before I spend too much of the allotted time in the details of running elections, I just want to make you aware that not all of this has an easy solution. And to make you aware that casual suggestions of how to make improvements are very neat, plausible but most often wrong.

Almost everyone who is not steeped in the administration of elections has incorrectly focused on technology as both the problem and the solution. Let me make this very clear. Had we had the most advanced technology in place in Florida in this election, it too would have been attacked. And there still would have been voter errors. Maybe not the same ones and maybe the proportions of errors would have been somewhat different, but the mistakes would still have been there. The problems in this election have their roots in laws, policies and procedures—or the lack of them—and then the application of technology in effecting those laws, policies or procedures.

Had Florida had a solid definition of what constitutes a vote by each voting system and then had an established recount procedure that would be followed uniformly throughout the state by all the counties, 90 percent of the problems of this election would have disappeared. Chaos can only happen when the laws, the policies and procedures are not set and in place *before* you have an election.

Many folks, including some with us today, have blamed the election officials of Florida for the chaos. And I will say to you that such a judgement is patently unfair. Legislative bodies are the only entities that can make sure chaos does not exist. Legislative bodies usually write election law and they usually write it to suit their own elections, not the administrative offices. The legislature of Florida and many other states have no set standards of what an election official is to count as a vote.

How can there be even an appearance of fairness in purely subjective judgement? In Florida we had 67 counties using widely varying standards of what constituted a vote and, in a recount, we had canvassing boards making decisions that election officials under normal circumstances would not define in the same way. But the state legislatures can fix that and it is not as hard as some would believe.

Recount procedures have to be uniform throughout a state according to the type of voting system they use so that the candidates and the election officials know how a recount is to be conducted. Considering the size of some of our jurisdictions, it is absolute insanity to order a hand recount of all ballots in races with many thousands of ballots. Voting systems in America were created to handle counting of significant numbers of ballots in less time and with far greater accuracy than humans. Use voting equipment to do the first part of the recount for all ballots it can count for each office. Then use humans to count anything the machines cannot read as a vote including overvotes (where the voter has cast a vote for too many candidates for a given office) or undervotes (where the voter has not voted for enough can-

didates for a given office) or any unresolved ballots that may not fit any other definition.

Again, state legislatures can fix this problem with state legislation. In fact, The Election Center's National Task Force on Election Reform, will make specific recommendations to the states for language they can adapt and adopt as their own based on what some of the states already do.

But even here, I am beginning to talk to a level of specifics that I cannot sustain due to time limitations in this hearing. In future hearings, I hope you will invite some of the elections administrators from our National Task Force (36 elections administrators from state and local levels) to discuss detailed solutions. That task force includes liberals and conservatives; Democrats and Republicans and unaffiliated administrators; is multicultural as to race, age, gender, sexual preference and size of communities and states represented from the very small to the giant size of LA.

Let me approach today's testimony from a different method. I have worked with each and every level of government in this process and there is a role in it for each level including federal, state and local.

The federal government, in 225 years, has never spent one dime in the cost of American elections. Isn't it about time it did so? Why should the cost of elections remain solely at the local level? Why should the townships, cities and counties of America be forced to bear the entire burden of elections?

I am NOT advocating the federal government try to take over the administration of elections because I don't really believe that is in the federal government's interest and would be such a radical departure from our 225 year history that it would not work very well. We want to keep the administration of elections at the local level because that is where most of our elections are held. And because that is where we have the people and staff knowledgeable enough to conduct elections.

The federal government certainly has a role in establishing in law the Federal Voting Systems Standards and the funding of those standards and the continuous update of those standards. The federal government certainly has a role in the establishment and funding of voluntary Election Management Practices Standards that states can adapt and adopt. The federal government should continue the Office of Elections Administration and the functions that it performs whether in the current Federal Elections Commission or in a new Federal Electoral Administration Commission. The federal government needs to be the clearinghouse for information related to voting systems and tracking overvotes, undervotes and system anomalies that can be reported throughout the nation.

Certainly, if we are to modernize the voting systems in place now, the federal government must be responsible for a major portion of the funding of that modernization effort. Local governments simply do not have the resources to do this in any quick timespan.

Certainly, it seems to me, the federal government ought to have the ability to offer states and localities on-going funding beyond the one-time replacement of voting equipment. Shouldn't it be worth \$10 per voter per year to fund the cost of maintaining voter databases; finding and securing accessible polling sites; advertising, staffing, conducting and assuring the integrity of elections; voter education and training; poll worker education and training; and election/registration administrator training? At the very least, these ought to be included as items worth funding on top of voting systems. Without necessary funds for doing these exceedingly important activities, most local jurisdictions simply will ignore these crucial but costly programs.

Shouldn't the federal government want to make elections mailings a priority of keeping in contact with all election age voters and to make it easier for them to stay on our active rolls as potential voters? We now have a national Postal Logo for sending out official elections mail. Now all we need is for the Congress to authorize the Postal Service to establish an elections class of mail and then Congress fund a portion of that mail so local jurisdictions can mail official voter registration notices, official voter information, notices of poll sites, notices of official elections, voter registration cards, and all the other things that help to keep voters in this process. This is an appropriate role for the federal government.

State governments also have specific functions that they need to take and without going into all the details of what we will recommend to them, it is important that they equally accept responsibility for improving this process. They must give us clear laws on elections procedures or allow their chief elections officials at the state level set these procedures in administrative rules with the force of law. They have to establish that local governments must let their elections administrators travel out of state to get additional and better training and get exposure to what other states



do as solutions to some of the age old problems. As one local administrator said "You don't learn anything new sitting at home talking to yourself."

Local governments and local election administrators will still need to carry the burden of conducting fair, honest and open elections. But they too, have to become more aware of the importance of this function to their citizens and to the process of maintaining a government that has the faith of the people. About one quarter of America's elections offices are funded adequately. The rest have been underfunded for far too long—and some local budget authorities have been negligent to the point of extreme. Part of that comes because few in the budget process even understand the needs and complexities of elections and haven't taken the time to learn. But this election may have been a wakeup call to them and other Americans that this process is too important to ignore. My fear is that complacency will rapidly descend on us and that locales will go back to underfunding and ignoring the elections offices. Education is critical to the continued success of elections: education of voters on how to participate in the system; education of poll workers on having the right attitude of assisting voters; education of election and voter registration administrators to improve their ability to conduct elections and to do so with a fairness to all voters.

Before I make my final statement to you, I want to assure you of this. There were serious problems identified in election 2000 but before we believe the whole process has failed, look around America to see that 98.5% of elections went well in most states and locales. We have been doing this process for 225 years and not all elections administrators suddenly became stupid in one election. Some of the flaws and problems in elections are ones that we have been warning you and local authorities about for more than 20 years and yet our warnings have gone unheeded. As an elections community, we want to work with you to make this process better.

It is always our desire to have voters feel welcome and that we need them in this process. Of all the government officials involved in all the functions of government, I will say to you that my belief is that elections administrators are the most "customer oriented" of all government officials. They work harder and longer at trying to accommodate their constituency than any other office I know. Frankly, they are, as a class of people, far more customer oriented than most American businesses.

And they make elections in this country work despite the lack of funds. With almost no resources, with almost no understanding by the public of what they do, with very little public recognition (except the negative kind when something goes wrong), these people we know as elections officials work hundreds of hours of overtime for which they will never be paid—nor can they even take the compensatory time they earn because if they do so their office would have to close.

The fact of the matter is that we get a much better administration of the elections process than we pay for and maybe even better than we deserve for the neglect that we have given to their profession.

Be cautious in your judgment of these folks. I know of no election administrator in America who wants to deny anyone the opportunity to participate in this process. We *want* all qualified voters in this process and we will do whatever it takes to make this experience a positive one for the voters. That is our commitment to our profession because we believe it is necessary for the preservation of democracy and even of freedom itself.

We are well aware that if a voter doesn't believe the process is fair and honest, then it is virtually impossible to believe in the resulting government. We will do our part to continue to insure that the process is fair and that it has integrity so that voters can feel that it is an honest process that accurately reflects the public's will.

Let me end with these statements: We want and need your participation in this process. Know that we will do our best to make this process work for you and dignify your participation for the parts of this process that are our responsibility and over which we can have any influence.

And to the nation's voters, know that we take our responsibilities very seriously. We strive to perfection—and even though we may not be able to achieve that level of perfection—we want to assure you that elections are run competently and fairly and they do indeed accurately reflect your votes as you cast them.

The CHAIRMAN. Thank you very much, Mr. Lewis.

Mr. Gashel, let me ask you, are there States that are moving forward with buying new election technology systems that will meet the needs of the elderly, blind, and disabled voters? Are there some States that are moving ahead in this area?

Mr. GASHEL. Yes, there are certain areas that are doing this. Texas has actually passed a law which requires accessible voting

equipment, and so I think that Texas will definitely be moving forward with this in the next election cycle.

I am very concerned about Florida, though, incidentally, Mr. Chairman, because at least of the news reports I have heard, they are talking about touch screen technology for every polling place for the 2002 election. If that happens, blind people won't be able to use that technology. There would have to be modifications. The modifications are quite simple, but I am afraid that states will scramble toward the touch screen technology, which is really not usable. And no matter what happens on the rest of this legislation, I think it is important that we need to get the signal out that states should not rush into technology at this point that is not accessible.

The CHAIRMAN. There is no modification of the touch screen technology that you are aware of that can accommodate—

Mr. GASHEL. Oh, there can be. In fact, there is one company that virtually has. It is like a television remote that you can hold in your hand that attaches to a touch screen voting terminal, and then the blind person could operate that remote rather than touching the screen. I am at least aware of that company, and there are probably some others that are going to be doing this. The important thing is this sort of thing has to be the standard. Touch screens alone won't work.

The CHAIRMAN. Other than friendly technology, are there other issues that you think need to be addressed related to the voting of the group that you are here to testify on behalf of?

Mr. GASHEL. No. Frankly, this is the major issue that comes up. You know, there may be some efforts made toward voter registration means—you know, and I am not sure I am prepared to get into a full discussion of that, except to say that if all you can do is fill out a card or something like that to register to vote, most blind people can find somebody to help them do that. It is not a very difficult process to do. But registration over the Internet or some other means might be a little bit more accommodating as the technology evolves. But the most problems arise for us in the area of actually casting the vote.

The CHAIRMAN. Mr. Lewis, in Florida—you mentioned that in every State it is sort of different in terms of what level of government has which authority over which part of the problem. In Florida, are decisions about ballot design, such as whether or not to use a so-called butterfly ballot that we heard so much about, the type of voting system used, the way voting places are staffed, the design of instructions for voters, and decisions such as whether or not to have card readers available for people to double-check their ballots, are those centralized in the hands of State officials in Florida or are they the responsibility of county election officials or county canvassing boards?

Mr. LEWIS. Like almost all of America, they are in the hands of the local officials.

The CHAIRMAN. So those in Florida, those issues were entirely in the hands of local county officials.

Mr. LEWIS. Correct.

The CHAIRMAN. Do you think the use of butterfly ballots, the lack of safeguards such as card readers for punch card ballots, the in-

consistent decisions poll workers made to allow some people who could not be verified as eligible, registered voters to vote, but not others, and the unusual number of invalid and illegal registrations and ballots in certain Florida counties were the result of intentional racial discrimination and election fraud schemes?

Mr. LEWIS. I know of no election official in America—and I know most of them. It is not a large community, Senator, and I go around to the States and talk to the States, and I have met most of these folks. I know of no election official in America who would intentionally deny the right to vote to any qualified voter in America. We want people to participate. We are measured unfairly by whether or not they participate.

And so it is our intent to make sure that they have a good experience in this. That doesn't always come through, and because some voters don't understand the process, they begin to believe that you are trying to dissuade them from voting when they simply just do not understand.

In some cases, we obviously have a disconnect between NVRA agencies and the voter registration office, and we are going to try to find ways to solve that problem so that doesn't occur anymore. We certainly have got a disconnect in terms of the voters not knowing that in many instances they have to be registered to vote before they can actually come vote.

And so I know of no election official in America that intentionally tries to preclude any qualified voter from participating in this process.

The CHAIRMAN. In fact, I have not heard of any evidence to that effect. Have you?

Mr. LEWIS. Well, to the best of my knowledge, no.

The CHAIRMAN. Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

Let me begin by thanking both of our witnesses. Mr. Lewis, I don't know you very well, but I appreciate your testimony. It was very helpful. And Jim Gashel and I have known each other for a long time. I suppose for truth in advertising here, I ought to report that I have a sister who is a member of the National Federation of the Blind, and she has worked closely with Jim Gashel and the Federation over the years. She is a teacher in Connecticut, and so I get an earful about issues affecting the blind.

Mr. GASHEL. She is the president of one of our local chapters.

Senator DODD. Yes, she is. She does a tremendous job, as a teacher as well as someone who is active on these issues affecting the blind. So I have grown up, with my older sister being visually impaired, so I have more than just a passing familiarity with the issues that affect this constituency and community. But I am deeply appreciative of your testimony, both of you here this morning.

I want to just briefly hear, if you might, Jim, beginning with you, if you could maybe just elaborate a bit more on what you think the appropriate role would be for the Congress in legislating for elections. Obviously, as has been said here this morning, there is a great deal of respect for localities and States to utilize and to be sensitive to the various differences that exist in the country so as not to apply a one-size-fits-all solution on what mechanisms people ought to use in voting. But I make a distinction between that,

choosing a particular method of voting, and standards, basic standards that ought to be applied in terms of what rights people have and what access is available.

As I counted—and Mr. Lewis can correct me if I am wrong here—I think there are some 192,000 polling places in the United States. Is that right, Mr. Lewis, roughly?

Mr. LEWIS. Give or take a few thousand.

Senator DODD. And you mentioned there were some 27,000 people in Los Angeles alone who were asked to volunteer, basically, and 8,000, I think you said, in your hometown of Houston, is it? I gather that with the number of 192,000 polling places, we are talking several hundreds of thousands of people on election day who are asked to, in effect, become officials.

Mr. LEWIS. Actually, about 1.4 million.

Senator DODD. About 1.4 million, with about an hour's worth of training at best in some places.

Mr. LEWIS. Yes, sir.

Senator DODD. So on that one issue, I don't have any question whatsoever that someone in your capacity, Mr. Lewis, and your intent to make sure that people have the right to vote. But you and I both appreciate the fact that when you are dealing with 1.4 million people out there who are acting as officials, sometimes people bring different motivations. You are nodding your head yes. Is that a yes?

Mr. LEWIS. Yes, sir.

Senator DODD. Okay.

Mr. LEWIS. Absolutely.

Senator DODD. I am going to ask both of you the same question, so if you might think about this, as well, Mr. Lewis, what is the proper role here for Congress in Federal elections? Now, as a Federal legislative body looking at Federal elections, where there are, at least in my view, some gaps that need to be filled, what recommendations, Jim, would you make?

Mr. GASHEL. Well, first of all, I think that there is an important distinction to be made between the administration of the voting system and the actual counting of the ballots, which is absolutely a local responsibility, and at least in my opinion. For what it is worth, I believe it ought to remain a local responsibility. Between that on the one hand, here standards which ought to be overarching and should apply across the board throughout our country—whether you are voting in Los Angeles, California, or Hartford, Connecticut, or Baltimore, Maryland. And there are certain kinds of standards. The one I believe in most fervently is that you ought to be able to use the technology even if you can't see to read the print. Additionally there are other certainly civil rights issues that are covered in the Voting Rights Act, and, again, there is our provision for the voter assistance legislation. This ought to be an overarching standard. There are other areas that I wouldn't even begin to know about, but I am simply making the point that the method that people use to vote should essentially be universal. I don't mean that all of the technology has to be precisely the same, but there are clearly standards that should apply to the use of the technology. And there is no rational basis for having those stand-

ards be one thing in Connecticut, another thing in Maryland, and another thing in California.

There is a rational basis for having the administration and the actual counting of the vote and the conduct of the election being local.

Senator DODD. I think you said that very well, and I have got another question for you, Mr. Gashel. But let me jump to Mr. Lewis so there is some continuity in this. Do you have anything you would add to that, or would you—

Mr. LEWIS. You bet.

Senator DODD [continuing]. Disagree with that?

Mr. LEWIS. No, no. You know, it depends on what we obviously mean. The devil is in the details. But reality is that the Federal voting system standards is certainly a role that the Federal Government needs to promulgate, fund the development of, the update of, so that we can do that. I mean, we did it once under the Federal Election Commission, and they did it basically out of funds they had. And since then we haven't done anything to them, and, you know, we have been asking for a long time to get those funded.

Certainly, we all know in the elections profession, we have been asking for 8 years now for the development of the management practices standards, and those certainly ought to be funded by and promulgated by the Federal Government as voluntary standards for the States to adapt and adopt. Certainly, that needs to be there.

In terms of elections mail, it seems to me that we now have a national logo from the Postal Service to identify official elections mail. It seems to me the Federal Government needs to be able to at least subsidize a portion of that so that we can reach every voter in America with information about elections and, if necessary, with sample ballots and other kinds of information. But all of that is expensive, and all of that requires a lot of mailings. And so certainly we need that.

Certainly we need probably a beefed-up Office of Elections Administration, whether it stays in the FEC or some new agency. We certainly need to be tracking at the Federal level anomalies in voting systems and imperfections in voting systems, and knowing what voting systems do to voters themselves. This was all brand-new information to us this time around.

So those are things that absolutely the Federal Government has a role in, and an appropriate role.

Senator DODD. Yes. And I presume you might add to that the training of the 1.4—did you say 1.4?

Mr. LEWIS. Yes, 1.4 million poll workers.

Senator DODD. Who are these people, generally? Give me a profile of an average poll worker.

Mr. LEWIS. The average poll worker is a retired citizen who does this basically out of—I guess a need for income, but probably more as a sense of duty. We average pay them nationwide about \$5 an hour for a 14-hour day. In some States, it is a little longer than that. If you add on the fact that, in addition to the voting poll hours that they are open, you have got at least one hour before and at least one hour afterwards that they are still working. And so they tend to be volunteers. They tend to be people who do this once

or twice or three times a year. They may or may not pay attention to the training you give them.

I will say this: If we know, if we ever hear, if we ever learn that any one of them has been discourteous to a voter, has treated a voter incorrectly, has maltreated a voter, or shown any racial prejudice or prejudice of any kind, we remove them. We do not allow it. And yet, at the same time, we do that in the face of the fact that we never have enough of them.

Senator DODD. And do you have any screening method at all, other than when someone may bring a report to you about someone? Is there any way in which you determine—

Mr. LEWIS. Once they bring a report to us, it doesn't take usually but about one or two, and if we can even come close to confirming it—and in a lot of cases we don't even confirm it. If the complaint has been made, they are history.

Senator DODD. Yes. But other than that, people come and basically you reach out through public service announcements and ask people? I say "you." I mean this is how it is done.

Mr. LEWIS. Right, exactly.

Senator DODD. So pretty much if you show up you get the job?

Mr. LEWIS. It used to be, you know, the political parties provided these. But the political parties are not really strong organizations anymore at the local levels, and so they don't really provide enough bodies to do this.

Senator DODD. So it is people who show up, basically.

Mr. LEWIS. Basically. And, in fact, on the morning of election, we are recruiting people to come to work for us. So they have had no training.

Senator DODD. Well, I have a couple more, but I have used a lot of time here.

The CHAIRMAN. Senator Schumer.

Senator SCHUMER. Thank you very much, Mr. Chairman. I, too, want to thank the witnesses both for their excellent and erudite and very helpful testimony as we try to craft a bill here.

I would just ask you, Mr. Gashel, just tell us your personal history in voting and what it is like to have to vote with another person or a poll worker in the voting booth with you. Has it gotten better? Have people become more sensitive over the—you have voted for about as long as I have.

Mr. GASHEL. Yes.

Senator SCHUMER. You said 1968.

Mr. GASHEL. Right.

Senator SCHUMER. Tell us also the worst problem you have as you actually try to vote, not the registration process.

Mr. GASHEL. Right. One time I went to the polls, and I inadvertently hadn't registered, and I didn't get to vote. But that was my fault, so I blame that one on myself, not the system.

But I would say, Senator Schumer, that every single time I go to the polls on election day, I go there with some degree of trepidation about what will happen to me in interacting with the system. And, you know, I am a reasonably savvy guy about dealing with systems. But it is not comfortable, and I am not overdramatizing that. This is what many blind people tell me, because you are going there, you are thinking about doing your citizenship duty,

and the last thing you want to have to do is to fight with somebody who is administering the system. And, mostly, the poll workers are well-intentioned people, but I am coming there and I am different. I don't fit the mold. Therefore, they don't know what to do with me.

A lot of times they make me sign an affidavit that I am being assisted by another person. I object to that. I don't want to do that. I don't want to sign some affidavit. To me it is irrelevant. I want to go and cast my vote.

The affidavit process that I just described has been outlawed in Maryland, but still at my polls they don't know it has been outlawed. And so I had to do that at the last election.

These things are annoyances at one level, but they tell us as blind people that the election process is not really welcoming. And we don't want to send that message in the election process.

If the voting machine will talk to me, and if the poll workers won't hassle me, I will cast my vote and I will feel like I am a welcome part of this democracy.

Senator SCHUMER. Thank you, Jim. And just one other. Do you think the percentage of people who are visually impaired who vote is much less than the rest of the public? Do people use absentee ballots? I mean, tell me just a little about that.

Mr. GASHEL. I think some people may tend to use absentee ballots a bit more. Perhaps that may be true more of senior citizens who have difficulty getting out and don't have the mobility that I have. I have never used an absentee ballot because I am blind. And I frankly think that blind people may tend to participate in the election process somewhat less because it is often viewed as somewhat of a hassle to do so.

Senator SCHUMER. Thanks. I just have three questions for Mr. Lewis. In the interest of time, I will ask them all together, and he can answer them seriatim.

The first is: You have been quoted as saying that the cost of replacing old voting machines, like the ones we have in New York, and other outdated technology could rise as high as \$6 to \$9 billion. That was a couple of months ago, as I remember. Do you still think that is correct or might not standardization of computer technology on voting, interchangeable PCs, laptops and all of that, you know, just the technology not the actual way of voting, might reduce the cost? That is question one. Just give us a little more flesh on how expensive.

Second, we have terrible problems with the poll workers. I know that both Mitch and Chris have talked about that. In New York, let me tell you, you don't get—you often go to a polling place where there should be two or four workers. We have a bipartisan system where each major party chooses one. And there is one because the others—they can't get them. It is a long day. As you say, the pay is low. I think we might even be a little lower than your per hour figure. We are open a long time, 6:00 in the morning until 9:00 at night. And you just see people not coming. They just can't get them. They beg people.

So what about the idea of having—and it is an idea, and, again, I wouldn't want a Federal mandate on this—but of having the poll workers, people called for poll place duty like they get called for jury duty, maybe even part of the same type of system? It is an

obligation. It is a similar obligation. Maybe you could do it once at your polling place. You don't get called for jury for several years. Something like that, what do you think of that idea? That is question number two.

And, finally, all of the systems you mentioned, the Federal ones, are voluntary. They set standards. They are sort of, you know, like the UCP or something. It is a model that States and localities can adapt. They don't have to. And my question is: What is your view—do we now have any mandates other than—under the Voting Rights Act, which obviously is an important one. But do we have any other election-driven mandates on local or State governments on how they ought to conduct voting?

Those are the three questions. Do you want me to repeat—

Mr. LEWIS. Number one, I am trying to remember what it was. I can remember two and three, but what was number one, again?

Senator SCHUMER. I have got to remember it, too. It was on the cost.

Mr. LEWIS. Oh, yes. Well, it is my fault—and this gives me a perfect opportunity to clear up some of that. Originally, when we were talking to the vendors, they were estimating that in order for us to come up with systems that would be compliant for many of the disabilities, not for all of them but for many of the disabilities, that their original estimates on that equipment range between \$13,000 and \$15,000 a unit.

Since the election, we have gone back to the vendors and asked them to recalculate, and certainly we are now down to where we are probably talking more like \$4,500 to \$5,000 per unit. And so that number—and that number is not for the disability groups themselves. That number is what the cost of the unit is and then add in disability and language-minority features to the units, which adds anywhere from—depending on the manufacturer, anywhere from \$500 to \$1,000 per unit. And so these are not massive costs being added to it.

Realistically, we are probably now down in the range of \$3.5 to \$5 billion, you know, in the—

Senator SCHUMER. \$3.5 to \$5 billion?

Mr. LEWIS. Right. If you replaced every voting system in America and made it all do the following things—I am not sure that we have to go that far.

Senator SCHUMER. Aren't about 20 percent of them in pretty good shape?

Mr. Lewis. Absolutely. And, certainly, you know, you don't have to go through and replace every cotton-picking voting system in America. And, certainly, it seems to me that the costs that we need to bear in terms of at least making some of those systems available in every polling place, you know, we may not have to make all of them, but certainly we need to make some of them so that we can take care of the blind, so that we can take care of quadriplegics and low motor skill and low education skill and maybe even mental impairments. I mean, those are things that we need to look at and to make some—

Senator SCHUMER. Right. But those figures you give are, as you mentioned, the machinery.

Mr. LEWIS. Right.



Senator SCHUMER. Making it handicapped friendly.

Mr. LEWIS. Right.

Senator SCHUMER. As Mr. Gashel said. But not all the other costs that might be associated.

Mr. LEWIS. No.

Senator SCHUMER. Polling workers and all this other stuff.

Mr. LEWIS. No. Those are additional costs that go along.

Senator SCHUMER. So a \$5 billion number total might not be out of the ballpark. It is large.

Mr. LEWIS. Exactly.

Senator SCHUMER. Okay. Next question.

Senator DODD. Let me just say, it was interesting. We had the General Accounting Office do an assessment. They have roughly your numbers, about 3.5.

Mr. LEWIS. Yes, about 3.5

Senator SCHUMER. Was that just machines?

Senator DODD. Just machines.

Mr. LEWIS. Just the equipment alone.

Senator DODD. Just the equipment.

Mr. LEWIS. Just the equipment alone.

Senator SCHUMER. Okay. Right. Now, we have forgotten, you and I both—jury duty.

Mr. LEWIS. Yes. I am have—oh, jury duty. It at least sounds like an intriguing idea. Let me say to you, I met just before coming here for 2 days—actually, 3 days, with our national task force on elections reform. I sit on virtually every one of these things that was formed by anybody anywhere, and so it is always interesting to hear the ideas.

This one was elections administrators, both State and local, and we asked this very question. And most of them said, while it sounds like a good idea, you don't really want somebody who doesn't want to be there in the polling place trying to work with voters and interacting with voters, because then you don't know what you are getting.

Senator SCHUMER. What I was thinking is it could be a voluntary substitute for jury duty. In other words, there are a lot of people who would rather say, okay, I'll get up at 5:00 in the morning, serve all day, get home at 11:00 at night on election day, but I dread being called when I have to work or I have to watch the kids or something like that. So all the people who would come would do it at least under less coercion than if you just—

Mr. LEWIS. Right. And at this point, quite frankly, I think in order to regain faith with America's voters that we may have to try some things and just find out. We may discard them, you know, but at least we need to try some things to make sure that we can at least get more and better quality. You know, when people tell me they need better quality poll workers, you know, that connotes surplus. And, I mean, we don't have that situation.

Senator SCHUMER. Not in my State. The last one was: Are there any, other than Voting Rights Act, Federal mandates on how the localities and States ought to conduct elections as of now?

Mr. LEWIS. Well, there are certainly, at least in terms of the Americans with Disabilities Act, there are conscriptions that we do follow based on what those guidelines are. Unfortunately, it is

not—there is a national law that covers it. It leaves the States to apply it, and sometimes the definitions within the State differ from State to State.

But part of that is built on the fact that some terrain is entirely different and situations are entirely different, you know, in New York, where you have major urban areas as opposed to West Virginia, which has got very steep inclines to build anything on, and so that is part of what is there.

But, otherwise, no, I know of none other than the civil rights laws themselves that actually apply.

Senator SCHUMER. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Schumer.

Senator Dayton.

**OPENING STATEMENT OF HON. MARK DAYTON, MEMBER, A  
U.S. SENATOR FROM THE STATE OF MINNESOTA**

Senator DAYTON. Thank you, Mr. Chairman. And I want to commend you, Mr. Chairman, for convening these hearings and, Senator Dodd, the ranking member, for your sense of urgent response to the situation that occurred last year. In my short 2 months here, I have come to already feel a frustration often trying to develop a sense of urgency about situations. I say that sometimes I feel like it is trying to push the Sta-Puff marshmallow man up Mount Everest. In this instance, I commend you, Mr. Chairman, for focusing this committee on what I think is an urgent matter. And certainly I—and I would think probably most Americans—in the last several months had a lesson in civics and in democracy. And I hope we could take these matters out of the realm of a particular election and any kind of partisan view of that and blaming one particular State versus another and look at it from the standpoint of what must we do to assure that the integrity, of our democratic process, is maintained. And I view this election as, in a sense, kind of a Pearl Harbor of our democratic process in that we realized how lax and unprepared and unequipped we have become, perhaps without fully recognizing it.

Mr. Lewis, I appreciate your remarks about the complexity, the magnitude, the number of people who are involved, all of which suggests that it is never going to be a perfect system. But it seems to me that there is a big difference between imperfection and incompetence. And I don't mean in terms of the people, but in terms of the systems or the lack of systems that we have put into place.

I am wondering, in terms of this, if it is the premise or the notion that States and local governments should have the flexibility, the laxity to kind of conduct elections now almost as they deem fit, if we are not paying a price for that and we don't recognize that, particularly in the context of the last election, and particularly because all of us as citizens are going to be affected by how well some place or another does or does not conduct their elections.

I wonder if you would care to comment on that, sir.

Mr. LEWIS. Senator, you know, this is one of those where you are torn between knowing that you have got some problems that need to be fixed and to admit that we had in some cases egregious errors

as it relates to voters. But to say that the system is broken, to say that it doesn't work, is just not so.

I mean, 98.5 percent of the elections in America had no problem. They went fine. And we focused on technology and the failure of technology or the answer of technology to fix all these problems, and that is really not the case either.

Where we are is that Florida, like a lot of the States, had no definition, no standard, no direction to the elections officials as to what constitutes a vote. And so we ended up with 67 counties interpreting it differently. And not only 67 counties, but then everybody that was involved in that process interpreted it differently.

Senator DAYTON. Mr. Lewis, I don't want to fault people, elections officials, and the like, but I would like to address your premise that technology is not a big part of the solution here. We have computer systems, we have machines that do far more complex processes these days than instructing people how to vote and vote correctly and then counting and tabulating those votes. I can go to an airport now and be instructed how to purchase a ticket. We have machines that tell retail clerks how to conduct the transactions so that they are virtually error free. We have systems moving millions, billions of dollars daily and doing so with near perfection. And I guess, you know, I don't think we are ever going to be able to take the human element out of this in the conduct of the elections or the conduct of voters, but it seems to me we have mastered this in a whole lot of areas where it is in our interest.

I guess I go back to the premise that founded your organization in your prepared testimony where two members of the Federal Election Commission despaired that the Federal Government was going to make the commitment necessary to be conducting elections to their optimal ability. And it seems we have reached the unfortunate harvest of that in that failure to do so last time.

Now, I commend Senator Schumer for—whether it is a commission, whatever it is to look at this and give it the attention it deserves so that we are not just throwing money at a problem. But, on the other hand, it seems to me these systems are woefully—the tabulation systems have been proven to be in some cases woefully antiquated, inconsistent within one State from one area to another, which seems to me to be even less defensible.

What can we do and how can we best do it based on your experience to bring this quickly up to a more acceptable national standard?

Mr. LEWIS. Well, Senator, you are not going to get an argument from me on that basis. I used to own a technology company, and when I came back into elections and was reminded how far behind we are in some of this, you know, I would like to get us into the 20th century, let alone the 21st.

But the point is that we have overfocused on technology as both the problem and the solution, and it is a part of the mix. But it is by no means what is going to really fix the real problems that occurred, because I can show you in example after example after example around the country that were using the same technology that they had different results. I can show you examples of where—and even Cal Tech and MIT in their report right now say-

ing that the newer systems, you know, create more problems than the old ones did.

Now, I don't know whether that is correct or not, and I don't know whether we are going to find out by experiential level that that is the solution yet. And when we say that there are technology solutions to some of these other things and they have virtually no error rate, please understand that business and industry establish an acceptable error rate. And what you don't get to hear about is that acceptable error rate. ATM machines have a fairly high error rate, but we don't hear about it very often. And their error rates are higher than we could ever live with in an election contest.

And so what we have to do is we have to look at finding a way to reach almost perfection in using technology to where we somehow don't have that technology exclude people because they don't know how to use it or use it inappropriately. And yet when I see what causes the problems and look at—I mean, we have looked at this a lot. And we know that central count systems tend to have far more error rates than precinct count systems. And yet sitting with elections administrators, I heard people who run central count systems who had lower error rates than any precinct count system.

So there is a combination here of policies and procedures and laws that need to be fixed first, and we have got to work on those. We are accepting our role in this and our responsibility in this. But it is almost too neat and too easy to say that this falls only on technology. It is important to me, it is important to the Nation, that we upgrade this technology to the extent that we at least get into the modern era.

Senator DAYTON. We have both used up our time. Thank you. Thank you very much.

The CHAIRMAN. We are going to have to—let me just announce to all the witnesses we are going to have a dilemma here. We have got three votes starting shortly. What Senator Dodd and I are going to do is wait until about 5 minutes are left on the first vote, and at that point we will have a recess. Then it will probably last 20 or 30 minutes, regretfully.

Any other questions for this panel?

Senator DODD. If it is all right, I had some additional ones. What I would like to do, if I could, is submit some in writing to you. I suspect other colleagues may do the same, rather than hold you here, if that is all right with you, Mr. Chairman.

The CHAIRMAN. That is a good idea.

Senator DODD. Then just one quick observation, Mr. Lewis. Picking up on what Senator Dayton has said here, I think the system is broken. You know, we ended up with one of the lowest voter participation rates in the industrialized world. There are Third World nations that do a better job. Brazil, because of their new implementations of technology, has been able to increase voter participation almost without incident in the last several elections they have had. And there was a nation that had huge problems. And they did it with some national standards.

So I do think it is broken. When you end up with a low voter participation, when you have undercounts, when you have people who are being turned away from the polls in droves in many

places, that is a serious flaw in the system in a Nation that prides itself and instructs the world on how to vote and conduct elections.

I am not pointing this at you specifically, but I take issue with the notion that this system is not in seriously bad shape. It is.

The Chairman. Of course, I would say to my friend Senator Dodd, the turnout issue is a totally different issue, and it is noteworthy that in most democracies where the turnout is high, they *Require* voting. You have to vote. If you don't vote, you get fined. It has a remarkable impact on turnout. We will have that debate another day.

Thank you very much for being here.

The CHAIRMAN. The vote has not yet started, so we are going to get started on the second panel. I would like to ask Todd Gaziano, senior fellow in Legal Studies at the Heritage Foundation, Hilary Shelton, director of the Washington Bureau of the NAACP, Juan Figueroa, president and general counsel of the Puerto Rican Legal Defense & Educational Fund, and Steven Knack, a professor in political science, I think at the University of Maryland, to please join us.

Senator DODD. If I could just exercise—Juan Figueroa and I are old friends. Juan, I didn't know you were going to be here today until I got the list. Juan was a member of the State Legislature in Connecticut.

Mr. FIGUEROA. Good to see you, Senator.

Senator DODD. I haven't seen you in a long time. It is good to see you again, Juan. Welcome.

The Chairman. You are a recovering politician. [Laughter.]

Let's lead off with Mr. Gaziano.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF TODD F. GAZIANO, SENIOR FELLOW IN LEGAL STUDIES, THE HERITAGE FOUNDATION, WASHINGTON, D.C.; HILARY O. SHELTON, DIRECTOR, WASHINGTON BUREAU, NAACP, WASHINGTON, D.C.; JUAN A. FIGUEROA, PRESIDENT AND GENERAL COUNSEL, PUERTO RICAN LEGAL DEFENSE & EDUCATION FUND, INC., NEW YORK, NEW YORK; AND STEVEN KNACK, PROFESSOR, BETHESDA, MARYLAND**

**STATEMENT OF TODD F. GAZIANO**

Mr. GAZIANO. Good morning, Mr. Chairman and members of the committee. Thank you for the opportunity to testify today on election reform and issues related to the 2000 election. My written testimony addresses two somewhat distinct areas, but because of the limited time, I can only touch upon the Supreme Court's election ruling in my oral testimony. But that ruling does have an impact on State and Federal election reform, what is required of you, what is allowed, and what is not allowed. So I would be glad to address those questions in further detail after our oral testimony.

The most important aspect of the U.S. Supreme Court's holding in *Bush v. Gore* was that all of the recounts that had been going on in Florida prior to December 12th were unconstitutional. That ruling was by a vote of 7 to 2, not 5 to 4, as has been erroneously reported in many places.

Outside the racial context, where I do think that the equal protection, vote dilution theory is very sound, I continue to question some aspects of the Court's decades-old jurisprudence that requires every vote in every political subdivision to be weighed exactly equally or almost exactly equally. Nevertheless, the equal protection and the due process rationale were joined by seven Justices, and they were the strongest grounds for the Court's ruling based on precedent. The scope of the Court's opinion is somewhat unclear, but there is some limiting language in the majority opinion to guide us.

Let me now turn to the States' failure, in my view, to ensure that only eligible voters vote in Federal elections.

In Federal elections, Congress has an important responsibility to prevent fraud, improve vote counting accuracy, and ensure that American citizens' votes are not illegally diluted by people who are not eligible to vote. Regardless of the intent of the so-called "Motor-Voter" law, it has helped create the most inaccurate voting rolls in our history. Citizens are registered in multiple jurisdictions at the same time, reports of fraud are common, and very few States have effective procedures to ensure that those registered are even citizens.

Article I, Section 4 of the Constitution grants Congress the power to establish the time, places, and manner of congressional elections. In any legislative action, I believe that you should leave as many alternatives open to the States as possible, although constitutionally I think you can almost preempt the States with regard to regulating the manner of congressional elections. With regard to State elections, they can have their own system, but by and large, they will probably comply with your Federal mandates.

But in my view, you ought to leave the States as much discretion as possible, but establish appropriate safeguards, minimum standards in vote counting, tabulation, and voting procedures.

I want to contrast, however, Congress' authority to regulate the time, places, and manner of elections with Congress' authority to establish voter qualifications. Apart from certain obvious prohibitions, including race, age, and sex discrimination, the States have the exclusive power to establish voter qualifications, even in congressional elections. All States accept the basic principle that legal voters should be U.S. citizens, but the Motor-Voter law has complicated State efforts to keep non-citizens off their rolls. The estimates vary on the number of non-citizens who are registered to vote. But it probably provides the margin of victory in some close elections, including one in Wisconsin this past year. According to my review, I seriously doubt it made any difference in the Presidential election.

But the most hotly debated restriction on voting today are the laws that exist in different forms in almost every State that disenfranchise persons convicted of various enumerated crimes that are either quite serious felonies or indicate a particular degree of untrustworthiness, such as election fraud.

In recent years, there have been bills introduced in Congress—and some of the written testimony that has been submitted today—urging you to overrule and ban those State laws. Congress not only has no enumerated power to interfere with State felony disenfran-

chisement laws, but such laws are specifically sanctioned in Section 2 of the 14th Amendment and result in no reduction in a State's congressional representation.

Nevertheless, some are concerned that State disenfranchisement laws affect certain communities more than others. At first blush, it seems like a laudable goal to eliminate or try to eliminate such disparities. But that might have some perverse effects on the communities most affected by these laws. With regard to the traditional purposes of these laws, which I would be glad to elaborate on, it could be argued that those communities that currently have the highest level of State disenfranchisement are the most protected by those laws.

The CHAIRMAN. Let me just mention to you, the red light has gone on.

Mr. GAZIANO. Thank you.

The CHAIRMAN. Try to wrap it up, if you can.

Mr. GAZIANO. Certainly. The only remaining point in two sentences is: I think there is a role for you to play in State felony disenfranchisement, however. There is some litigation under the Voting Rights Act that would attempt to overturn some of these State laws under a disparate impact theory. I believe that that is constitutionally flawed litigation and should fail. I would be glad to elaborate on that if you wish, but I think it would be helpful for Congress to clarify that, on a showing of disparate impact alone, as opposed to intentional discrimination, Federal law does not interfere with State felony disenfranchisement laws.

[The prepared statement of Mr. Gaziano follows:]

PREPARED STATEMENT OF TODD F. GAZIANO, SENIOR FELLOW IN LEGAL STUDIES AND DIRECTOR, CENTER FOR LEGAL AND JUDICIAL STUDIES, THE HERITAGE FOUNDATION\*

Good morning Mr. Chairman and Members of the Committee. Thank you for the opportunity to testify today on election reform and issues related to the 2000 election. For the record, I am a Senior Fellow in Legal Studies and Director of the Center for Legal and Judicial Studies at The Heritage Foundation, a nonpartisan research and educational organization. I am a graduate of the University of Chicago Law School and a former law clerk to the U.S. Fifth Circuit Court of Appeals. I also served in the U.S. Department of Justice, Office of Legal Counsel, during different periods in the Reagan, Bush, and Clinton Administrations, where I provided constitutional advice to the White House and four Attorneys General.

A number of concerns have been raised about the 2000 election. In my view, some are serious and some are not. I will divide my testimony today between two somewhat distinct areas. The first is whether the Supreme Court of the United States improperly interfered with the recent presidential election. The second is whether the states have taken adequate steps to ensure that only eligible voters are voting in federal elections.

If you find that the Supreme Court's exercise of jurisdiction or their decision in *Bush v. Gore* was in serious error, the Congress has some authority under Article III, section 2 to regulate the Court's appellate jurisdiction in future elections. If you find that the states have failed to take adequate steps to prevent vote dilution of eligible voters, you may exercise your powers under Article I, section 4 to alter the times, places and manner of congressional elections.

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## THE SUPREME COURT'S ELECTION 2000 RULINGS

I will turn first to an analysis of the Supreme Court's election rulings. At The Heritage Foundation, I edit a Supreme Court bulletin for our subscribers in which I report on the decisions and other major actions of the Supreme Court. I am also a member of the Bar of the Supreme Court and I frequently attend oral arguments at the High Court. So it was with some interest that I followed the election contests in the state and federal courts as they worked their way twice to the Supreme Court of the United States.

The most important constitutional holding of the U.S. Supreme Court in *Bush v. Gore* was that all of the recounts and re-recounts in Florida prior to December 12 were unconstitutional. That ruling was by a vote of 7–2, not 5–4 as it has been erroneously reported in many places. This 7–2 ruling is undoubtedly correct, and the only aspect of the vote that surprised me was that it was not unanimous. This is because there were several independent grounds for holding that the recounts were unconstitutional based on the Court's equal protection and due process precedents and the text of Article II. In fact, the two dissenting justices had to abandon positions they had previously taken in analogous cases to vote as they did.

I am disappointed that some lawyers who should know better are continuing their effort to mislead the public about the need for—and correctness of—the Supreme Court's December 12 ruling. These activist lawyers are joined by others who have a partisan motive to undermine the legitimacy of the current Administration. For example, I am well aware that debates still rage in the law schools over the Court's decision. But that says more about the politicized nature of American law schools than about whether the decision was controversial in any objective sense.

In recent weeks, former Solicitor General Charles Fried, who teaches at Harvard Law School, and federal appeals court judge Richard Posner, who teaches at the University of Chicago Law School, have ridiculed the academic ferment over the Supreme Court's decision. Professor Fried has said that a newspaper ad by a number of law professors was a “preposterous” statement by a group of people “in the grip of partisan excitement.” He is quoted in *The New York Times* as saying that “[t]he only thing that is beyond the pale is this kind of ridiculous rhetoric about the court disgracing itself.”

Judge Posner has expressed similar sentiments and has said that at least one prominent member of the University of Chicago Law School faculty now regrets signing the letter and is trying to distance himself from it. But no one should be surprised that a number of legal academics will continue to churn out utter nonsense—for liberal agitprop is now a high art form in many American law schools.

The Supreme Court's December 4 and December 12 decisions speak for themselves and they are understandable to any intelligent person who takes the time to read them carefully. I will summarize some of the principal features for the Committee, but I urge you not to take my or anyone else's testimony or submissions at face value, particularly those that amount to thinly veiled attacks on the justices' motives. There was a time when the leading Supreme Court advocates were U.S. Senators, and while your modern duties may prevent you from actually arguing the leading cases of the day, I submit that you are fully capable of evaluating the correctness of a given case by yourselves.

That said, let me summarize what I consider to be some of the most important aspects of the Supreme Court's two decisions:

In both decisions, *Bush v. Palm Beach Co. Canvassing Bd. et al.* (Dec. 4, 2000) and *Bush v. Gore* (Dec. 12, 2000), all nine justices of the Supreme Court agreed that the cases were within the Court's jurisdiction because they presented important issues of federal constitutional and statutory law. Some have accused conservatives of hypocrisy for defending the federal suit, but there is nothing inconsistent with defending federal intervention in the 2000 presidential election dispute. Progressive nationalists may try to advance the position that states have no reserved power except that which the national government permits. But strong defenders of federalism have never taken the opposite position that the national government has no constitutional power of its own.

The federal judiciary is unquestionably vital in the vindication of federal rights. The U.S. Supreme Court would not have agreed to hear the Florida cases, no matter how important the election contests seemed to others, if it did not conclude that the case presented weighty issues of FEDERAL law. The real irony is that some liberal academics now invoke the crudest formulation of the states' rights argument in the ongoing debate. No principled federalist would sign on to such a formulation.

Outside of the racial context, I continue to question some aspects of the Court's decades-old jurisprudence that requires every vote in every political sub-



division to be weighed exactly equally. Nevertheless, there is no doubt that this line of cases predated the 2000 election and was implicated by the inconsistent standards of vote tabulation applied in different parts of Florida. In the days leading up to the oral argument in the first Supreme Court case, I noted in an op-ed that the Supreme Court should have considered the equal protection issue in its initial grant of certiorari. I predicted then that a ruling on the equal protection issue “would have the greatest impact in voiding the results from all selective hand recounts and end other . . . attempts to cherry-pick votes. Because a statewide hand recount with uniform standards is increasingly unlikely, an equal protection ruling probably would be dispositive.”

After numerous subsequent court proceedings, the Supreme Court finally took up that issue and seven justices ruled that all the previous recounts were unconstitutional because they violated equal protection and due process guarantees. It was obviously hard for any justice to disagree, although the two most ideological liberals, Stevens and Ginsburg, found a way to abandon their prior positions in pursuit of a contrary result. Stevens and Ginsburg argued that the inconsistent vote tabulation standards were “flawed” and “raise[d] serious concerns” but that the state courts could be counted on to take care of the problem. Would these two justices have ruled that literacy tests were only “flawed” and that state courts in the Jim Crow South were in the best position to resolve those issues? In any event, it was the four liberal justices who were evenly divided (2–2) on the most significant constitutional holding of the case.

Based solely on precedent, the equal protection rationale joined by seven justices was the strongest ground for the ruling. Nevertheless, I believe the separate opinion by Chief Justice Rehnquist for three members of the Court provided a more satisfactory basis for the ruling. The Chief Justice pointed out that all the hand recounts were illegal under Florida statutes and that Article II of the Constitution required the federal courts to enforce that state Legislature’s mandate. This opinion is worth reading again if for no other reason than it is a fitting defense of the logical and sensible decisions that Secretary of State Katherine Harris made in applying the Florida election laws.

As for the hysterical rant that the majority was wrong to end the re-re-counts on December 12, not doing so would have required the U.S. Supreme Court to overrule a federal statute that provides finality if that date is met, a Florida statute that was enacted to get that protection, AND a Florida Supreme Court decision that December 12 was the state deadline for recounts. It is hard to argue with that, even though Justices Souter and Breyer made a spirited attempt to do so. However, we now know, according to several independent news organizations, that Gore would have lost anyway even if the recounts had continued under the most favorable standard imaginable to him.

Others argue that it was “unfair” to Gore not to allow the recounts to continue after December 12 under uniform standards even if the law did not allow it. Yet, Bush raised the equal protection problem almost from day one. In response, Gore’s lawyers repeatedly argued in federal district court, federal appellate court, and in briefs before the U.S. Supreme Court, that the issue was not “ripe” for the courts to consider. In other words, Gore urged the courts not to rule on the equal protection issue until the state process was completed. Thus, in the end, it was Gore who ran out the clock on the issue that seven justices of the U.S. Supreme Court ultimately relied on to invalidate his shady legal recount scheme. He who seeks unconstitutional, standardless recounts and tries to delay federal challenges to them, is in no position to complain that time has run out when the federal courts finally rule. In the law, as in the rest of life, choices have consequences.

The partisan wailing over the outcome is only surpassed by liberal anguish over judicial activism. That the Florida Supreme Court’s first and second tour de force of judicial activism would make any other judicial overlord blush deserved no comment from those who are now shocked that judges might let bias affect their rulings. Nevertheless, there is simply no evidence that the majority in the U.S. Supreme Court was controlled by partisan bias, and as an officer of the Court, I take serious issue with those who suggest it was. In any event, the liberal wailing may still help educate the public that judicial tyranny really does exist, even if it is misdirected in this case.

#### STATE EFFORTS TO ENSURE THAT ONLY ELIGIBLE VOTERS VOTE IN FEDERAL ELECTIONS

In federal elections, Congress has an important responsibility to prevent fraud, improve vote counting accuracy, and ensure that American citizens’ votes are not illegally diluted by people who are not eligible to vote. In the 2000 election, both

of the major parties accused the other of irregularities or outright fraud. In an election as close as the past presidential election, the truth of these accusations matters, but so does the public perception. If the states are not doing an adequate job eliminating the possibility of fraud and improper voting in federal elections, it falls on Congress to take steps to fix the problems and reverse this corrosive perception.

Regardless of the intent of the Motor Voter law, it has helped create the most inaccurate voting rolls in our history. Citizens are registered in multiple jurisdictions at the same time, and very few states have effective procedures to ensure that those registered even are citizens. If you compound our sloppy voting rolls with the fact that over 15 percent of Wisconsin college students in one survey admitted voting more than once (several voted at least five times) and that absentee voter fraud has plagued many recent contests, you can almost guarantee that illegal voting may provide the margin of victory in a close contest. The most technically advanced nation and leader of the free world should do a better job of policing its democratic processes.

Still, Congress should not get involved unless two conditions are met: (1) the Constitution grants it the power to do so and (2) there are good reasons for Congress to act. Both conditions are met with regard to ensuring voting integrity. Article I, section 4 of the Constitution grants Congress the power to establish the times, places, and *manner* of congressional elections. Moreover, Congress helped create the current mess with the Motor Voter law, and it is unlikely to fix itself without congressional action (which should include a reexamination of the Motor Voter law itself). In any legislative action, Congress should leave as many alternatives open to the states as possible out of respect for legitimate state interests, but it ought to establish some minimum safeguards and standards to govern voter registration, voting procedures, and vote counting.

These minimal safeguards should address potential vote fraud, including multiple voting and absentee voting abuse, but these matters deserve careful debate. It is important that these measures do not go so far that they discourage voting. Still, the overwhelming majority of Americans would gladly comply with reasonable safeguards (such as showing some identification at the polls) in order to ensure that our elected officials really have won the elections that put them in office.

#### NON-CITIZENS AND DISENFRANCHISEMENT BASED ON CRIMINAL BEHAVIOR

I want to contrast Congress's power to regulate the times, places, and manner of elections with the power to establish voter qualifications. There can be no discrimination in voting based on race or gender, and the states may not impose long residency requirements, a poll tax, or deny the right of people 18 or older to vote because of their age. Beyond that, the states have the exclusive power to establish voter qualifications (even in federal elections) so long as the states apply the same qualifications for congressional elections that they do for the most numerous branch of the state legislature. The two principal voting restrictions in state law today involve non-citizens and those who have been convicted of certain crimes, usually serious felonies.

All states accept the basic principle that legal voters should be U.S. citizens. I am a second generation American. I hope that all legal residents pursue the necessary steps to become U.S. citizens just as my patriotic, immigrant grandparents did. But until they do become citizens, our state laws do not grant non-citizens the most important privilege of citizenship: the vote.

The estimates vary on the number of non-citizens who are registered to vote, but this number would include both legal resident aliens and illegal aliens. At no time have any of the four states where I have serially registered to vote asked me for any proof of citizenship, even though I must establish with proper forms of identification that I am eligible to work every time I change jobs. Indeed, some state procedures imposed in the wake of the Motor Voter law automatically register home owners and drivers and include many non-citizens. Instead of complicating the states' job in keeping non-citizens off their voting rolls, Congress should help the states to ensure that our vote is not illegally diluted by non-citizens.

The most hotly-debated restrictions on voting today are the laws that exist in different form in almost every state that disenfranchise persons convicted of various enumerated crimes that are either quite serious or indicate a particular degree of untrustworthiness, such as fraud or bribery. In recent years, there have been several bills introduced in Congress to overrule and ban such state laws. Congress not only has no enumerated power to interfere with state felon disenfranchisement laws, but state felon disenfranchisement laws are specifically sanctioned in section 2 of the Fourteenth Amendment and result in no reduction in a state's congressional representation.

Historically, criminal disenfranchisement laws have served two purposes. The first is that they are part of the sanction for specified crimes. This legitimate state purpose of setting the proper sanction to fit the crime would be partially frustrated with non-enforcement or attempts to overturn felon disenfranchisement laws. Criminal punishment takes many forms, including fines, incarceration, periods of probation or parole, restitution, and the relinquishment of the individual right guaranteed by the Second Amendment to own and use a gun. It is simply false to say that a felon has served his entire debt to society upon the completion of his prison sentence. It is a bad policy, and probably unconstitutional in itself, for Congress to try to lessen the sanction for state crimes. But this is what many people are urging Congress to do.

The other traditional reason for criminal disenfranchisement laws is based on the notion that those convicted of certain crimes are less trustworthy citizens and that they have forfeited their right to vote for at least a period of time, which varies from state to state. In every state disenfranchisement law of which I am aware, there is at least some process for those disenfranchised to restore their voting privileges. That is generally not the case with a felon's Second Amendment right to own or use a gun. Both federal and state law presume that those convicted of certain felonies are never to be trusted again with a gun, even though that presumption is unfair to many felons.

Related to this second purpose is the concern that a large and important function of government is devoted to law enforcement. Criminal disenfranchisement allows law-abiding citizens to decide law enforcement issues and the proper allocation of scarce community resources without the dilution of voters who are deemed either to be less trustworthy or to have forfeited their right to participate in those decisions.

Nevertheless, some have argued that state disenfranchisement laws affect certain communities more than others. At first blush, it seems like a laudable goal to try to eliminate such a disparity, but it is unclear to me what is best for communities most affected by these laws. In general, those communities that have a higher rate of crime have a higher rate of disenfranchised criminals living among them. Given that many poor and minority communities are ravaged by crime, proposals to eliminate felon disenfranchisement laws could have a perverse effect on the ability of law-abiding citizens to reduce the deadly and debilitating crime in their communities. With regard to the traditional purposes of these laws, it could be argued that those communities that currently have the highest level of state disenfranchisement are the most protected by those laws and would be the most adversely affected by the vote of "unreformed" convicts in their communities. The fact that so many states have these felon disenfranchisement laws is strong evidence that many citizens do not want their ability to influence crime control decisions to be diluted by convicted felons on parole or otherwise.

Criminal disenfranchisement laws go back at least as far as the Roman Empire and existed in the American colonies. That said, criminal disenfranchisement laws that were designed or intended to have a racially discriminatory effect are clearly unconstitutional under the Fourteenth and Fifteenth Amendments. At the turn of the Twentieth Century and shortly thereafter, a handful of southern states amended their felon disenfranchisement laws in an attempt to further bar African-Americans from voting. Yet, no such intentionally discriminatory law probably survives today and the federal courts are open to strike down any such law that does exist. Indeed, the Supreme Court struck down Alabama's felon disenfranchisement law when it concluded that past racial animus permeated the statute. See *Hunter v. Underwood*, 471 U.S. 222 (1985). Thus, if persuasive evidence exists that any current statute would not have passed absent racial animus, then the statute should and will be struck down.

However, the Fourteenth and Fifteenth Amendments do not outlaw a statute that has a disparate impact on a racial group but that lacks an invidious motive or intent. As the Supreme Court noted in the case striking down Alabama's criminal disenfranchisement statute: "[O]fficial action will not be held unconstitutional solely because it results in racially disproportionate impact. . . . Proof of racially discriminatory intent is required to show a violation of the Equal Protection Clause." *Hunter v. Underwood*, 471 U.S. at 227-28 (quoting prior cases). In short, findings regarding the disproportionate racial impact of many state felon disenfranchisement laws would do nothing to confer constitutional authority on Congress to address that disparity. Proof of such discriminatory intent, on the other hand, renders congressional action wholly unnecessary, as the case of *Hunter v. Underwood* shows.

Attached as an appendix to my testimony is a more detailed constitutional analysis of why Congress lacks the constitutional authority to overrule or ban current

state felon disenfranchisement laws. But I do think Congress can play a constructive role in clarifying that federal law cannot be used to interfere with such laws.

Despite the Supreme Court's ruling that disparate effects of such laws are not sufficient to overturn them under the Fourteenth and Fifteenth Amendments, there is ongoing litigation seeking to have such statutes overturned under the federal Voting Rights Act. I believe such litigation should fail, in part because such an interpretation of the Voting Rights Act would, at a minimum, raise serious constitutional problems. But portions of the Voting Rights Act do invite some disparate impact claims, and the federal litigation might take years to resolve in any case. Congress should clarify in legislation that state criminal disenfranchisement laws are not a violation of federal law if the suit is based on a showing of disparate impact alone.

In addition, a strong argument can be made that the "weigh every vote equally" line of cases that was the basis for the majority opinion in *Bush v. Gore* requires states to enforce their felon disenfranchisement laws in a uniform way. There is substantial evidence that disenfranchised felons voted in large numbers in some counties in Florida, Wisconsin, and other states in the last presidential election. As we all know, the presidential vote was very close in both Florida and Wisconsin.

The Associated Press estimated that as many as 5,000 disenfranchised felons may have voted in Florida alone. Of the 445 Florida felons who were known to have voted illegally, 45 were murders, 16 were rapists, seven were kidnappers, 62 were robbers, and 56 were drug dealers. Because the Associated Press reported that nearly 75 percent of the Florida felons were registered Democrats, there is reason to believe that they did not provide the margin of victory in the presidential election. Given the larger margin of victory for Gore in Wisconsin, it is also unlikely that felons provided the margin of victory for him in that state either, but they may have provided the margin of victory in some of the close local elections.

Disenfranchised felon voting was not as big a problem in many counties of Florida and Wisconsin where local election officials took their state-law responsibilities to prevent illegal voting more seriously. People who are deeply concerned about vote dilution claims in the racial context, as is appropriate, should also be concerned about diluting the vote of law-abiding citizens, particularly when the harm is concentrated in certain parts of a state and not in others. I believe such equal protection claims may be adjudicated in any court, and that judges may provide appropriate relief in such cases.

However, Congress can only act pursuant to authority under section 5 of the Fourteenth Amendment if it found that uneven enforcement of felon disenfranchisement laws dilutes the votes of lawful voters in a number of states and its remedy is proportional to the equal protection violation. So while Congress has no constitutional authority to overrule or bar state felon disenfranchisement laws, it might have the authority to enact legislation to require even-handed application of such laws. That said, it is my view that Congress should take a neutral stance regarding state felon disenfranchisement laws unless the evidence is overwhelming such laws are being enforced in an uneven manner.

#### APPENDIX RE: CONGRESS' LACK OF AUTHORITY TO OVERRULE OR BAN STATE FELON DISENFRANCHISEMENT LAWS

In recent years several bills have been introduced in Congress that are designed to overrule and ban state felon disenfranchisement laws. But for the following reasons, Congress lacks the constitutional authority to interfere with current state felon disenfranchisement laws in this way.

#### THE CONSTITUTIONAL FRAMEWORK OF ANALYSIS

The constitutional analysis of any congressional bill is bounded by certain bedrock principles, the most important of which is as follows: If the Congress is not acting pursuant to a specific grant of power set forth in the Constitution, the legislation is unconstitutional. This is because the national government is one of limited and enumerated powers—as opposed to one of inherent powers. No citation to Supreme Court authority is necessary for this proposition, although many are available. But the federal courts' interest in this principle since the Supreme Court struck down the federal gun-free school zone statute in *United States v. Lopez*, 514 U.S. 549 (1995) is especially noteworthy.

As Congress knows, this aspect of federalism is not just wise policy to be followed whenever Congress deems it appropriate; it is specifically designed to limit Congress's appetite to encroach on state power and individual liberty. This fundamental principle of federalism is recognized not only in the Tenth Amendment, but also in the text and structure of Articles I through III, and it is strongly reinforced in the debates on the Constitution. Although the Federalists and Anti-Federalists

disagreed on the precise scope of federal power and the need for a Bill of Rights, everyone agreed that the national government could only exercise those powers enumerated in the written Constitution.

Of course, Members of Congress take their oath to uphold the Constitution seriously, but some public misconceptions remain about every Member's responsibility to ensure that Congress does not attempt to pass unconstitutional legislation. For example, it is not permissible for Congress to vote for unconstitutional legislation with the expectation that the courts will make the constitutional determinations. Although the courts have their own obligation to make such determinations in a case or controversy properly before them, it is no less the duty of Congress to adhere to and be bound by the Constitution. Although many cite *Marbury v. Madison* for a contrary view, the opinion of Chief Justice John Marshall recognizes that each branch of government has the same duty in its own realm to act constitutionally and pass on constitutional questions. It was simply Marshall's view that the courts, no less than Congress, shared in this responsibility.

So that no person thinks my general approach to constitutional analysis is invoked selectively, let me state clearly that I think the current majority and minority in Congress are almost equally guilty of forgetting these principles of constitutional law when a popular bill is before them. I have opposed many well-meaning bills in recent years solely because they were beyond the constitutional authority of Congress to enact. Bills to ban state felon disenfranchisement laws are no different.

#### CONSTITUTIONAL ANALYSIS UNDER ARTICLE I

Congress has no power to ban or preempt state felon disenfranchisement laws under Article I of the Constitution, and the question is not a close one. There is no textual grant of authority to Congress in Article I to override nondiscriminatory state voting qualifications; there is no Supreme Court precedent recognizing such a power; and there are three constitutional provisions that recognize that this is an inherent state power.

Article I, section 2 provides that voters for Members of the House of Representatives "shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." The Seventeenth Amendment contains the exact same phrase with respect to voters for U.S. Senators. This provision essentially requires states to have the same qualifications for voters in state and national elections (at least with regard to legislative elections), but it also is an explicit recognition that states have the authority to set those voting qualifications—even for Members of Congress.

Other provisions of the Constitution prohibit voting qualifications based on race, sex, and young adult status, but Section 2 of the Fourteenth Amendment implicitly recognizes that states may deny the franchise to those who have engaged in "rebellion, or other crime." Thus, the Constitution recognizes the general power of states to set voting qualifications in Article I and the Seventeenth Amendment and the specific power of states to disenfranchise those convicted of a crime in the Fourteenth Amendment.

It could be argued that these three provisions of the Constitution recognize the states' inherent authority to establish voting qualifications and disenfranchise felons rather than provide a grant of such power to the states, but that is of no less constitutional significance. Like the operation of the Eleventh Amendment, Article I, the Seventeenth Amendment, and the Fourteenth Amendment provide powerful evidence that this state power was understood to be an aspect of state sovereignty that predated the Constitution and always remained with the states. See *The Federalist*, Nos. 52 and 60 (where James Madison and Alexander Hamilton concur with this understanding of Article I); *Alden v. Maine*, 527

U.S. 706, 741–43 (1999) (recognizing that aspects of state sovereignty are of no less constitutional significance if they are proven by the existence of the Eleventh Amendment rather than protected by its text).

Article I, section 4 cannot reasonably be read as a grant of power to Congress to define the qualifications of voters in national elections. Article I, section 4 allows the states to establish the "Times, Places and Manner of holding Elections for Senators and Representatives," except that "Congress may at any time by Law make or alter such Regulations. . . ." "[S]uch Regulations" refers only to the "Times, Places, and Manner" of holding congressional elections—not to voting qualifications. Article I, section 4 simply cannot be read to overrule the plain meaning of Article I, section 2 and the same phrase in the Seventeenth Amendment. Although it is still a fashionable theory on some university campuses and among some special interest groups to argue that words are infinitely malleable, that approach would render a written constitution of no particular value. Members of Congress and judges faithful

to their oath cannot engage in such nonsense. The text of Article I and the Seventeenth Amendment is clear.

Nor is there any Supreme Court authority for the proposition that Article I grants Congress power to establish voting qualifications. *Oregon v. Mitchell*, 400 U.S. 112 (1970), which upheld an 18-year-old voting statute just prior to the ratification of the Twenty-Sixth Amendment, certainly is not to the contrary. In that highly fractured decision, there were three separate opinions for the five members who voted to uphold the statute. The most significant feature of *Oregon v. Mitchell* is that eight justices rejected the Article I argument when it was squarely presented in the case. Only Justice Hugo Black relied on Article I, section 4, and no other justice of the five-member majority would join his opinion. I also believe the Court's ruling in *City of Boerne v. Flores*, 521 U.S. 507 (1997) makes it unlikely that today's Court would rule the same way as the majority in *Oregon v. Mitchell* (absent the Twenty-Sixth Amendment). But I want to add that even if I am wrong about the continued validity of *Oregon v. Mitchell*, the Court certainly would not rely on any Article I power in its decision.

There are some fascinating and complex constitutional questions about which reasonable scholars can disagree in good faith, and there are some easy questions about which no reasonable high school student ought to disagree. Whether Congress has plenary power to establish the qualifications of voters under Article I is in the latter category, and the answer is "no."

#### THE FOURTEENTH AND FIFTEENTH AMENDMENTS

Section 1 of the Fourteenth and Fifteenth Amendments render unconstitutional any state law that has as its purpose the intentional disenfranchisement of a racial group. Although state statutes that disenfranchise felons predate the Revolutionary War and may serve legitimate, nondiscriminatory ends, any statute intended to have a racially discriminatory effect is nevertheless unconstitutional. Thus, congressional legislation is wholly unnecessary to address statutes with such a purpose, because they can and should be struck down by any court at any point in time.

Some historical evidence suggests that racial animus may have played a part in the passage or revision of a handful of states' criminal disenfranchisement laws 50–100 years ago. At least two of those states have largely repealed the offending statute. In Alabama, the courts agreed that the evidence was sufficient to conclude that one part of its statute was based on unconstitutional racial animus. See *Hunter v. Underwood*, 471 U.S. 222 (1985). It is unclear whether any state's current felon disenfranchisement law was passed because of racial animus. But if evidence exists that any current statute would not have passed absent racial animus, then the statute should be struck down.

However, the Fourteenth and Fifteenth Amendments do not outlaw a statute that has a disparate impact on a racial group but that lacks an invidious motive or intent. As the Supreme Court noted in the case striking down Alabama's criminal disenfranchisement statute: "[O]fficial action will not be held unconstitutional solely because it results in racially disproportionate impact. . . . Proof of racially discriminatory intent is required to show a violation of the Equal Protection Clause." *Hunter v. Underwood*, 471 U.S. at 227–28 (quoting prior cases). In short, findings regarding the disproportionate racial impact of state felon disenfranchisement laws do nothing to confer constitutional authority on Congress to address that disparity. Proof of such discriminatory intent, on the other hand, renders congressional action wholly unnecessary, as the case of *Hunter v. Underwood* shows.

Prior to the *Boerne* decision, the Supreme Court upheld some congressional statutes enacted pursuant to section 5 of the Fourteenth Amendment involving voting rights. These congressional statutes were designed to prevent states from excluding racial minorities from voting through pretextual devices, such as literacy tests, which were facially neutral but had the clear history, pattern, practice, and intent of excluding racial minorities. Everyone knew that the real purpose of literacy tests was invidious discrimination and that the stated purpose was a pretext. Facially neutral statutes that have the intent of excluding one race from the equal protection of the law are unconstitutional and should be struck down by the courts. After *Boerne*, Congress has less power to enact prophylactic statutes that outlaw the use of such facially neutral practices in the future. But the special history, pervasive pattern and practice, and the clear invidious intent of literacy tests present a strong case for a congressional prophylactic ban on the use of that particular device, especially since it was only used in modern times as a tool of intentional discrimination.

In contrast to the literacy test example, Congress's power to ban state felon disenfranchisement laws lacks all of the criteria necessary for Congress to act under section 5 of the Fourteenth Amendment. Congress could not find that a substantial

number of current felon disenfranchisement laws (if any) were passed as a pretext to discriminate against racial minorities. Almost every state has such a law, and the type and variety of such laws show no correlation to states with histories of racial discrimination. For example, some southern states have little or no felony disenfranchisement, and in the 2000 election, the people of Massachusetts enacted a new felon disenfranchisement law in response to a prisoner PAC that was formed in their state. In sum, there is no serious evidence that existing felon disenfranchisement statutes were passed for an improper racial motive.

Moreover, section 2 of the Fourteenth Amendment implicitly recognizes that states may have perfectly good reasons to disenfranchise those engaged in rebellion or other crimes. The framers of the Fourteenth Amendment would not have recognized these laws and made them an exception to the normal rules regarding the apportionment of Representatives in Congress if they did not believe such laws could operate in conformity with the rest of the Fourteenth Amendment. It would certainly be odd to argue that Congress could find that no state felon disenfranchisement statute passes muster under the Fourteenth Amendment when the Fourteenth Amendment itself acknowledges otherwise. The Supreme Court seemed to adopt this reasoning when it relied on section 2 of the Fourteenth Amendment to uphold a felon disenfranchisement statute against a nonracial equal protection clause challenge in *Richardson v. Ramirez*, 418 U.S. 24 (1974).

Even if the evidence allowed Congress to conclude that a few states passed their existing criminal disenfranchisement statutes to deny their citizens constitutional rights protected by the Fourteenth and Fifteenth Amendments and Congress stated that its ban was designed to address that narrow problem, the proposed solution would still be unconstitutional. In *Boerne*, the Supreme Court stated that before Congress could legitimately invoke section 5 of the Fourteenth Amendment “[t]here must be a congruence and proportionality between the [constitutional] injury to be prevented or remedied and the means adopted to that end.” Overruling the laws of the other 50 states regarding criminal disenfranchisement and preventing all 50 states from reenacting any that are not in conformity with Congress’s dictates is not proportional to any constitutional violation by one or two states.

The CHAIRMAN. Thank you, Mr. Gaziano.  
Mr. Shelton.

#### STATEMENT OF HILARY O. SHELTON

Mr. SHELTON. Thank you. Good morning, Chairman McConnell, Senator Dodd, and distinguished members of the Committee on Rules and Administration. Thank you for the opportunity to come before you this morning on behalf of the National Association for the Advancement of Colored People and our 1,700 branches in 50 States, the District of Columbia, Italy, Germany, Japan, and Korea.

The NAACP is deeply appreciative of the U.S. Senate Committee on Rules and Administration for convening this hearing to look into the issue of vote irregularities with respect to last year’s Presidential election. We believe that this is a matter of grave concern of our Nation and our people. We also believe that perhaps tens of thousands of voters were denied the basic right to cast their free vote and to have that vote counted.

While our concerns encompass the electoral process in all 50 States, for the purposes of today’s hearing I shall confine my remarks to what occurred and did not occur in the State of Florida and why it was particularly discomfoting.

There was, at best, as we have been able to determine, substantial unresolved allegations throughout the State of massive voter disenfranchisement in African American, Hispanic American, Haitian American, and Jewish communities. The election appears to have been conducted in such a manner that many of those same communities now believe unequivocally that it was unfair, illegal, immoral, and certainly undemocratic.

As the Nation's oldest and largest civil rights organization, the NAACP was appalled and outraged by much of what we saw unfold the weekend before the election at polling places on the day of the election, and at Board of Elections throughout the State the days and weeks that followed. Because the right to vote is the most sacred franchise in our democracy, these hearings, as uncomfortable as they might be to some, must challenge all Americans to focus again on the thorny issues of equal protection under law and whether or not our protection is afforded to duly registered voters who went to the polls on election day in Florida.

Every survey, in fact, that has been conducted after the election has shown that the greater the percentage of black voters in a precinct, the greater was the likelihood that a significant number of the ballots of those voters was never counted. There was also a greater likelihood that computer equipment, when available at such polling places, was not adequate or on par with what was available in some uses in polling places in precincts that had a relatively low number or inconsequential number of African American voters. Ask the thousands upon thousands of people who saw their fundamental rights violated, often because of the color of their skin, and they will tell you without hesitation that they feel violated and robbed.

The national response to this has been a flurry of legislative initiatives announced and undertaken by conscientious members of the House and Senate on both sides of the aisle. If anything, the bipartisan nature alone of the response thus far has been encouraging. However, the real test will be to see what, if anything, of substance emerges and is signed into law under the rubric of voting and electoral reforms. The NAACP also has a set of well-developed ideas and recommendations designed to avoid similar election day debacles in the future. We don't seek pride of authorship of these or any other ideas. What we do seek, however, is a responsible expectation that the distinguished men and women of both chambers of Congress will work in earnest to move our Nation closer towards a universal and uniform system of casting and counting votes.

Before I offer our 12 recommendations, let me begin with what took place in and around November 7, 2000. The weekend prior to the election, the NAACP began receiving calls alerting us about the fact that a person or persons were making electronic phone calls into predominantly black households, claiming to represent the NAACP in support of Republican candidate George W. Bush. These calls were apparently taking place in the key battleground States of Michigan and Florida. Specifically, the caller was identifying him—or herself as a representative of the NAACP, saying that the organization endorsed and supported the Republican candidate for President and urged the recipients of the call to go to the polls on Tuesday and vote accordingly.

In response to this blatantly false and extremely illegal call, the NAACP moved quickly to make sure that the U.S. Department of Justice as well as the Attorney General of each of the States was also notified. Unable to secure a cease and desist order, we used public service time on local radio stations over the 48 hours we had available to us prior to the election to straighten out this issue.



Three days later, on election day, NAACP local, State, and national officials began receiving unprecedented numbers of complaints from citizens nationwide who were attempting to vote, saying in essence that they had been turned away from the polls or had trouble casting their ballots.

It became clear and, quite frankly, it became evidently clear that this problem was very focused in the State of Florida. By 2:00 p.m. that afternoon, with the polls still open, the number of complaints became so enormous that the NAACP president and CEO, Kweisi Mfume, issued an afternoon press release calling attention to what we believe was a major, if not unprecedented, disenfranchisement of voters because there seemed to be no sense of urgency coming out of the Department of Justice with respect to what had happened throughout that weekend and on election day.

Upon receiving even more of these complaints, our civil rights lawyers were immediately dispatched to Florida on November 11th and thereafter. We held a hearing on Saturday, November 11th, in Miami, where we received testimony from hundreds of members of the Florida electorate. At that hearing, which was covered by C-SPAN, over 700 people came out—black voters, white voters—to discuss the bureaucratic snafus that occurred and the disappearance of certain ballot boxes which were unattended for many days.

Now, I know I have run out of time, but there are many things I would like to share.

The CHAIRMAN. Is there any way to kind of sum it up, just like Mr. Gaziano did?

Mr. SHELTON. To sum it up, in essence, the NAACP has what we consider a 12-step approach to addressing this problem. Some might refer to it as a 12-step program towards election sobriety.

Number one, to ensure non-discriminatory equal access to electoral processes for all voters, including ethnic minorities, the elderly, handicapped, disabled, individuals who are overseas citizens, and members of the U.S. Armed Forces.

Number two, to retrain all poll workers and election officials so that there is fair, equal, and uniform treatment of voters across the State.

Number three, to modernize voting and counting procedures throughout the State, including voting machines, equipment, and a well-defined procedure for addressing the issue of provisional ballots throughout our country.

Number four, providing necessary and adequate funding for the resources.

Five, launching an aggressive voter education initiative and campaign.

Six, expand poll workers' training.

Seven, put into place systems to maintain and easily access correct and up-to-date voter rolls using the latest technology.

Eight, enhance the integrity and timeliness of absentee ballots.

Nine, re-examine all existing voting policies as we address issues of voting accessibility for elderly and handicapped—the Voting Rights Act of 1965, the National Voter Registration Act of 1993.

Ten, to work to identify and eliminate practices which might be perceived as intimidating in certain sectors of the population.

Eleven, to establish clear standards for bilingual ballots, for language minorities and the disabled.

And, twelve, to re-examine, simplify, and standardize voting re-enfranchisement laws for those Americans who may or may not have been incarcerated because both became a problem for us in Florida.

Let me lastly say that the NAACP has found that the best piece of legislation to address these particular issues is a bill that was introduced yesterday by our good friend Christopher Dodd in the Senate and our good friend John Conyers in the House entitled "The Equal Protection of Voting Rights Act," and we hope to see that Congress will move very quickly in that direction.

[The prepared statement of Mr. Shelton follows:]

PREPARED STATEMENT OF HILARY O. SHELTON, DIRECTOR, WASHINGTON BUREAU OF  
THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Good morning, Mr. Chairman McConnell, Senator Dodd and distinguished members of the Committee on Rules and Administration. Thank you for the opportunity to come before you this morning on behalf of the National Association for the Advancement of Colored People and our 1700 Branches in 50 states, the District of Columbia, Italy, Germany, Japan and Korea.

The NAACP is deeply appreciative of the U.S. Senate Committee on Rules and Administration for convening this hearing to look into the issue of voting irregularities with respect to last year's Presidential election.

We believe that this is a matter of grave concern for our nation and our people.

We also believe that perhaps tens of thousands of voters were denied their basic right to cast a free vote and to have that vote counted. While our concerns encompass the electoral process in all 50 states, for the purpose of today's hearing I shall confine my remarks to what occurred or did not occur in the state of Florida and why it was particularly disconcerting.

There was, as best as we have been able to determine, substantial unresolved allegations throughout that state of massive voter disenfranchisement in African American, Haitian American and Jewish communities.

The election appeared to have been conducted in such a manner that many of those same communities now believe unequivocally that it was unfair, illegal, immoral and certainly undemocratic.

The specter of these allegations alone indisputably require that the record be made complete in terms of what did not happen during the election in Florida.

As the nation's oldest and largest civil rights organization, the NAACP was appalled and outraged by much of what we saw unfold the weekend before the election, at polling places on election day and at Boards of Elections throughout the state in the days and weeks that followed.

Because the right to vote is the most sacred franchise in our democracy, these hearings, as uncomfortable as they might be to some, must challenge all Americans to focus again on the thorny issue of equal protection under law and whether or not such a protection was afforded to duly registered voters who went to the polls on election day in Florida.

Every survey of fact that was conducted after the election has shown that the greater the percentage of black voters in a precinct the greater was the likelihood that a significant number of the ballots of those voters were never counted.

There was also a greater likelihood that computer equipment, when available at such polling places, was not adequate or on par with what was available and in use at polling places in precincts that had a relatively low or inconsequential number of African American voters.

Ask the thousands upon thousands of people who saw that fundamental right violated, often because of the color of their skin, and they will tell you without hesitation that they feel violated and robbed.

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

The NAACP also has a set of well developed out ideas and recommendations designed to avoid similar Election Day debacles in the future. We don't seek pride of authorship of those or any other ideas. What we do seek however is a reasonable expectation that the distinguished men and women of both chambers of congress will work in earnest to move our nation closer toward a universal and uniform system of casting and counting ballots.

Before I offer our twelve recommendations let me begin with what took place on and around November 7, 2000.

The weekend prior to the election, the NAACP began receiving calls alerting us to the fact that a person or persons were making electronic phone calls into predominately black households, claiming to represent the NAACP, in support of Republican candidate George W. Bush. These calls were apparently taking place in the key battleground states of Michigan and Florida. Specifically, the caller was identifying him or herself as a representative of the NAACP, saying that the organization endorsed and supported the Republican candidate for President, and urged the recipient of the call to go to the polls on Tuesday and to vote accordingly.

In response to the blatantly false and extremely illegal calls, the NAACP moved quickly to make sure that the U.S. Department of Justice, as well as the Attorneys General of each state was also notified. Unable to secure a cease and desist order we used public service time on local radio stations over the next 48 hours to alert voters of the false nature of the calls.

Three days later, on Election Day, NAACP local, state and national offices, began receiving an unprecedented number of complaints from citizens nation-wide who were attempting to vote saying in essence that they had been turned away from the polls or had trouble casting their ballots. It became clear quite quickly that many of the problems were located in the state of Florida.

By 2 pm that afternoon, with the polls still open, the number of complaints became so enormous that NAACP's President and CEO, Mr. Kweisi Mfume, issued an afternoon press release calling attention to what we believed was a major, if not unprecedented disenfranchisement of voters. Because there seemed to be no sense of urgency coming out of the Department of Justice with respect to what had happened the weekend prior or to what was happening on election day itself, the NAACP sent an additional 100 of our field workers into Florida from neighboring states by early that afternoon.

Upon receiving even more of these complaints, our civil rights lawyers were immediately dispatched to Florida to interview witnesses and on November 11, just 4 days after the election, the NAACP held a public hearing in Miami to receive testimony and to establish a public record highlighting the extent to which violations of state and federal law may have occurred. We were joined at that hearing by many of the organizations seated here today.

At that hearing, nearly 1,000 people listened intently, and many more watched on C-SPAN as witness after witness dramatically testified about the disparate treatment between black and white voters, intimidation by election officials, bureaucratic snafus and ballot boxes that were left unattended for several days after the election.

During the hearing we heard tearful testimony about polling officials challenging African American voters and demanding that they produce photo identification without doing the same to white voters.

We also heard testimony from a Miami police lieutenant and a long-term minister also of Miami who said that they had both, in separate instances, found unopened and uncounted ballot boxes two days after the election in the lobby of a local hotel and in the church hall respectively. As bizarre as that might sound, what was more amazing was that after repeated calls to the Board of Elections the ballot boxes had still not been collected and were not collected until the NAACP and others got involved.

There were students who came forth to tell us of their inability to vote because they were told they were not registered when in fact they were. In other instances many male voters, including a catholic priest, were not allowed to vote because they were told that they were convicted felons when in fact they were not. And, countless others were told that even though they were in line at the time polls were closing that they too could not and would not be allowed to vote.

I could go on and on with a list of examples from the testimony replete with instances where everyday citizens publicly and on the record recounted their horror stories of what happened to them on election day in Florida.

The goal of the hearings we held was not to determine who won the Presidential election.

Rather, the hearings represented an effort by the NAACP to establish, as I said before, a public record to assist the U.S. Department of Justice, the State of Florida,

Congressional Committees, and any other interested parties in determining if Federal voting rights and civil rights laws were violated during the election.

A complete transcript from our November 11 hearing, all 296 pages, was presented to then-Attorney General Janet Reno on November 16, 2000, along with a renewed request that she investigate possible violations of federal civil rights laws. Copies of the transcripts have also been sent to various House and Senate committees.

Overall, the hearing and the transcripts revealed several instances in which the voting strength of Florida's minority voters was adversely impacted.

Subsequent to the hearing, the NAACP Legal Department received and has continued to receive additional affidavits and other supporting materials showing massive voting irregularities in the state of Florida.

Other NAACP branches, including some in Missouri, Texas and Massachusetts have also held hearings into voting problems faced by ethnic minority Americans. All of this evidence is being assembled by the NAACP national headquarters and is being used to support legal actions.

Due largely to the inaction of the U.S. Department of Justice, the NAACP, joined by The Advancement Project, the American Civil Liberties Union Foundation, the Lawyers Committee for Civil Rights Under the Law, the NAACP Legal Defense and Education Fund and the People for the American Way Foundation filed an historic lawsuit against the state of Florida and several of its counties to eliminate discriminatory and unequal voting policies and practices from Florida's electoral system.

We intentionally did not file the lawsuit until the outcome of the election had been determined. Included in the suit was evidence that showed that the disparate and unfair voting practices that took place across the state resulted in the disenfranchisement of thousands of African American voters.

Specifically, our lawsuit produces evidence showing that polling sites were moved without timely notice or no notice at all; voters were disenfranchised by some polls closing early; some polling places had no bilingual ballots and Haitian voters were denied assistance from translators; there was a disproportionate purging of votes in predominantly Black precincts in several counties, including Duval and in West Palm Beach; charges of voter intimidation in Broward and Hillsboro counties; and inadequate training of poll workers.

We believe that it is a part of our obligation as a non-partisan organization to insist that all voters be allowed to cast an unfettered ballot and be free from intimidation and harassment as promised by the Voting Rights Act of 1965.

The NAACP abhors the countless horror stories that can continue to be heard from voters in Florida and across the nation, and we are incensed and bewildered that so little is being done to address this situation.

The NAACP has, therefore, developed a set of policies and procedures that we are asking every state, as well as the federal government, to adopt prior to the next election.

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

Hence our policy and procedure recommendations have been crafted in response to the problems of the November 2000 election and we think that, if properly implemented, will go a long way toward establishing uniform national voting standards that will make it easier to ensure that every American who wants to vote can.

Specifically, the NAACP is calling on the Federal government, as well as each of the 50 states to promptly enact laws, policies and procedures that secure the following:

1. Ensure non-discriminatory, equal access to the electoral process for all voters, including ethnic minorities, the elderly, handicapped/disabled individuals, overseas citizens, and members of the US Armed Services;
2. Re-train all poll workers and election officials so that there is fair, equal and uniform treatment of voters across the state;
3. Modernize voting and counting procedures throughout the state, including voting machines and equipment, to ensure that well-defined, uniform procedures are in place so that the genuine intentions of the voters are reflected in their ballots;
4. Provide necessary and adequate funding and resources to modernize and upgrade all equipment, state-wide, so that voting procedures are uniform and consistent throughout the state;
5. Launch an aggressive voter education initiative so that potential, new and existing voters are knowledgeable on how to use the equipment correctly and so their genuine intent can be easily determined;

6. Expand poll worker training and recruitment programs, utilizing the best practices from across the nation;
7. Put into place systems to maintain and easily access correct and up-to-date voter rolls using the latest technology;
8. Enhance the integrity and timeliness of absentee ballots;
9. Reexamine all existing voting policies and procedures to ensure that your state and every municipality therein is in full compliance with the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973 et seq.), the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) and the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.);
10. Work to identify and eliminate practices which might be perceived as intimidating to certain sectors of the population;
11. Establish clear standards for bilingual ballots for language minorities and the disabled; and
12. Re-examine, simplify and standardize voter re-enfranchisement laws so that every American who is not incarcerated who wishes to vote can do so.

The NAACP Washington Bureau is working with several like-minded Members of the U.S. House and Senate as well as other civil rights organizations to help develop legislation to implement these policies on a federal level.

Mr. Mfume has also personally written to all of the 50 governors of each state and asked that they too work hard to develop uniform standards throughout their jurisdictions. The letters will be followed up by contacts from each of the individual state conference presidents.

In short, the entire NAACP organization is determined to follow through on this issue and attempt to do all we can to see that nothing like the November 2000 Election Day debacle is repeated.

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

Our members and our friends remember the days, not too long ago, when it was not only legal but also acceptable for states and local municipalities to block access to the voting booth based on a person's skin color, gender, socio-economic status, or ethnicity.

It is no longer legal, but as we just recently saw, it still happens. This is unacceptable, and we intend to devote all our available resources, if that is what it takes, to see that the situation is rectified.

I am especially troubled and angered by the deafening silence that has fallen over the subject of the voter suppression and intimidation that occurred on Election Day across this country.

It has caused the NAACP to redouble their efforts to make our voices heard in this fight to protect our rights by using every available resource, financial and otherwise, to make sure that the vote of every voter counts in all future elections.

I again thank the Chairman and members of the U.S. Senate Commission on Rules and Administration for holding this hearing and for your continued interest and activism in this area. I would welcome any questions or comments that you may have.

The CHAIRMAN. Thank you, Mr. Shelton.

Mr. Figueroa, we have got probably enough time before Senator Dodd and I have to go for these three votes for you to get your statement in, and I would like for you to see if you can do that.

#### **STATEMENT OF JUAN A. FIGUEROA**

Mr. FIGUEROA. I will try. Good morning, Mr. Chairman. Thank you very much. Thank you to members of the committee. I am Juan Figueroa, president and general counsel of the Puerto Rican Legal Defense & Education Fund, a national civil rights legal advocacy organization that was founded in 1972 to advance and safeguard the equal protection and progress of Latinos throughout the United States.

I am privileged to appear before you to present my remarks about a very serious matter, that is, the challenge of making our democracy healthier, ensuring that the election process is more ac-

cessible to all voters regardless of the language that they speak, and seeking constructive approaches to ensure a truly representative democracy.

Language minorities are ensured protection and full participation in the electoral process by two separate provisions of the Voting Rights Act of 1965: Section 203 and Section 404. Despite these provisions of current law, there is ample evidence that some jurisdictions do not comply with Federal language assistance provisions. In this past election, the Puerto Rican Legal Defense & Education Fund became yet again aware of barriers and ballot access problems encountered by many Latinos in Florida whose mother tongue is not English.

And let me make a note here about Florida's Latino community. It is much more diverse than people realize. Just in the last 10 years alone, central Florida has seen an influx of Puerto Rican and other Latinos in that area, approximately 300,000-plus or more. These voters were either denied the right to vote or were subject to different forms of neglect, intervention, and intimidation before they could cast their votes, if they voted at all. We are actually in preparation for a lawsuit that will be brought over the next 2 months that will specifically address the language issues and Latinos in terms of what happened this past election.

These problems affecting minority-language voters were not limited to Florida. Voting access hardships were faced by non-English voters even in my own city of New York, where election precincts failed to provide adequate bilingual assistance for protected minority-language voters as required by the Voting Rights Act. That is the same and that is true for many other parts of the country.

To truly modernize our democracy requires comprehensive and bold legislation, and any legislation that seeks to reform and remedy past problems at the voting booth must also ensure that fair standards and consistent policies and practices guarantee the equal protection of the limited-English-language minority voter. After all, language should not be a deterrent to being able to exercise such a fundamental right.

As the details of the 2000 U.S. Census begin to emerge, Congress must ensure that proposed electoral reform reflects and accommodates the actual demographic changes that are occurring throughout this country. First- and second-generation immigrants and refugees have played a contributing role in revitalizing our urban centers and small towns, and are increasingly able to exercise their right to vote as they join the American mainstream.

Many States and counties and election precincts will require the assistance of Federal funds in modernizing these systems. However, let us be clear: It is not only an issue of new machines and technology. Our most fundamental and pragmatic concerns must include a refocusing of resources to promote voter education, voter registration, civic participation, in whatever language seems necessary and practical.

Consistent with these principles and approaches, I would like to recommend very respectfully to this committee a few recommendations that we think are consistent with assuring that language-minority voters in this country exercise their right to vote.

First, to preserve the Voting Rights Act and the National Voter Registration Act, while ensuring that any activities under the new legislation are consistent with these existing laws.

Number two, to create a comprehensive and multi-year Federal grants program to upgrade election technologies, including the study and improvement of voting equipment and counting mechanisms, and the implementation of more uniform statewide standards in the administration of elections, such as computerized voter registration lists.

Three, to establish federally approved best practices and a mechanism to review compliance by grant recipients to ensure non-discriminatory accessibility, maintenance of voter roll accuracy, and a full and affirmative and meaningful participation by language minorities, racial and ethnic minorities generally.

Let me end, Mr. Chairman, by also recommending, as is the case where I grew up in Puerto Rico, that this country consider making election day a national holiday. I think it is one of the central factors in Puerto Ricans going to vote 70, 80, and sometimes 90 percent strong to the voting booth.

Thank you, sir.

[The prepared statement of Mr. Figueroa follows:]

PREPARED STATEMENT OF JUAN A. FIGUEROA, PRESIDENT & GENERAL COUNSEL,  
PUERTO RICAN LEGAL DEFENSE & EDUCATION FUND, INC.

Good morning, Chairman McConnell and members of the Senate Rules Committee.

I am Juan Figueroa, President and General Counsel of the Puerto Rican Legal Defense & Education Fund, a national civil rights legal advocacy organization that was founded in 1972 to advance and protect the equal protections and progress of Latinos and Hispanics throughout the United States. PRLDEF has been involved in litigation, policy research and advocacy regarding the civil rights of Latino-Americans and Puerto Ricans.

I am privileged to appear before you to present my remarks about a very serious matter—that is, the challenge of making our democracy more whole, ensuring that the election process is more accessible to all voters, and seeking constructive approaches to ensure a truly representative democracy.

This past November 2000 elections and the issues arising from the experiences of certain American voters provide us all with an important opportunity to modernize our electoral *systems* and practices. I say electoral systems because indeed we have no uniform system governing the administration and conduct of federal elections. In fact, we have at least 51 different voting systems, each operating under varying state and local election laws.

Language minorities are ensured protection and full participation in the electoral process by two separate provisions of the Voting Rights Act of 1965—Section 203 and Section 4(f)(4).<sup>1</sup> Despite these provisions of current law, there is evidence that some jurisdictions do not comply with federal language assistance provisions.

In this past election, PRLDEF became aware of the barriers and ballot access problems encountered by many Latino voters in Florida whose mother language is not English. These voters were either denied the right to vote or were subjected to different forms of neglect, intervention, and intimidation before they could cast their votes.

However, these similar problems affecting minority language voters were not limited to Florida. You should also know that voting access hardships were faced by non-English voters even in my own city—New York City, where election precincts failed to provide adequate bilingual assistance for protected minority language vot-

<sup>1</sup>In 1975 Congress added minority language provisions to the Voting Rights Act, and recognized that large numbers of American citizens who primarily spoke language other than English had been effectively excluded from participation in the electoral process. The denial of the right to vote among language minority citizens was “directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation.” 42 U.S.C. Sec. 1973aa-1(a).

ers as required by the federal Voting Rights Act. Other groups have provided accounts and testified about similar problems in other forums and hearings since November 2000.

To truly modernize our democracy requires comprehensive and bold legislation, not small incremental measures. Any legislation that seeks to reform and remedy past problems at the voting booth must also ensure that fair standards, and consistent policies and practices guarantee the equal protection of the limited-English language minority voter.

As the details of the 2000 U.S. Census begin to emerge, Congress must ensure that proposed electoral reform reflect and accommodate the actual demographic changes found throughout the nation. In many suburban and urban localities, US Census data has documented the significant presence of Hispanic and Latino residents in population growth areas. First and second generation Immigrants and refugees have played a contributing role in revitalizing our urban centers and small towns and are increasingly able to exercise their right to vote as they join in the American mainstream.

Many states, counties and election precincts will require the assistance of federal funds in modernizing their systems. However, this is not only an issue of new machines and technology. Our most fundamental and pragmatic concerns must include a refocusing of resources to promote voter education, voter registration, and civic participation. Any legislative reform package must encompass provisions that expressly promote the thorough, conscientious planning and effective implementation of state plans to address the specific needs of the disabled, the aging population of senior voters, and voters with limited English proficiency.

#### RECOMMENDATIONS

Consistent with these principles, and speaking from the perspective of the Latino and language minority community, PRLDEF urges the enactment of legislative safeguards and initiatives that:

1. Create a comprehensive multiyear federal grants program to upgrade election technologies, including: The study and improvement of voting equipment and counting mechanism. The implementation of more uniform state-wide standards in the administration of elections, such as computerized voter registration lists.

2. Preserve the federal Voting Rights Act and the National Voter Registration Act, while ensuring that any activities under the new legislation are consistent with these existing laws.

3. Establish federally-approved "best practices" and a mechanism to review compliance by grant recipients to ensure that reforms result in: Non-discriminatory accessibility and convenience for the voter, including voters with disabilities, language minority voters, and voters with special needs. Maintenance of voter roll accuracy. Full, affirmative and meaningful participation by language minorities, racial and ethnic minorities, and people with disabilities.

4. Establish priority-setting criteria to ensure that jurisdictions with the most significant problems receive needed funding.

5. Promote a commission whose purposes and administration reflect an open and transparent non-partisan review process on the further study of electoral reform whose membership consists in part of election and voting rights experts and community-based leaders from diverse experiences and regions.

Election reform and new legislation should be guided by current laws ensuring access to language minority voters. It should not become a vehicle for adding barriers or restrictions to any part of the voting process, whether in voter education, registration, or casting a vote.

We urge you to ensure that additional, unnecessary measures to "confirm" or "verify" the eligibility of voters—which have a clear, disparate impact on Latinos or language minorities—are not imposed.

In closing, maximizing inclusion and participation of all eligible members of the American electorate should be the guiding principles of our renewed democracy.

Thank you.

The CHAIRMAN. Congratulations, Mr. Figueroa. You came as close to hitting the deadline as any of the witnesses so far.

Professor, we are going to have to get you when we come back, and the hearing will be recessed until the return of the ranking member and myself.

[Recess.]



The CHAIRMAN. Okay. We lucked out. There was only one vote, as it turned out, and we will resume the hearing with Professor Knack.

#### STATEMENT OF STEVEN KNACK

Mr. KNACK. Good morning, Mr. Chairman and members of the committee. I appreciate the opportunity to testify on voting and election administration issues, which have been a major focus of my research over the last 10 years. I am here today to discuss my most recent study, co-authored this winter with Professor Martha Kropf of the University of Missouri-Kansas City.

Following the last Presidential election, a widespread perception emerged that punch card voting equipment was more prevalent in counties heavily populated by minorities and poorer persons. Our study contradicts this belief. We combined county-level demographic data on voting equipment used in all the counties—combined county-level demographic data with information on voting equipment used in all the counties and found little support for the view that resource constraints caused poorer counties with large minority populations to retain antiquated voting equipment.

Among our specific findings, first, nationally racial differences in punch card use across the country are negligible; 31.9 of whites and 31.4 percent of African Americans lived in counties using punch card equipment. Controlling for county size and other factors that affect the type of equipment in use, it turns out that a higher percentage of African Americans actually is associated with a significantly lower probability that counties use punch card voting equipment.

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

Third, Hispanics are more likely to live in punch card counties than blacks or whites. This disparity is entirely attributable to the use of punch card voting in Los Angeles County.

Fourth, based on Presidential voting patterns in 1996, Democratic and Republican voters across the country were equally likely to live in punch card counties.

Fifth, because we elect Presidents by electoral votes and not popular vote, we also found it important to make these comparisons on a State-by-State basis. It turns out that in the majority of States where some counties use punch cards and others do not, whites, the non-poor, and Republican voters are more likely to reside in punch card counties than African Americans, Hispanics, the poor, and Democratic voters. Unfortunately for Vice President Gore, Florida happened to be one of the exceptions to the general pattern.

Sixth, and finally, public resources don't seem to matter much. Counties with punch card systems tend to have higher incomes, higher property tax revenues per capita, and larger populations than do counties with more modern voting equipment. In counties using electronic voting systems, the most expensive type, incomes and tax revenues are actually lower than in counties using punch card or any other type of voting technology. Florida fits this pat-

tern. In Florida, it is the largest and richest counties with the highest property tax revenues that tend to have punch card equipment.

A recent Cal Tech/MIT study, as R. Doug Lewis mentioned, has exposed as false another popular belief. It found the electronic systems often promoted as the high-tech solution to chad problems actually generate the same rate of invalid Presidential votes as vote-a-matic style punch card equipment. So the problems go much deeper than antiquated equipment.

Evidence from studies such as these has obvious implications for some of the proposed solutions to problems associated with punch card voting. Our study shows that providing financial assistance to replace punch card technology would not be subsidizing the poorest counties. In most States, including Florida, it would subsidize the richer counties, and replacing punch card technology with expensive electronic systems might not reduce the number of invalidated Presidential votes. In fact, it might even increase it in the short run because we don't understand yet why electronic systems generate a high rate of invalid votes, so we don't know what to do about it. On the other hand, just about everybody is well informed now about what can go wrong with punch card technology, and anyone using it in the future will take extra care in using it. I am told that in the Palm Beach County mayoral elections yesterday that under-votes went way down, exactly because the election workers are much more careful in informing voters, and I am sure voters are taking much more care themselves.

Hopefully, the findings of these research efforts will not only help inform policymaking, but also contribute to a more cautious and responsible public discussion of election administration and voting technology reform. The Post and other newspapers were quick to condemn the television networks for prematurely calling election night contests based on selective and unrepresentative data. But just a few days later, these same newspapers were irresponsibly editorializing about racial and class bias and voting equipment based again on selective and unrepresentative data. And unlike the networks on election night, they have had plenty of time to get the facts right. But as recently as February 25th, the Post editorial was still making unsupported claims about how punch card equipment in poorer areas is older and less well maintained.

Finally, I want to say something about the use of the term "disfranchisement" in connection with voting using punch card technology. This is a term that has previously been reserved for measures such as poll taxes and literacy tests intended to prevent large classes of people from voting. Punch card balloting, despite its flaws, was never intended to prevent anyone's votes from being recorded. I am not trying to defend the use of punch card technology. From the dozens of Government studies and academic studies I have read on election administration and voting equipment, it is clear that many experts have been concerned for a long time about the deficiencies of this equipment. But we should not be under any illusions that there is a simple technological fix.

We should consider reasonable reforms that evidence shows might substantially reduce voter error, but voters as well as party workers and election officials will always make some mistakes, and there will always be the potential for another controversial election

outcome. We should not trivialize the denial of voting rights to women and African Americans earlier in this century by defining disenfranchisement downward to include honest mistakes associated with punch card voting.

Thank you.

[The prepared statement of Mr. Knack follows:]

PREPARED STATEMENT OF STEPHEN KNACK

Good morning, Mr. Chairman and Members of the Committee. I appreciate the opportunity to appear today to testify on voting and election administration issues, which have been a major focus of my research over the last ten years. I am here today to discuss my most recent study, co-authored this winter with Professor Martha Kropf of the University of Missouri-Kansas City.

Following the last Presidential election, a widespread perception emerged that punch card voting equipment was more prevalent in counties heavily populated by minorities and poorer persons. Our study contradicts this belief. We combined county-level demographic data for the mid-1990s with information from Election Data Services on voting equipment used by the counties in the 1998 election. Our results showed there is little support for the view that resource constraints cause poorer counties with large minority populations to retain antiquated or inferior voting equipment.

Among our specific findings:

1. Nationally, racial differences in punch card use are negligible: 31.9% of whites and 31.4% of African Americans lived in counties using this voting technology. Controlling for county size and other variables, counties with larger percentages of African Americans actually have a significantly lower probability of using punch cards.

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

3. Hispanics are more likely to live in punch card counties than blacks or whites, but this disparity is attributable entirely to the use of punch card voting in Los Angeles County. In most states, whites are actually more likely than Hispanics to live in punch card counties.

4. Based on presidential voting patterns in 1996, Democratic and Republican voters were equally likely to live in punch card counties, for the U.S. overall.

5. Because we elect Presidents by the electoral vote and not the popular vote, it's also relevant to make these comparisons on a state-by-state basis. It turns out that in the majority of states where some counties use punch cards and others do not, whites, the non-poor and Republican voters who are more likely to reside in punch card counties than African Americans, the poor and Democratic voters. Unfortunately for Vice-President Gore, Florida happened to be one of the exceptions to this pattern.

6. Public resources don't seem to matter much. Counties with punch card systems actually tend to have higher incomes, higher tax revenues, and larger populations than do counties with more modern voting equipment. In counties using electronic voting systems—the most expensive type—per capita incomes and property tax revenues are actually lower than in counties using punch card or any other voting technology. Florida is actually one of the best examples of these patterns: the largest and richest counties tend to use punch-card equipment. The Washington Post's claim of November 11 that it is "mainly affluent counties that have switched" to newer technology turns out to be dead wrong.

Our study is intended only to address the question of who uses punch card and other voting systems. It does not explore the question of why punch card voting appears in Florida and elsewhere to be associated with a greater number of invalidated ballots in precincts with larger numbers of poor persons and minorities. Neither does it take a position on any of the other political or legal controversies surrounding the election in Florida.

Because of limitations on the data available, we were forced to consider optical scan systems as a single group. Some counties have scanners at the precincts programmed to inform voters of certain types of mistakes on their ballots, which can reduce substantially the number of invalidated ballots. However, we don't have comprehensive data on which counties use the precinct scanners. Neither can we identify the age of equipment in punch card counties.

We therefore cannot rule out the possibility that among counties using optical scanning the poorer ones are less likely to have the precinct counters. Neither can we rule out the possibility that among punch card counties, the poorer counties have

older equipment more prone to generating invalidated ballots. But there's no evidence to support those conjectures, and they could very well turn out to be just as wrong as some of the other popular beliefs about voting equipment.

A recent Cal Tech/MIT study has exposed as false another popular belief. It found that the electronic systems often promoted as the high-tech solution to chad problems actually generate the same rate of invalid presidential votes as Votomatic-style punch card equipment.

Evidence from studies such as these has obvious implications for some of the proposed solutions to problems associated with punch card voting. Our study shows that providing financial assistance to replace punch card technology would not be subsidizing the poorest counties—in most states, including Florida, it would subsidize the richer counties. And replacing punch card technology with expensive electronic systems might not reduce the number of invalidated presidential votes. In fact, it would probably increase it in the short run, because we don't understand yet why electronic systems generate a high rate of invalid votes, so we don't know what to do about it. On the other hand, just about everybody has become well informed about exactly what can go wrong with punch card technology. Next time around, anyone still using punch cards will probably take extra care to insert the card into the slot correctly, punch their selections forcefully, and tear off any hanging chad before turning in the ballot. Poll workers likely will check the vote recorders periodically for chad build up. The error rate for punch card voting will probably fall far below the rates prevailing in recent years for punch cards and electronic systems.

We'll undoubtedly learn more about the performance of different voting systems in the coming months. The Cal Tech/MIT group is expanding their study to examine the effects of using precinct counters in optical scanning systems, and to examine different types of electronic voting systems. Professor Kropf and I are currently studying how ethnicity, education and other factors are related to invalidated presidential votes, and how these relationships differ with different types of voting equipment. For example, we'll be able to show whether racial gaps in the rate of invalidated votes are greater in punch card counties than in counties with other voting technology. There are probably other useful studies currently underway.

Hopefully the findings of these research efforts will not only help inform policy making but also contribute to a more cautious and responsible public discussion of election administration and voting technology reform. The Washington Post and other major newspapers were quick to condemn the television networks for prematurely calling election night contests based on selective and unrepresentative data. But just a few days later these same newspapers were irresponsibly editorializing about racial and class bias in voting equipment, based on nothing more than selective and unrepresentative data. And unlike the networks on election night, they've had plenty of time to get the facts right. Yet as recently as February 25, a Post editorial was still making unsupported claims about how punch card equipment in poorer areas is "older and less well maintained."

We have also heard much talk in recent months alleging massive "disenfranchisement" of voters by punch card technology. This is a loaded term previously reserved for measures such as poll taxes and literacy tests intended to prevent large classes of people from voting. Punch card balloting, despite its recognized flaws, was never intended to prevent anyone's votes from being recorded. The Cal Tech/MIT study found it is no less effective than the touch-screen voting systems in recording votes in presidential contests. Moreover, punch cards were intended to make voting easier. In many large counties it reduced waiting times for voters, as many punch card stations could be provided for the cost of only one lever machine. Although lever machines produce fewer invalidated ballots, it's possible that they would actually generate fewer total votes than punch card equipment, if they are also associated with longer lines that deter some people from going to the polls at all.

The problems affecting the largest numbers of voters in Florida were also the product of good intentions, and were not inherently related to punch card technology. In Palm Beach County, the major problem was a ballot designed to be printed in large type for the benefit of older voters. In Duval County, the major problem was faulty instructions to voters by party workers, that were provided with the intention of reducing roll-off in contests farther down on the ballot. Ballot design and instructions to voters are not issues unique to punch card technology.

I am not trying to defend the use of punch card technology. From the dozens of government reports and academic studies I have read on election administration and voting equipment, it's clear that many elections officials and other experts have been concerned for a long time about the deficiencies of punch card technology. However, we should not be under any illusions that eliminating punch card technology alone is the technical solution to all voting-related problems. This presi-

dential election happened to be decided in a state in which punch cards were widely used, and in which they produced an unusually high rate of voting errors. The next controversial outcome might turn on some completely different problem, in a state where punch cards aren't even used. As the executive director of the Election Center, R. Doug Lewis, has written:

Americans continue to amaze election officials with their creative ability to miscast votes. Give them a marking device with their paper ballot, and they'll take out their own pens instead—and the wet ink from a fountain pen may occlude the lens on the optical scanner. Or they'll use red ink and the infrared scanner won't detect it. Or they'll write notes, which a machine can't read. Give them an ATM-style touch screen, and they'll touch two candidates' boxes at once—and the screen will read neither, or both, or the box in-between.

Of course we should consider reasonable reforms that the evidence indicates might substantially reduce voter error. But voters, as well as party workers and election officials, will always make mistakes, and there will always be the potential for another controversial election outcome. We should not trivialize the denial of voting rights to women and African Americans earlier in this century by defining disenfranchisement downward to include honest mistakes associated with punch card voting.

#### OVERVIEW

In the aftermath of the 2000 Presidential election and the disputed vote in Florida, differences in voting equipment became a national issue. The public became acquainted with the potential for punch card mechanisms to produce large numbers of invalidated ballots. A Washington Post-ABC News survey found 64% of respondents in favor of (with only 29% opposed) the federal government “outlawing so-called punch-card ballots.” An overwhelming 87% favored (with 12% opposed) a law “requiring all states and counties to use one kind of voting machine.”

A widespread perception emerged among politicians and in the media that the use of punch cards, and of antiquated voting machinery more generally, is more common in counties with a greater percentage of minorities and poor people. A Washington Post editorial claimed that it is “mainly affluent counties that have switched” to newer technology. Vice-President Gore stated that “the old and cheap, outdated machinery is usually found in areas with populations that are of lower income people, minorities, and seniors on fixed incomes.” Senator Lieberman suggested that antiquated voting equipment “may be undermining the electoral rights of many poor and minority citizens.” In an opinion article, Jesse Jackson and AFL-CIO President John Sweeney charged that “voters in predominantly minority communities had to vote using antiquated machines. . . .”

Only very limited and selective analyses underlie these assertions, however. A New York Times study reported that in the 2000 election in Florida, 64% of African American voters but only 56% of whites lived in punch card counties. Similarly, Democratic voters were somewhat more likely than Republican voters in Florida to reside in counties using punch cards. A Washington Post article concluded from an examination of the Atlanta and Chicago metropolitan areas that the problem of racial differences in invalidated ballots caused by gaps in voting technology “extended well beyond Florida.” Based on this evidence, Washington Post columnist William Raspberry—like many others—has generalized that it is a “fact that the most error-prone machines tend to be in the poorest counties.” However, there was no comprehensive study on which such claims could be grounded.

With Professor Martha Kropf of the University of Missouri-Kansas City, I decided to investigate these claims, after learning that Election Data Services, Inc. maintained data indicating the type of voting equipment used in each county across the nation. Our study analyzes the incidence of punch card and other voting equipment by ethnicity, income and other variables, combining county-level demographic data from the Census Bureau with county-level data on voting equipment. We found little support for the view that resource constraints cause poorer counties with large minority populations to retain antiquated or inferior voting equipment. Nationally, there is very little difference between whites and blacks, between the poor and non-poor, and between Democratic and Republican voters, in the likelihood of living in a punch-card county. In a majority of states in which some but not all counties use punch card technology, whites, the non-poor and Republican voters are actually more likely than African Americans, the poor and Democratic voters to live in punch card counties. Moreover, counties with punch card systems on average have higher personal incomes, higher tax revenues per capita, and larger populations than do counties with more modern voting technology.

## TYPES OF VOTING EQUIPMENT

The choice of voting equipment is determined at the county level in most states. Voting equipment currently in use can be classified into six broad categories: (1) paper ballots, (2) lever machines, (3) punch card systems, including the infamous Votomatic equipment used in Broward, Palm Beach and Miami-Dade counties in Florida, (4) Datavote, a somewhat different form of punch card voting, (5) optical scanning, and (6) electronic systems.

Paper ballots constitute the oldest system of voting still in use. Candidates' names are printed next to boxes, which voters mark. Because they are hand counted, paper ballots remain in use mostly in small counties with few contested offices.

On mechanical lever machines, each candidate name is assigned to a lever on a rectangular array of levers on the face of the machines. The voter pulls down selected levers to indicate choices. Levers are connected to a counting wheel, which at the close of the polls indicates the number of votes cast on the lever that drives it. Linkages in the machines are arranged to prevent invalid votes such as overvotes.

Punch card systems employ one or more cards and a clipboard-sized device for recording votes. Information about the ballot choices is provided in a booklet attached to a mechanical holder and centered over the punch card, which is inserted by the voter. To cast a vote, a stylus or other punching device provided is used to punch holes at the appropriate locations on the card, forcing out the inside of a pre-scored area in the shape of a rectangle (the now famous "chad").

Datavote also uses punch technology, but is different enough to warrant a separate category. A stapler-like tool creates holes on the card with sufficient force that pre-scoring of ballot cards is unnecessary. The name and party of the candidates are printed directly on the Datavote card, so it is easier for voters to ascertain after completing their ballot whether they voted as intended. Because fewer ballot choices can be printed on each card, voters typically must vote several cards. This proliferation of cards can slow the counting process substantially (unless extra card-reading capacity is added), so that a large county such as Los Angeles might have difficulty completing their tabulations on election night were it to convert from Votomatic to Datavote.

Optical scanning systems are widely used in standardized testing and other functions besides voting. Optical scanning began to be used in voting at about the same time as punch card systems, although its use spread more slowly until the 1980s. These systems use large ballots similar to those of paper ballot systems, so that information about candidates can be printed directly on the ballot. The ballots are counted by a machine that uses light or infra-red as a sensor to discern which oval or rectangle the voter marked from a set of choices. In many counties, voters can feed the ballot into a reader, which returns the uncounted ballot to the voter if it contains any overvotes or other mistakes, giving the voter a chance to correct the ballot. In other counties, voters drop the ballot in a box and the ballots are all collected and fed into the machines later by election workers.

Direct recording electronic systems are similar to lever machines, and different from other systems, in that there is no physical ballot, and no possibility of overvotes if the equipment is programmed correctly. While votes are tallied electronically using punch card, Datavote, and optical scanning systems, votes are not cast electronically. Electronic voting systems are different from those systems in that voter choices directly enter electronic storage, using touch screens, push buttons or keyboards.

In Maine, Massachusetts, New Hampshire, Vermont, and Wisconsin, voting equipment is determined at the municipal level. In many (but not all) counties in these states, therefore, equipment is not uniform throughout the county. These mixed systems were in effect in about 4.5% of counties in 1998, representing about 8% of the population (see Table 1).

## DATA AND METHODOLOGY

Following the general election in November of each even-numbered year, Election Data Services, Inc. surveys states and counties to obtain data on voter registration, vote totals, and voting equipment in use, with complete results available the following spring or summer. Thus, the most recent year for which the voting equipment data are available is 1998. Each county is classified in the Voting Equipment Data File as either using paper ballots, lever machines, Votomatic-style punch cards, Datavote, optical scanning, electronic, or mixed. The survey does not ascertain which punch card or optical scan counties provide voters with access to card readers that checks ballots for overvotes or other problems before they are turned in.

We merged the Voting Equipment File with demographic data from USA Counties 1998, a data file available from the U.S. Census Bureau. This file provides estimates of the number of whites, African Americans, and Hispanics (who may be of any race) residing in each county in 1996, and of the number of poor and non-poor persons as of 1993. Personal income per capita and property tax revenues per capita are available for 1994 and 1992 respectively. Data are available in USA Counties on the number of votes cast for the Democratic and Republican candidates (Clinton and Dole) in the 1996 presidential election, which can be used to approximate the partisan distribution within counties.

#### DETAILED FINDINGS

For the U.S. overall, black-white differences in punch card use are negligible: 31.9% for whites and 31.4% of African Americans live in counties using this voting technology. Hispanics are much more likely to live in punch card counties than either whites or blacks. However, this difference is entirely attributable to Los Angeles County, where nearly one in seven Hispanics in the country reside. Whites (27.7%) are more likely than blacks (21.8%) to live in optical scanning counties, but blacks (37.8%) are much more likely than whites (26%) to live in counties using either of the technologies for which overvoting is nearly impossible if machines are programmed correctly: electronic voting and lever machines.

Differences in voting equipment associated with poverty status are very minor. The poor are slightly more likely than the non-poor to live in punch card counties, but also slightly more likely to live in counties with electronic voting.

Based on presidential voting patterns in 1996, Democratic and Republican voters were equally likely to live in punch card counties. Democrats were somewhat more likely to live in counties with "antiquated" equipment, but in the form of lever machines that produce very few invalidated ballots, not punch cards. Republicans were somewhat more likely than Democrats to live in optical scan and electronic voting counties.

In practical terms, these nationwide comparisons are relevant only for the popular vote in the presidential election. Equity in voting technology is better addressed by examining differences across counties within states. The Electoral College system grants a state a fixed number of electoral votes, regardless of the number of valid votes cast in the state. Therefore, differences in voting technology that are purely cross-state cannot disadvantage a state's voters relative to other states. For this reason, it is important to examine differences across counties within states, to exclude purely cross-state differences that can have no electoral impact. Accordingly, we considered separately each of the 29 states in which some but not all counties use punch card technology.

The conventional wisdom regarding racial disparities in voting equipment is contradicted by the state-level comparisons: in 18 of the 29 states, whites were more likely than African Americans to live in punch card counties. The 11 states in which blacks were more likely to live in punch card counties tend to be larger, however, accounting for 191 electoral votes, compared to 162 for the 18 states in which whites were more likely to live in punch card counties.

A similar comparison between whites and Hispanics shows that the former were more likely to live in punch card counties in 21 states (representing 235 electoral votes), while the latter were more likely to live in punch card counties in only 8 states (representing 118 electoral votes).

The conventional view that the poor live disproportionately in punch card counties also turns out to be incorrect for the majority of states. In 21 states, representing 203 electoral votes, it is the non-poor who are more likely to reside in counties using this type of voting equipment. In only 8 states, representing 150 electoral votes, are the poor more likely to live in punch card counties.

Party differences, as measured by voting in the 1996 presidential election, also contradict popular belief. A greater share of Dole voters than Clinton voters lived in punch card counties in 16 of 28 states. However, the states in which Democratic voters were more likely to live in punch card counties account for slightly more electoral votes (183 to 167).

#### ECONOMIC FACTORS

The belief that minorities, the poor and Democrats tend to reside in areas using more error-prone voting equipment rests in large part on the reasonable presumption that cost matters. Electronic voting systems are more expensive than punch card systems, and counties with a lower poverty rate (and thereby a smaller share of minorities and Democratic voters in general) may be better able to afford the newer, more expensive technology. On the other hand, larger counties—where mi-

norities and Democratic voters disproportionately reside—may benefit from economies of scale in purchasing and implementing newer systems such as electronic voting.

Our results found little evidence that the retention of punch card systems, or the adoption of less error-prone optical scanning or electronic alternatives, is heavily influenced by considerations of affordability. Punch card counties in Florida are much larger, wealthier, and more revenue-rich than any other group of counties. It is exactly those counties which should be best able to bear the expense of modern equipment which are the most likely to retain punch cards.

For the U.S. as a whole, punch card and Datavote counties are larger and wealthier on average than those using any other voting system. Paradoxically, counties using electronic voting constitute the group with the lowest incomes on average, and—by a wide margin—the lowest property tax revenues per capita.

Similar findings are produced by comparisons across counties for each state separately. For each state in which some counties use punch cards while others use modern (optical scanning or electronic voting) equipment, we calculated simple averages of county size, income, and taxes across the relevant group of counties. For example, we found that in Arkansas, punch card counties on average are larger (mean population of 63,594) than counties with modern equipment (34,139). Similarly, they are wealthier (mean personal income per capita of \$16,597 vs. \$14,982) and have higher tax revenues per capita (mean of \$239 vs. \$209 per year).

In 17 of 28 states, punch card counties tend to be larger than counties with modern equipment. Similarly, in 17 of 28 states punch card counties tend to have higher incomes, and higher property tax revenues per capita.

Finally, we ran multivariate tests, using counties as the units of analysis, that include demographic and economic variables together. These tests can determine, for example, whether counties of a given size are more likely to use punch card systems if they have more minorities. Controlling for other variables, we found that counties with a higher share of African Americans are significantly less likely to use paper ballots, more likely to use lever machines, and less likely to use punch card machines. Counties with more Hispanics are less likely to use lever machines, and more likely to use Datavote or optical scanning technology. Higher incomes are associated with a lower likelihood of using paper ballots, but no other significant relationship with income was found.

Higher property taxes are associated with a greater use of paper ballots (likely reflecting low population density) and a lower likelihood of using electronic voting. Low population levels strongly predict the use of paper ballots as expected, while large counties are more likely to use punch card or electronic voting systems.

#### CONCLUSION

Results from our study contradict the widespread belief that African Americans, the poor, and Democratic voters are more likely to reside in counties using punch card technology, and that the choice of voting systems is largely determined by affordability. Evidence reported in the media on ethnic and party disparities in Florida and in selected metropolitan areas such as Atlanta and Chicago is inconsistent with evidence from most other states and the country as a whole. In fact, in the majority of states with some counties using punch cards and others using alternative systems, whites, the non-poor, and Republican voters are more likely than African Americans, the poor, and Democratic voters to reside in punch card counties. Moreover, there is little evidence that the choice between punch cards and more modern, less error-prone systems is influenced by economic factors. To the contrary, in Florida and elsewhere larger, wealthier and more tax-rich counties are more likely to use punch card technology, and less likely to use electronic voting systems.

Several caveats to our study should be noted. First, it in fact found some evidence of disparities in voting equipment that may disadvantage minority groups. Blacks are more likely than whites to reside in counties using lever machines, which may be associated with longer waits at the polls. Also, Hispanics are much more likely than whites to live in punch card counties, although this disparity would be eliminated entirely if Los Angeles County abandoned its use of punch cards—and the disparity in most individual states is inconsistent with this gap for the nation as a whole.

Second, there are potentially important variations in the way punch card systems operate that we are unable to control for due to a lack of data. For example, we cannot rule out the possibility that poorer counties are less likely to provide voters access to card readers that allow them to check that their ballots accurately reflect their voting intentions. However, the availability of this equipment could just as



easily be a function of county size rather than income levels. We also do not have complete data on the number and characteristics of absentee voters in each county and on which system is used for tallying their ballots.

Third, this analysis addresses only the question of who uses punch card and other voting systems, and does not explore the possibility that minorities or the poor might find it more difficult than other voters to use punch card technology effectively. The New York Times and Washington Post have reported that in Chicago, and in Duval and Miami-Dade counties in Florida, there are far higher rates of invalidated votes in precincts with large numbers of African American voters.

Fourth, the study does not claim that the 2000 presidential election outcome was unaffected by the geographic distribution of punch card voting in the 2000 election. Unluckily for Vice-President Gore, the crucial state in the election happened to be one of the few in which Democratic voters were substantially more likely than Republicans to vote using punch card technology.

Finally, the study is intended solely to investigate the consensus that rapidly emerged in the aftermath of Florida regarding who was more likely to confront antiquated voting technology. None of its findings should be interpreted as arguing for the retention of punch card technology, or that voters are to blame when their ballots are not read in a way consistent with their voting intentions. Neither should our study be interpreted as taking a position on any of the political or legal controversies that arose in Florida following the 2000 election.

In light of the now widely-known problems associated with punch card voting systems, it is easy to second guess decisions to retain punch card systems until now. Lost in all of the publicity regarding Florida, however, are the potential drawbacks of alternative systems. Errors are not unique to punch card systems.

As experts have noted, each type of voting system has its own particular vulnerabilities. The executive director of the Election Center, R. Doug Lewis, has written:

Americans continue to amaze election officials with their creative ability to miscast votes. Give them a marking device with their paper ballot, and they'll take out their own pens instead—and the wet ink from a fountain pen may occlude the lens on the optical scanner. Or they'll use red ink and the infrared scanner won't detect it. Or they'll write notes, which a machine can't read. Give them an ATM-style touch screen, and they'll touch two candidates' boxes at once—and the screen will read neither, or both, or the box in-between.

Counter mechanisms on lever machines may fail to turn, due to a disconnect in the mechanical system or to excessive friction. Unlike the case with punch card systems, there are no independent ballots available for recounting if a lever machine suffers from a rare failure such as this. If the printed strips inserted in a lever machine that identify candidates are incorrect, voters may cast votes for the wrong candidate. If not all of the counters have been set to zero before the polls open, incorrect totals can be produced. Even where lever machines work perfectly, their higher cost may result in an insufficient number of machines, leading to longer waiting times, perhaps deterring some people from voting.

With optical scanning systems, there are instances on record of ballot readers failing to read inordinately large numbers of ballots. An optical scanning malfunction in Volusia County, Florida caused hundreds of votes to be missed in the 2000 election. The Orlando Sentinel newspaper conducted a manual review of more than 6,000 ballots read by optical scanners as invalid in Lake County, Florida in the 2000 presidential election, and found hundreds of overvotes in which voter intent was clear from attempted erasures or from notes written on the ballots, and several undervotes in which voters had circled a candidate's name instead of filling in an oval.

Most electronic systems in use do not provide re-countable individual records of voter choices, meaning that certain software or other problems in vote tallying may not be correctable. Any system relying on computerized vote tallying, including electronic voting, optical scanning, and punch cards, is subject to both security concerns and the possibility of programming errors.

Punch cards created unusually serious problems in Florida in 2000 for several reasons. First, no punch card counties in that state provide voters with access to card readers to check their ballots for overvotes or other problems; by contrast nearly all optical scan counties in Florida provide this option. Second, Florida's punch card counties appear to be atypical in not having election workers fan the ballot cards, or pull off hanging chad, before machine counting them on election night. Finally, there were problems specific to individual large counties, such as the ballot design in Palm Beach County and confusing instructions provided by Democratic Party workers to their voters in Duval County.

This discussion is not intended as a defense of punch card technology, but to suggest that differences in the accuracy of punch card and other systems was reasonably perceived (until the 2000 election) as a matter of degree, and that the retention of punch card technology was not dictated only by a sheer inability to afford newer systems. In fact, a new Cal Tech-MIT study has found that electronic systems—the most expensive type of voting equipment—generate as many invalidated presidential votes as does punch card equipment.

The CHAIRMAN. Thank you, Professor Knack.

Mr. Shelton mentioned the phone calls that were made by those seeking to impact the vote in Florida. The Wall Street Journal pointed out on February the 27th that the Democratic Party had an early-on strategy to subvert any potential pro-Bush outcome in Florida. It started even before the polls closed. According to the Palm Beach Post, the DNC hired a Texas telemarketing company, Telequest, to call voters on election day to stir up fears about their punch card ballots.

So I think both sides were trying hard to win in Florida, and the tactics, it seems to me, could be equally criticized in both parties.

Now, Mr. Shelton, I gather you think the use of punch card systems and butterfly ballots and the lack of safeguards, such as card readers for punch card ballots, the inconsistent decisions poll workers made to allow some people who could not be verified as eligible registered voters to vote, but not others, and the unusual number of invalid and illegal registrations and ballots in certain Florida counties, I gather from listening to your testimony that you thought that was the result of intentional racial discrimination.

Mr. SHELTON. The consistency of the level of discrimination that occurred in Florida certainly raised that idea to a very prominent position with us consistently, as we talked to voter—potential voter, I should say, after potential voter. We heard the many stories as people came to testify and provide affidavits to us that consistently we heard stories of people being locked out, turned around, their votes being thrown away in record numbers. It certainly raises that point to a very high level of consideration for us. So certainly I would argue that that level of discrimination did occur. I cannot read the minds of people and tell you how intentional it was, but the effect was also very clear. We had Haitian voters that went to the polls with interpreters, asking if they could vote, poll workers turning them away saying they could not use the interpreter. We had African Americans going to the poll that had participated in the primary and going to the same site and their names not being on the rosters, as well as their votes just being thrown out altogether.

So the answer to the question is I can't say there was a massive, masterminded intention to lock out African American voters, but I will say that the disproportionately high number of African American voters that were disenfranchised is frightening.

The CHAIRMAN. Do you have any thoughts, then, about why Florida's Democratic Attorney General Bob Butterworth and Janet Reno, the Attorney General in the Clinton administration, never opened any criminal investigations based on the allegations the NAACP compiled in its field hearing and presented to them?

Mr. SHELTON. We were and are extremely critical of the slow movement of the Department of Justice in that area as well as officials in Florida to move forward and investigate with some depth

what has happened. We are still hoping that that occurs. As you know, the NAACP has filed a lawsuit to address these issues. We waited until after the election. Our intention was not to affect the outcome of the election but to preserve the civil and voting rights of America's citizens.

The CHAIRMAN. The effort to reform our elections, it seems to all of us, must balance many and sometimes conflicting values. People need to view the process as fair and open, regardless of race, ethnicity, or national origin. People also need to view the process as honest and accurate and not subject to massive fraud.

What do you view, Mr. Shelton, as the best way to increase the reality and perception of fairness and openness while at the same time enhancing the reality and perception of honesty and accuracy of our elections, which is very much in question in light of events in places such as Florida and Missouri, where substantial vote and registration fraud has been documented?

Mr. SHELTON. Absolutely. I think that the 12 steps that we have outlined that are now encompassed in Senator Dodd's legislation is a very helpful first step, a process where we begin looking at just many of the problems that occurred, having States present State plans to a commission of ways to strengthen their ability to provide an accurate, honest, and open ability for all Americans to participate in the voting process, where we take into consideration much of the history of disenfranchisement in our Nation.

With some deference to my learned colleague to my right, disenfranchisement laws in this country were also put in place consistent with a move to lock out African American voters. Most of the disenfranchisement laws that we have today had actually begun directly after African Americans were given the right to vote and were done consistently with laws that African Americans were most likely to break.

But even beyond that, I think the training of poll workers is extremely important. I think standardizing disenfranchisement laws so that all States have a very clear, clean process in which Americans that have paid their debt that are now being called upon to become good citizens, to get jobs, to work hard, to take care of their families have a stake in the democracy and are able to vote as soon as possible. That is extremely important.

As a matter of fact, Mr. Chairman, if I might, I would argue as much that Americans that commit crimes and pay their debt to society are oftentimes put on probation upon coming out, and at best, probation is a process in which we provide greater oversight as we reintegrate Americans into our society.

The CHAIRMAN. The NAACP is against the State laws that prevent convicted felons from voting?

Mr. SHELTON. Upon release. They have become too confusing. They disenfranchise not only those Americans that have paid their debt, but also as we saw in Florida, many Americans that did not commit a crime or convicted at all.

I have a black, Catholic priest in Florida that went to the polls to vote and was told he could not because he was a former felon, which he was not. But because the company that was given the responsibility of purging those rolls used last names instead of something like a Social Security number or a birth date—

The CHAIRMAN. But you are talking about mistakes now. But even if there were not mistakes, it is your view that convicted felons should be allowed to vote?

Mr. SHELTON. Once they complete their sentence in prison, they should be allowed to vote. And in many ways, this would affect a drastic issue of confusion. If an American is not incarcerated, they can vote. There would be no confusion at the polls.

The CHAIRMAN. As we have heard today, Florida is a State where elections are controlled at the county level. County supervisors of elections are responsible for selecting ballot designs, selecting the type of voting equipment used, selecting how resources such as computers and registration databases are apportioned, and how to maintain accurate voter rolls. The counties about which you have made the most serious allegations of intentional racial discrimination in the administration of the election are Duval, West Palm Beach, Broward, and Hillsborough counties. I guess Palm Beach, Broward, and Hillsborough counties.

Bearing in mind that all of those aspects of the election I just described were handled by local officials, what do you think the responsibility of the supervisors of elections in those counties bear—what kind of responsibility do they bear, then, for the problems about which you complain since they selected the ballot design, hired, trained, and oversaw the poll workers, decided where computers would be located, decided when and where to open and close the polls, and made all other decisions about how the elections were administered in those problematic counties?

Mr. SHELTON. I think most importantly their responsibility now is to repair the breach. They must go back and—

The CHAIRMAN. But if you would answer my question, who was responsible for the problems that you raise in Florida in those counties?

Mr. SHELTON. The problems we had in those counties were on every single level, from the poll worker that gave out inaccurate—

The CHAIRMAN. But the authority was at the county level, was it not?

Mr. SHELTON. Yes, it was.

The CHAIRMAN. In Florida.

Mr. SHELTON. Yes.

The CHAIRMAN. Thank you. I think it is noteworthy, just for the record, with regard to any partisan implications of what happened in Florida, that the supervisors of elections in Broward, Hillsborough, and Palm Beach counties, who had ultimate responsibility for all of these issues that we just talked about were Democrats. The supervisor of elections in Duval County is officially designated as nonpartisan. So I think any effort to try to blame the problems that were incurred in all of the areas that you outlined that were of concern to you on the State officials in Florida is simply not appropriate.

Mr. SHELTON. Mr. Chairman.

The CHAIRMAN. Yes.

Mr. SHELTON. In due respect, the NAACP is a nonpartisan organization. We are not interested in assigning blame to one party

over the other. We are most interested in making sure this never happens again.

The CHAIRMAN. Well, I am certainly encouraged to hear that, and I congratulate you for that observation.

Mr. Gaziano, as Congress works toward bipartisan election reform, what lessons should we take from *Gore v. Bush*? For instance, does the Supreme Court's ruling require States now to adopt uniform voting systems for every one of their jurisdictions? Does it require uniform enforcement of voter eligibility laws throughout a State? What do you draw from this decision in terms of the future?

Mr. GAZIANO. You start with the hard questions but the most important.

First of all, it does not require any type of uniformity between States. You all can choose to exercise your Article I, Section 4 authority with regard to Federal congressional elections, but the equal protection decision does not require uniformity between States. Even within a State, the decision itself still doesn't require uniformity in its own terms. The Supreme Court has some limiting language in which it said that it was reviewing the situation in Florida in the totality of the facts, and it stated, its deliberation was quote, "limited to the present circumstances." The U.S. Supreme Court said the major flaw was that there was one Florida court that had authority to make uniform vote-counting standards, and instead of doing so, it endorsed decidedly unequal procedures. So that might limit the reach of the opinion.

On the other hand, there are some aspects of the decision that say where there is such authority in a State and such uniform standards are practicable, the Court suggested it is an equal protection violation not to take certain steps to make the procedures more uniform.

I can imagine that this is going to be an evolving area of the law, and I can imagine—

The CHAIRMAN. So if you were a Secretary of State somewhere, would you be recommending to your legislature—

Mr. GAZIANO. I might be recommending—

The CHAIRMAN [continuing]. That they go to uniform voting procedures?

Mr. GAZIANO. There are two things I might recommend. One is I want no authority because then I have to act. Give it all to the counties. But that is probably not the case with most Secretaries of State.

The exact lines are unclear, but where a State has given some authority to the Secretary of State—for example, in Florida, the Secretary of State did have some authority to issue uniform guidelines on counting chads, and the Secretary of State did attempt to do so and was overruled by the Supreme Court. I think that this opinion strengthens the Secretary's hand, both in the exercise of his or her authority and perhaps in urging the legislature for more authority. I think there is some responsibility for the legislatures in passing such reform legislation to consider that and to decide where uniformity is important, maybe standards, and where there is some local discretion that will be allowed.

The CHAIRMAN. Do most State laws prohibiting convicted felons from voting extend to criminals convicted of Federal felonies or just State felonies?

Mr. GAZIANO. Most States—and it is 47 States that have felony disenfranchisement laws—do extend it—I couldn't come up with an exact number, but I think it is the overwhelming number that do extend it to Federal felons. And in the Motor-Voter law you require U.S. attorneys to notify State officials of conviction of Federal offenses and whether such convictions were overturned, and you require Federal officials to answer questions that the States might have. It is a very complicated and interesting patchwork, but—

The CHAIRMAN. Well, let me ask you this: Does Congress have the authority to prohibit Federal felons from voting in Federal elections?

Mr. GAZIANO. I thought about that in preparation for testimony. There might be three grounds you could assert for authority. I don't think you can pass a comprehensive civil disenfranchisement statute of the type States have. You might have authority to make it part of the penalty of a crime going forward, and even that I am a little dubious about. But probably your safest ground is to bribe the States with new money that would pass the Supreme Court's spending clause—

Senator DODD. Isn't bribery a felony? [Laughter.]

Mr. GAZIANO. Well, you know how these sorts of things happen. But under the Supreme Court's spending clause cases, if it is non-coercive inducement to the States to impose that sanction, you probably have authority to do that.

The CHAIRMAN. Mr. Figueroa, in light of the documented evidence that many ineligible voters cast ballots in the last election, what, if any, steps do you think should be taken to ensure that our elections are not only open but honest in the sense of ensuring that people voting are legally entitled to do so?

Mr. FIGUEROA. Mr. Chairman, from our perspective, and certainly going back to the language issues that I testified to, I think that certainly enforcement of the Voting Rights Act provisions that deal with language issues specifically is, I think, a good place to start. Certainly as we consider reforming the entire system or many parts of the electoral process, the fact that having trained personnel that appropriately can speak Spanish where it is needed or having materials that are written in the language of the community that is involved in that instance I think would be very helpful in making sure that citizens whose primary language may happen to not be English at that time can fully exercise their right to vote.

The CHAIRMAN. To the extent you claim there was intimidation directed at preventing Latinos and language minorities from voting, do you think officials in Florida are being lax in investigating and prosecuting the county officials responsible?

Mr. FIGUEROA. Well, certainly this is one of the things that we are looking at right now as we are preparing for litigation in this case. We have found a number of instances where people were given wrong information, typical to other communities, did not appear on the voting rolls, were given excessive things to do in preparation for an affidavit, voting by affidavit. In some of these instances, they seemed to be purposeful. And so—

The CHAIRMAN. In that regard, then, would a Federal criminal investigation of those charges be appropriate?

Mr. FIGUEROA. Well, as Mr. Shelton has said, we also wrote immediately, a few days after the election, a few days after we got complaints from Florida, and have been vigilant since then, that the Justice Department look at this. As a matter of fact, in the case of Florida, the person who actually contacted our organization called the Justice Department and registered a complaint around 2 o'clock on election day. So we are following that closely, and we do expect the Attorney General's office to follow through on that.

The CHAIRMAN. Well, let's look to the future. Given the pervasive intentional discrimination that you assert was directed at minorities in the polling places, do you support having Federal authorities monitoring these polling places in the next election to document and prosecute any such behavior?

Mr. FIGUEROA. Let me make clear something, Mr. Chairman. I have mentioned that we do seem to have some evidence of some intentional behavior. Clearly, what we are seeing here is the effect of the accumulation of a number of different factors which seem to, without a doubt, in our opinion, have had the effect of having Latinos not be able to exercise their right to vote.

The CHAIRMAN. So is the answer to that yes?

Mr. FIGUEROA. Actually, I have forgotten the—

The CHAIRMAN. Well, the question is: Would you favor, then, in order to prevent this sort of thing in the future, having Federal monitoring of these precincts where you allege that—

Mr. FIGUEROA. Well, I am not sure that it is Federal. I wouldn't say Federal necessarily, but one recommendation that I did make to the Black Caucus a couple of weeks ago is that where you have communities where there is evidence where these problems have been persistent, I would say create an ombudsman or somebody who is in these electoral colleges who, in fact, can provide the appropriate information, whether language is involved or not involved, and be able to help someone who is, for whatever reason, trying to exercise their right to vote.

The CHAIRMAN. And ensure there is an honest election in the process, too.

Mr. FIGUEROA. Excuse me?

The CHAIRMAN. And ensure there is an honest election in the process.

Mr. FIGUEROA. No question that is the bottom line to the whole process.

The CHAIRMAN. You know, Mr. Shelton, one thing I failed to mention that I am sure you were proud of in Florida, African Americans represent about 14 percent of the voting age population in Florida, and yet they represented 16 percent of the total turnout in Florida. So that aspect had to be something you felt good about in terms of African American voters getting out and voting in Florida.

Mr. SHELTON. We were excited about that, and we were actually excited that the numbers were higher than that. The only numbers you have are those that were actually allowed to cast the vote.

The CHAIRMAN. Professor Knack, in your study, who uses inferior voting technology? You note that in the Florida, counties such as

Palm Beach, Duval, and Miami-Dade registered much higher rates of invalid punch card ballots, especially in minority areas, than occurred in most other places that used punch card ballot. You have explained that this could have been due in part to the confusing ballot design adopted by Democratic officials in Palm Beach County, the decision of Democratic canvassing boards in these counties to not have card readers available, and State and local regulations that did not require poll workers to fan ballots and remove hanging chads.

You also mentioned confusing instructions handed out by the Democratic Party workers to voters in Duval County. Your study also noted “a greater number of voters with either no prior experience or limited ability to read and comprehend written instructions in poorer and heavily minority precincts.”

My question is this: Do you think that well-designed, non-partisan voter education and literacy efforts would substantially reduce the unusual frequency of invalid votes in those kinds of areas?

Mr. KNACK. That is a good question. Probably Doug Lewis from your last panel would be better equipped to answer that than I would.

I should mention that a lot of these possible explanations that were mentioned in the paper are conjectural. I really don't think there is a lot of evidence that apportions the blame for these high rates of invalidated votes to all these different factors. I think it is just speculative. It was basically just a list of possible factors that could have explained it, but I don't think we really know.

I mean, apparently, Florida is somewhat atypical in the way they administer punch card systems. In quite a few parts of the country, election workers fan the ballots and do other things to remove the chad before the votes are ever counted for the first time. But just how atypical Florida is in that respect, we don't know. There is just not systematic data on that.

The CHAIRMAN. What factors beyond a specific voting technology used impact the ability of voters to translate their preferences into legally valid votes?

Mr. KNACK. You know, I think it is always easy as an academic researcher to recommend more academic research. But I really think there is at this point a real demand for some micro-level studies of behavior to determine what are the sorts of things that confuse voters when they enter the polling booth, not just with punch cards but with higher error rates with other types of technology. We need studies that are designed to figure out exactly what is it that is confusing people, what is the nature of their confusion. I really don't think we have the answers to those questions. And until we do, it is easy to propose some technological solutions and throw money at the problem, but we are probably going to spend that money in very inefficient ways.

The CHAIRMAN. Finally, why do you think that some other large jurisdictions, such as Los Angeles County, which used punch card ballots in the 2000 election, did not experience the degree of difficulty encountered in certain Florida counties such as Palm Beach, Miami-Dade, and Duval?

Mr. KNACK. By difficulty, you mean the rate of invalidated votes?

The CHAIRMAN. I suppose.



Mr. KNACK. I haven't seen the data on that. But it is possible that there are differences in the age of the equipment. I don't want to get into the details of the vote-recording devices used in punch card systems, but there are different parts of the equipment that can cause errors when the equipment ages. There are these rubber strips, for instance, that can fail.

Another way in which punch card systems across counties can differ from each other is that in some, but not that many, there are these so-called precinct counters. But that issue is usually discussed in the context of optical scan. But in some punch card counties, voters can actually feed their ballots into a machine that can detect under- or over-votes. And I am not familiar enough with Los Angeles or any other particular county to say, you know, that they have that equipment and that is the reason for the lower problem.

The CHAIRMAN. Thank you.

Senator Dodd.

Senator DODD. Thank you, Mr. Chairman. Just picking up on that last point, I think that particularly when you have an over-vote, the machines kicks back out the ballot and says try again. And in the Los Angeles area, you have that and here you don't. And it is now discovered, at least based on one analysis that has been done, some 6,000 ballots in one county had over-voting. This was despite the fact that people wrote on the ballot what they wanted to do when they cast a ballot for two Presidential candidates and realized they had probably, at the very least, created confusion, not error, and wanted to indicate what their intent was. As a result, of course, those votes were not counted.

But, anyway, let me come back. I hope we are going to keep this on the level where we are talking about what needs to be done. I think there is a recognition that we wouldn't be having hearings and talking about this if there were not a genuine concern in the country about what we put the Nation through for 36 days in trying to determine who the President of the United States was. And while the focus was on Florida and other States where issues have been raised, certainly my constituents, when they voted for President, felt as well that their vote was in some way placed in jeopardy because of what happened in other places.

So, there is a national framework to this. While we are focusing on individual States where problems occurred, every voter in the country is affected in a Presidential race if there is a failure in the system that results in electoral college votes being cast on the basis of a few hundred ballots one way or another. So this is national in scope and really does deserve, as I hear at least you, Mr. Shelton, and Mr. Figueroa saying, that there are clearly national standards, there are national issues, there are national interests here that can't exclusively be left to the whims of what occurs at a county or precinct level in the country. And for those reasons, some of us have introduced legislation to try and at least have some standards apply here.

I won't read the whole article, but I find this piece intriguing—and I will put it in the record—about the Brazilian elections. I don't know what this appeared in. It came from the Brazilian embassy in response to an inquiry I made to them. My inquiry was based on a news article I had seen where, as a result both of their

new technologies they put in place on a national level and of setting standards, in this last election the results of 95 percent of all municipal voting districts were known by midnight on election day. By noon of the next day, the superior electoral court had certified all the results, including those from the locations as remote as the Amazon Basin. There was not a single allegation of fraud, and these involved the elections of over 6,000 mayors, 48,000 municipal council members, and 110 million people voting in a Third World Country. We have touched on systems and so forth. That was a country that had huge electoral problems just a few years ago and managed to come up with a scheme and a mechanism that eliminated at least, by and large, the problems that existed.

Let me come back, if I can, because I appreciate the idea of suggesting some solutions here. The NAACP is not a partisan organization. And I know that the NAACP is as critical of Democrats as Republicans when problems arise. So I hope we will keep focused on that aspect of all of this.

I wonder if you might just, Mr. Shelton—I said “Mr. Hilary” earlier. Pardon me. You described some hearings that you had and some findings that the NAACP made from hearings conducted in Florida, Missouri, Texas, and Massachusetts. I wonder if you might just give us a synopsis of what you concluded for them.

Mr. SHELTON. Absolutely. We heard extremely compelling testimony just 4 days after the election on November 7th in Florida, on Saturday. Over 700 Floridians came into Miami-Dade County in a small community center to talk about what had happened, to share their fears and concerns of what had happened to them.

We had Haitian Americans coming in to testify that they were not allowed to use interpreters, even though they brought the interpreters with them. We had African American men that testified that, as they went in to vote, they were the only ones asked if they had felony offenses on their record.

We had a priest come in to testify and share with us that he was taken off the rolls and later found out that it was because he was assumed to have had a felony offense on his record and that apparently, as many of us have already talked about, the company that was brought in unfortunately did a really sloppy job of purging the rolls in Florida.

We had students come in saying that they had worked very hard to hold voter registration drives, and many of them on college campuses were very excited to participate for the first time in their lives in a Presidential election, excited with anticipation of being able to take a stake and help make a decision who would be the leadership of the country, and going to one place during the primary to vote where they were able to vote, and then going to another place—or going back to that place during the general election and the polling site had been moved, and they were unable to find a polling site at all.

We had other college students that came in that registered to vote, then went to their polling site, after moving from one polling site to another, and then yet at the end to a fourth polling site, they found they were not on the rosters at all and were unable to vote. They were not given the option of a provisional ballot, things of that nature.

We had people in areas of Florida that went to their polling site to vote to have to get through first blockades of streets that police had set up for some—for what we were told later for some other reason, but prevented them from getting to the poll site, and other polls sites that had police lines around them that provided a level of intimidation.

And though very well I would say it is not like the fire hoses and the police attack dogs and days gone by in our country. I think we still have many citizens that had those very vivid images of being prevented from voting in our history. And as those citizens went to vote and saw these same symbols in many ways of voter intimidation, they turned around and went away.

We also had Haitian Americans that, when a police line was set up in front of a polling site when Baby Doc or Papa Doc was running for re-election, it sent a very different signal to them as they saw uniformed police officers outside their polling places as well.

So we had a myriad of issues and instances of both voter intimidation and voter rejection.

Senator DODD. Your testimony does not speak to this issue directly, but there is always a legitimate concern regarding the role and degree of fraud in Federal elections. We are talking here, obviously, about Federal elections. This is not every election that occurs in the country, but just the Federal elections where the national legislature and the President of the United States are the issues being decided. Does the NAACP take any position regarding fraud? And are you aware of any national studies or statistics that discuss fraud in Federal elections?

Mr. SHELTON. I am not aware of national statistics particularly, but I will say this: The NAACP is extremely concerned about fraud. Interestingly enough, fraud has more often been something used against the will of people in the African American community than it has been used as something to help further that will. So certainly we want to make sure that fraud is not part of the landscape and do everything we can to see to it that every American's vote is counted, and counted accurately.

Senator DODD. I wonder if you might speak, as well, on the issue that was raised by Senator Schumer, who talked about the 1.4 million people who work in the 192,000 polling places around the Nation on election day and the difficulty in New York of getting people to do the job. What sort of evidence did your hearings give about the competency and sophistication, to the extent you expect that, of people working in polling places? I have the same concerns—you know, as someone sitting on this side of the dais. I have voted in every election since I have been registered to vote, sometimes by absentee ballot in my local community elections, but obviously in national elections I vote back in my hometown. You walk in, and as someone who is holding a high office in this country, you want to make sure you are doing this right. There is always that concern that I get this right. But we have little levers you pull down in Connecticut. I want to tell you honestly, when I walk in and close that curtain, there is a sense of apprehension I have that I am going to mess this up or not do it right or what does the ballot look like.

So the suggestion somehow that this is just a routine day for people—it's not—people take this very seriously. They really want their votes to count, and it can be intimidating to people. And when you add a lot of other elements out there, it is an unsettling experience. It is not something that we do every day, and so it is—I am not finding the right language here for you, but there is that sense that this is an experience that can be, little unsettling or unnerving.

So, anyway, I asked you about the poll workers themselves. What evidence did you hear about that?

Mr. SHELTON. Well, we got a lot of information in our hearing about poll workers that were misinformed or misunderstood what the requirements were to participate in the election. We had incidents where African American community voters filled out their punch card or whatever the card was they were using at that time. They had made a mistake. They went to the poll worker and said, "I made a mistake. I would like to get another card." And they simply told them no, you couldn't have it, though the law provides an opportunity for voters that make mistakes on their punch cards to go back and get a card and redo it.

So I think there is a strong need, I think, for re-education of our voting officials, our volunteers. Very clearly, I think the vast majority of people out there have very good experiences personally. Here in the District of Columbia, unfortunately, D.C. doesn't have a vote here in the Senate. But that is another hearing, I guess. But I think that there is a need to train poll workers so they are very clear on what to do under certain circumstances.

I think equally as importantly, I think we need to have something akin to a *voter's bill of rights*, that is, that the rights that you have as a voter when you go into the polls are prominently displayed, where you go to address issues of disagreement over process is very clear to be able to get through. I think there are a number of provisions that we have asked for in the bill that you have introduced that will be very helpful to that end. But I think that that is a good way of getting at addressing these problems.

I do think most poll workers are extremely well intended, but sometimes just not very well trained.

Senator DODD. Yes. There is one last issue I would like to raise quickly, there are a number of issues we have included as part of this proposal. This is not an easy question, but if you had to prioritize the things that you thought we ought to do in the short term that are more important than others, what would they be?

Mr. SHELTON. I think if I were going to the top three items, I would work to emphasize the already existing voter protection laws, the Voting Rights Act of 1965, the disability voters rights, the motor-voter bill so that people understand the provisions and the safeguards that are already in the law. I don't think they understand them. I don't think it is very clear. And I think in many ways they were violated, and I could presume that much of that violation was out of ignorance.

Secondly, certainly we need to enhance the modernization of our voting machines, both those that were used to cast the vote and those that were used to count the vote, to make sure there are less mistakes and a higher level of efficiency.

And, thirdly, I believe we need to certainly standardize the processes from State to State. We are not saying each State has to do it exactly the same way, but best practices and standards for what is expect of States to have a high level, high integrity election process is absolutely necessary.

Senator DODD. In Federal elections?

Mr. SHELTON. In Federal elections.

Senator DODD. Because the voter in one State is directly affected if another State conducts a process that jeopardizes the value of the person's vote in the other State.

Mr. SHELTON. Exactly. And from my meetings with county executives—I said I am one of the NACO election reform advisory committees, and I have spoken to many of these executives. And many of them had not thought about it. As an example, I spoke to an executive from the State of Missouri that does not have a provisional balloting process, and she was outraged, not because people were asking why not, but because they hadn't moved to do it. And she thought it just made very, very good sense.

Those kind of standards being laid out and being promoted in a way that is very helpful, and, of course, the Federal Government providing the necessary resources that helps our States and counties to implement those programs.

Senator DODD. Thank you for that.

Mr. Figueroa, a number of questions here for you. I want to specifically ask what your recommendations would be as to the appropriate Federal role in any legislative proposals for election reform.

Mr. FIGUEROA. Similar to Mr. Shelton, Senator, I think that we need to start with the enforcement of our Voting Rights Act and making sure that the language provisions of that law are fully in effect and followed through in each of the States where it might apply.

I think beyond that I would also agree that modernizing our electoral systems overall are a very important component to being able to have people exercise their right to vote.

I would come back to this idea—and while it may be a long shot in the context of politics today and the legislature here in Congress—that this idea of making election day a national holiday, while it may go up against these notions of free market, et cetera, et cetera, certainly is something that is not unusual, that, in fact, it does happen in many countries. I think it puts the idea of voting—and in this case, obviously voting for the Presidency—at the level where it should be. After all, this is the person who is your leader, and in this case the leader of the free world.

So if that is the case, then I think that really considering this issue of making the election a national holiday should be a serious concept that should be debated in this Congress.

Senator DODD. Well, I think it is a very intriguing idea and one that I am inclined to be supportive of. We have suggested that that would be an item that a commission—in fact, both the Schumer bill and the bill we have introduced has a commission to take a look at some of these recommendations that you may not be able to resolve in the short term, but clearly ought to be on the list. And that is one that has enjoyed the support of a number of people in the Senate on both sides of the aisle who are attracted to that idea.

Is it your opinion, though, as representing a legal group, that Congress has the legal authority to regulate in the area of Federal elections?

Mr. FIGUEROA. I believe it does for Presidential elections, that it has, in my opinion, authority to regulate in this area. And I think it would be consistent with finding a way or devising a way in which how we vote for the Presidency from the ballot itself to what I just stated, making election day a national holiday, in my opinion is within the purview of this body.

Senator DODD. And I presume you would apply that as well to Federal elections for the Congress of the United States?

Mr. FIGUEROA. That is correct.

Senator DODD. Do I understand, Mr. Gaziano, that you have a problem with that notion?

Mr. GAZIANO. Just a minor clarification. You do have authority under Article I, Section 4 to regulate congressional elections, and the 17th Amendment has a provision I should repeat which is the same as Article I, Section 4, which applied to the House before you were directly elected by the people. But Presidential elections are still left to the State legislatures. If they choose to make them subject, as they all have now, to the people, that is one thing. But my guess is if you make uniform regulations with regard to congressional elections, that is going to have the effect of making all State and all Federal elections done in the same way. Having dual voting roles and dual voting machines won't work. So it is probably a distinction without a difference.

Senator DODD. Do you think it is in the national interest to set some national standards, not specifically telling each State what kind of machines they ought to use, but some national standards on how we conduct national elections?

Mr. FIGUEROA. I do. I think that deferring to the States might have been appropriate if they were doing the right things. Now, I apologize, Senator, that I haven't read your bill, but I am impressed with the focus of the chairman's bipartisan bill that focuses on some of the areas where I think there is the most serious need for attention, and that is preventing fraud.

Senator DODD. All right. Well, I will submit some additional questions, Mr. Chairman, so we move things along here. But I am very grateful to all of you for coming, and, Mr. Shelton, I thank you, Mr. Figueroa, Mr. Gaziano, Mr. Knack, Professor Knack as well for your testimony here today. And this is obviously going to be a matter we are going to have to hear some more about, but I appreciate it very much. And I am grateful for the NAACP and La Raza and related organizations' support of the Conyers-Dodd bill that we have introduced. And hopefully we are going to put something together here and we don't end up with a lot of competing legislation. Senator Schumer and I have talked, and our goal is to try and put something together that can attract a broad spectrum of people in this country to rally around as a way to look forward in a constructive way so we don't ever have a repetition of what we saw this year.

The CHAIRMAN. There is no question that, with all these competing legislative proposals, we are going to have to come up with

some synthesis in order to legislate, and I don't think we are anywhere near ready to do that.

Senator SCHUMER.

Senator SCHUMER. Thank you. And I agree that we are not ready yet to do that, but these hearings are a great first step in terms of getting us going on this issue. And I take it the chairman's view would be that—I mean, all of our views, I guess mine certainly is that this should be separate from campaign finance reform.

The CHAIRMAN. I don't think we are ready to legislate in this area, and I don't intend to offer any amendments on the campaign finance debate on this subject, and I assume others will not, either, because I can't imagine that we are ready to go forward.

Senator DODD. That is good news. I agree with that.

Senator SCHUMER. I am glad to hear the chairman say that. Maybe he would want to say the same thing about all other amendments he might offer on campaign—

The CHAIRMAN. Oh, we have some great amendments. You would like them. [Laughter.]

Senator DODD. I would like to try though, Chuck, I tell you.

Senator SCHUMER. One little step. Try the next big one. Anyway, I thank everybody.

Just before I get into some of the substance of my questions, I just want to follow up on Mr. Gaziano's question in relation to Senator Dodd and to his testimony. You know, there are little two strains here. Some folks are saying we have got to worry about voter fraud above all, and some are saying we have got to worry about people who deserve to vote who can't. At least in my experience in my State, the second group far outweighs the first group. You hear after every election thousands and thousands of people who can't vote, just on an impressionistic basis. You hear very little actual proof of fraud. So what I would like to ask Mr. Gaziano is: Does he actually think that more people vote improperly due to fraud or are more people who are entitled to vote turned away from the polls because of different malfunctions of the system, not by design but just it happens?

Mr. GAZIANO. In Mr. Shelton's prepared testimony, he used the term "bureaucratic snafus." And I think that all States would strive to correct such bureaucratic snafus. I am not sure, but there are probably more votes that are not counted because of bureaucratic snafus. Some of that, of course, is impossible to correct. You just aim for perfection. But I think everyone is, and I think State laws do aim for perfection.

Where I think you have a real legal failure is an absence of safeguards to prevent fraud. And when you do have evidence of fraud, as is the case from time to time, that seems to me to invalidate the whole process. Bureaucratic snafus, as you know—I differ from some of my colleagues to the left—tend to be evenly distributed. And while some like to impute racial animus, I think that that is sad and unfortunate. However, fraud tends to be perpetrated by one person or group to affect the outcome in a dishonest way. And so that is why I set that as—

Senator SCHUMER. So it goes not to the number, where you seem to concede that a greater number of people, albeit randomly, in

your judgment, anyway, are excluded, but it is not by design so we ought to look at the fraud where it is by design. Is that correct?

Mr. GAZIANO. Correct.

Senator SCHUMER. Can you give me the three largest instances of voter fraud in the last decade?

Mr. GAZIANO. I confess that I really haven't looked at what are the three largest instances, but there was in the last election some instances in Wisconsin where there were reports of people, whether they were elected officials or not, encouraging felons to vote, and that—

Senator SCHUMER. That lady with the cigarettes?

Mr. GAZIANO. No, no. It was different people who were urging felons to vote. There was also—

Senator SCHUMER. Do we have any instance, any proof of a single felon who voted incorrectly in Wisconsin?

Mr. GAZIANO. Yes, there are news accounts of several hundred, as many as several thousand, in Wisconsin that voted, and the margin of error in the Presidential election was pretty close in that State.

Also you have surveys—

Senator SCHUMER. Let me just ask you, who was encouraging them to vote?

Mr. GAZIANO. That I am not clear about, but the State officials did not take seriously their responsibility to—

The CHAIRMAN. I am told by staff, Senator Schumer, that two felons in Wisconsin are currently being prosecuted for voting in the last election.

Mr. GAZIANO. In Wisconsin—

Senator SCHUMER. Two.

Mr. GAZIANO. But I could cite you the Wisconsin—or I could provide your office—

Senator SCHUMER. Was there a design to get felons to vote, or was it just people were encouraging people to vote and some were felons?

Mr. GAZIANO. No. I understand that—

Senator SCHUMER. Do they have a mailing list of felons or something?

Senator DODD. They actually have a PAC. [Laughter.]

Mr. GAZIANO. In Massachusetts, actually, there was a criminal PAC, and in the last election, the citizens of Massachusetts voted to impose felony disenfranchisement to defeat them. But also you had college students in a survey who admitted that they had voted multiple times. Fifteen percent of the college students in that survey, some admitted to voting at least five times. You also had the situation in—

The CHAIRMAN. Mr. Gaziano, could I help you out? According to the Miami Herald, more than 5,000 felons likely cast illegal ballots in Florida, including 62 robbers, 56 drug dealers, 45 killers, 16 rapists, and 7 kidnapers. At least two who voted are pictured on the State's online registry of sexual offenders. Nearly 75 percent of the illegal ballots discovered were cast by registered Democrats, and we proudly got the other 25 percent. In Pinellas County alone, at least 212 ineligible felons were allowed to cast votes on November 7th. According to the Fort Lauderdale Sun, at least 442 people, in-



cluding convicted felons barred by Florida law from voting, and persons ineligible to vote because they were registered in other States, cast ballots at Broward County precincts during November 7th. Do you want me to continue?

Senator SCHUMER. No. None of that indicates fraud.

Mr. GAZIANO. Sir, I was going to get to where it is in Florida. The State officials, the county election officials in Florida who had the responsibility to purge the voting rolls in Florida, some of them intentionally or—well, they consciously did not do so.

Senator SCHUMER. And that rises to the same level as somebody who would just not open up the voting machine in a certain place early enough or whatever. I mean, look, I hear of these little instances, too. In every New York City election, New York State election, you get a number of people who say somebody pulled off the lever for the candidate that they—for a candidate. In other words, the machine doesn't work. And in my election that happened. I heard a couple of instances of it.

It just seems to me—and I know there will be some difference of opinion here—we should go after fraud in any case. I still do not have any real proof of it. But to raise that to the same level as the literally millions of people who are disenfranchised because the system does not work, I think to me is misplaced. Let us go after fraud.

But frankly, when I hear statements that say, fraud should be our number one goal, and then sometimes it is not even mentioned about disenfranchised except the military. God bless the military, we should make every effort, maybe even an extra effort they should vote. But by our Constitution, a welfare mom who is turned away has every bit as much right to vote as a soldier defending us overseas, and you do not hear any mention of that.

Even in all due respect, the Chairman's statement had a lot of mention of military, a lot of mention of fraud, and virtually no mention of what I see is the biggest—and I am not alleging any design here. But because of incompetence, or what was the word that Mr. Shelton used, bureaucratic snafus or whatever you want to call it, that is the number thing it seems to me that denies the right to vote which is so precious to all of us.

Again, let us do number two and three, fraud and military, but let us not leave out or make a tertiary issue—literally, I think each year, the odds are that the number of people who are disenfranchised through bureaucratic snafu is much larger.

Then the only other thing I would say is, my guess—I do not know the two instances you mentioned that someone deliberately did not knock out the felons. In New York it is supposed to be knocked out by a computer, not by the individual people at the voting machines or in the voting precincts. That person should be prosecuted. That seems to be far more aberrational than what we are talking about here. Many any of the others would want to comment on what I had to say.

Mr. FIGUEROA. If I may, Senator, just very quickly. Along the lines of these issues of bureaucratic snafus there is an individual in New York City, Professor Ronald Haduk, who has just, I believe, finished his Ph.D. dissertation and a study on how these bureaucratic snafus have a very disparate impact on communities of color.

You never hear people not appearing on the voting list in Westchester or in many of these other communities.

Senator SCHUMER. In all due respect, I have. It is such a mess—

Mr. FIGUEROA. They are, but not to the same degree when you compare it. Not to the same degree as they appear in communities of color. So I just wanted to say that for the record.

Senator SCHUMER. Professor Knack, do you have anything to say about the relatively frequency—let us not talk about the moral issue. We can all draw our own morality here. But if the issue is just one person, one vote, the relative frequency of fraud versus bureaucratic snafu, to use shorthand that we have been using here fairly successfully.

Mr. KNACK. You are probably correct although we really do not have any idea just how many people who are ineligible are able to register and vote anyway, despite being non-citizens or disqualified on other grounds. I am not sure that this one for one trade-off though is the necessary and appropriate test for the legitimacy of a voting system. I think if somebody is out there voting twice, that that may have more adverse implications for how legitimate the voting system is perceived than if you have one hanging chad where some random person's vote is not counted because of some pure accident. I just would not equate those two.

Just like if you are talking about the legitimacy of a jury trial and the court system, you do not just look at the number of defendants who are convicted and say, we get it right the majority of the time; that is good enough.

Senator SCHUMER. We can all make our judgments. I think I would say to you, my moral judgment is fraud is worse than accident, but in the case of voting they are both real bad. And if the numbers of accident are 50 times the number of fraud, any bill that just were to focus on fraud or were to play up fraud more than accident would be misguided. I do not think we—

The CHAIRMAN. Why don't we stipulate that we are against both fraud and intimidation?

Senator SCHUMER. I would accept that stipulation and join with the Chairman in that courageous statement that he made. But again, I was just trying to establish some numbers here.

Mr. KNACK. I am not sure where you got your number.

Senator SCHUMER. I did not get any number. I am just giving you impressionistic—

Mr. KNACK. No, you said millions were disenfranchised.

Senator SCHUMER. That is my guess, that is true.

Mr. KNACK. I am wondering where the millions came from, because there are roughly two million invalid presidential ballots and we have no idea how many of those, I think a rough guess would be one-half of those are voluntary undervotes.

Senator DODD. But we were also talking though, Professor, about people who never got a chance to vote at all.

Mr. KNACK. So you are talking about people—so you are saying—

Senator DODD. Who were turned away at the polls, told they were not on the list.

Mr. KNACK. So you are saying there is a million people—

Senator SCHUMER. Every election in New York City, as I say, either the lever comes off the machine, or more likely the machine breaks down. They then have paper ballots to deal with it but the lines end up being so long. I have seen this 25 times with my own eyes minimum, of every minute people going into the polling place, seeing the line, and walking out. That is one person's experience. Admittedly, one who buzzes around election precincts on election day. But still—

Mr. KNACK. Obviously, waiting time is—

Senator SCHUMER. So if you take the two million, it seems to me that the invalid ballots are, at least again in New York City and New York State where we have machine voting, which is slow but fairly accurate, there are many more people who are disenfranchised than we know. Then you get the secondary issue. You will get a good number of people who, if it happens to them once or twice and then have a half-hour that they can vote in because they are putting the kids to school and then they have got to be at work, then they stop showing up.

Mr. KNACK. The major cost of voting for anybody is time. If you define as disenfranchised anybody who declines to vote because they do not have the time, I think the true number would be more like 80 million or 100 million. So if you want to call those disenfranchised—

Senator SCHUMER. I do not mean people who say, I would rather play golf or whatever. It is a little different when someone has made an effort to vote and it should take a half-hour or 45 minutes, and then you make them make a choice of missing work or leaving the kids alone and voting, which is not a choice I think we should want to have in a democracy.

Mr. KNACK. Yes, lines are a problem in places and that is exactly why the punch cards were adopted in many counties with large populations was to reduce those lines.

Senator SCHUMER. I have taken a lot of time here. Can I just see if I have anything that I really—thank you, Mr. Chairman.

The CHAIRMAN. I am sorry we have ended up backing this last panel up. You are going to get short shrift, regretfully. But let us thank all of the second panel and call up the last panel. John Samples, director of the Center for Representative Government at the Cato Institute; Robert Williams, special policy advisor, United Cerebral Palsy Associations; Linda Chavez-Thompson of the AFL-CIO; and Deborah Phillips of the Voting Integrity Project.

Senator DODD. Mr. Chairman, I have to also make a truth-in-advertising statement here. Bob Williams and I go back 20-some-odd years. He was an intern in my office when I was a House member. Has gone on to a very distinguished career and made an incredible contribution in countless areas of public policy. He is one of the brightest, most talented people I have met in public life. I remember very clearly those days back in the 1970s when this individual would show up on a regular basis in the office to work with us in Norwich, Connecticut in the bottom of the post office.

Bob, it is truly an honor and a pleasure to see you still active and still committed and still working so hard. I am honored to be sitting on this panel today and receiving you as a witness before the Senate Rules Committee.

Mr. WILLIAMS. Thank you.

The CHAIRMAN. Thank you, panel. We will lead off with Mr. Samples.

**TESTIMONY AND PREPARED STATEMENTS OF JOHN SAMPLES, DIRECTOR, CENTER FOR REPRESENTATIVE GOVERNMENT, CATO INSTITUTE, WASHINGTON, D.C.; ROBERT R. WILLIAMS, SPECIAL POLICY ADVISOR, UNITED CEREBRAL PALSY ASSOCIATIONS, INC., WASHINGTON, D.C.; LINDA CHAVEZ-THOMPSON, EXECUTIVE VICE PRESIDENT, AFL-CIO, WASHINGTON, D.C.; AND DEBORAH M. PHILLIPS, CHAIRMAN, THE VOTING INTEGRITY PROJECT, ARLINGTON, VA**

#### **STATEMENT OF JOHN SAMPLES**

Mr. SAMPLES. Mr. Chairman and distinguished members of the committee, my name is John Samples. I am director of the Center for Representative Government at the Cato Institute. I wanted to thank you, Mr. Chairman, for inviting me to testify before the committee about election reform.

In 1994, Congress passed the National Voter Registration Act, which is popularly known as motor voter. The aims of the law were to increase the number of registered voters, to enhance electoral turnout, to protect the integrity of the electoral process, and to ensure that accurate and current voter registration rolls were maintained.

Registration rolls grew by 20 percent from 1994 to 1998, yet enhanced voter registration was never an end in itself. Many believed that the United States suffered from declining voter participation and that increasing registration would lead to higher voter turnout. Both of these beliefs have turned out to be wrong.

First, declining participation. Political scientists have traditionally measured voting turnout as a percentage of voting age population. However, the Census Bureau's estimate of the voting age population includes several categories of persons ineligible to vote: non-citizens, disenfranchised felons, persons who have moved, and the mentally incompetent.

Samuel Popkin and Michael McDonald, two political scientists, have produced a new and more accurate measure of the American population and turnout based on the percentage of the American population eligible to vote. The chart I brought with me indicates the revised estimates about turnout for presidential and off-year elections. Presidential is on the top and off-year elections is on the bottom.

The conclusions we draw from this and McDonald and Popkin draw from this new measure of turnout is that since 1994 the trend in voting turnout in national elections has been basically flat during presidential years and slightly upward during non-presidential years. Conventional wisdom to the contrary, the United States has had steady turnout at the polls at the Federal level for about three decades. To the extent that motor voter tried to deal with declining turnout, it aimed to solve a problem that did not exist.

Motor voter also has failed, it is generally acknowledged among political scientists, to increase voter turnout. Looking at Popkin

and McDonald's numbers again you will notice that turnout after 1994 is very similar to turnout prior to the law.

In summary, we have received very few of the benefits promised by motor voter. We have paid significant cost about which we have heard some today and will hear more later on this panel. The integrity of the electoral process has been thrown into question. Motor voter made it difficult and expensive to remove voters from registration rolls. As a result, the rolls are wildly inaccurate.

I want to discuss the case of St. Louis, Missouri, both during and after election 2000 as an example of this. Recently, a voter registration drive in St. Louis delivered 3,800 voter registration cards to the elections board on the last day, on the deadline day for the primary that they just held on March 7th. Through a series of circumstances—it was accidentally discovered that nearly all of those 3,800 cards were fraudulent.

Now the St. Louis election board officials want to examine about 30,000 voter registration cards that came in right on the deadline day for the November 7th election. Now these last minute registrations last fall could have thrown into question the close November election in Missouri if a sizeable number turn out to be fraudulent, and if the election had been closer in many regards. The loose registration process set up by motor voter has cast doubt on the integrity and outcome of elections in Missouri last year.

The rolls in general in the United States have cost taxpayers across the Nation thousands of dollars in clean-up cost and additional election expenses. We have also learned about the threat of voter fraud, and will learn more about that from this panel, posed by such wildly inaccurate rolls. The evidence from St. Louis and elsewhere strongly suggests the reality of registration fraud. I think, Mr. Chairman, we should ask why anyone would go to the trouble of committing registration fraud if they did not intend to follow through and commit vote fraud.

Given the state of the registration rolls, a major vote fraud disaster remains a distinct possibility in our future.

The CHAIRMAN. Mr. Samples, I hate to do this but your red light already. Can you summarize?

Mr. SAMPLES. I will sum up on one sentence. When you look at the benefits and the cost of motor voter, it seems ripe for reform.

[The prepared statement of Mr. Samples follows:]

**STATEMENT of**  
**John Samples, PhD**  
**Director**  
**Center for Representative Government**  
**The Cato Institute**

**before the**  
**Committee on Rules and Administration**  
**United States Senate**

March 14, 2001

Mr. Chairman, distinguished members of the committee:

My name is John Samples. I am Director of the Center for Representative Government at The Cato Institute.

I want to thank you Mr. Chairman for inviting me to testify before the committee about election reform.

Mr. Chairman, the United States of America is the greatest example of what James Madison called "popular rule." We enjoy a legacy of democratic rights and obligations that remains the envy of the world. Differences notwithstanding, we all agree that the franchise is sacred and should be above mere partisan or individual advantage. At the same time, in the spirit of the Founding Fathers, we seek to improve our political system when necessary and possible. I appreciate the opportunity to testify today about some shortcomings of our current electoral system.

In 1994, Congress passed the National Voter Registration Act (popularly known as the "Motor Voter Act"). Congress succinctly stated the aims of the law:

- to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- to protect the integrity of the electoral process;

- to ensure that accurate and current voter registration rolls are maintained.

The National Voter Registration Act has clearly fulfilled one of those purposes. Registration rolls grew by 20 percent from 1994 to 1998. Yet enhanced voter registration was never an end in itself. Many activists and experts believed the United States suffered from declining voter participation and that increasing registration would lead to higher voter turnout. Both of these beliefs have turned out to be wrong.

For many years political scientists saw a steady decline in the electoral turnout of the voting age population and as a percentage of registered voters. Leaders in the discipline also thought that reducing the costs of voting – primarily through easier registration – would arrest this steady decline and fortify American democracy. The National Voter Registration Act thus grew out of the findings of political science.

Political scientists have traditionally measured voting turnout as a percentage of the voting age population. Recently political scientists Samuel Popkin and Michael McDonald have shown that “voting age population” is an inaccurate gauge for measuring turnout. The Census Bureau’s estimate of the voting age population includes several categories of persons ineligible to vote: non-citizens, disenfranchised felons, persons who have moved to a new residence after registration closed, and the mentally incompetent. Popkin and McDonald have produced a new and more accurate measure of the American population eligible to vote. Figure 1 shows Popkin and McDonald’s revised turnout during Presidential elections as percentage of those eligible to vote. Figure 2 indicates revised turnout during off-year elections as proportion of those eligible to vote.

Figure 1 Turnout in Presidential Election Years 1948-2000

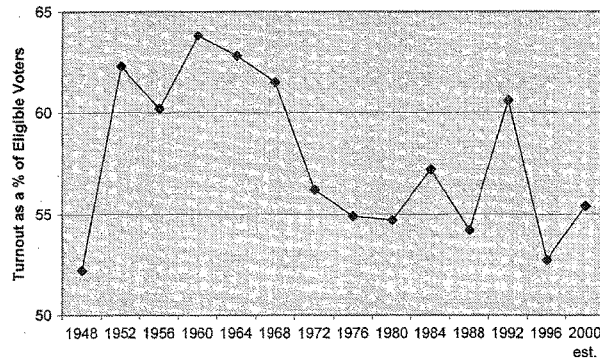
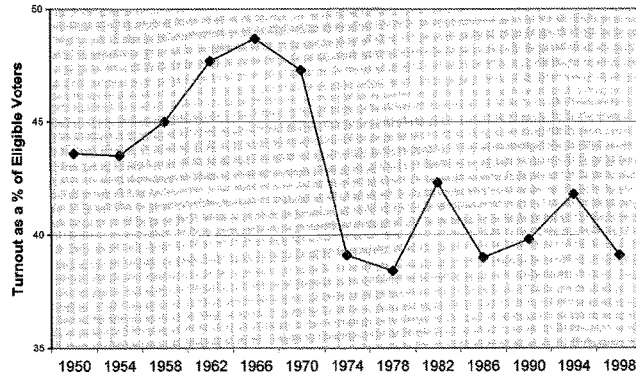


Figure 2 Off Year Elections 1950 to 1998



The United States did see a decline in voting turnout among eligible voters around 1972. Since 1974, the trend in voting turnout in national elections has been basically flat during presidential years and slightly upward during non-presidential election years. Conventional wisdom to the contrary, the United States had experienced steady turnout at the polls for about three decades. There has been no steady decline, nor a crisis of legitimacy for the American republic. The National Voter Registration Act aimed to solve a problem that did not exist.

“Motor Voter” has also failed to increase voting turnout. Looking at Popkin and McDonald’s revised numbers in Figures 1 and 2, we see that turnout after 1994 is similar to turnout prior to the law. Participation in the Presidential election of 1996 was the lowest since 1948 while estimates of turnout in 2000 suggest an average performance. The same can be said of the off year elections in 1994 and 1998. The world of voting turnout before and after “Motor Voter” looks much the same. This is not really surprising. As the political scientist Martin Wattenberg has pointed out, states like North Dakota, Minnesota and Wisconsin have no or very lenient registration requirements, and yet all have seen declines in voting turnout.

In summary, we have received few of the benefits promised by the National Voter Registration Act. While registration has increased, the law has not enhanced “the participation of eligible citizens as voters in elections for Federal office.” Moreover, the basic premise of “Motor Voter” – reducing the costs of registration would increase voter turnout – now seems disproved by experience. The plus side of the ledger for “Motor Voter” seems empty.

Unfortunately, the same cannot be said of the negative side of the ledger. The costs of “Motor Voter” should be measured by the other goals of the law. Congress intended for



“Motor Voter” to both protect the integrity of the electoral process and to ensure officials could maintain “accurate and clean” registration rolls. Neither goal has been met.

The Motor Voter Act allowed citizens to register to vote simultaneously with an application for a driver’s license, by mail, or in person. The Act made it harder to verify the identity of voters seeking to register. It also considerably complicated the states’ task of keeping the registration rolls clean. For example, to remove a voter who has moved from the rolls of a voting district, the local jurisdiction has two choices. First, they could get written confirmation of the move from the citizen. Lacking that, the jurisdiction had to send a notice to the voter. If the notice card was not returned and the person did not vote in two general elections for Federal office *after* the notice was sent, then the jurisdiction could remove their name from the rolls.

The cost of these mailings is significant. In Indiana, for example, such a mailing would have a price tag of about \$2 million or about twice the Election Division's entire annual budget. Given this price tag and the limited resources of most local election boards, we should not be surprised that the registration rolls throughout the nation are enormously inaccurate. In some counties, election administrators report, the voting roll numbers are bigger than the voting-age population.

In the short time since Election 2000, we have seen startling new evidence of the disorder of registration rolls in several states. In **Indiana**, for example, the *Indianapolis Star* looked closely at the rolls. They concluded that tens of thousands of people appear on the voter rolls more than once, that more than 300 dead people were registered, and that three convicted killers and two convicted child molesters were on the rolls. In general, experts believe one in five names on the rolls in Indiana do not belong there. A recent study in **Georgia** found more than 15,000 dead people on active voting rolls statewide. **Alaska**, according to Federal Election Commission, had 502,968 names on its voter rolls in 1998. The census estimates only 437,000 people of voting age were living in the state that year. Similar studies in other states would no doubt return similar data.

In the balance of my testimony, I would like to focus on the events in St. Louis, Missouri, both during the election of 2000 and thereafter. I believe these events point out the real costs “Motor Voter” has imposed on the United States.

Since last fall, “Operation Big Vote” has been active in the St. Louis area as part of a national campaign -- promoted by Democrats -- to register more African-American voters and get them to the polling booth. This effort delivered 3,800 voter registration cards to the St. Louis Elections Board on the February 7, 2001, the deadline for the March mayoral primary in that city.

A cursory check of the registration cards turned up questionable names. Shortly thereafter, election board workers spent an entire day calling the names listed on the cards and found that nearly all of them were fraudulent. Many of them sought to register prominent people, dead or alive - as well as at least three deceased aldermen and a dog. The media have reported that close examinations have turned up cards that attempted to register prominent businessmen using their childhood addresses, a former deputy mayor using an old address for an alderman, and a former alderman who has been dead for

years. They also found cards for convicted felons and for residents who did not seek to register themselves in the primary. The woman at the center of this vote fraud investigation "doesn't deny" that some of her canvassers may have turned in bogus voter registration cards. A grand jury convened by St. Louis Circuit Attorney Jennifer Joyce has begun interviewing witnesses regarding the 3,800 bogus registration cards. St. Louis police have obtained a warrant and searched the house of the Operation Big Vote director for evidence.

Not surprisingly, many St. Louis residents are angry that someone had registered them and knew information such as their Social Security numbers. Some of the people registered by the bogus cards told Election Board workers that someone calling himself "Big Mike" came to their homes and said he was with the Election Board and wanted to register them.

This is not the first time Operation Big Vote has been at the center of a voter registration controversy. In 1994, the director of Operation Big Vote was the subject of a similar investigation into fraudulent voter registration cards found among the 14,000 that the group had collected to aid a statewide campaign to allow riverboat casinos. No one was indicted.

The implications of the registration fraud scandal in St. Louis are not limited to current events. St. Louis Election Board officials now want to examine 29,500 voter registration cards that came in shortly before the deadline for the November 7 election, in light of discovering that most of 3,800 cards submitted in February were bogus. John Hancock, executive director of the Missouri Republican Party, called for another look at the last-minute registrations made for November's election. He also said he preferred that U.S. Attorney Audrey Fleissig take charge "because I think the federal government can bring more force to bear on an investigation of vote fraud." The last-minute registrations last fall could throw into question the close November election in Missouri if a sizable number were fraudulent. Democrat Bob Holden won the Missouri contest for governor by about 21,000 votes statewide. In this way, the loose registration process set up by "Motor Voter" has cast doubt on the integrity and outcome of elections in Missouri last year.

Many will recall the election night controversy in St. Louis. A judge ordered that voting places be kept open late only to be overruled shortly thereafter by a Federal appeals court. The initial ruling accepted the claims of local activists who maintained that thousands of voters had been wrongly placed on an inactive list. As it turned out, local officials had acted properly in composing the inactive list. Missed in the controversy was the fact that up to 400 unqualified voters cast ballots in St. Louis in the 2000 election.

I turn now to the costs paid by the nation as a result of the National Voter Registration Act. I begin with concrete dollars estimates, but I would add that I think perhaps the more important costs have been imposed on the civic culture of the United States.

The clogged rolls have cost taxpayers thousands of dollars in cleanup costs and additional election expenses. For example, the Indiana Election Division has conducted

its statewide duplicate program four times at a total cost of about \$900,000. Moreover, several county officials in Indiana have increased the number of voting sites unnecessarily because the lists are so inaccurate. The county that includes the transient student population of Indiana University at Bloomington has added about a half dozen precincts since "Motor Voter" became law. Each new precinct costs county taxpayers \$10,000 for two voting machines and about \$500 per election for additional poll workers and supplies. Statewide in Indiana, more than 200 precincts have been added since the law went into effect, according to state election officials. Such costs are not trivial, especially since the state gets nothing in return for such spending. Such costs for the nation as a whole must be large.

We have also learned about the threat of vote fraud posed by such wildly inaccurate voting rolls. Susan Morandi, Nevada's deputy secretary of state for elections, noted that the Motor Voter Act made registration easier but also made the process "much more open to voter fraud." Experts like Deborah Phillips of the Voter Integrity Project add that the trend toward mail-in and absentee voting exacerbates this problem, since those seeking to manipulate the system can pretend to be a dead person or someone who has moved, and then cast a ballot.

The evidence from St. Louis and elsewhere strongly suggests the reality of registration fraud. Looked at technically, registration fraud is not the same as vote fraud. However, as a practical matter, we should ask why anyone would go to the trouble of committing registration fraud if they did not intend to follow through and commit vote fraud. Otherwise, committing registration fraud becomes a senseless act. Are we to believe that individuals commit registration fraud for thrills or simply as a practical joke? The existence of fraudulent registrations suggests the greater threat of a corrupt election, a danger that we dismiss at our peril. Given the state of the registration rolls, a major vote fraud disaster remains a distinct possibility.

We should not presume that vote fraud is an inconsequential danger. On January 22, 2001, the Miami Herald reported that at least 2,000 illegal votes had been cast in about a third of Florida's counties -- very roughly 6,000 for the state as a whole. On January 9, 2001, it revealed that 452 felons had voted unlawfully in Broward County alone. In Georgia, analysts found that over 5,400 dead people had voted over the past 20 years. As I mentioned, at least 400 unqualified voters cast a ballot in St. Louis last November.

The damage done by vote fraud, of course, is clear. Breaking any law, but especially laws meant to protect the integrity of the electoral process, damages our nation. Vote fraud also devalues the votes of those who register and vote properly. It also strikes many people as unfair: most citizens bear the burdens of exercising the right to vote, those who vote illegally claim the right and wish to escape the minimal burdens associated with that right.

The possibility of vote fraud also harms the nation by calling into question the integrity of our electoral system. The Supreme Court has said that the federal government may regulate campaign finance to prevent corruption or the appearance of corruption. Allow me to suggest that we should similarly be concerned about the appearance of our electoral process. The lax standards for registration encouraged by "Motor Voter" have

left the voter rolls in a shambles in many states. As St. Louis shows, the uncertainty surrounding the rolls breeds mistrust and can call the integrity of the system into question. “Motor Voter” has fomented “the appearance of corruption” that has, fairly or not, done real damage to American government. Political scientists have charted the decline in trust in government over the past four decades. I believe “Motor Voter” has been part of that problem, not part of its solution.

The inflation of the registration rolls has also clearly misled Americans about the state of their democracy. Inflated and inaccurate rolls give a false measure of voting turnout as a proportion of registered voters. In fact, we now know that voting turnout as a percentage of registered voters is much higher than we believed because registration rolls are so inflated. In that sense, the news about voting is much better than we thought, and I suspect that we have seen no decline in voting as a percentage of registered voters. We may even have seen a rise in that measure of voter participation.

Finally, politics is about cooperation as well as conflict. The American people expect their representatives to fight hard for a cause but also to make compromises that serve the public good. The general uncertainty surrounding registration procedures — an uncertainty exacerbated by “Motor Voter” — has increased mistrust between the two political parties in Missouri and perhaps elsewhere. Missouri Republicans now believe with plausible reason that some Democrats tried to commit vote fraud last election day. Democrats, on the other hand, suggest Republicans wish to disenfranchise their constituents. Such conflict inevitably weakens our political system and actuates unnecessary partisan rancor that precludes potential bipartisan agreement on some issues.

Mr. Chairman, judged by its purposes, the National Voter Registration Act should be judged a failure. The Act has brought about a substantial increase in the number of registered voters. However, that increase has been bought at a high price. Specifically, the Act has made it difficult if not impossible to maintain clean registration rolls, a major purpose of the law. Moreover, the inaccuracy in the rolls caused by the Act has thrown into doubt the integrity of our electoral system. Finally, the Act has also failed to achieve its other purpose of increasing voter turnout. In sum, the National Voter Registration Act has provided few of its promised benefits and imposed significant costs on the nation. For that reason, “Motor Voter” seems ripe for reform.

The CHAIRMAN. Thank you.  
Mr. Williams.

**STATEMENT OF ROBERT R. WILLIAMS**

Mr. WILLIAMS. Good morning, Chairman McConnell. Thank you for asking me to appear before you on behalf of United Cerebral Palsy Associations. It is a privilege to share our views on a matter of such urgency. Americans with disabilities, like all others, have a vital stake in the outcome of the policy discussions taking place here and in many States.

I would like to take a moment of personal privilege, if I might, sir. Growing up I was inspired to public service by the words and deeds of John and Bobby Kennedy, Martin Luther King, and Franklin Roosevelt, whose example of leadership and disability is now accessible for all schoolchildren to learn from.

But it was Representative Chris Dodd, who gave me a chance to test that dream with an internship in his office. That was July, 1976. My memories of that month are not the tall ships fireworks, but of the opportunity I was given to prove to myself, and others far more disbelieving, that my dream would one day be reality. I thank you, Senator.

Dr. King said, all of us can be great because all of us can serve. One of the most important forms of service we can offer to is that of voting in every election. This is a time-honored tradition that has no equal. Yet last November demonstrates that some of the ways we use to carry out our elections are badly in need of improvement.

All Americans will benefit from legislation designed to bring our elections into the 21st century. But, those 54 million of us with disabilities have some of the most to gain or lose from such legislation, depending on how it is crafted and implemented.

In several polls Lou Harris has found that many people with disabilities follow politics at a higher rate than others. But the polls also show that as a group we register to vote, and vote, at substantially reduced rates than others. Though many factors explain why, this paradox exists, issues of access to the polling place, access to the ballot box, and access to the ballot itself top the list.

There are already several Federal statutes that address access to the polling place. Cumulatively, these laws have improved things over the past 25 years. But the simple fact of the matter is that access to the polls is still a major problem, especially in very rural and urban areas.

Moreover, given that one of the civics lessons that came out of last November was that many States do not bother to count absentee ballots unless someone demands a full recount, we have serious concerns about the fundamental fairness of this process as well.

Many in Congress are rightly concerned about the disparate impact that various quirks in absentee ballot procedures can have on those in the armed services. We would respectfully urge that the same vigorous attention be paid to making voting absentee a fairer process for all Americans who must rely on it.

In every election we also hear of at least some people with disabilities either being turned away from the polls entirely, or being

talked out of voting or registering to vote, for no other reason than they have an obvious disability.

In about half the States, people who have had legal guardians appointed for them, cannot, by law, vote at all. While on its face, such a prohibition might seem necessary to protect the integrity of the election process, there are many reasons why a guardian might be appointed for a person with a disability. Many of these have nothing to do with the individual's capacity to comprehend and cast their vote. Yet it is easier for convicted felons to have their voting rights restored than it is for many people with disabilities to legally cast a ballot in some States.

I would, therefore, urge the Congress to work with the Administration, State election officials, the disability community and others to develop reasonable ways of remedying this problem.

Let me now highlight certain basic elements that many of us believe need to be included in any serious electoral reform bill. The first is, of course, an explicit prohibition against any practice that deprives people of the right to register or vote on the basis of race, ethnicity, disability, gender, or any other partisan or prejudicial basis. There must be an explicit restatement of Federal civil rights law that, taken together, the Voting Rights Act, Section 504, the ADA and the equal protection clause, provide a sweeping mandate in this regard.

Similarly, we believe electoral reform legislation must mandate that States and communities getting funding to improve their electoral processes need to assure equal access to the polls to Americans with disabilities. This means they must have polling places in accessible buildings. If for some extreme but valid reason a particular poll can not be made accessible or moved to an accessible location, then there should be other ways such as, curbside voting, offered as an accommodation. But this should be a rare exception, not the rule.

It is 2001. ADA is a decade old. Section 504 was enacted when I was in high school and the Architectural Barriers Act went into effect when I was in a segregated special ed class, housed in a church rather than the public school, where our kind was not yet welcomed.

The point being that some election officials have been saying for over 30 years, they need more time to find accessible voting places. Justice delayed this long is, quite simply, justice denied. Any electoral reform legislation enacted into law, therefore, needs to, at the very minimum, make access to the polling place a crucial and non-negotiable prerequisite to receiving Federal assistance.

Similarly, such legislation needs to require that States and communities take proactive steps to assure universal access as well to both the ballot box, and the ballot itself. Technology at its finest is a lot like freedom; when it is available for all to use and benefit from equally, it unites and strengthens us as a nation and a people. But technology that is not accessible marginalizes and deeply divides us. This is one of the most important lessons we need to learn from Florida.

It is also an area where we have a great deal of knowledge and experience to share with the rest of the Nation. The basic tenets of universal design first applied to public buildings and transit sys-

tems are now being used in the development of all kinds of technology, including the Internet.

Three Federal agencies, the Access Board, the Federal Communications Commission, and the General Services Administration are on the leading edge of these efforts. We strongly recommend that Congress seek their advice as well as others on how best to achieve this vital objective. We are too great a nation not to tap the technological innovations of our day to ensure that Americans of every age and ability can pass the next ballot for President with confidence and in the secrecy of their own conscience.

I fear I have used up both my time and welcome. I would though be most pleased to respond to any question or concern that the Committee might like to raise, either at this hearing or in writing. Thank you.

[The prepared statement of Mr. Williams follows:]

Testimony to the U.S. Senate Rules Committee

Regarding Electoral Reform and the  
Voting Rights of Americans with Disabilities

Presented by Robert R. Williams  
United Cerebral Palsy Associations

March 14, 2001  
Russell Senate Office Building



Good morning, Chairman, Mic Con nel, Senator Dodd, and other members of this Committee. I am Bob Williams and I'd like to thank you for asking me to appear before you on behalf of United Cerebral Palsy Associations, today. It is a privilege and a high responsibility to be asked to share our views and concerns on a matter of such urgent importance to our Democracy. Americans with disabilities, like all others, have a vital stake in the outcome of the policy discussions taking place both here and in many State Capitols.

Before beginning, Mr. Chairman, I would like to take a moment of personal privilege, if I might sir. Growing up I was inspired to public service by the words and deeds of John and Bobby Kennedy, Martin Luther King, Rosa Parks, Abraham Ribicoff, and Franklin Roosevelt, whose personal example of leadership and disability is now more accessible to school children with and without disabilities, alike, to learn from and emulate.

But it was a first term U.S. Representative, Chris Dodd, the son of another great member of this body, Senator Tom Dodd, who gave me my first chance to test that dream of future public service out, with a month long internship in his District office. That was July, 1976 when the tall ships came into New London harbor and the eyes of the world were on America's promise. My most lasting memories of that month, however, are not the tall ships or the Fourth of July fireworks. But, rather, of the rare opportunity I was given to prove to myself, and others far more disbelieving, that my dream of public service could in fact, one day be reality.

I thank you for that Senator.

Doctor King said it best more than a generation ago: All of us can be great because all of us can serve. And, in America one of the most fundamental forms of service we can offer to our country, our communities, and families, is that of voting our hearts and minds in every national, state, and local election. This is a time honored tradition that still has no equal. What the aftermath of last November's elections clearly demonstrates, however, is that it is the time honored ways we use to carry it out, which are badly in need of, repair, reform, and improvement.

All Americans, of course, will benefit from well thought out legislation designed to enhance and bring our electoral processes into the 21st Century. But, I believe that those 54 million of us with a wide range of developmental, physical, psychiatric and sensory disabilities have the most to gain, or for that matter, to lose from such legislation, depending on how it is crafted and of course, implemented at the state and community levels.

In several polls taken over the past decade, Lou Harris has found that many people with disabilities, follow politics and public

issues at a higher rate than most others. But, the polls also show that as a group, Americans with disabilities, register to vote, and vote, at substantially, reduced, rates than most other groups. Many factors explain why, this paradox exists. However, issues of access to the polling place, and increasingly, access to the ballot box and the ballot itself, are high on the list.

There are several Federal statutes, already on the books, that should have eliminated problems of access to the polling place, years ago. And, cumulatively, these four statutes, the Architectural Barriers Act, Section 504 of the Rehabilitation Act, the Voting Access for the Handicapped Act, and the ADA certainly have improved things tremendously, since I started to vote 25 years ago. The Motor Voter Act also holds out the significant, though still unrequitted, promise of providing people with disabilities far more opportunity to register to vote than ever before.

But, the simple fact of the matter is that access to the polls is still a major problem in several States, especially in rural and very urbanized areas. Moreover, given that one of the civics lessons that came out of last November, was that many, States, don't bother to count absentee ballots, unless someone demands a full recount, we have serious concerns about the fundamental fairness of this process as well. As one who has never had to vote absentee, but advised many others on how to do so, I continue to be shocked and dismayed at this revelation.

Many Members of Congress, as well as the new Administration, Governors and State legislators, are rightly concerned about the disparate impact that various quirks in absentee ballot procedures can have on those in the armed services serving abroad. We would ask that the same vigorous attention be paid to making voting absentee a fairer process for all Americans who must rely on it.

We also believe the time has come to eradicate another set of barriers and prejudices that strip people of their most fundamental right and responsibility as American citizens. For, at every election, we hear of at least some people with disabilities either, being turned away from the polls, entirely, or being talked out of voting or registering to vote, for no other reason than they have an obvious disability. In about half the States, people who have had legal guardians appointed for them, can not, by law, vote at all. And, while on its face, such a prohibition might seem logical and even necessary to protect the integrity of the election process, the way it is applied is far too broad brush.

There are many reasons why a guardian might be appointed for a person with a disability. Many of which have nothing to do with the individual's capacity to comprehend and cast their vote. Yet, in many instances, it is easier for, convicted felons, to have their voting rights restored, than it is for many people with disabilities to legally cast a ballot in some States. I would,

therefore, urge this Committee and others in Congress to work with the Administration, State election officials, the disability community and others to closely examine and hopefully develop some reasonable ways of remedying this problem.

Our final set of concerns, as I said, is if States and communities are going to receive Federal funding to update and purchase new voting technology, in what ever form that takes, it needs to be accessible. There are certain basic elements, that many of us in the disability, civil rights, and voting rights communities, believe need to be included in any serious electoral reform bill in Congress.

The first is, of course, an explicit prohibition against any practice that deprives people of the right to register or vote on the basis of race, ethnicity, disability, gender, or of any other partisan or prejudicial nature.

There are a couple ways this could be accomplished; neither of which, in my view, should be seen as mutually exclusive. The first such approach is that of including a very strong statement of finding by Congress that any policy or practice that disenfranchises any America, is a serious offense against our democracy and can not be tolerated. Second, there needs to be a very explicit re statement of Federal civil rights law. That is, that taken together, the voting rights act, Section 504, the ADA and, of course, the equal protection clause, provide a sweeping mandate in this regard. I'd argue this needs to be said very explicitly in legislative, rather than merely report language, based on the history we have just gone over.

Similarly, we believe the electoral reform proposals need to also restate and make extremely clear that States and communities getting funding to improve their electoral processes, need to do at least the following in respect to ensuring equal access to the polls to all Americans, including those of us with disabilities.

First, they need to have their polling places in accessible buildings. If for some extreme but valid reason a particular poll can not be made accessible or move to an accessible location, then there should be other ways such as, curb side, voting, offered as an accommodation. But this should be a rare exception; not the rule. It's 2001. ADA is a decade old. Section 504 was enacted when I was in high school and the Architectural Barriers Act went into effect when I was in a segregated special ed class, housed in a church rather than the public school, where our kind was not yet welcomed.

The point being that some election officials have been saying for over 30 years, they need more time to find accessible voting places. Justice delayed this long is, quite simply, justice denied. Any electoral reform legislation enacted into law, therefore, needs to at the very minimum, make achieving access to the polling place a crucial and non negotiable prerequisite to

receiving Federal assistance for making such reforms and improvements.

Similarly, such legislation needs to require that States and communities take pro active steps to assure universal access as well to both the ballot box, and the ballot, itself. The senior Senator from Connecticut can certainly tell you how much having access to the device I am using has meant. Technology at its finest is a lot like freedom. Once it's uncorked, its fruits are there for everyone's enjoyment and benefit. But, technology that is not accessible and readily useable by all can both marginalize and deeply divide us as a people and a nation. This was, I believe, one of the saddest lessons we need to learn from what happened in Florida.

Fortunately, I think this is an area where the disability community has a great deal of knowledge and experience to share with the rest of the nation. The basic tenets of universal design which were first applied to designing and constructing public buildings parks, transportation systems and the like have now been adapted and applied to the design and development of all kinds of technology, including the Internet itself. Three Federal agencies, the Access Board, responsible for developing accessibility guidelines under ADA the Federal Communications Commission, and the General Services Administration, continue to be on the leading edge of these efforts. We would, therefore, strongly recommend that Congress seek their advice as well as others on how best to achieve this vital national objective.

I fear I have used up both my time and welcome. I would, though, be most pleased to respond to any question or concern that the Committee might like to raise, either at this hearing or in writing. Thank you.

The CHAIRMAN. Thank you very much, Mr. Williams.  
Now we will hear from Linda Chavez-Thompson from the AFL-CIO.

**STATEMENT OF LINDA CHAVEZ-THOMPSON**

Ms. CHAVEZ-THOMPSON. Mr. Chairman, Senators, distinguished members of the committee, I want to thank you today for the opportunity to appear today and share the experiences of union members in the 2000 election and to explain the AFL-CIO's perspective on the urgent national need for election reform. The AFL-CIO and its 66 national and international unions represent over 13 million workers throughout the United States. We are proud that over 2 million members registered to vote during the last 4 years and that 26 percent of the voters in the 2000 election hailed from union households. Due to the labor movement's efforts in 2000, there were 4.8 million more union household voters than in 1992. Regrettable, there were 15.5 million fewer non-union household voters.

These potential voters have no organized voice, and many are losing faith in our political system. Congress needs to act quickly and meaningfully to address some of the more significant problems associated with the last Presidential election in time for the next one.

I think you heard from previous speakers about the complaints regarding the Florida elections. Many of our union members felt that they, too, had been denied their rights and called our Florida State AFL-CIO, and they were inundated with calls from union members eager to share their problems at the polls and anxious for meaningful relief.

The Florida Labor Federation, assisted by staff and volunteers from other unions, participated in unprecedented grass-roots efforts to document these problems and seek immediate redress so that the final tally in the State would reflect the votes its citizens had sought to cast on November 7th.

As everyone now knows, however, the Florida courts and ultimately the United States Supreme Court shut door after door on all efforts to determine and effectuate the will of the people in the 2000 election in Florida. The election now is over as a practical matter of who was inaugurated and who was not. But the bitter experience remains fresh for many and it presents a tremendous challenge and opportunity to spark a new national voting rights movement to ensure that the wholesale disenfranchisement of voters in Florida and elsewhere is never repeated.

The AFL-CIO is committed to reforms and principles fundamental to our democracy. In January of this year, we endorsed the following goals for election reform which we commend to you as useful guideposts in shaping genuine election reform.

First, voter registration should be simple, easy, and designed to encourage voting through universal registration at age 18 and same-day registration and voting. Accurate and fair systems to maintain and update voter files are needed so that voters are not erroneously disenfranchised. Although the National Voter Registration Act of 1993, the motor-voter act, set national standards regarding voter registration by mail and when applying for driver's

licenses, it must also include penalties for noncompliance and means for wrongly disenfranchised voters to vote after election day.

Second, voting itself should be easy. With rare exception, voting in national elections is conducted during limited hours in a workday, so most voters must act during the first few or the last few hours the polls are opened. This arrangement is utterly ill-suited to how Americans live. In particular, for millions of working people, election day presents unacceptable choices among work, family, and voting. And even for those who make it to the polls, any irregularities or inefficiencies, such as the improper list purges in Florida, can prompt the collapse of whatever system is in place to assist voters who encounter any problem while trying to vote. Clearly, we must provide time off from work for voting, either a full holiday or paid leave during the day, and either extend voting hours or conduct multi-day or weekend elections. Also, voters should have an absolute right to challenge ballots if their names do not appear on the list. Sample ballots and voting instructions should be mailed to voters in advance of the election. Uniform and reasonable identification requirements and procedures should apply, and reasonable requalifications of felons should be afforded.

Third, we must ensure that every gets counted. After all, at the very least, elections must register the actual choices of all who cast votes. Antiquated equipment, confusion ballots, and the failure of election officials to give adequate assistance led to many hundreds of thousands of votes not being counted throughout the Nation last November. This is a national disgrace, and solutions to these problems include a common ballot format in Federal elections, first-rate common voting technology, and effective training for poll workers.

Finally, voting right laws should be aggressively enforced and penalties for violating voting rights must be strong enough to act as a meaningful deterrent. The Federal Voting Rights Act prohibits a wide range of conduct designed to prevent people from voting because of their race and includes a preclearance process applying to jurisdictions with histories of such abuses. However, the law does not explicitly allow retroactive relief except in limited circumstances. This must change.

[The prepared statement of Ms. Chavez-Thompson on behalf of Richard Trumka follows:]

TESTIMONY OF RICHARD TRUMKA, AFL-CIO SECRETARY-TREASURER

Chairman McConnell, Senator Dodd, and distinguished members of the Committee: Thank you for the opportunity to appear today and share with you the experiences of union members in the 2000 election, and to explain the AFL-CIO'S perspective on the urgent national need for election reform. The AFL-CIO and its 66 national and international unions represent over 13 million workers throughout the United States. Union members reside in almost every towns and neighborhood, and their experiences in registering to vote and casting their ballots are reflective of those of all Americans. And, one of the labor movement's primary missions is to foster civic involvement—including voting—particularly by union members and their families.

We are proud that over two million members registered to vote during the last four years, and that 26% of the voters in the 2000 election hailed from union households. Due to the labor movement's efforts, in 2000 there were 4.8 million more union household voters than in 1992. Regrettably, there were 15.5 million fewer non-union household voters. These potential voters have no organized voice and many are losing faith in our political system, a crisis of confidence that was exacerbated by the notorious problems many voters encountered in Florida and elsewhere last November. This mistrust will deepen and the dangers it portends for democracy

worsen if Congress does not act quickly and meaningfully to address some of the more significant problems associated with the last Presidential election in time for the next one.

Last Election Day, Florida erupted with complaints of confusing ballots, flawed voting equipment, unhelpful polling personnel, erroneous registration records and more blatant intimidations at the polls. Many lawfully registered voters were disenfranchised outright and many others cast votes that didn't count because of faulty equipment, faulty ballots or faulty procedures. When it became apparent that the state's presidential race had deadlocked, the Florida AFL-CIO and its affiliates were inundated with calls from union members eager to share their problems at the polls and anxious for meaningful relief. The Florida labor federation, assisted by staff and volunteers from other unions, participated in unprecedented grassroots efforts to document these problems and seek immediate redress so that the final tally in the state would reflect the votes its citizens had sought to cast on November 7.

As everyone now knows, however, the Florida courts, and ultimately the United States Supreme Court, shut door after door on all efforts to determine and effectuate the will of the people in the 2000 election in Florida. The election is now over as a practical matter of who was inaugurated and who was not. But the bitter experience remains fresh for many, and it presents a tremendous challenge and opportunity to spark a new national voting rights movement to ensure that the wholesale disenfranchisement of voters in Florida and elsewhere is never repeated.

The AFL-CIO is committed to reforms anchored in principles fundamental to our democracy—chief amongst them the idea that the right to vote is a right whose meaningful exercise is guaranteed to all, not a privilege reserved for the well-educated, the affluent, or the well-connected. The labor movement has renewed its commitment to vindicating that right at all levels of government, and we are actively engaged at both the state and federal level to reform an election system whose flaws have been so starkly exposed.

Comprehensive national reform is only possible through a major federal role in setting standards and providing financial support for states' own efforts at modernizing and standardizing their voting systems. In January of this year, the AFL-CIO Executive Council endorsed the following goals for election reform, which we commend to you as useful guideposts in shaping genuine election reform.

First, voter registration should be simple, easy and designed to encourage voting through universal registration at age 18 and same-day registration and voting. Accurate and fair systems to maintain and update voter files are needed so that voters are not erroneously disenfranchised. Although the National Voter Registration Act of 1993—the "Motor Voter Act"—set national standards regarding voter registration by mail and when applying for drivers' licenses, it must also include penalties for non-compliance and means for wrongly disenfranchised voters to vote after Election Day.

Second, voting itself should be easy. With rare exception, voting in national elections is conducted during limited hours on a work day, so most voters must act during the first few and the last few hours the polls are open. This arrangement is utterly ill-suited to how Americans now live. In particular, for millions of working people Election Day presents unacceptable choices among work, family and voting. And, even for those who make it to the polls, any irregularities or inefficiencies, such as the improper list purges in Florida, can prompt the collapse of whatever system is in place to assist voters who encounter any problem while trying to vote. Clearly, we must provide time off from work for voting—either a full day holiday or paid leave during the day—and either extend voting hours or conduct multi-day or weekend elections. Also, voters should have an absolute right to vote challenged ballots if their names do not appear on the list; sample ballots and voting instructions should be mailed to voters in advance of the election; uniform and reasonable identification requirements and procedures should apply; and reasonable re-qualification of felons should be afforded.

Third, we must ensure that every vote gets counted: after all, at the very least elections must register the actual choices of all who cast ballots. Antiquated equipment, confusing ballots and the failure of election officials to give adequate assistance led to many hundreds of thousands of votes not being counted throughout the nation last November. This is a national disgrace. The solutions to these problems include a common ballot format in federal elections; first-rate, common voting technology; and effective training for poll workers.

Finally, voting rights laws should be aggressively enforced and penalties for violating voting rights must be strong enough to act as a meaningful deterrent. The Federal Voting Rights Act prohibits a wide range of conduct designed to prevent people from voting because of their race and includes a pre-clearance process apply-

ing to jurisdictions with histories of such abuses. However, the law does not explicitly allow retroactive relief except in limited circumstances. This must change.

We have a signal opportunity now to fix systems and end practices that for too long have impaired the exercise of the most fundamental right of citizenship. The raw injustices revealed in the last election have not yet faded from public concern. This is an extraordinary opportunity to act decisively, and public expectations are rightly high that Congress will do so. Although some are cautioning that state prerogatives in election administration must be protected, the Constitution expressly reposes ultimate authority in the Congress over the times and manner of conducting federal elections. Modern voting rights legislation is premised on that authority, and election reform presents no less compelling a public policy imperative for its exercise.

The AFL-CIO urges legislation that establishes precise standards and timetables for the modernization of all voting equipment used in federal elections, and for the adoption of registration and other voting procedures that achieve universal enfranchisement. We also urge the government to dedicate its resources generously to achieve the goals of full and fair voter participation. I have yet to see a cost estimate for comprehensive election reform that amounts to more than a tiny sliver of annual federal spending in an era when huge surpluses are piling up and mammoth tax cuts are discussed as the order of the day. History will not deal kindly with us if we fall short in either devising or funding the changes necessary to achieve a twenty-first century system for conducting our public elections.

Thank you for your efforts to advance the cause of election reform and for your consideration of the views of the AFL-CIO.

The CHAIRMAN. Thank you, Ms. Chavez-Thompson.

Let me just mention here that I am going to have to leave at 1 o'clock, and I know that Ms. Phillips is getting the short end of the shrift here coming at the end. I am going to have written questions for all of you which you will have until Wednesday, May the 2nd, to answer, and the reason for that is that many of us are deeply involved in the campaign finance reform debate, which starts next Monday, and we are not going to be able to get back to this subject until some time later. Also, we are not going to have the hearing tomorrow that we had originally planned to have on this subject. I think we have all agreed that we need to resume this issue after we have finished up on campaign finance reform.

So there will not be a hearing tomorrow. All the witnesses will have until—the hearing record will remain open until May the 2nd for us to submit questions and hopefully get answers from you.

With that, Ms. Phillips, I hope you won't be offended if you I go walking out of here at 1 o'clock. Please proceed with your statement.

Ms. PHILLIPS. Well, I will be as quick as I can.

Senator DODD. I will be here.

The CHAIRMAN. Senator Dodd is going to wrap up.

Ms. PHILLIPS. Thank you.

Senator DODD. I will be here for you. And let me just say to the Chairman, I thank the Chairman for having these hearings. And while there are a lot of different bills and a lot of different ideas, there are others we need to hear from as well. We didn't hear from all who were interested in this. The League of Women Voters I know wanted to appear and they are representative in some ways because they are part of a coalition. But we are certainly going to make that opportunity available, I am confident, down the road. And we have other colleagues who are interested as well as Secretaries of the States in various States who can offer, I think, a lot of wisdom in this discussion as well. So I appreciate the Chairman's willingness to have this hearing today and look forward to



additional testimony. But I will be here to ask some questions and to listen to you, Ms. Phillips.

**STATEMENT OF DEBORAH M. PHILLIPS**

Ms. PHILLIPS. Thank you. It is a privilege to be here, and thanks for my 5 minutes.

My name is Deborah Phillips and I am the founder and chairman of the Voting Integrity Project. There are serious problems in America's elections that are being ignored in our recent debate on election 2000. American elections will probably always be vulnerable to vote buying, vote hauling, machine tampering, and electioneering. But the National Voter Registration Act has tied the hands of election directors to protect the rights of legitimate voters from the dilution of vote fraud, and this is a voter rights' issue of the highest magnitude.

The NVRA instituted mail-in registration which depends solely on the honor system. There is no requirement to prove your identity, residence, or qualifications to vote. There is only a simple attestation form signed by the voter. That is why voter rolls are filled with the dead, those who have moved out of the area, convicted felons, non-citizens, or fictitious persons. Once registered, it is very easy to vote such names.

Most jurisdictions do not require any form of identification at the polls. Those that do can be bypassed by mail-in absentee ballots. The use of such ballots is increasing, and procedures for verification are even more lax than in-person voting.

Election directors have a very limited ability under Federal law to prevent or detect such fraud. In VIP's written submission, we have included State-by-State sampling of election and voter registration fraud cases since implementation of NVRA. Some of the cases have received national attention, but most are little known outside their immediate area. Almost all these cases are aided by NVRA's constraints on maintaining clean voter rolls.

How extensive is the problem? California estimated in 1997 that 10 to 25 percent of its voter rolls were contaminated. Yet problems have persisted. A criminal investigation in Los Angeles in 1998 found as many as 16,000 fictitious voters registered by paid collectors.

There have been instances reported where the number of registrations defies logic. In 1998, Alaska had 66,000 more registered voters than census estimates of its voting age population. In the year 2000 alone, more than 15,000 dead people were found on Georgia's active voting records. As many as one in five registrations on Indiana voter rolls were found to be bogus. In Tulsa, hundreds of dead and felon registrants were identified on the voter rolls, and many had voted. A recent St. Louis investigation, already mentioned, had thousands of registrations submitted by one collector just before a deadline that were found to be fraudulent.

The short time frames and level of proof required by most State election statutes is prohibitive to bringing a successful election contest based on fraud, and criminal prosecutions are not popular because they require substantial budgets to investigate and have low success rates.

In 1998, for example, the FBI declined to investigate 39 forged absentee ballots from personal-care homes in Fayette County, Pennsylvania. It took a local prosecutor 2 years to indict three defendants who plea bargained the charges down to misdemeanors, a frequent occurrence in election fraud prosecutions.

Defective ballots from our most vulnerable citizens is on the rise. Most States do not have adequate mechanisms to protect seniors and the disabled from vote theft. Many allow others to request absentee ballots on behalf of residents, so there may not even be an awareness that a vote has been cast on their behalf.

But the biggest problem is dirty voter rolls. VIP has studied voter roll maintenance procedures to understand the barriers election officials face in maintaining pristine voter rolls. VIP concluded that even when resources are available, it is a process fraught with potential problems. Once a computerized match is completed, substantial manual due diligence must be performed before any notification to the voter. In Florida, last year, some jurisdictions purged misidentified voters without performing such due diligence, resulting in disenfranchisement. Other jurisdictions refused to purge based on faulty data rolls and permitted invalid registrants to vote. Neither scenario is acceptable.

The greatest irony of all is that NVRA may also have resulted in a record number of voters who registered properly being unable to vote. Georgia is investigating such a case now involving large numbers of minority students registered by a community organization. NVRA's recommended fail-safe provisions failed these voters. That is why VIP supports reasonable amendments to NVRA that will allow election directors to more easily verify a voter's identity. And we have details in the written testimony, and I see that the light just went on.

[The prepared statement of Ms. Phillips follows:]

**Testimony of Deborah M Phillips  
Chairman of The Voting Integrity Project  
March 14, 2001  
U. S. Senate Committee on  
Rules and Administration**

My name is Deborah Phillips, and I am founder and Chairman of The Voting Integrity Project, a national non-partisan voter rights organization. For the past five years, we have studied and documented a wide range of problems relating to elections. Equipment malfunctions, poorly designed ballots, voter disenfranchisement and tabulation irregularities, are now familiar to the American public. But there are serious problems in America's elections that are being ignored in the recent debate on Election 2000.

**How the National Voter Registration Act Weakens Election Integrity**

American elections will probably always be vulnerable to vote buying, vote hauling, machine tampering and electioneering. But the National Voter Registration Act has tied the hands of election directors to protect the rights of legitimate voters from the dilution of vote fraud. This is a voter rights issue of the highest magnitude!

The NVRA was enacted in 1993 and by 1995 had been implemented in all by 6 states which were grandfathered in the legislation. As stated in the Federal Election Commission "Guide To Implementing the NVRA," the objectives of the Act were to increase the numbers of eligible citizens registered to vote, protect the integrity of the electoral process by ensuring maintenance of accurate voter rolls, and enhance participation of eligible citizens as voters in federal elections. Because of the constraints built into the Act, and the way in which it has been regulated, it was doomed to failure and in fact has failed to meet its objectives.

The NVRA is administered not by the Federal Election Commission, or its Office of Election Administration, but the U.S. Justice Department Civil Rights Division. This set up a tension — some would say obstructively so — between the goals of the NVRA and any attempts at oversight of its implementation from the standpoint of election integrity. This is because the Department of Justice Civil Rights Division has demonstrated a bias toward keeping the registration process as open as possible, even if it results in the registration of unqualified or fictitious names, thereby diluting the franchise of all legitimate voters.

The legislative history of the NVRA indicated that the purpose of the Act was "to ensure that once a citizen is registered to vote, he or she should remain on the list so long as he or she remains eligible to vote in that jurisdiction." [Sen.Rpt., pg 17] The problem though is that the procedures of NVRA permit the easy and remote registration of virtually anyone or anything, absent sufficient controls against fraud. Once registered, it becomes very problematic to remove

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such names. Reliance upon a single layer of data match — the National Change of Address List maintained by the U.S. Postal Service — is insufficient to identify fraudulent registrations, or even duplicate/triplicate registrations of eligible voters. Thus, voter registration records nationwide have become dangerously clogged with ineligible, fictitious, or no longer valid names.

The NVRA requires states to maintain the integrity of the voter rolls in a non-discriminatory manner that complied with the Voting Rights Act of 1965. This tension has often resulted in a reluctance by election officials to conduct purges of any kind. This is not just a bureaucratic problem. It has become a serious voter rights problem because of the ease of using such faulty registrations to vote — either in person or increasingly by mail — with little concern for detection or apprehension. The cases are increasing.

The NVRA instituted mail-in registration which depends solely on the “honor system.” There is no requirement to prove your identity, residence or qualifications to vote. There is only a simple attestation form signed by the voter combined with limited and problematic verification procedures by Election Directors *after a voter’s name is entered into the system*. Thus it is not only possible, but rather easy to fraudulently register and vote.

One source of problems with registration is the attaching of the voter registration form to other government application forms, such as driver’s license application forms. Many non-citizens would be loathe to commit any offense that might result in their deportation, yet non-citizens are routinely registered to vote through DMVs, and are not routinely recognized as unqualified since there is no automatic verification of citizenship by Election officials. In fact, attempts to perform such matches are very difficult.

Even if the registration by non-citizens is inadvertent and innocent, once their names are on the registration records, they become vulnerable to have their names voted by others. Routine door-to-door canvasses by political campaign and party workers can easily identify such names and the voter turnout likelihood. Street sheets are typically kept on each voter in a given jurisdiction noting “likely” voters and their attitudes toward a party, candidate or ballot issue. In the wrong hands, such information can easily be used to “turn out” fraudulent votes. Similarly, deadwood names can also be voted.

That is why voter rolls today are filled with the dead, those who have moved out of the area, convicted felons, non-citizens, or fictitious persons. Once registered, it is very easy to vote such names. Most jurisdictions do not require any form of identification at the polls. Those that do can be bypassed by signing an affidavit at the polls or by mail-in absentee ballots. The use of such ballots is increasing, and procedures for verification are even more lax with mail-in ballots than in-person voting. Under current federal and state election law, election officials have a very limited capability to prevent or detect such fraud.

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In Appendix A we have included a partial listing of the types of integrity problems experienced state by state since implementation of NVRA. Some of the cases have received national attention, such as the infamous Miami Mayoral election of 1997, where thousands of fraudulent absentee ballots changed the rightful outcome. But most are little known outside their immediate area, or are based upon individual voter reports.. Almost all of these cases are aided by NVRA's constraints on maintaining clean voter rolls.

#### **Voter Maintenance Procedures**

NVRA depends almost entirely on the imperfect and limited matches of the voter rolls against the U.S. National Change of Address List (NCOA). But NCOA is only as good as the change of address information filed by individuals. And it is entirely possible to create fictitious names that will be recognized by NCOA as legitimate.

How extensive is the problem? California estimated in 1997 that 10-25% of its voter rolls were contaminated. Yet problems have persisted. A criminal investigation in Los Angeles in 1998 found as many as 16,000 fictitious voters registered by paid "collectors." San Francisco has had almost annual audits of its voter rolls revealing persistent deadwood.

There have even been instances reported where the number of registrants defies logic. For example, in 1996, 219 counties in the U.S. reported having more than 100 percent of their voting age population registered to vote. In 1998 Alaska had 66,000 more registered voters than Census estimates of its voting age population. And in almost every election cycle there are reports of turnout exceeding the actual number of registered voters in a given precinct.

In the year 2000 alone:

- More than 15,000 dead people were found on Georgia's active voting records
  - As many as 1 in 5 voter registrations on Indiana voter rolls were found to be bogus.
  - In Tulsa hundreds of dead and felon registrants were identified on the voter rolls and many had voted.
  - A recent St Louis investigation found that 3,000 registrations submitted by one collector just before a deadline were fraudulent, and a recent mayoral primary is currently investigation for rampant voter fraud..
  - As many as four hundred illegal ballots were cast in Broward County's November 2000 election, most of them by unregistered voters. Fraudulent
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absentee ballots in nursing homes are now also being alleged in Miami-Dade.

- In the 2000 election, hundreds of thousands of Indiana voter names -- as many as 1 in 5 voter registrations -- were found to be bogus.

The short time frames and level of proof required by most state election statutes is prohibitive to bringing a successful election contest based on fraud. Criminal prosecutions are not popular with prosecutors, because they require substantial budgets to investigate and have low success rates.

In 1998, for example, the FBI declined to investigate 39 forged absentee ballots from personal care homes in Fayette County Pennsylvania. It took a local prosecutor two years to indict three defendants who plea-bargained the charges down to misdemeanors --- a frequent occurrence in election fraud prosecutions.

The theft of ballots from our most vulnerable citizens is on the rise. Most states do not have adequate mechanisms to protect seniors and disabled from vote theft. Many allow others to request absentee ballots on behalf of residents, so there may not even be an awareness that a vote has been cast on their behalf.

VIP has studied voter roll maintenance procedures to understand the barriers election officials face in maintaining pristine voter rolls. It was immediately evident that reliance solely on NCOA limited the range of problem identifications. But collateral sources for redundant data matches are not always readily available. VIP concluded that even when resources are available, it is a process fraught with potential problems. Once a computerized match is completed, substantial manual due diligence must be performed before any notification to the voter. In Florida last year, some jurisdictions purged mis-identified voters without performing such due diligence, resulting in disenfranchisement. Other jurisdictions refused to purge based on faulty data rolls and permitted invalid registrants to vote. Neither scenario is acceptable.

The greatest irony of all is that the NVRA may also have resulted in record numbers of voters who registered properly through third parties being unable to vote. Georgia is investigating such a case now, involving large numbers of minority students registered by a community organization. NVRA's recommended "fail safe" provisions failed these voters. Largely because even if a jurisdiction advocates the use of "provisional" ballots, it may not translate down to the precinct level. A voter is almost entirely at the mercy of a few individuals, usually poorly trained, to determine their eligibility to vote.

That is why VIP supports reasonable amendments to NVRA that will allow election directors to more easily verify a voter's identity, residence and qualifications prior to placing them on the voter rolls, and to more easily and confidently remove them when they become ineligible.

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We also think there needs to be mandated cooperation from the INS and Social Security Administration.

But today, many states do not have centralized voter registration records. Each jurisdiction is responsible for its own voters, and often without adequate resources for computer, list matching expertise or services, and staff to perform the necessary due diligence before purging of voter names. This leaves many election officials reluctant to purge at all, lest they risk disenfranchising a voter.

If all states had centralized voter rolls, the next logical step would be to find some way of cross-checking voter registrations between states. That may be possible without further erosion of individual privacy, or a “federalized” voter registration system.

#### **The Role of Election Vendors on Election Integrity**

Much has been written and said in the wake of the Florida recount on the need to upgrade America’s voting equipment. But little has been said about America’s capability to do that, and whether simple upgrading of technology would actually address most weaknesses in election integrity. Few understand the degree to which the current environment for supply of election equipment may actually contribute to election problems.

- (1) State and local election offices are growing deeply reliant on election vendors for technical expertise; even certification is not a guarantee of perfection in programs or systems
- (2) Election vendors have closed architecture systems — no peer review and no independent oversight
- (3) Most election vendors are privately-held companies and do not disclose information regarding their ownership, finances, political orientation or campaign contributions, nor are many contracts competitively bid
- (4) Growing lack of transparency in the overall conduct of America’s elections, leading to increased public cynicism and decreasing public confidence in election outcomes
- (5) Many election officials cannot cope with opening the system up further, because they are underfunded and understaffed. There is a tendency to get defensive when things go wrong or results are challenged.

There are just a handful of vendors who currently supply America’s elections. The lengthy certification process for election equipment is daunting to new entrants. This leaves election officials increasingly reliant on manufacturers for expertise on their own systems, since some do not have independently verifiable audit controls. Many of the touch screen systems, for example, simply do not have a paper audit trail of any kind, so that it would be possible to miss errors in programming, since the manufacturers refuse to make their source codes available to

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independent review. They opt instead to escrow such codes with the state certification authorities.

The manufacturers of America's voting devices have a very sweet deal. They produce closed architecture systems that are proprietary, even though none of the technology today is so unique that it really warrants proprietary protections. In fact, the most advanced of the technology is not much different than your average ATM machine or personal computer. But by keeping their systems proprietary, they are able to reduce direct competition, and charge exorbitantly. The latest trend is to provide turn-key operations on a soup-to-nuts basis, providing ballot printing services, even special pens for the filling out of opti-scan ballots. This all adds to the final cost of the election, and it can be astounding. The State of Hawaii, for example, in upgrading from a problematic punch card system, spent \$1.2 million to ES&S for the one-time administration of its 1998 statewide election using brand new opti-scan equipment. The election ran into difficulties, however, because when the special pens supplied by ES&S did not work, voters used their own, with disastrous results, leading to an historic statewide recount

Although much was alleged about that election, VIP believes that the most fundamental failure was in supplying sufficient training to the poll workers. ES&S has acknowledged this deficiency and in the 2000 election, where sufficient resources were dedicating to educating workers on the equipment, there were no similar problems reported. This is just one example of how some of your most basic elements of an election can resist or even defeat attempts at technology solutions.

So what can and should be done?

#### **The Need for an Institutional Memory**

One of the problems is that there is no one national source for reliable information about election practices. The FEC's Office of Election Administration is small and competes for resources within the agency. The Election Center is primarily equipment standard oriented, and has no real authority. State election certification procedures are often insufficient or ignored.

If it can be argued — and I think this is by no means clear — that disparity in equipment used in elections can result in an equal protection violation, than it is also plausible that ALL the elements that go into delivery an election need serious scrutiny in order to avoid such inequities. But who decides these "best practices"? There is no authority. There is only conventional wisdom generated by industry sources. We need reliable, non-partisan study performed on an on-going basis. When things go awry, or are even alleged, in an election, it should be routinely dissected to understand every element that may have contributed to the problems, and the benefit of research done on an election in, say, Hawaii, should be available to election officials struggling with similar issues in, say, Polk County Florida. Today, there simply is no such central repository.

Creation of an independent and ongoing Federal Election Administration Commission

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would do much to address this deficiency. Research could and should be ongoing, since election equipment and rules will continue to evolve.

That is why Congress should refrain from attempting to set specific national standards for elections. Today's voluntary standards were out of date by the time they were promulgated. A review and update that has been in progress for several years will likely be outdated the moment it concludes. Further, states should remain in control of their election choices, but they need help. Recommendations from a truly bi-partisan Federal Commission, coupled with grants to states and communities willing to adopt these recommendations, could be a very effective means of transforming the level of integrity, without adopting uniform federal standards, because it will be based on consensus building, rather than mandatory standards, and hopefully avoid unintended consequences.

### **Recommendations**

Election integrity is impacted by more than just the type of equipment used. Reform needs to cover the whole end-to-end delivery of elections, based upon "Best Practices" to ensure ballot security, privacy and secrecy, registration procedures that ensure enfranchisement but permit officials to have pristine voter rolls; election industry "sunshine" and "peer review"; and transparency that includes full citizen participation in election administration and voting

Beyond the strong support that VIP has for establishment of a Federal Election Administration Commission, we have developed several recommendations for improving election integrity and voter rights.

(1) Maintain state control of election choices, but equip states with the information and financial resources necessary for effective reform. Encourage states to adopt photo identification at the polls, without watering it down to a meaningless reform. Resolve conflicts in the verification process, such as the tension between protecting privacy and the need for critical information such as Social Security Numbers to verify voters' identity. Also encourage states to adopt uniform rules for the casting and counting of overseas and military ballots. (See Appendix

(2) Encourage states to centralize voter registration list maintenance and to adopt uniform data formats for vital statistics, felony records, tax records, and change of address records. Encourage states to put a maximum emphasis on maintaining pristine voter rolls, providing "fail safe" devices — particularly where Election Day registration is permitted — to prevent voter disenfranchisement without jeopardizing the strength of legitimate votes by a flood of election fraud.

(3) Open up the voter registration records to citizen oversight by making records available and searchable by name and address on the Internet. Many states do not permit ordinary citizens

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to obtain searchable databases of voter rolls, limiting such access to candidates and political parties.

(4) Encourage states to contract with election vendors only after an open, competitive bid process, where vendors are required to meet the same financial and other disclosure standards set for state lottery vendors.

(5) Encourage states to contract only with election vendors who are willing to supply “open architecture” election equipment systems.

(6) Encourage states to build maximum “transparency” into their election process to independent citizen review and participation

(7) Encourage non-binding pilots of any new equipment, technology or practice in a parallel environment with independent professional and citizen review.

(8) Limit or prohibit third party gathering of absentee ballots, or use bar-coding to identify the organization or individual gathering absentee ballots (See Appendix C)

(9) Make citizenship records publicly available for purposes of performing voter roll maintenance.

(10) Ensure that any federal funds that flow to the states go to meaningful reform, including recruiting, training & retention qualified poll workers, not just election equipment upgrades.

(11) Strengthen civic education in our schools and encourage volunteer programs for high school students in actual election administration. Such programs may also need changes in state election law.

I am grateful to the Senate Rules Committee for convening this hearing. I hope that the Members can work together, across party lines, to help the states guarantee free and fair elections in the future. Thank you.

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The CHAIRMAN. Thank you, Ms. Phillips.

Senator Dodd, I am going to pass the baton to you and repeat that I will have questions for all of you in writing, which I would very much appreciate your responding to. And thank you for being here, and I apologize for the rhythm of the Senate, which frequently sends us off in a different direction.

Senator Dodd.

Senator DODD. Thank you very much, Mr. Chairman, and I will keep this relatively brief for you and probably submit some additional questions as well.

I just want to make a comment. I should have said this earlier. We have talked about the 1.4 million poll workers who are recruited to participate each election cycle. And I wouldn't want to leave the impression that I thought there was any serious problem with the majority of these people, because I think many of them really do step forward out of a sense of civic duty and desire to assist. It has been a remarkable achievement in some ways, despite the obvious shortcomings that exist today, the fact that people who are average citizens will give as much time as they do at a modest salary for a day to try and make our elections work as well as they can. So I want to express my gratitude to the millions of people who have done this over the years and thank them for their service.

Let me begin, Ms. Chavez-Thompson, by thanking you and all of you for being here. I found your argument compelling, that comprehensive national reform for elections is only possible through a major Federal role. Specifically, what would you recommend as the appropriate Federal role in election reform?

Ms. CHAVEZ-THOMPSON. I think what we need to do is to make sure that—one of the problems that we heard repeatedly after the Florida elections—and it wasn't just Florida; we heard stories from Illinois, et cetera—was that when voters arrived, the feeling of—they felt like they weren't supposed to be there. Some monitoring, some Federal intervention is needed so that there isn't one single voter who has a feeling that when they go to the poll that they are not supposed to be there. We have to make sure that whatever rules we pass, whatever laws we pass, do not disenfranchise one single voter because of the color of their skin, the language barrier, or anything else, a disability, accessibility.

And if we don't provide those kinds of protections in any kind of rules that we pass, then we are not doing our jobs as leaders within our communities or within our organizations or within Congress to make sure that there isn't a single person who goes to vote that has a right to vote that doesn't have—that feels disenfranchised the minute that they walk in by whatever happens in that voting place.

Senator DODD. Some of the proposals we have had acknowledged that obviously changes to the technology have to occur. But they may not occur. Even if you exclude 20 percent of the equipment, which was the number given to us earlier of those machines that may be more than adequate to meet the challenge today, replacements of significant numbers of equipment would still have to occur in order to just deal with the technological glitch issues. This is aside from the other issues of disenfranchisement. This may not

occur until 2004 or 2008, some have projected ahead, and I wonder if you might be able to provide us with some guidance as to would be a more realistic time frame and date for the modernization of voting systems based on—

Ms. CHAVEZ-THOMPSON. It has to begin by 2004, and we could, in fact, get it done by 2004 if we eliminate some of the tax cuts that are being proposed at this time and use that money for upgrading our voting system.

Senator DODD. The point is, is it your testimony that the technology exists? It is not a question of inventing the technology as such.

Ms. CHAVEZ-THOMPSON. It is there. It is there. We can apply it. It can be done. And I think that if we applied ourselves and if everybody was able to endorse one piece of legislation that is a non-partisan piece of legislation, it could be done by the next Presidential elections. I don't want to have to go through and try to explain even to my 12-year-old grandson after the election in November—he is 12 years old, and he was wondering what was going on. Why didn't we have a President? When you try to explain a complexity of reasons of why there is no President yet to a 12-year-old, can you just imagine the frustration of so many others who found it very difficult to understand?

We have to do something before the next Presidential elections.

Senator DODD. Mr. Williams, I saw you in your testimony indicate this as well. Is it your sense, the sense of the disability community, that the technology exists today? Or is there some sense that more modernization or improvements would have to occur before people could take advantage of existing technology to eliminate the barriers that you identified in your testimony?

Mr. WILLIAMS. We believe that the majority of the technology we are discussing today is already available. It is a question of States and communities recognizing what is out there.

Senator DODD. Thank you. I agree with that. I thank you for that.

Let me ask you again, Ms. Chavez, I meant to bring up the types of standards, that should be established for election administration in Federal elections. I wonder if you might describe the types of standards that should be established, in your view, and in what areas of Federal elections these standards should apply.

Ms. CHAVEZ-THOMPSON. I think they should apply especially at the Federal level because what we have seen is what is in place today is so haphazard from State to State, the rules are changed from State to State, there is major confusion, especially in those areas where there is a high concentration of minority voters. And if we don't standardize on a national level in the Federal election, if we don't standardize every single State and provide the necessary equipment, then the continuation of disenfranchisement and the continuation of a lack of citizens being able to exercise their right to vote will continue. But we believe that standards should be certainly established by Congress and funded through a cost of Congress.

Senator DODD. Well, I thank you for that.

Let me ask you, Mr. Samples, you talked about voter fraud. Again, I think Senator Schumer raised the issue effectively and

there is no debate here. We will stipulate that obviously voter fraud is something that needs to be addressed. And I guess this goes to you as well, Ms. Phillips, since you have addressed the issue as well. No one argues about that. But the point was made earlier to the previous panel that, in addition to dealing with voter fraud issues, there is obviously the significant issue of voter disenfranchisement, where people are turned away from the polls or denied the opportunity to register or, having registered, people don't find them or they shift polling places. And then it was conceded by the other panelists that those numbers are vastly in excess of the instances of fraud. And while no one is wanting to condone fraud at all, if a vote is cast illegally, a vote is cast that should not be cast or a vote is denied that should have been cast, the net effect in terms of the electoral process is the same.

Now, you take a different view of that, and I want to give you a chance to respond to that. In trying to guarantee that all people who have the right to vote have their votes counted, there is a legitimate debate, obviously, about how you deal with these matters. But, from our perspective of trying to guarantee those rights to people that have the right to vote, would you disagree with the earlier conclusions about the numbers, that there are vastly more significant numbers of those who are disenfranchised from voting, one? And, two, what statistics and data do you provide besides the anecdotal cases? Are you aware of any organizations or agencies involved in collecting national statistics on vote fraud? And, in your own work involving data collection of vote fraud, do you have any sense of the projected percentage of vote fraud in national elections that we are looking at? And I wonder if you have any specific recommendations from a national perspective? Since so much of this debate may center around whether or not we have any right at all—I am sure there will be some who will suggest that the Federal Government shouldn't be setting standards, legally and constitutionally, to be involved in Presidential elections.

So, in the face of all of that, how would you respond to some of those questions?

Mr. SAMPLES. Let me go first—

Senator DODD. Ms. Phillips, since you have been involved in this as well, why don't you chime in wherever you feel like it?

Mr. SAMPLES. Let me say, first of all, that I consider Ms. Phillips the premier data specialist on this, so I will defer to her on a lot of that. But I would like to make a couple of points, one of which is I would be a little more agnostic than we have been so far about balancing the numbers, because I think there is just a lot we don't know, and voter fraud, by the nature of the case, a lot of times you are not going to know that.

But I would also on a second point try to change the framework we are looking at this a little bit. It is a little bit like the whole question of corruption in government. We are concerned and Congress is concerned about preventing both corruption and the appearance of corruption, Senator, and I think with voter fraud, Congress ought to be concerned with both the existence, the real existence of fraud, but also preventing the appearance of it. And one way to do that, I think, is to deal with a lot of the problems with the rolls which inadvertently create this kind of appearance in

many cases, and, I should also say, create the appearance without really creating any real benefit on the other end from the National Voter Registration Act.

Ms. Phillips now.

Ms. PHILLIPS. The truth is, Senator, that we don't really know—

Senator DODD. Let me stop you there. Would you not also agree that the perception or the appearance that people are being denied the right to vote because of bureaucratic snafus, to use the jargon of the day, imposes a similar set of problems?

Mr. SAMPLES. I would think so, but I would say also that that would have to be—Professor Knack talked about the use of the term “disenfranchisement.” I think that would have to also be rooted in real analysis and a strong sense of reality.

Senator DODD. Ms. Phillips?

Ms. PHILLIPS. NVRA, as you know, was fully implemented only in 1996. So there really hasn't been a lot of time even for the FEA, the Federal Election Administration, a portion of the Federal Election Commission, to amass any great data on it. Certainly we have not—as regards disenfranchising voters, that really is a voter roll problem, if you think about it. And we support the fail-safe provisions that NVRA advocates for provisional balloting. But, unfortunately, there just—it doesn't always filter down to the poll workers.

And so we think that—

Senator DODD. What can we do? What would you recommend we do?

Ms. PHILLIPS. Well, we really are—I haven't had a chance to study your bill, Senator, but there are many provisions of the McConnell-Torricelli bill—

Senator DODD. We talk about provisional voting, but we have left open the issue of how you do this effectively, and there will be a hot debate about it. But I think you can do it. If smart people get together, it seems to me that ought to not be an insurmountable problem.

Ms. PHILLIPS. Well, you need more time. Certainly it would make impossible these instance tallies in close elections. You might have to delay, you know, announcing a tally to give enough time in a close election. I think there are legitimate reasons why provisional balloting could address a lot of the disenfranchisement that is going on now.

But it wouldn't address the issue of voter fraud and diluting legitimate votes because of stolen votes. That could only be addressed by ramping up the ability to clean up the voter rolls, which we just don't have now.

Senator DODD. This is an interesting subject, and I don't want to tie you up all day. But doesn't that sort of cry out, then, for some national standards here? So, that way, we have some ability to at least—not that Washington is going to be dictating to my town of East Haddam, Connecticut, or some county in Virginia or Texas or elsewhere, have some national standards by which we can start to apply the law. Then, we can begin to offer the assistance and the backing to help us root out both the problem of disenfranchised voters as well as those who would scam the system and commit fraud?

Ms. PHILLIPS. Well, from what I understand about your bill, it would mandate provisional voting, and I think that that may be a standard that needs to be applied nationally. But I think before we start talking about national standards for equipment and best practices, we need to study it. And without that study, we could be forcing a new set of problems on States such as NVRA presented to the States.

Also, if you are going to study the problem and set up a list of recommended best practices, you need to sweeten—you need to impose another unfunded Federal mandate on the States, which NVRA—

Senator DODD. I agree with that. We have to provide some resources.

Ms. PHILLIPS. Right.

Senator DODD. And I want to suggest that my own view is that there should be some commensurate participation financially as well. It isn't just a Federal—

Ms. PHILLIPS. Well, in most communities. Some communities might not participate if they have to meet a matching grant.

Senator DODD. We need to look at that. But we should certainly try and encourage local participation.

Well, listen, I appreciate this, and I have taken you beyond the time that we said we would have you here. I am going to ask—since I am the only one here, I guess I get to do this, anyway. But I would ask unanimous consent that some documents and statements be included in the record, a statement of Raoul Segara, the president of the National Council of La Raza; a report of the GAO entitled “The Scope of Congressional Authority in Election Administration”; a statement by Barbara Arnwein, the executive director of the Lawyers’ Committee for Civil Rights Under Law; a statement by Congresswoman Sheila Jackson Lee, the 18th District of Texas. I would also suggest that it might make sense to compile all of these additional statements, and any others that may be submitted in an appendix to the hearing record so that they are available to the public but do not unnecessarily encumber the actual hearing record. And I will leave the record open for any additional statements that other members may want to add, and questions that they may want to submit to you.

I thank you all for being patient, sitting here a long time to listen to other people give testimony, but it has been very helpful. As a result of this, I see some common themes emerging from the three panels we had. We are all benefited on this side of the dais from hearing from people who think about this a lot more frequently than we do. So I thank you all for coming and submitting your remarks. I am particularly appreciative of the AFL–CIO for their support of the Conyers–Dodd bill. We have enjoyed working with you over the last few weeks.

Ms. Phillips, I would encourage you to look at this. Let me know what you think of it. We are interested in getting comment on how we might strengthen it—any suggestions you would have.

Ms. PHILLIPS. I would be happy to do that.

Senator DODD. Mr. Williams, it has been 25, 26 years since we have been dealing with each other, and you have once again distin-

guished yourself with your testimony here today. And I look forward to working with you as well.

With that, the committee will stand adjourned until further call of the Chair.

[Whereupon, at 1:15 p.m., the committee was adjourned.]

[The following statements were submitted for the record.]



## ELECTION REFORM

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### REPORT OF THE U.S. COMMISSION ON CIVIL RIGHTS ON THE NOVEMBER 2000 ELECTION AND ON ELECTION REFORM ISSUES

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WEDNESDAY, JUNE 27, 2001

U.S. SENATE,  
COMMITTEE ON RULES AND ADMINISTRATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:37 a.m., in room SR-301, Russell Senate Office Building, Hon. Christopher J. Dodd, (chairman of the committee), presiding.

Present: Senators Dodd, Inouye, Feinstein, Torricelli, Schumer, and McConnell.

Staff Present: Kennie L. Gill, Staff Director and Chief Counsel; Veronica M. Gillespie, Elections Counsel; Carole Blessington, Administrative Assistant; Tamara Somerville, Republican Staff Director; Brian Lewis, Republican Chief Counsel; Leon R. Sequeira, Republican Counsel; Jill Szczesny, Deputy Chief Clerk; and Lindsay Ott, Staff Assistant.

#### OPENING STATEMENT OF HON. CHRISTOPHER J. DODD, CHAIRMAN, A U.S. SENATOR FROM THE STATE OF CON- NECTICUT

The CHAIRMAN. Good morning. Will the committee please come to order?

I apologize for the confusion here at the outset, but we are about to start voting on an amendment on the floor, and I thought it might be wise to wait and have the first vote before we started. But it has already been 10 minutes without the vote occurring, so rather than try and anticipate floor action, we will begin the process. I think what we will do, talking to my friend and colleague from Kentucky, is that I will open up with a statement, and if the vote starts, then the Senator from Kentucky may go and make that vote. When he comes back, I will go over and vote, and we will cover the ground as quickly as we can. As I speak, the vote begins here.

I welcome all this morning, and I am pleased to open this hearing with a few brief remarks before turning to my ranking member and other members of the committee who may wish to make some opening comments or statements.

First, let me say it is something of an unexpected pleasure and privilege to convene this committee as its chairman. For the first time in the history of our Republic, the Senate has changed its leadership in mid-season. As a result, I find myself following in the footsteps of a very esteemed group of previous Chairs, including the gentleman who was just sitting to my right, who will be back shortly, Senator Mitch McConnell of Kentucky. And I want to thank him for all his courtesies during his stewardship as chairman.

I also served on this committee under the leadership of another Senator from Kentucky, Wendell Ford, as well as Senator Byrd, Senator Stevens, Mac Mathias, Senator Pell, a long list. If you look up here on the committee wall to my left, you will see the people who have served as Chairs of this committee: Senator Warner, Senator Stevens. And so I am deeply honored this morning to be following in the footsteps of these people who have served as chairman of this committee.

Today, the committee considers what I believe is one of our most important matters of jurisdiction. Normally one thinks of the Rules Committee as a committee that deals with the infrastructure of the capital and of the Senate's day-to-day workings, including the Library of Congress, the Smithsonian, and other institutions.

But one of the most profound legislative responsibilities that any committee could have is to deal with campaigns and elections, and this committee has the jurisdiction over elections and campaigns. And certainly no issue could be more important to every single citizen in this country than the issue of who is qualified to vote, whether they can vote, and the assurance that when they do vote, their vote will be counted.

Our focus this morning is on the report of the U.S. Civil Rights Commission pertaining to last year's election in the State of Florida and across this country. We are pleased to have as witnesses the Chairwoman of the Commission, Mary Frances Berry, and other distinguished witnesses to discuss this report in the larger context of election reform.

Allow me to say at the very outset of these hearings that I am well aware that this report has generated controversy and consternation in some quarters. On one level, this fact should surprise no one. For as long as our country has existed, the issue of civil rights has been the source of controversy. And for as long as it has existed, some four decades now, the Civil Rights Commission has not shied away from examining civil rights matters, and I commend them for it.

To those who would take issue with this report, let me make three brief points in response.

First, it would have been irresponsible in my view for the U.S. Commission on Civil Rights not to examine the Florida election, given the profound civil rights issues that were raised by last fall's vote.

Second, I do not know of anyone, Republican or Democrat, who can say that what happened last year in Florida and other parts of the country was fine, acceptable, and represented the best that we are capable of.

Third, the focus of this hearing is not on the Commission but on the election and what we might do to see that it does not happen again.

We want to hear from our witnesses today, and in the days and weeks to come, about how we can make our elections work better for all Americans. And then we want to make the necessary changes in our election laws so that our elections will work better for all of our citizens.

No one who observed the events of last November and December can fail to have some concerns, deep concerns, about the health of our electoral system. To this day, many millions of Americans remain hurt—deeply hurt—and offended by what took place last year, not just in one State but in States and precincts throughout our Nation.

It has been credibly estimated that 2 to 2.5 million eligible voters who dutifully lined up and went to vote last November 7th were wrongfully denied the right to exercise their franchise. These are people whose ballots were improperly invalidated, whose names were erroneously purged from the rolls of eligible voters, or who were unable to vote because their polling precincts did not accommodate people with disabilities or people for whom English is not their native language.

I represent a State of approximately 3.5 million people. Imagine, if you will, the population of my entire State, every man, woman, and child, showing up to vote and being denied the opportunity to do so. That was the magnitude of the problem that occurred.

Fortunately, there is little argument within the Senate about the dimensions of the problem our country faces in strengthening our electoral system. There is overwhelming bipartisan agreement that what transpired last fall must not be allowed to happen again. That is the very good news.

Indeed, the ranking member of our committee, Senator McConnell, has already held hearings—and I commend him for it—on the issue of electoral reform. Senator McConnell has also introduced legislation along with other members of this committee and Members of the Senate, and there are other bills that have been introduced, addressing the issue of electoral reform.

Senator McConnell's bill, like the one that I have introduced with Congressman John Conyers of Michigan, would devote substantial new resources to States wishing to purchase new voting technologies. Like our bill, Senator McConnell's bill would create incentives and resources to allow States on a voluntary basis to train poll workers, to update voting rolls, and to implement other reforms.

Our bills have much in common, but there are also some very critical differences. The Dodd-Conyers bill would establish three requirements throughout the States, independent of whether or not they accept Federal funds. These requirements are: one, that all voters have the benefit of studying sample ballots before election day so that they are not flying blind when they enter a polling booth; two, that voters be allowed to provisionally vote so that they know that a second effort will be made by election officials to ensure that their vote, if lawful, is counted; and, three, that all polling places provide equal access to voters, whether they be able-bodied

ied, disabled, sighted or visually impaired, English-speaking or non-English speaking.

Some say that these provisions are unwarranted and would intrude on State and local election practices. But, in my view, these three provisions have the virtue of modesty. In this day and age, when voters routinely face a bewildering array of decisions on races and referenda, can anyone seriously argue that they should not have prior access to a copy of the ballot that they will confront when they pull the curtain at the voting booth in their community?

Can anyone seriously argue that a citizen duly registered to vote should not have a chance to provisionally vote if otherwise he or she would be denied the right to cast a vote due to no fault of their own?

And can anyone say that, after what happened last November, we should not ensure equal access to the voting booth for all Americans, including the visually impaired, people with disabilities, the elderly, the infirm, and racial and language minorities?

The answer to these questions in my view is self-evident. These provisions are especially modest when viewed through the prism of the past. Throughout our Nation's history, when fundamental rights have been at stake, we have not failed to act as a Nation to secure those rights. In 1954, the Supreme Court did not say that school districts may desegregate classrooms. It said that they must do so, and do so with all deliberate speed.

In 1964, the United States Congress did not say that public places may be desegregated, but that they must be desegregated.

One year later, in 1965, the Congress did not say that States may abolish a poll tax or literacy test and other barriers to the franchise. The Congress said they must abolish such practices.

And 11 years ago, we did not enact an Americans with Disabilities Act that made access to public and private places optional. We made it mandatory, to ensure that all Americans can exercise their fundamental rights to association and travel.

In a democracy, the voting booth is hallowed ground. There the promise of freedom finds its purest expression. There the noblest political aspirations of humankind find form and purpose. The very least we ought to do in this Congress is ensure that the voting booth receives the same status in our national law as the restroom and the restaurant, that it be a place where equal access for all is absolutely guaranteed.

The flaws in our election system require more than money and more than a menu of options that States are free to disregard as they wish. What is at stake is securing for this and future generations the right to vote, which is the North Star in the constellation of rights and privileges that we enjoy as citizens of this blessed land.

Fifty Senators have already agreed on this fundamental point. I am hopeful and confident that in the days and weeks to come even more will unite behind this effort, including, of course, members of both parties. It is un-American and wrong to have an election system where certain classes of voters, racial minorities, language minorities, the blind, disabled, are disenfranchised at significantly higher rates than voters not in those classes. And until we can say as one Nation that the differences in their disenfranchisement are

insignificant, then our work as a Congress and a country is unfinished.

With that, let me turn to my friend from Hawaii who is here for any opening comments he may want to make and then at that point I presume that my friend from Kentucky will return.

**OPENING STATEMENT OF HON. DANIEL K. INOUE, MEMBER,  
A U.S. SENATOR FROM THE STATE OF HAWAII**

Senator INOUE. Mr. Chairman, I wish to commend you for your most profound statement and to commend you for convening this hearing. I think it is a very important hearing. I wish I could stay here to listen to all of the witnesses, but as one can surmise from the change in command here, we have new responsibilities. I hope you will understand.

The CHAIRMAN. I do understand that, and I thank you.

The committee will stand in recess, and Senator McConnell will reconvene as soon as he comes in. We will begin with his opening statement, and I will come right back for your opening statement, Ms. Berry.

The committee stands in recess.  
[Recess.]

**OPENING STATE OF HON. MITCH McCONNELL, RANKING  
MEMBER, A U.S. SENATOR FROM THE STATE OF KENTUCKY**

Senator McCONNELL. In case anyone thinks there has been a coup, I have not reassumed the chairmanship here but, rather, in the interest of time, the chairman and I agreed that I would make my opening statement while he is voting and on the way back.

In March, this committee heard testimony from individuals representing diverse interests and viewpoints. We learned that problems extend well beyond the machines used to cast votes, to accurate lists of eligible and registered voters, accessibility, military voters, and voter and poll worker training.

We also learned that, contrary to what has been reported, counties which have punch card machines tend to be the larger and richer counties.

Since the November elections, more than 62 hearings on election reform have been held at the national and State level. The problems have been much discussed, from ballot design to votes by dead people and household pets.

Fortunately, there is substantial bipartisan support to move ahead with solutions. By way of example, the McConnell-Schumer-Torricelli-Brownback bipartisan election reform bill has 70 cosponsors, 31 of them Democrats, 38 Republicans, and one Independent. The roster includes a majority of the members of this committee. In addition, the New York Times, Common Cause, and the League of Women Voters are supporting this legislation. I must say this alliance was a little disconcerting to me at the outset, but I have carefully reviewed the bill and could not find a soft money ban lurking anywhere in it. [Laughter.]

So we will just enjoy the camaraderie of old foes coming together on an issue that is fundamental to our democracy, and that is nice for a change.

Election reform is an issue upon which there is much consensus. Everyone agrees we should provide resources to States and localities to improve their systems and election administration.

The differences are primarily in approach. One aspect in dispute is the suitable role for the Federal Government in this process, whether it should mandate specific technologies and administrative practices which traditionally are the 50 States' prerogative. The McConnell-Schumer-Torricelli-Brownback bill, as Senator Schumer has stated, takes a carrot rather than a stick approach. Our bill recognizes that the conduct of elections in New York City varies dramatically from that in Paducah, Kentucky. Their needs are different, so their processes have evolved differently over the years.

Moreover, at the Federal level, there are already two agencies involved in election administration issues: the Federal Election Commission and the Department of Defense. Introducing a third or fourth entity into the process with little to no expertise will impede rather than expedite solutions to the problems. Rather than dictate from Washington, we should empower the States and localities with essential data from a centralized source, as well as provide financial resources overseen by experts in this area.

Our bill is designed to address the three A's of election reform: accuracy, access, and accountability.

Mr. Chairman, I look forward to hearing from our first panel. Over the past few months, many questions have been raised about the final report of the U.S. Commission on Civil Rights, received just yesterday afternoon, all 300 pages of it.

It is also interesting to note that this eight-member bipartisan Commission had only one Republican Commissioner. I look forward to testimony on the dynamics of bipartisanship under those circumstances.

Further, while the charge of the Commission appears to be quite broad, the report itself, while large in girth, is rather narrow in scope. The draft report does not address issues related to the many votes cast by people ineligible to vote. It does not address the thousands in the western part of Florida, a time zone apart from the rest of the State, who were dissuaded from voting because the news media had already called the race and reported the polls were closed when, in fact, they were still open. And the draft report does not examine the questions of how American servicemen and women overseas were disrespected and even disenfranchised.

I am glad that we are taking the time to hear opening statements and to discuss this report with the Chairwoman, Ms. Berry, and Ms. Thernstrom, the sole Republican Commissioner. And I thank the chairman for calling this hearing. But I feel strongly that the problems are already well known and we should hasten to act on election reform.

Prior to the change in the majority in the Senate, Republicans were ready to move legislation on the floor prior to the July 4th recess. I hope that we will not put this floor debate off too long, particularly since we have a measure supported by 70 percent of the Senate.

Finally, I noted in the Washington Post today an interesting op-ed by Senator Kit Bond from Missouri about the problems experienced in his State in the last election. I understand, Mr. Chairman,

that Members of the Senate will get a chance to testify a little bit later. I would like to ask that that be made a part of the record at this point.

The CHAIRMAN. Without objection, so ordered.

[The op-ed is Appendix 9, p. 692.]

Senator MCCONNELL. Finally, Mr. Chairman, I wish you well as you embark on the chairmanship. I have enjoyed our friendship over the years and look forward to working with you in my new reduced role, and I appreciate the hearing that you are holding today and look forward to hearing from the witnesses.

The CHAIRMAN. Well, thank you very much.

As I mentioned before when you were over voting, I commended you, Mr. Chairman. You have had a hearing on this subject—I still call you “Mr. Chairman.” It takes us a while here to—

Senator MCCONNELL. You do not need to change on my account. [Laughter.]

The CHAIRMAN. Well, I appreciate it. These roles may change three or four times in the next year or so. The margins here are not substantial. So one not ought to become too comfortable in declaring themselves to be of a certain title. Obviously the Senate only functions when you are operating on a bipartisan basis. So I have enjoyed our relationship, enjoyed serving under you as a ranking member, and I am confident I will enjoy working with you as chairman of the committee.

For those who have been interested, there will be an opportunity for Members of the Senate. There are a number who would like to be heard on the issue. They will certainly be given that opportunity.

I also would like at some point to try and do some field hearings. We have hearings in Washington all the time, and I thought it might be worthwhile, given the fact that this is not just a Florida issue. The Commission obviously focuses on Florida, and it is serious. It was the narrowest election in the Nation’s history and ended up being decided in a 5–4 decision in the building across the street. And so the girth of the report is, I think, an indication of the magnitude of the problem, and not just in Florida but across the country. And that is reflected, I think, by the interest in the subject matter and the fact that we are not debating whether or not there are needs for reform in the election process. And certainly I know there has been a lot of notoriety surrounding the Commission report itself. Hopefully we can focus our attention on the matter before this committee, and that is, of course, the elections, what happened last fall and what we can do to see to it that it does not happen again. I am determined to try and put together a piece of legislation here that will help us achieve those results.

With that, Ms. Berry, we welcome you to the committee. I looked over the testimony, and I want to give each one of our witnesses as much as 15 minutes so you get a chance to make your points. And if there is material that goes beyond that, I want to just ahead of time say that anything you want, we can have included in the record. I presume that the minority reports will be available today or tomorrow based on the news media. That will also be included as part of the record so that there will be a full and complete record from the Commission.

But I want to put a clock on you here, as a guidance. I am not going to slam down the gavel here exactly at 15, but if you try and keep that time frame in mind, it would help us move along the process.

With that, Madam Chairman, we thank you for being here, and we thank all the members of the Commission for their participation. We look forward to receiving your testimony.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF THE HON. MARY FRANCES BERRY, CHAIRPERSON, U.S. COMMISSION ON CIVIL RIGHTS AND HON. ABIGAIL THERNSTROM, COMMISSIONER, U.S. COMMISSION ON CIVIL RIGHTS**

**STATEMENT OF HON. MARY FRANCES BERRY, CHAIRPERSON, UNITED STATES COMMISSION ON CIVIL RIGHTS**

Ms. BERRY. Thank you very much, Mr. Chairman and Senator McConnell, for inviting me to testify in this hearing on electoral reform. I am Mary Frances Berry, Chairperson of the U.S. Commission on Civil Rights. I am also the Geraldine R. Segal Professor of American Social Thought at the University of Pennsylvania where I teach history of American law.

The bipartisan U.S. Commission on Civil Rights has eight members. Four are here today, including myself, Commissioner Christopher Edley, Commissioner Russell Redenbaugh, and Commissioner Abigail Thernstrom, our newest member.

Senator McConnell asked how was it that we ended up with one Republican. Republicans had opportunities to appoint people to the Commission, but we cannot help it that they appointed an Independent. Russell Redenbaugh is an Independent, but he is a Republican appointee.

The CHAIRMAN. Ms. Berry, could I interrupt just for one second here? We have been joined by our colleague from California. There are several other members who will be coming in, and before you get deep into the substance of your statement, I might ask if my colleague from California would like to make any brief opening remarks.

Senator FEINSTEIN. I will be very brief, or I could wait until after the witness finished. Why don't I wait until after she finishes?

The CHAIRMAN. Fine.

Ms. BERRY. Okay. I am perfectly willing to wait.

The CHAIRMAN. I gave her the chance, didn't I, Ms. Berry? [Laughter.]

Ms. BERRY. In any case, we approved a report on voting irregularities in Florida that we have asked to have introduced into the record, and I assume it will.

At this time also, Mr. Chairman, I would like to enter into the record a slightly revised statement—including some editorial changes and a supplemental statement including some documents I would also like to have entered into the record at this time.

The CHAIRMAN. Without objection, so ordered.

Ms. BERRY. Thank you, Mr. Chairman.

Our staff director, Les Jin, and our general counsel, Edward Hailes, whose team of civil service lawyers did the work on this re-



port are also here. We also have Dr. Allan Lichtman, who is an accomplished scholar and expert in voting rights statistical methodology who did some of the work.

The Civil Rights Commission work on many topics. We have a statutory mandate to act as a watchdog over civil rights enforcement and to recommend changes that will move us closer to equality of opportunity on issues of race, gender, national origin, disability, age, and in the administration of justice. We have exercised that authority with major inquiries on a number of subjects. We do not always agree. We would like to be unanimous all the time. I guess you would like unanimity in the Senate, too. We do disagree. We disagree about such matters as affirmative action. We disagree about such matters as whether good bilingual education can help children who are language minorities to learn as a protection of their civil rights. We differ about whether there is a need to pay attention to women and girls learning advanced mathematics.

There are all sorts of issues. We did a report, on racial profiling, for example, and had a disagreement about whether it existed. The majority of us thought it did and that it existed in a particular police department, and others did not. So we would like unanimity, but we are not always unanimous.

Our statutory duty brings us to the question of voting rights in Florida. We believe that the right to vote is fundamental. We as opinion leaders, make speeches, all over this country on how the right to vote is the keystone of our democracy, and we all believe and understand this. The history of the United States is in many ways the history of epic struggles over the right to vote, from the Revolution to the struggle of white males without property to vote, women and the suffrage cause and all the struggles in which people engaged and then the civil rights movement. People have marched, they have fought, they have died for the right to vote in this country. So the vote is fundamental with respect to everything we do in the area of civil rights, and indeed important everything in the political arena.

The Civil Rights Commission's mandate includes responding to any allegations of fraud or the violation of voting rights. Some people say the Commission did not start looking at allegations of voting irregularities in Florida until after it figured out who was going to win. That is not true. The complaints started coming in to us from people on election day about how they were treated or denied their right to vote, before anybody knew about counts and recounts and results.

We at the Commission then undertook our statutory responsibility to investigate, and we did it in record time. People know it sometimes takes us years to do a report with the small staff we have. But we did this report. Our staff investigated, held hearings, subpoenaed witnesses and documents and engaged in analysis. The hearings were broadcast, I am pleased to say, around the world and widely watched, so people knew what they heard and what they saw.

So therefore anyone who wonders whether anything happened in the election in Florida, whether there were any major problems, or only minor ones, or asks why the Commission became involved, can

look at the videotape of the hearings and see there was great interest and many people participated. We could have stayed there for days listening to people voluntarily telling their stories in the public forum. We stayed on into the evening. We heard from everyone who wanted to be heard, and made a full record.

What did we find in Florida? We found, ineptitude, inefficiency, and injustice. We found State officials and county officials, Republicans and Democrats, who at the hearings, testified, and washed their hands of any responsibility for the debacle that had taken place. They testified under oath and denied responsibility.

We had officials who conceded "Well, I might have moral authority but I do not have real authority," or "Maybe I should have done something but I do not really have the responsibility to do anything." This type of testimony came from officials up and down the line.

Only one county supervisor actually stepped up to the plate and said, "There were problems, I was responsible." That was so breathtakingly refreshing. Finally someone accepted responsibility. But most people did not.

And what happened in Florida? The impact of the voting irregularities was felt most harshly on disabled voters. I never will forget the story of a group who came on a bus from their condo. They used wheelchairs and tried to get into their polling place, which was on the second floor of a building, and there was no way for them to get up there. They got on the bus and went back to the condo.

Or the people who talked about how they tried to get into a gated community that was their polling place and they did not have cards to get into the gate, which was closed. So they sat in line waiting and honking their horns to see whether they could get in so that they could vote. Then, finally, when somebody listened to us, they said it is too late, election supervisor's office is closed, the time is up, you cannot vote, we are sorry.

Many people were in this situation. The impact fell most harshly on disabled voters, and on black people, on people who needed language assistance and could not obtain it. We will never know how many people who were legal voters did not get to vote but were prevented from voting. And, likewise, Senator McConnell, we do not know how many people might have voted fraudulently. That is another part of the history of this country. Historians, teach about voter fraud routinely, in class all the time in elections where someone votes early and often, three, or four times. This has occurred throughout our history. But we do not have good data on the subject. But we do know what happened to the ballots of people who voted, and we do know what happened to some citizens who tried to vote and the barriers to their voting that existed.

We found barriers involving the infamous felony purge, the problematic polling places, the chaotic closing hours, the ballot design, were particular problems. One of our Commissioners said that the ballot design we were shown for one community where there were many ballots rejected looked like a take-out menu from a delicatessen, with choices here and there and upside down and every other way that no one could negotiate.

We heard about the irregularities at polls not just from complainants—keep that in mind—we heard complaints from poll workers who were angry about what they confronted and how upset they were over the number. We heard complaints from local officials. The result was black voters were almost 10 times more likely to have their ballots rejected than non-black voters. African Americans were 11 percent of the voters, but cast 54 percent of the spoiled ballots.

Education levels did not account for what happened either. We asked our expert to control for education levels. Also the Governor of Florida's task force that looked at this issue. They and our expert concluded that less than 1 percent of the difficulty could be accounted for by voter error.

Considering what happened in Florida, looking retrospectively, we are now asking the Attorney General of the United States, Mr. Ashcroft, who has the resources and information, to look at this report. We have requested a meeting with him to see if he will take action. We believe he should systematically review these issues and determine whether a violation of the Voting Rights Act has occurred. Perhaps the felon purge issue is the place to focus. Someone decided to approve the felon purge contract, and somebody decided to approve the process by which these mistaken names were thrown into the pool of voters, to be excluded. The Attorney General has the information concerning who cleared the felon purge legislation.

President Eisenhower, who as President conceived the idea of the Civil Rights Commission, said, "The Civil Rights Commission and the Justice Department will be a one-two punch. The Civil Rights Commission will put the facts on top of the table," and he pounded the table when he said it. I have that from Arthur Flemming, who was a Republican Cabinet Secretary and former Commission Chairperson who was at the table when it happened. He told me that story many times over breakfast at the Hay Adams. He told me perhaps a hundred times, and now I have told it a hundred times. He also remembered that Eisenhower said, "The Justice Department will take that information and they will use their resources and they will continue the investigation and tie it all together. And then they will come back and they will tell the public whether indeed they found anything or not, and the Commission and Justice Department will work together and this will be great and we will be able to solve the problems." What we are asking the Attorney General to do is to act according to President Eisenhower's vision.

The Legislation that the Florida State government has passed is a great step forward. We commended them for it when they did it. We are pleased about it. We congratulate the Governor and the legislature. But the legislation must be implemented and there are some problems in making sure that it does get implemented, and we will be monitoring that implementation.

It also has some gaps. It does not make provisional ballot absolutely mandatory. We think it ought to be mandatory, that if you go to the polls and you try to vote and you say you are registered and they say you are not, as in California, you sign an affidavit, put your ballot aside, and have it check the next day, rather than turn away claiming you cannot vote. If Florida ballot had a provi-

sional, many of the problems that existed in Florida in the last election would have been resolved.

As for language assistance, there is nothing in the legislation that ensures language assistance for people whose civil rights will be violated if such assistance is not provided.

And on the felon purge, we think it is necessary to have purges and to make sure that people who are fraudulently trying to vote do not. But you have to be fair about it. You have to do it right. You cannot overweight it so that you exclude people who should not be excluded. And there are no controls and guarantees in the legislation on access for people with disabilities, that is a major area in which there is nothing.

We believe that every State ought to prepare for elections ahead of time. In Florida—and it started way before the election—some people knew that the registration rolls were up in some precincts. They knew it because they received reports. They told us this at the hearing. They knew there were major “get out the vote,” efforts, and that large numbers of voters going to show up, and they did absolutely nothing that we can ascertain to prepare for them. It would be as if at the university we knew we would have twice the enrollment in the fall that we had expected previously and we did nothing, when the students arrived, we said, there are insufficient dorm rooms, and classes.

Preparations are necessary. Every State ought to be ready for the elected. I believe there ought to be a scorecard or some kind of card issued to the public, that would check off before the election, say a month before, we are ready, all these things are in place, the access is there, you know where your polling place is, let’s go vote. Voting ought to be user-friendly. We encourage people to vote. I have done spots, PSA announcements, begging people to vote. We can beg, but if they cannot vote when they get there, that is a major problem.

The Federal Government, of course, has a role to play in insuring the right to vote under Article I, Section 4 of the Constitution, the 14th Amendment and 15th Amendment, and has exercised that role in the past. That role includes guaranteeing equality of opportunity and to make sure that the fundamental right to vote is protected. That is not interfering with the rights of the States. In fact the federal agreement that buttress the rights of the State.

We in this country have not paid nearly enough attention to the mechanics of voting. It has been a longstanding problem. And there is a bipartisan, nonpartisan failure on the part of the public and on the part of politicians. Politicians pay a lot of attention to getting out the vote, but do not pay enough attention to making sure that everything is in order at the polling places and that the votes will be counted. We have not wanted to evaluate what is needed, and we have not wanted to spend the money for equipment, for training, for hiring of workers, voter education and the like.

I have a chart here that shows the greatest discrepancy in overvotes in Florida, not undervotes. It shows that 12.9 percent of the votes cast by African Americans were rejected compared with 0.6 for non-African Americans.

But I have another one that is even more instructive, in my view, and this is a chart that shows that in one Florida county—

Escambia County—which uses optical scan equipment and counts at the precinct level, the rejection rate in overwhelmingly black precincts was much higher than that in non-black precincts: 2 percent in non-black precincts, and about 14 percent in heavily black precincts.

But the most interesting thing about this to me is that the county used optical scan equipment, which is supposed to be the best equipment, according to some experts; They were counting at the precinct level, which is what our report recommends; but there was one little problem here. There is a feature where a voting machine can kick out the vote if it is an overvote so that the person can vote again. They had disabled the kick-out feature in Escambia County so that the machines did not kick out overvotes.

What does that tell us? It tells us that technology alone will not solve the problems. Solutions require leadership, education, and training. Also if the technology is changed without training leadership and there is inadequate voter education and you do not use the voting machine kick-out feature, you can end up with the same result you would have otherwise.

I think that is important to remember as we go forward that Congress needs to help the States on these issues.

A 1992 decision of the Supreme Court stated: “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.” And we believe at the Civil Rights Commission that this is really the fundamental concern. We will continue to press the Attorney General to see if he will take some action. We will continue to consider whether we should investigate in other States. And we will monitor the legislation in Florida and keep pressing to implement our recommendations. And we will also have more national recommendations which we will submit to this committee.

But for now, I want to commend you, Mr. Chairman, and the committee for taking up this subject, and I hope you will find ways to legislate solutions. Thank you very much.

[The prepared amended statement of Ms. Berry follows:]



UNITED STATES  
COMMISSION ON  
CIVIL RIGHTS

624 Ninth Street, N.W.  
Washington, D.C. 20425

**TESTIMONY OF  
THE HONORABLE MARY FRANCES BERRY, CHAIRPERSON  
U.S. COMMISSION ON CIVIL RIGHTS  
BEFORE  
THE COMMITTEE ON RULES AND ADMINISTRATION  
UNITED STATES SENATE**

**June 27, 2001**

Mr. Chairman and members of the Committee, I am Mary Frances Berry, the Chairperson of the United States Commission on Civil Rights. In addition to serving as the Chairperson of the Commission, I am the Geraldine R. Segal Professor of American Social Thought, and Professor of History and Adjunct Professor of Law at the University of Pennsylvania in Philadelphia, Pennsylvania. Thank you for this invitation to provide testimony in support of the Committee's hearing today on election reform.

I am joined by Commissioner Christopher Edley, Jr.; Commission Staff Director, Les Jin; and Edward A. Hailes, Jr., the General Counsel for the Commission, who came to our agency with a wealth of experience in the area of voting rights litigation and legislation. Mr. Hailes led a team of eight lawyers in conducting the Commission's six-month investigation into allegations of voting irregularities occurring in the November 2000 Presidential Election in Florida. I am also joined today by Professor Allan Jay Lichtman, who conducted a statistical study for the Commission on the percentages of spoiled ballots among different populations of voters in Florida. Dr. Lichtman was selected by the Commission as an expert for its investigation based upon his significant knowledge of voting rights issues and experience in analyzing statistics and correlating those statistics with demographic data. He is the Chairman of the Department of History at the American University in Washington, D. C., and is a nationally recognized expert on voting rights issues and particularly in the use of statistics to analyze voting rights issues.

I begin today with a solemn affirmation found in a 1992 U.S Supreme Court decision:

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>

My testimony today focuses on fact finding by the U. S. Commission on Civil Rights concerning problems facing Americans, who want to vote, are eligible to vote, who try to vote, but who are denied the right to vote. I hope to accomplish at least two objectives by this testimony. First, I specifically want to apprise the Committee of the voting irregularities that occurred in Florida

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

during the November 2000 presidential election. The Commission staff documented these irregularities in a report that is based upon a six-month investigation, utilizing the Commission's subpoena power, comprising three days of hearings, more than 30 hours of testimony, over 100 witnesses, and a systematic review of more than 118,000 sheets of paper. By a 6-2 margin, my colleagues on the Commission approved this report on June 8, 2001. Second, I want to address more generally how our findings in Florida led us to conclude that there is a pressing need for national election reform. Before turning to these important issues, however, it may be useful to provide an overview of the work of the Commission and its present composition.

As an independent, bipartisan, fact finding agency of the Federal government, the Commission is mandated to collect, study, and publish information concerning denial of equal protection of the laws because of race, color religion, sex, age, disability, or national origin, or in the administration of justice. More directly, 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 those votes counted*. The Commission reports its findings and recommendations to the President and Congress. When the Commission on Civil Rights was established in 1957, it was given the responsibility of investigating and reporting on voting procedures and devices used to discriminate against racial minorities.

My colleagues on the Commission represent a diverse range of backgrounds, talents, political affiliations and views. They are: Vice Chairperson Cruz Reynoso, professor of law at UCLA; Christopher Edley, Jr., professor of law, Harvard Law School; Yvonne Y. Lee, president of Yvonne Lee Consultants; Elsie M. Meeks, executive director, First Nations Development Institute; Russell G. Redenbaugh, partner and director, Cooke & Bieler, Inc.; Abigail Thernstrom, senior fellow, Manhattan Institute; and Victoria Wilson, vice president and associate publisher, Alfred A. Knopf.

Each member of the Commission has one vote on matters brought before the Commission. My colleagues are given extensive opportunities to present their views and fully participate in Commission meetings, project planning sessions and public hearings. It is the treasured tradition of the Commission to embrace open and frank dialogue among its members. We do not stifle debate. That is why the nation often hears our members express different views on a wide range of civil rights issues. Recently, the Commission has taken on some of the most controversial issues of our times. There is bound to be disagreement on how to approach and resolve these issues. Too often, media accounts confuse dialogue and disagreement with division and discord at the Commission. I know the Commission cannot preach and teach tolerance to our diverse nation if we do not practice it in our own deliberations.

I take the time to point this out to emphasize that we would prefer to have unanimity on every issue, but our larger purpose is to find and report factual information that is relevant to the issues within our jurisdiction. Let me turn to the voters in Florida, whose voices were silenced in the first presidential election of the new millennium by a state-sponsored pattern of injustice, ineptitude and inefficiency.

The Commission found that the most dramatic undercount in the election was the nonexistent ballots of eligible voters, who were turned away, or wrongfully purged from the voter registration rolls by various procedures and practices. State officials failed to fulfill their duties in a manner that would prevent this disenfranchisement. A combination of restrictive statutory provisions, wide-ranging errors and inadequate and unequal resources in the election process denied countless Floridians the right to vote. The disenfranchisement of Florida's voters fell most harshly on the shoulders of African Americans. Statewide, based upon county-level statistical estimates, African American voters were nearly ten times more likely than white voters to have their ballots rejected in Florida. While African Americans comprised about 11% of all voters in Florida in the November 2000 presidential election, African Americans cast about 54% of the ballots that were rejected in the election. Before and during the election state and county officials were aware of several key factors that ultimately contributed to the disenfranchisement of qualified voters.

There was a disturbing dearth of quality controls at many levels of the Florida election system that resulted in a wide range of errors, including the insufficient provision of adequate resources. Large numbers of voters in Florida experienced frustration and confusion, which resulted in the denial of their right to vote or to have their vote counted. The state's highest officials failed to fulfill their duties in a manner that would prevent this disenfranchisement. The election system is the engine that drives the participation of citizens in our democracy through the exercise of the precious right to vote. Regrettably, Florida officials with responsibilities for the operation of the election system were asleep at the switch.

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 authority 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.

The Commission found there was no uniformity in the manner the 67 counties in Florida carried out Election Day responsibilities. When state officials fail to provide clear guidelines and needed resources to its counties on a uniform basis, which results in the denial of the right to vote, it becomes the duty of the federal government to promote the exercise of that right. Thus, the importance of Federal election reform measures becomes easily apparent. I do not want to appear to downplay the steps Florida has taken in enacting a new election reform law.

The Commission commends the state for this action. It is clearly a step in the right direction. However, there is so much more work to be done. Each step of implementing this new law must be monitored. Adequate funding and expert assistance must be provided. The next federal election is fast approaching. Improved technology must be swiftly and equally distributed throughout the



state. The necessary provision of voter education and proper training for election officials must immediately accompany the new technology. The new law does far too little to address accessibility issues for voters with physical disabilities and voters who require language assistance. The permanent disenfranchisement of former offenders who have paid their debt to society must also be addressed. The Florida law provided limited use of provisional balloting must also be expanded to ensure that eligible voters have an opportunity to cast ballots that count when the system otherwise breaks down.

In fact, many of the reform measures that are necessary and good for Florida are also indispensable in promoting and protecting voting rights in all of the states. All states should have uniform voting systems which allows for a precinct count and an opportunity for the voter to correct his or her ballot. All states should allocate the financial resources necessary to educate voters, poll workers, and state election officials of 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.

In Florida, we found that African Americans had a significantly greater chance of appearing on a state-sponsored exclusion list that was compiled by a private firm and distributed to county Supervisors of Elections with names that were inexact matches. The list was compiled and distributed to prevent ineligible voters, including ex-felons from voting. The data provided demonstrated that this list had at least a 14.1 percent error rate. One witness, a member of the clergy, testified before the Commission that when he was told by an election official in front of his family that he could not vote on Election Day because he was on a felon exclusion list, his feeling was that he had been catapulted back into slavery. The witness had never committed a felony and had to threaten legal action before he was allowed to exercise his right to vote. Florida, and all states, should eliminate policies and practices that place the burden on eligible voters to prove that he or she has not lost his or her civil rights to be permitted to vote.

All voters throughout the nation, who are 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 would have an opportunity for his or her vote to count in the same election in which the denial initially occurred. Resources should be allocated to create a system of voter reminder cards that would be mailed to voters before every election, that informs them of their registration status and the location of their polling place. The timely processing of motor voter registration applications is also essential to provide opportunities for eligible persons to participate in our democracy. The Commission also supports measures designed to address problems caused when polling places close early or are moved without adequate notice.

The Commission also believes that meaningful measures must be undertaken to protect the integrity of the ballot box from fraud. All states should issue public service announcements and advertisements that 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. The appropriate state officials should also provide the necessary 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.

In addition, states must 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.

The Commission does not believe that Florida's new provisional balloting provision adequately protects the rights of eligible voters. All states 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. In addition to provisional balloting, the Commission believes that each state should require the use of precinct-based technology that will significantly increase the chances that a voter will have his or her vote count.

We also emphasize that all states must eliminate ballot confusion. One disability expert told the Commission that the design of the butterfly ballot that was used in Palm Beach County, Florida, was "absolutely irresponsible" for use by persons with visual impairments. The Commission heard additional testimony about the burden of confusion that it placed on other voters. The state of Florida and all states must ensure that ballot designs are as uniform and easy to read and understand as possible for all voters, including individuals with disabilities and those with language assistance needs. Thus, training should be required for all election officials on creating and approving ballot designs, including training on how to conduct effective outreach efforts seeking advice and input from disability rights and other community groups.

In conclusion, the error-plagued election in Florida must never be repeated. Not all voices were heard on Election Day and the law provides no meaningful way for their voices to be heard now. Voting is the language of our democracy and regrettably, when it mattered most, real people lost real opportunities to speak. 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. These issues require great attention and focus. This focus cannot end until voting rights are secured throughout the nation. Accordingly, the Commission plans to travel to other states to examine additional allegations of voting irregularities.

Mr. Chairman and Members of this Committee, as we move forward down this new path of election reform, we must glance back into the rear-view mirror of history, to ensure that we do not go back to the horrible days that prompted the passage of the Voting Rights Act of 1965. This law still provides vital protection for voters even when intentional discrimination cannot be proven. So when we ask the Justice Department to find out why Florida's election system caused stark disparities in spoiled ballots cast by African American voters and non-African American voters, it

is because we understand very clearly that the question who spoiled the ballots is important, but even more important is to discover why the disparity exists and how to eliminate it. We have requested a meeting with the Attorney General for the United States to discuss these matters.

I stand ready to commit the resources of the Commission to the exciting challenge of promoting election reform throughout our great country. Thank you.

The CHAIRMAN. Thank you very much, Madam Chairman.  
And with that, let me turn to my colleague from California for any opening comments. Then, Ms. Thernstrom, we will get to you.

**OPENING STATEMENT OF HON. DIANNE FEINSTEIN, MEMBER,  
A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thanks very much, Mr. Chairman. I want to thank you for holding this hearing.

Directly after the election, I happened to be in a group with a number of Europeans, and they said, "You know, you Americans are so arrogant. You say you have the greatest democracy in the world, and yet look what happened."

And I thought a lot about those comments and a lot about the laws that give so much responsibility to the States, really have no standards. States can either have good technology or bad technology. They can either service that technology or not service it. As one who for many years in San Francisco voted on a punch card ballot, I know how deeply flawed it is, how dependent it is on the kind of backing it has, on the stylus. If you vote absentee, it is very difficult. The numbers are so tiny that those of us who get older and farsighted have a hard time distinguishing number 31 from number 33. And then, of course, watching what happened in Florida. . . And I think, you know, a lifetime of voting comes home suddenly.

So I think that this bill, S. 565, is a good bill. I think it is time that we do have a commission on voting rights and procedures. I think it is time that a group that sits down can make recommendations and can really take a good look across the United States at what is going on with regard to voting technology and, most importantly, in election administration, which I suspect we will find is rather sloppy from county to county all across this great land.

I think the grant program is a good one, and most importantly, I would be very supportive of legislation which would require States to meet uniform and non-discriminatory standards in technology and administration.

A lot of people in this country do not feel their vote matters, and yet in election after election, ending with this one, which is the closest certainly in my lifetime, we find that your vote really does matter. I think preventing obstacles to a vote, I think having equipment that is well serviced, I think having equipment, more importantly, that everybody can use, whether you are developmentally disabled, whether you are impaired, whether your eyesight is not great—there has to be a standard that cuts across the board and enables a correct count.

I remember listening to some of the descriptions of the equipment during the post-election analysis. People were saying, well, if you come from a poor county, they cannot put the rubber backing on the punch card, they use hard plastic instead. And, therefore, the chads that are punched out coagulate so that it is much more difficult for the stylus to punch a chad out entirely. So there are many small things that really need to be looked at.

I hope this past election was a great lesson to us, that we cannot take voting for granted, that it is going to be done in—I was going to use the word "uncorrupted," but that is the wrong word—that

it is done in a perfect way all across the United States, because it is not. And I think that was brought home. And it is not only Florida, it is every State. California has some standards statewide with respect to hanging chads and how many corners must be perforated and that kind of thing.

But I think you are making a good first step. I, for one, hope S. 565 will come out of this Committee with a strong bipartisan vote. I think it is important that we take a good look at ourselves. And as we Americans always do, we put everything on the table. All our imperfections hang out. Let's take a good look at these imperfections. I think the Commission is the first step. So I want thank you very much for your leadership, and I look forward to joining with you in the march.

The CHAIRMAN. Thank you very much.

We have been joined by our colleague from New Jersey. Senator Torricelli, would you like to make a brief opening set of comments? We have heard already from the Chairperson. We are about to hear from Ms. Thernstrom. I thought maybe you might like to—

**OPENING STATEMENT OF HON. ROBERT G. TORRICELLI,  
MEMBER, A U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator TORRICELLI. Mr. Chairman, I only want to thank you and congratulate you for having this hearing, and to compliment Senator McConnell for having also expressed interest in taking a lead on this issue. I, too, am anxious to hear from the witnesses, so I will not delay the hearing any further.

The enormity of this problem can obviously not be overestimated. In a democratic society to have any segment of the population feel disenfranchised goes to the very core of the Republic itself. And it is no small number of people in this Nation who now feel that they are either disenfranchised or potentially so disenfranchised. It is no great honor that my State is one of only a few in the Nation that has had continuing Federal monitors on our election procedures. There are many forms of disenfranchisement. Some are as bold as purposefully having people at polling places to make people feel uncomfortable or unwelcomed. Some are much more subtle such as the disparity of the funding of polling technologies. But they all lead to the same result. People do not feel they are part of the Republic or its future and do not feel the rights for which they fought so hard are actually afforded them.

I am glad you are taking this opportunity to examine this problem, and I only want to say publicly what I have expressed to you privately, and that is my hope that because many of these unfortunate realities have taken place in my State of New Jersey, because we have had this problem through the years, and because we are a Northern State of considerable resources with access to technology thus making it all the more unlikely and unjustifiable that we should have experienced this problem, I hope as you are planning field hearings that you will consider coming to New Jersey and allowing us to have the committee share in some of our experiences.

The CHAIRMAN. Thank you very much, Senator Torricelli.

Ms. Thernstrom, I apologize for the slight delay, and if any of our colleagues come in, we will postpone their remarks until after you

have finished your testimony. We thank you immensely for being here today.

**STATEMENT OF HON. ABIGAIL THERNSTROM, COMMISSIONER,  
UNITED STATES COMMISSION ON CIVIL RIGHTS**

Ms. THERNSTROM. Well, I thank you very much for inviting me. My name is Abigail Thernstrom. I am a political scientist by training, a senior fellow at the Manhattan Institute in New York, a member of the State Board of Education in Massachusetts, where I live, and also a Commissioner on the U.S. Commission on Civil Rights. It is a position to which I was appointed by Congress just this past January. So some of the issues that the Chair said the Commission disagreed on I did not take a stand on. I was not on the Commission at the time.

I am also the author of a multiple-award-winning book, "Whose Votes Count? Affirmative Action and Minority Voting Rights," and I am a co-author of "America in Black and White," a history of race relations and racial change in the decades since World War II.

I also ask that an amended statement be introduced in the record.

I, too, am delighted that the committee is holding this hearing. The election 2000 story, and particularly the allegation of black disfranchisement in Florida is one that indeed needs straightening out. Considerable misinformation has been floating around, and, unfortunately, in my opinion, the U.S. Commission on Civil Rights has contributed to that misinformation.

It has been well established—no one disputes it, least of all Florida itself—that the Florida election suffered from a variety of imperfections. Senator Feinstein talked about the need for perfect elections. Well, that is indeed a very high standard. But, in any case, the only question before the Commission was this: Was the Florida election marred by discrimination that impeded the ability of American citizens, particularly African Americans, to freely and fairly exercise their right to vote? And in my view, sadly, the very body charged with conducting an objective fact-finding investigation into this matter, the Commission, squandered its credibility by responding with a report that is little more than a partisan assault on the integrity of the American electoral system.

The majority report rests heavily on a statistical analysis performed by Dr. Allan Lichtman of American University. We—that is, Commissioner Redenbaugh and myself—believe that his statistical analysis is deeply flawed, and we offer an alternative one that is broader and more sophisticated, one that reaches completely different conclusions.

This analysis was conducted by Dr. John Lott of Yale Law School, who is with me right here, and in consultation with Professor Stephan Thernstrom of Harvard University, who is sitting right there.

But before explaining my disagreement further, let me say that no statistical analysis of the rates of ballot spoilage or voter error, which is at the heart of the Commission's case, can be precise and certain. So we cannot bet the farm of any of them. Ballots are secret in the United States. We cannot know how any individual

voted, nor exactly who cast a ballot that did not count for some reason.

Thus, we cannot be at all sure of the race or of any other characteristic of voters whose ballots were rejected. We believe that Dr. Lott has done a much better job than Dr. Lichtman, but we want to underscore the point that all of the numbers in dispute are mere estimates and have a range of error that is unknown and might be very large.

As I read the evidence, however, the Florida election was hampered by unintentional and unanticipated problems that were not motivated by racial bias and did not disfranchise minority voters. The assertion that black voters were 9 times more likely than whites to have their ballots discarded simply does not withstand scrutiny.

And it should be noted that the Commission's majority report does not even recognize the concept of voter error as opposed to disfranchisement.

Using all the variables in Dr. Lichtman's analysis, Dr. Lott was not able to find a consistent, statistically significant relationship between the share of voters who were African American and the ballot spoilage rate.

Furthermore, there appears to be little relationship between racial population change and ballot spoilage. That is, as the black population in a county went up in recent years, the rate of ballot spoilage did not, suggesting that race per se is not the explanation for ballots that did not count. And I point to Dr. Lott's first chart right here, for those who are interested in the numbers.

Indeed, in looking at the variation in ratios of ballot spoilage among counties, it is clear that race has very little explanatory value. Dr. Lott's more sophisticated regression analysis suggests that three-quarters of all the county variation in the rate of ballot rejection can be explained with equations that do not use racial information at all—that factor in, for instance, the poverty rate.

Dr. Lichtman also ignored the conflict between his statewide estimate that blacks were 9 times more likely than whites to cast spoiled ballots, and his arguably more accurate precinct data that show racial disparities at the precinct level only a third as large as those at the county level.

I would like Dr. John Lott to flip to his chart. Dr. Lichtman's chart that was up there before is not the actual numbers, but is based on their estimates. John, you have got this other chart. Well, no, I have not gotten to the county supervisors yet. Maybe I am wrong to say you have the chart.

The CHAIRMAN. Can we make sure we get copies of these? I do not even see—

Ms. THERNSTROM. Okay. We will just make sure you get a copy.

The CHAIRMAN. Thank you.

Ms. THERNSTROM. The majority report on the Commission blames the Governor and the Secretary of State for spoiled ballots. But elections in Florida are the responsibility of county supervisors, and all but one of the 25 counties with the highest rate of ballot rejection had supervisors who were Democrats, the one exception being an official with no party affiliation.

It is difficult indeed to think how the local Democratic Party officials could have been tempted to suppress the black vote, which is, of course, almost entirely Democratic.

Well, I could continue at some length with the discussion of the flaws in the majority report, but I do not have time to run through all the major findings in our 50-page dissent, which is available today. But other flaws in the report include:

(1) The almost complete omission of Hispanics, Florida's largest minority group, as well as the omission of all other non-black minorities—Asians, Native Americans.

(2) A complete failure to distinguish between actual discrimination and bureaucratic problems, problems caused by bureaucratic inefficiencies, inexperienced voters, and other technical problems that are unrelated to race.

(3) A warped interpretation of the 1965 Voting Rights Act.

(4) A misleading analysis of errors in the "purge list" of convicted felons ineligible to vote. Their own data shows the opposite of what they claim, whites were erroneously placed on the purge list at almost twice the rate of blacks.

And then there were procedural irregularities, many of them, that marred the production of the majority report. Most importantly—and it is the only one I will mention here—I asked for a copy of the machine-readable data that Professor Lichtman used to run his correlations and regressions. That is, I wanted his computer runs, the data that went into them, the software he used. The Commission had the temerity to tell me that it did not exist, that the data as he organized it for purposes of his analysis was literally unavailable.

Sharing data of this sort is either mandatory or a matter of routine and professional courtesy among economists, political scientists, and other scholars, aside from the fact that this was taxpayer-funded data.

In conclusion, misinformation is dangerous. The Commission's majority report in my view positively sets us back in our progress on the long road to racial and ethnic equality. Real civil rights problems stir the moral conscience of Americans. Inflated rhetoric, depicting crimes for which there is no evidence, undermines public confidence in civil rights advocates and the causes to which they devote themselves. And it increases the alienation of blacks from the American political process. Do we really want black Americans to believe there is no reason to get to the polls, that elections are always stolen, and they remain disfranchised? The answer is clearly no because those conclusions are simply false.

Thank you very much.

[The prepared amended statement of Ms. Thernstrom follows:]



Amended Statement of Commissioner Thernstrom

TESTIMONY BEFORE THE COMMITTEE ON RULES AND ADMINISTRATION, U.S.  
SENATEJUNE 27, 2001  
Russell Senate Office Building, Rm 301  
by Abigail Thernstrom

Mr. Chairman and members of the Committee, thank you for inviting me to testify today. My name is Abigail Thernstrom. I am a political scientist by training, a senior fellow at the Manhattan Institute in New York, and a member of the state board of education in Massachusetts, where I live. I am also a commissioner on the U.S. Commission on Civil Rights, a position to which I was appointed by Congress this past January.

I am the author of a multiple-award winning book, Whose Votes Count? Affirmative Action and Minority Voting Rights, and the co-author of America in Black and White: One Nation, Indivisible, a history of race relations and racial change in the decades since World War II.

I ask that this amended testimony be introduced into the record.

I am delighted that the Committee is holding this hearing. The Election 2000 story—and particularly the allegation of black disfranchisement in Florida—is one that needs straightening out. Considerable misinformation has been floating around and unfortunately, the U. S. Commission on Civil Rights has now contributed to it.

It has been well-established that the Florida election suffered from a variety of imperfections. But the only question before the Commission was this: Was the Florida election marred by discrimination that impeded the ability of American citizens, particularly African Americans, to freely and fairly exercise their right to vote?

Sadly, the very body charged with conducting an objective fact-finding investigation into this matter, the Commission, squandered its credibility by responding with a report that is little more than a partisan assault on the integrity of the American electoral system.

The majority report rests heavily on a statistical analysis performed by Dr. Allan Lichtman of American University. We believe that his statistical analysis is deeply flawed, and we offer an alternative one that is broader and more sophisticated—one that reaches completely different conclusions. This was conducted by Dr. John Lott of Yale Law School, in consultation with Professor Stephan Thernstrom of Harvard University, who are both here today.

But before explaining further, let me say, that no statistical analysis of rates of ballots spoilage or voter error can be precise and certain, so we can't bet the farm on any of them. Ballots are secret in the United States. We cannot know how any individual voted nor exactly who cast a ballot that did not count for some reason. Thus, we cannot be at all sure of the race or any other characteristics of voters whose ballots were rejected. We believe Dr. Lott has done a much better job than Dr. Lichtman, but want to underscore the point that all of the numbers in dispute are mere estimates,

and have a range of error that is unknown but might be very large.

As I read the evidence, the Florida election was hampered by unintentional and unanticipated problems that were not motivated by racial bias and did not disfranchise minority voters. The assertion that black voters were nine times more likely than whites to have their ballots discarded simply does not withstand close scrutiny.

And it should be noted that the Commission's majority report does not even recognize the concept of voter error—as opposed to disfranchisement.

Using all the variables in Dr. Lichtman's analysis, Dr. Lott was not able to find a consistent statistically significant relationship between the share of voters who were African American and the ballot spoilage rate.

Furthermore, there appears to be little relationship between racial population change and ballot spoilage. That is, as the black population in a county went up in recent years, the rate of ballot spoilage did not—suggesting that race per se is not the explanation for ballots that did not count.

Indeed, in looking at the variation in ratios of ballot spoilage among counties, it is clear that race has very little explanatory value. Dr. Lott's more sophisticated regression analysis suggests that three quarters of all the county variation in the rate of ballot rejection can be explained with equations that do not use racial information at all—that factor in the poverty rate, and so forth.

Dr. Lichtman also ignored the conflict between his statewide estimate that blacks were nine times more likely than whites to cast spoiled ballots, an his even more accurate precinct data that don't account for other factors like poverty, but do show racial disparities only one third as large.

The report blames the governor and secretary of state for spoiled ballots, but elections in Florida are the responsibility of the county supervisors, and all but one of the twenty-five counties with the highest rate of ballot rejection had supervisors who were Democrats—the one exception being an official with no party affiliation.

It is difficult to see how the local Democratic officials could have been tempted to suppress the black vote, which is almost entirely Democratic.

I could continue at some length with the discussion of the flaws in the majority report but I do not have the time to run through all the major findings in our 50-page dissent. But other flaws in the report include:

1. The almost complete omission of Hispanics—Florida's largest minority group, as well as all other non-black minorities, such as Asians and Native Americans.
2. A complete failure to distinguish between actual discrimination and bureaucratic problems—problems caused by bureaucratic inefficiencies, inexperienced voters, and other technical problems unrelated to race.

3. A warped interpretation of the 1965 Voting Rights Act.
4. A misleading analysis of errors in the "purge list" of convicted felons ineligible to vote. Their own data on the "purge list" show the opposite of what they claim: whites were erroneously placed on the purge list at almost twice the rate of blacks.
5. Procedural irregularities that marred the production of the majority report. Most importantly, I asked for a copy of the machine-readable data that Prof. Lichtman used to run his correlations and regressions. That is, I wanted his computer runs (the precise regressions he ran), and the data that went into them. The report does not contain his regressions. The Commission had the temerity to tell me that they do not exist—that the data as he organized it for purposes of analysis was literally unavailable. Sharing such data is either mandatory or a matter of routine professional courtesy among economists, political scientists, and other scholars, aside from the fact that Dr. Lichtman's analysis was funded by the taxpayers and should be in the public domain.

Misinformation is dangerous. The Commission majority report positively sets us back in our progress on the long road to racial and ethnic equality. Real civil rights problems stir the moral conscience of Americans. Inflated rhetoric depicting crimes for which there is no evidence undermine public confidence in civil rights advocates and the causes to which they devote themselves. And, it increases the alienation on blacks from the political process. Do we really want black Americans to believe there is no reason to get to the polls; elections are always stolen; and they remain disfranchised? The answer is clearly no, because those conclusions are simply not true.

Thank you.

The CHAIRMAN. Thank you very much. What I am going to do, in order to move things along, is put the clock on and try to limit ourselves to about 5 minutes each with questions, and try and really get through it in one round or two, whatever is necessary, and then move to our second panel.

Well, let me begin with you, Madam Chairman. First of all, I know there has been a lot of notoriety, et cetera, around the Commission report. As I said at the outset, this is not a hearing about the mechanics of the Commission. I mean the Commission is a four-decade old commission with a very distinguished record. And as you point out, there is a political nature to this. I am sort of reminded about the great Claude Rains' line in the movie "Casablanca", as he enters Rick's Bar and looks around. He says, "You mean there's gambling going on in here?" And this Commission is, by its very nature, political, as the appointees are made political appointees. So there is a political element to this which is unavoidable. But as I understand it, over the years there have been numerous occasions when the Commission has been less than unanimous in its opinions, and you pointed that out earlier.

But why do you not take a couple of minutes and address some of these questions here, because I do not think they ought to go unanswered. But then I want to come back to the issue of what went on in Florida. Obviously, the political leadership of that state thought something seriously was wrong with the election, or they would not have devoted as much of their attention and time as quickly as they did to straighten the mess out. So we had no other evidence to offer but the actions by the governor and the legislature over the last several months. That would be enough to certainly suggest that what happened there was deeply disturbing, to put it mildly. So I am interested to some degree about the Commission's inner workings, but I am far more interested in what happened in Florida.

Ms. BERRY. Okay. Mr. Chairman, thank you very much. First of all, the documents that I submitted support the statement I am about to make, which is that Mrs. Thernstrom not denied anything by the Commission that the Commission possessed, nor by any of its experts. The letters and correspondence that I have submitted to this Committee document this. Secondly, she misstated the inquiry. The Commission did not go to Florida to determine whether black voters were disenfranchised. We went to Florida because we heard complaints from people. Some individuals said they were African-Americans, others told us they were Latino. Other complainants included the disabled, the elderly, and Jewish voters, among others. A lot of people complained. Additionally, the Commission has a broad mandate on voting rights issues. As I stated earlier, our jurisdiction on voting rights issues extends beyond race discrimination.

As for Florida, our lawyers went first to conduct preliminary fact-finding and reported to the Commission in December 2000. Regarding the report, the civil servant writes the reports. Commissioners do not write reports. The Commissioners tell the staff what kind of reports we want, what subject we want to work on, and once the report is finished, whether we agree or disagree. As for Florida, what was reported is what we found.

I also want to note that I like very much the chart from Commissioner Thernstrom's expert, because it shows that the worst counties in terms of disenfranchising black voters were in counties where the Democrats were county supervisors. That makes sense. As the Supreme Court recently said in *Hunt v. Cromarte*, the redistricting case, many Democrats are black and many blacks happen to be Democrats. Thus, it is not astounding, that a lot of these problems were in counties with Democratic elections supervisors. We say that in the report, so I am happy to have Dr. Lord confirm that.

Also, we do not say anything about Governor Bush being responsible for the spoiled ballots. We know that the county supervisors have a lot of responsibilities in running the elections. What we do say is the Governor has a statutory responsibility to investigate when there are allegations that voting rights have been violated. To date he has not made any investigation of which we are aware. We asked him about that at the hearing. Second, is he acknowledged he has both a statutory and moral authority to take some leadership. We have not singularly blamed anybody. We place blame up and down the line for what happened. Additionally, we asked the Attorney General of the United States to look at this and try to figure out why things went wrong. That is his job. Was it just disparate impact? Was it unintentional? Once that happens we can move on, and focus all our energy on how we solve these problems as we move forward.

And I also forgot—and I will not do it now since Commissioner Thernstrom mentioned her books—I forgot to mention my 7 books, but I will not do it now.

The CHAIRMAN. Let us not get into that now. It is not a book sale we are doing here today.

Ms. BERRY. You are right.

The CHAIRMAN. Oprah Winfrey has her own show where she does promotion of books.

Ms. BERRY. Okay, I will remember that. [Laughter.]

I'd like to make a final point about race, specifically whether we can tell the race of a voter. Certainly we do not pluck out ballots and try to figure out is this voter, white, black, latino, Asian American? But we know that if you are in a county where most of the registered voters are of a particular race, and you get a significant number of ballots, there are ways for scholars to figure out a lot of those ballots must have come from people who live there, who are the registered voters. So it is not going one by one and saying, "We know every ballot." That is not really the issue.

And, finally, the question of intent. We do not even say that anybody intended to do anything, and in fact, we say there was no conspiracy. Everybody keeps overlooking that. And I am quite shocked that people are so exercised about this report. As you said, Mr. Chairman, the folks in Florida agree that there were problems in the election, and that somebody did something or something happened and went wrong.

The problem is that people keep thinking we are saying somebody intentionally did something. You do not have to do that under the Voting Rights Act. The Voting Rights Act takes that out of play. Nobody cares whether people intended to do it. If I run over

you going 90 miles an hour and I kill you, whether I intended it or not, you are dead. So in fact, those are my answers now, and maybe I forgot to answer something, but if I did, I would be happy to answer it.

The CHAIRMAN. Well, I thank you. And again, people do not like various conclusions of reports. It is not uncommon to go after the messenger, rather than the message. In a sense here, we have got to focus on the message. But I did want to give you a chance to respond—because so much attention has been played on this particular point. I am not suggesting it is not relevant, but it seems to me we have got to focus on what clearly went wrong.

And if I did not say so at the outset of my remarks, I will say it here: I certainly commend Governor Bush and the legislative leadership in Florida for acting as expeditiously as they did. Now, whether or not they have covered all the ground that they should have in terms of responding to the concerns and the problems with the vote in Florida last year, I will leave that to others to decide. But I commend them for moving and acting. But I also think the point that you raised about responsibility is well taken. I mean, remember the old Harry Truman line that the buck stops here. It is not uncommon in public life find people who are not terribly willing to assume responsibility and always hoping that someone else will be accountable. But, obviously, those of us in positions of authority have to ultimately accept the responsibility when things go wrong, even though we may not be involved in the details of it. I think that is the point you were making. So I commend the leadership in Florida for acting quickly.

With that, let me turn to my colleague from Kentucky.

Senator MCCONNELL. Ms. Berry, did you find—first let me just say “The New Republic”, which I almost never quote anything, had an article recently questioning the process and the accusations in your report, in particular the significant relationship between economic constraints or economic status and voting error. Did you look at the correlation between those two items?

Ms. BERRY. Mr. Lichtman, our expert, will answer that, if you do not mind, sir.

The CHAIRMAN. No, but why do you not introduce yourself. We are going to hear from some of these expert panelists, including Mr. Lott, who I am familiar with, but Mr. Lichtman, I am not. So why don't you—if you are going to come and be a part of the hearing, identify yourself.

Ms. BERRY. You are familiar with Mr. Lott because he is from Yale.[Laughter.]

The CHAIRMAN. I also read some of his articles on gun control.

Mr. LICHTMAN. I have to confess I am not from Yale. I am from Harvard, but I hope that does not bias you.

The CHAIRMAN. Let us not get into that one either. Books and colleges are not to be advertised.[Laughter.]

Mr. LICHTMAN. But I am a professor of history.

Senator MCCONNELL. You are talking on my time, Professor Lichtman. Keep it brief if you can.

Mr. LICHTMAN. I will.

Senator MCCONNELL. Just if you could respond to the question about the relationship—

Mr. LICHTMAN. Professor of history at American University. I have been an expert witness for all sides in more than 60 Federal voting rights cases.

Let me say that the fundamental purpose of my study was simply to determine whether or not there were racial disparities in ballot rejection rates in Florida. And I just read through—I just got it 10 minutes ago—57 pages of dissenting opinion. There is not a single statistic in there to deny that there were significant racial disparities.

Senator MCCONNELL. But my question was about the relationship between economics and voter error.

Mr. LICHTMAN. Yes, I am going to get to that now.

I also did look, however, although it was not the fundamental purpose of my study, at education, and I looked at it at two levels. First of all, I looked at it within Dade County, where we had finely-grained precinct data. I looked at not only the relationship between black population, black registered voters in the precinct, I also looked at Hispanics, which have comparable education levels to African-Americans, and of course, in addition, have challenges for some for language barriers. And I found in fact a vastly lower rate—of ballot rejection.

Senator MCCONNELL. I am talking about economic status.

Mr. LICHTMAN. Yes. I thought you said education.

Senator MCCONNELL. Economic status and voting—

Mr. LICHTMAN. I thought it was education you had raised.

Senator MCCONNELL. No, economic status.

Mr. LICHTMAN. I heard education. I am sorry. I looked at education—

Senator MCCONNELL. The relationship between—

Mr. LICHTMAN [continuing]. And I did not find that that explained the relationship.

Senator MCCONNELL [continuing]. Economic status and voter error.

Mr. LICHTMAN. I also looked at economic status, and found that that did not explain the relationship either. And indeed, there is an independent study done by Professor Klinkner of Hamilton College, who I do not know, but who, I believe submitted to this Committee, and he looked at a great variety of factors, and found that independent of those factors, you still had a substantial relationship between race and ballot rejection. But that is a very different question than the question I addressed, which was were there racial disparities in ballot rejection rates.

Senator MCCONNELL. That was not my question.

Ms. BERRY. He answered his question, okay. Thank you.

Senator MCCONNELL. Ms. Berry, could I ask you—I touched on this in my opening statement, but I am curious as to why you did not more fully explore allegations of disenfranchisement among military and overseas voters, allegations of voter fraud, including reportedly thousands of votes illegally cast by convicted felons, and the effect that the media's misreporting of poll closings had on voters in the panhandle.

Ms. BERRY. Those are very good questions. First of all, we operated on the basis of the kinds of complaints we received from people, and also when we went to Florida, we announced widely that

we were there to hear any allegations that anybody had of fraud or anything that they thought was a problem in the election that we should hear. And we opened the meetings to the public, not just the witnesses we asked for, and publicized this on television, on the radio, every kind of media, that we were there and we wanted to hear about any of the problems that people wanted to bring to us. And we looked at the problems that were brought to us.

We do mention the question of voter fraud, and as I say, we think that steps ought to be taken to address it. There is no good data on the extent of voter fraud. On the military ballots question, we understand that steps have been taken by the Pentagon and the State of Florida, in their legislation, to deal with that issue. But we did not have complaints from people who came forward to talk about that issue.

The CHAIRMAN. We have been joined by our good friend and colleague from New York, Senator Schumer. Chuck, I have asked everyone else, if you had some brief opening comments you wanted to make before we turn to our colleague from California.

Senator SCHUMER. No, I will wait for the questions and do them there. Thank you.

The CHAIRMAN. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Let me ask Commissioner Thernstrom a question, but before I do, Ms. Berry, I just want to thank you and your Commission for your work. I know this is difficult. I know it is always subject to criticism, but I for one really appreciate the fact that you all took the initiative, went to Florida, and gave people who felt disenfranchised an opportunity to give their testimony.

We just got the draft last night, so this was the first time I had a chance to see it. Let me ask you one question. Ms. Thernstrom said that she was denied data, which as a matter of professional courtesy could have been or should have been extended to her. How do you respond to that?

Ms. BERRY. It is an absolute falsehood. She was not denied data that should have been extended to her, and I do not know why she keeps repeating this statement. And in the documentation I sent to you, which is in the record, you will see the exchange of correspondence on that subject. She asked for a disk, a machine-readable disk of what Mr. Lichtman had used and cited in a report he gave us, which she had, about his work. And she was told that he had no such disk, that he used the Internet and sources that have been used both by the task force in Florida and elsewhere that anybody could just call up. And the citations were there, and that is all she had to do. She was told that orally and in writing.

Now, it makes a good story. You know, I was denied this and I was denied that. But in point of fact, that is an absolute lie. I do not know how—I am 63-years-old. I am sick and tired of playing games. It is a lie. It demeans and besmirches the staff, our civil service staff, who are quite upset about all this being said about them, and the work that they do, and in fact, people can disagree ideologically, politically, they cannot like things that people do, and I am used to that debate. I have spent my life in the pits working, and I have been often a source of consternation and confusion and controversy. I do not mind it. But I do mind besmirching the rep-



utation of the civil service staff and saying that we have something that we do not have, and then going around telling everybody that we have it.

Senator FEINSTEIN. Thank you very much. One of the things, Mr. Chairman, about the report is it provides names behind what people say. For example, election polling places that were not accessible to handicapped people, it documents it, where they were and who complained and what happened. So I think things like that are very helpful, and can be used (if your legislation is successful) by the Commission in really studying and seeing if there is a pattern and practice to these things.

Ms. Thernstrom, let me—first of all, I want to give you an opportunity to respond—but let me ask this question: if the race of a voter does not reflect valid spoilage rates, how do you explain such racially disparate results in the spoilage rates? Is it merely different technologies? If so, does that suggest that the Federal Government ought to assist lower-income counties to upgrade their voting technologies?

Ms. THERNSTROM. Well, to begin with, the disparities do not exist over time. No one slice in time, the year 2000, tells you what you ultimately need to know. I have no doubt that literacy levels do partially explain the disparity, but there was no data that was included on literacy levels as opposed to high school graduation. Those are two completely different questions.

And let me just say here, because it is important to say it, I would never publicly call a Commissioner a liar, but I have just heard a lie on the question of what I asked for—and the obvious availability of those data and the Commission's refusal to provide them. I would actually like Dr. Lott to further elaborate on, however, the question that you asked.

The CHAIRMAN. Please use the mike. Identify yourself, too, doctor.

Mr. LOTT. Sure. My name is John Lott. I am a senior research scholar at Yale University Law School.

And the central hypothesis is that as you see more blacks in a county, you will see greater spoilage or non-voting of those ballots as the claims. What they look at is purely cross-sectional data, looking across different counties in the year 2000. There are lots of factors that vary there. And in fact, if you try to just look at any individual county and see whether counties that had the biggest growth in the percent of voters that are black, and compare that to see whether there is any change in spoiled ballots, you in fact find absolutely no relationship. And in fact, if anything, the counties that ended up having relatively more black voters over time tended to have relatively less spoilage.

What you find that basically explains the spoilage across the areas—and once you control for these things, you basically find no relationship even in a purely cross-sectional data for spoilage—are the types of machines being used, whether the counting was done centrally or done at the precinct level, and also, other races. If you try to just account, for example, simply for the percent of voters that are white, that causes you to have the opposite effect from what they are claiming in the every simple regression that they use there.

If I could just point to one graph here. This is a simple plot here, showing you the change in spoiled ballots over time between the '96 and the 2000 election, and the change in the percent of voters that are black. And if you look at this, you simply see no relationship. If anything, there is a very slight few percent negative correlation that is there. By doing this, this is one way to account for the fact that there are many differences across counties that are there, and largely to try to help to account for those differences.

With regard to Senator McConnell's earlier statement, one of the things that you find that is important also is income differences, that those counties that do have higher incomes do tend to have lower non-voting rates of the ballots, and once you account for that, that also helps to greatly diminish or eliminate the effect that you get from the racial component.

Ms. THERNSTROM. John, could you say also a word about what you needed—

The CHAIRMAN. Use the microphone, please, doctor. Use the microphone. We can hear you.

Mr. LOTT. Well, she just—I had asked, for example, for the regression output that Professor Lichtman had used in his study. There is no actual regression reported, no actual specific specification of how he estimated the number of spoiled ballots in different counties or precincts. One can only guess what he tried to do from very vague discussions that he had in his report. And I had asked for that, and I was told that that was not forthcoming to get that. And it would have—given that I basically only had a week to look at this, it would have been very helpful to have actually had the data in an easily usable form to be able to go and examine it myself. But that was not forthcoming either, at least that is my understanding.

The CHAIRMAN. Well, let me turn if I can—you will get a chance, Mr. Lichtman, to respond to this—but let me turn to Senator Torricelli.

Senator TORRICELLI. Thank you very much, Mr. Chairman. First, Mr. Chairman, I want to congratulate you on your first hearing. I knew when you became chair the hearings would get more interesting, a little more contentious, but I had no idea of the degree to which that would prove true.

Senator MCCONNELL. I resemble that remark. [Laughter.]

The CHAIRMAN. I am not sure you should not be complimented.

Senator SCHUMER. I have a feeling we may show up at a regression table here. [Laughter.]

Senator TORRICELLI. As much as I would like to get involved in the inner workings of the Commission and the sharing of data, I am going to resist the temptation, and instead, I would like you to respond to the general proposition before the Committee. The committee ultimately would like to produce legislation. Legislating the conduct of national elections involves not only changes of law, but real changes in national custom and tradition. Conducting elections in this country has largely been an affair of the states, conducted through their sometimes lowest political entities. That may be about to change, either in funding or in the setting of standards, and ultimately, this Committee needs to consider whether that is

required and whether those changes involve some fundamental constitutional principles.

The Supreme Court, in ultimately deciding the 2000 elections, relied in part on an equal protection argument. And if we accept that there was an equal protection argument in the counting of ballots, a disparity in how those ballots were handled, there are ramifications for this Committee.

Let me take the argument to my own State of New Jersey, and ask you to reflect upon those equal protection questions, so we can get out of the statistical analysis of Florida. There are rural counties in the State of New Jersey of relatively low income, largely of white populations, that are using punch ballots. They are counted by hand or by machines. They have been doing this throughout the 20th century. The urban areas of my State largely use lever ballots, lever machines that are 50-years-old. On a recount, they must be counted individually, and they frequently break during elections. In the high-income suburban areas, balloting is electronic. Recounts are simple, of I would assume, a very low error rate. There are automatic recounts because it is all electronic.

Now, on its face, the Court having found that these are equal protection questions on a recount, this may or may not relate to race—it certainly does in the urban areas, but let us leave it out for a moment—it directly correlates with the tax base of the locality, hence the income of the individuals involved. Is this not on its face a question of fairness and equity, if not constitutional rights? Is it not a question of a fundamental right of an American citizen in our democratic system that should invite the Committee to consider the funding of lower-income areas and the setting of standards at least within a state?

Ms. THERNSTROM. Are you asking me?

Senator TORRICELLI. I am asking all of you.

Ms. THERNSTROM. I would hope we could all agree that we want to reduce the rate of voter error, and voter error was the central problem in Florida, not disfranchisement, but voter error. Now, look, we may be able to get better machines that—though I have a problem with Federal mandates, by the way—but anyway, we may be able to get better machines that reduce the level of voter error, but you are talking in part about voters who choose not to vote, say, for the presidential candidate, who say, none of the above, and vote for other candidates on the ballot. The Chair told us at one point in Miami that she over-votes deliberately—that is, checks off two candidates for one office.

Senator TORRICELLI. Let me just—

Ms. BERRY. Senator, may I respond?

Senator TORRICELLI. My ability to frame a question must be less than I imagined it would be.

Ms. BERRY. May I respond, Senator?

Senator TORRICELLI. To me—

Ms. THERNSTROM. Well, I think—

Senator TORRICELLI. I do not have any more time, but I want you to respond to what I think is the threshold question before the Committee.

Ms. BERRY. May I respond?

Senator TORRICELLI. We would like to write legislation. Is there an issue here?

Ms. BERRY. May I respond? There is an issue, one, and I understand the question.

Ms. THERNSTROM. I do not think I finished.

Ms. BERRY. May I answer the question?

The CHAIRMAN. Yes, you may. I have got a clock on here, but I am trying to keep this thing—

Ms. BERRY. There is an issue. The voters you are talking about are in a situation that is not of their own making, the ones in the rural counties facing disparities you are talking about. And while it might not be race discrimination, and constitutionally, the Court may say that it is poverty and we do not have any economic rights—there is a whole argument about that—in point of fact, in terms of fairness, in terms of equity, in terms of ensuring the right to vote and making sure that our political system works effectively, absolutely, the Congress can do exactly what it has done on other issues, like education, for example, which is a state and local responsibility, that provide some resources to make the playing field even for people. Let them pick what kind of technology they want or how they want to do it, and not interfere, but make the resources available, as we do, again, in education, to equalize the playing field. I think there is an absolute issue there.

The CHAIRMAN. I will give you all a chance to move around here. So we will get a chance to come back. But I guess the question being posed is that: if voter error is caused by faulty equipment or because of the impoverished area is that not disenfranchisement? I guess that is the basis question.

Ms. BERRY. Absolutely.

The CHAIRMAN. Let me turn to my colleague from New York.

Senator SCHUMER. Well, and I would say—and thank you, Mr. Chairman, for holding these hearings. I apologize for being late. I had to put my daughter on the camp bus in Brooklyn, so she is gone for 2 months, for better and for worse.

The CHAIRMAN. She will be watching C-SPAN tonight. If you want to correct that, we will give you a chance to correct that.

Senator SCHUMER. Yes. We miss her very much. She is happy to get away. That is what we are saying here.

The CHAIRMAN. Okay. [Laughter.]

**OPENING STATEMENT OF HON. CHARLES E. SCHUMER,  
MEMBER, A U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator SCHUMER. But what I would like to do is go back to the argument that was made here before.

The CHAIRMAN. Absolutely.

Senator SCHUMER. We have two bills here. I know they have been talked about before. Senator Dodd's done yeoman-like work getting so many sponsors on his bill, almost every Democrat, or every Democrat. Senator McConnell and I have worked on a different bill. The main difference in the bills is mandates as opposed to using funding as a way to get places, localities to upgrade. The one hope I have is that we can eventually, we do not let our differences here stand in the way of passing legislation, because I think the similarities far outweigh the differences.

Let me get to the question here, and I would like to follow up on what Senator TORRICELLI said. I think this is an argument that does not make a difference. And that is what I would like to ask Professor Thernstrom, someone I have tremendous respect for, having read a lot of her works, and I think my sister was taught by her at Harvard. Whether its economic analysis, whether the regression reveals that its income levels, and, yes, in an upper middle income, African-American area, there would be as little voter disenfranchisement as in an upper income white area, to me does not really matter.

If large numbers of people try to vote and cannot, not through their own mistake, and this you cannot dispute because every one of us has these experiences. I have seen the anguish on poor people's faces, working people who show up at the polls at 6:30 in New York, wait on line for an hour because the machines are so outdated, and when they get to the front desk they are told, "You are at the wrong voting booth because we have switched the cards. Go to the next line and wait another hour." And they have children to take care of and other things to do, and they walk away disgusted. Nothing bothers me more than a person who makes the effort, and it is not made easy.

It would also be obvious to me, that if, as Professor Lott says, that income level has a more direct correlation than race in determining how many people are in these instances, that you still have a higher number of people of color turned away from voting because they are poor, and the analysis cannot dispute that. I am not saying that this is the cause. It may be the economics is the cause, as Senator Torricelli was making the argument. But I would ask Professor Thernstrom, because I think Mrs. Berry agrees with me here, or at least did—I saw her shaking her head—what is the difference? Why shouldn't we, at the Federal level, be putting as much money as we can into making sure that poor people or poor black and Hispanic and white people, call it what you will, and Asian people, and Native Americans, put as much money as we can into making it as easy for them to vote as the people in Great Neck and Scarsdale and other places, whatever their race, who have the machines that make it a lot easier? What is the argument against that, if any, or do you agree that we should do that?

Ms. THERNSTROM. Well, I agree that the money should be available, of course, as the McConnell bill, I believe, provides. But, look, and the stories you tell are, of course, deeply troubling, but my understanding of the literature at this point is there is no evidence that punch card ballots for instance were concentrated in poverty areas. And what I was going to say before—but I do want Dr. Lott to briefly talk here—that—

Senator SCHUMER. Let us say they are not.

Ms. THERNSTROM. Okay.

Senator SCHUMER. Still want to provide the money. You would still—

Ms. THERNSTROM. Okay, but look—

Senator SCHUMER. Yes or no?

Ms. THERNSTROM. I would like the money to be available to states. Absolutely, I would like the money to be available to the states, and I believe that the McConnell bill makes—

The CHAIRMAN. Both bills, all bills.

Senator SCHUMER. Fine.

Ms. THERNSTROM. Make it available. The only question is——

Senator SCHUMER. The second sponsor on the McConnell bill's name is Schumer. [Laughter.]

Ms. THERNSTROM. Thank you.

Senator SCHUMER. So, you are not arguing against me here.

Ms. THERNSTROM. Sorry. I—I——

The CHAIRMAN. He is also a sponsor of the Dodd bill, which by the way, makes my case.

Ms. BERRY. Senator——

Ms. THERNSTROM. No, let me finish.

The CHAIRMAN. Please let Professor Thernstrom. Let Professor Thernstrom finish.

Ms. BERRY. Could I please?

Ms. THERNSTROM. May I finish.

The CHAIRMAN. Yes.

Ms. THERNSTROM. Senator Schumer, I should have remembered that perfectly well. I did know that.

Senator SCHUMER. That is okay.

Ms. THERNSTROM. My apologies. But my previous point—and I do want Dr. Lott to talk very briefly to this point—my previous point is you cannot completely eliminate voter error without a horrible infringement of personal privacy. That is, if a ballot is spit out and you have got an official saying, “Dr. Thernstrom, did you really not mean to vote for somebody at the top of the ticket, or do you not really know who you want to vote for as county supervisor,” it would be an intimidating question and I do not want that kind of invasion of privacy. So you are not going to completely eliminate voter error. But, yes, I agree with your basic proposition. Let us make funds available for the best possible machinery. Let Dr. Lott talk a minute.

Ms. BERRY. Why is it that I cannot talk?

Senator SCHUMER. You will. I just want to let her finish.

The CHAIRMAN. You are going to be heard. I want to make her next.

Mr. LOTT. About 30 percent of the variation——

The CHAIRMAN. Try and make this fairly brief, Dr. Lott.

Mr. LOTT. Yes. About 30 percent at least of the variation in spoiled ballots can be explained by the type of voting mechanisms that are used and whether the votes are counted at the central or at the precinct level. And also——

Senator SCHUMER. But in all due respect, sir, lots of people do not vote, not just because of spoiled ballots.

Mr. LOTT. Oh, no, I agree.

Senator SCHUMER. Like the example I gave, they waited on line and their name was not there, or it said you are not on the voting rolls because you are a felon, and you are not a felon, or depending on the state, you were a felon two years ago. Spoiled ballots are not the only way of disenfranchisement, you will concede that, correct?

Mr. LOTT. Of course. I was not trying to disagree. I was just saying that there are lots of factors. You had mentioned the voting

machines and stuff, and they do matter. And it does vary by income. You know, whether you have got—

Senator SCHUMER. It does vary by income?

Mr. LOTT. It does, even after you account for—

Senator SCHUMER. Professor Thernstrom just said—

Mr. LOTT. But it does not—

Ms. THERNSTROM. No. No, I—

Mr. LOTT. It does not vary by race though, I do not think.

Senator SCHUMER. Okay. But would you concede that if it varies by income, the percentage, not the causality, but the percentage of people of color who are turned away is, ipso facto, going to exceed the number of white people turned away?

Mr. LOTT. You do not find any additional effect from race—

Senator SCHUMER. I did not say additional. You are not answering my question. You know, it is the same kind of logic you had in your correlation study that said the more guns, the less violence.

Mr. LOTT. Well, that is pretty—

Senator SCHUMER. Answer my question, sir.[Laughter.]

The CHAIRMAN. Wait, wait, wait. We are not getting into guns here.

Senator SCHUMER. No, no, no. Answer my question. I did not say “additional.” I did not say “additional.” And so do not twist my question. I said to you, if there is economic correlation, which you just conceded there was, does it not mean, ipso facto, that a higher percentage of people of color are turned away from voting or do not get to vote than white people? Yes or no?

Mr. LOTT. For any given income, there is no higher percentage blacks that are not voting, but if you break it down in terms of—

Senator SCHUMER. Do you refuse—

Mr. LOTT. If you break it down in terms of—

Senator SCHUMER [continuing]. To answer the question yes or no?

Mr. LOTT [continuing]. More blacks.

Senator SCHUMER. It is a simple yes or no question. Are not people of color poorer; is not black income—is black income lower than white income? Can I get a yes or no on that?

Mr. LOTT. Yeah.

Senator SCHUMER. Is Hispanic income lower than white income?

Mr. LOTT. Yes.

Senator SCHUMER. Again, I want to have you answer the question to me in a straightforward way. If—

Mr. LOTT. I thought it was.

Senator SCHUMER [continuing]. Your assertion that there is an economic correlation between people—

Mr. LOTT. What I said was—

Senator SCHUMER [continuing]. Who are turned away from voting, economic correlation, and you just agreed that black people and Hispanic people have lower incomes than white people. Then does it not have to follow, not with an explanation—it should just require a yes or no answer—does it not have to follow that a greater percentage of black and Hispanic people are turned away or do not get to vote, than white people?

Mr. LOTT. Yeah.

Senator SCHUMER. Thank you.

The CHAIRMAN. Okay.

Ms. BERRY. Do I get to—

The CHAIRMAN. Let me turn—no, no, no, hey, hey. This is not a rally. It is a hearing.

I am going to give you a chance to—because I know you want to respond to some of the earlier question. And I will use it out of my time, and then turn to my friend from Kentucky.

Ms. BERRY. Let me first say that Senator Schumer and Senator Torricelli are really onto something when they say that this fairness problem is something that should be addressed, and it may also be a constitutional problem, because indeed, we have a constitutional right to vote, unlike all those school finance cases where the Supreme Court said there is no economic right to have an equal school, and then you have to come at it through the back door, providing funding. So this is definitely a fairness question, and it is underscored by the Supreme Court decision in *Bush v. Gore* when they talk about equal protection.

The other point I wanted to make is that we are being too generous in conceding that voter error caused these problems. In point of fact, there is no evidence that voter error—we found that and so did the Governor's Task Force—in Florida caused these problems. That is just wrong. These problems that are in our report were caused by all the different kinds of things that Senator Schumer mentioned and other issues. There is no evidence and therefore no need to keep conceding that as we make these points. Also there is no evidence that income would have made the facts come out differently. In fact, correcting for income, blacks still have the highest rate of spoilage. All the people still have the same problems. So this is just a canard that is thrown out there.

And finally, we keep coming back to causation, and I know we do not want to talk about race. It is hard in America to talk about race. Let us talk about anything other than race. That is tough. But causation. The civil rights laws, the Voting Rights Act especially, do not require us to connect the dots and say who caused this and who caused that. It happened. We know what happened. And if it has a disparate impact, an overwhelming impact on a group of people that the law is designed to protect, it is up to the Attorney General to ferret that out and to go forward and to do something about it. So let us not concede the points in the argument, even though they are painful for us to deal with. And it may be that to get a bipartisan consensus, one needs to mute the race argument, mute the argument about discrimination, mute all these arguments, and talk about these other issues. And you know that better than I do, and if that is what you have to do, fine. But the report shows more than that. Those are problems, but there are other problems.

The CHAIRMAN. Mr. Lichtman, you wanted to be heard, and then I will turn to the Senator from Kentucky.

Mr. LICHTMAN. Yes. I would like to bring us down to the bedrock reality here, and look at what actually happened by race within counties using the same technologies, and these are not statistical estimates, this is what actually happened in the 90 percent black precincts, versus the 90 percent non-black precincts, because these numbers are shocking, and the Nation should know about them.



In Duval County, in the 90 percent black precincts, 22 percent of ballots were rejected, more than 1 out of 5 of every person in those overwhelmingly black precincts, who walked into the polling booth, had their ballots rejected. This compares to 6 percent in the 90 percent plus non-black precincts, a 16 percentage point difference. In Palm Beach County—

The CHAIRMAN. What are the total numbers of people who voted in those two counties?

Mr. LICHTMAN. Hundreds of thousands in these counties. In fact I looked at Duval, Miami-Dade and Palm Beach. If African-American rejection rates had been equal to that of non-African-American rejection rates, more than 20,000 additional ballots by African-Americans would have been cast in those three counties alone. These are counties using the same technology.

In Escambia County, a county which had available optical scanning technology by precinct, in the overwhelmingly white precincts, the rejection rate was 2 percent. In the overwhelmingly black precincts, the rejection rate was 13 to 14 percent. This is what actually happened within counties using the same technology. In Escambia there was not a single, regardless of any other characteristics, white precinct anywhere close to the rejection rates for the black precincts.

So we can try to explain all this away. We can try to talk about correlations, but the bottom line, knowing what actually happened now within four counties casting hundreds of thousands of votes, is not small, but double digit disparities between the white precincts and the black precincts, and statistical analysis confirms that.

Ms. THERNSTROM. Can I answer that?

The CHAIRMAN. No. I am going to turn to my colleague from Kentucky and his time. That was my time.

Senator MCCONNELL. Thank you, Mr. Chairman. I think it is perfectly apparent that the Commission is deeply divided on this, and we can have a battle of statistics endlessly. I tend to agree with Senator Schumer, whether it is race or whether it is economics, the issue is what if anything should we do at this level?

I understand the chairman wants to have a lot of additional hearings, and that is certainly his prerogative, but a very large number of Senators, which is unusual around here, have already reached a conclusion about what ought to be done. I understand virtually every, if not every, Democrat is on the chairman's bill. 70 Senators—which is astonishing, almost never happens around here—70 Senators are on the bill that Senator Schumer and I are promoting. And the fundamental difference between the two is the role of the Federal Government.

So I would like, during my brief time here, to stop the battle of statistics. They are interesting and I suppose could go on endlessly, but I would like to ask you, Ms. Berry, and you, Ms. Thernstrom, to address specifically, since the two bills differ fundamentally on this issue of Federal mandates, which way we ought to go and why. Ms. Berry.

Ms. BERRY. Well, because the right to vote is so fundamental and constitutionally protected, and has been so contested in our country, and that the Federal Government really has not paid that

much attention to the actual mechanics of voting in years—and because states have uneven resources, just as counties within states have uneven resources, that if you can—and political scientists tell me, that the further away you are from the people, something about taxing and allocating funds, and people understand better if it is a national responsibility. Whether that is true or not, I think that since it is a constitutional right and since there are uneven resources around the country, and because the Federal Government ought to show leadership on this, leadership is important in this area—that there ought to be some resources allocated and some standards established by the Federal Government for the states to use, but not with intruding into how they actually carry out things on a day-to-day basis. Let them figure out how to do that.

Senator MCCONNELL. Thank you. I do not think we are going to have a big argument over resources. But the administration of elections is dramatically different. As many of you know, in North Dakota, they do not register at all. They just show up on election day. They have never had a case of fraud. Nobody has ever accused anybody of cheating. It is just not done in North Dakota. Nobody does that. In Eastern Kentucky, where there are almost no African-Americans, it is not a disability to voting to have passed away. [Laughter.]

And it is a longstanding tradition that leaving this earth is no particular problem in continuing the right to vote. And I just cite those as two dramatically different situations, completely unrelated to race. I assume North Dakota is virtually all white. I guess that is right. I assume it is. The states vary in size. They vary in customs. Voter fraud tends to be sort of part of the culture in some inner cities and in some rural areas like in my state. It is just sort of what people do. I do not know if it is a sport or something. I am not sure. But those kinds of actions tamper with the validity of the franchise, and so I worry somewhat about a kind of one-size-fits-all approach to election administration. So I just wanted to indicate some skepticism about the Federal approach.

Now, Professor Thernstrom, your view on the same question, which is the appropriateness of Federal mandates, which really is the only issue that divides the Senate.

Ms. THERNSTROM. Well, as I said, I have no problem in making funds available. I will stick with my point, however, that voter error is the main problem here, and thus, voter education is a major problem. And I am not sure what role any level of government can play in really solving that problem. I mean, what is the government supposed to do? Is it supposed to send election workers house to house? Is it supposed to have mandatory voter education?

Senator MCCONNELL. So your thought is whether we sort of federalized elections or not, the chances of having a perfect election, which Senator Feinstein was suggesting—

Ms. THERNSTROM. Is zero. You are not going to have—

Senator MCCONNELL. Almost not possible.

Ms. THERNSTROM. And there is no national emergency equivalent to 1965, when you had had egregious Fifteenth Amendment violations for 95 years, and when 6.7 percent of eligible blacks in Mis-

issippi were registered to vote, and where Florida—and let me see, one other southern state—I cannot remember which one—

Senator MCCONNELL. Let me just ask in closing—

Ms. THERNSTROM. Were the only ones with more than 50 percent of eligible black voters.

Senator MCCONNELL. And is it not also the case, that in a very close election, no matter what kind of system you use, paper ballots, punch cards, touch screen voting, if it is a very tight election, and somebody goes to court, this could happen all over again in any state in America in any election, right?

Ms. THERNSTROM. Absolutely.

Senator MCCONNELL. So it is not possible, whether the Federal Government mandates some one-size-fits-all solution or not, to create, in effect, the perfect election environment?

Ms. THERNSTROM. Well, that is true, and I should remind the Committee that the micro-managing of elections at the local level in the 1965 Voting Rights Act, barely passed constitutional muster. It did because of the true emergency situation that faced the country, where blacks were disfranchised in the Deep South.

Senator MCCONNELL. Well, let me just conclude, Mr. Chairman, by saying, at some point we are going to have to get together here if we are going to pass a bill, because we have a situation which all—I guess all Democrats are on Senator Dodd's bill, a bipartisan group are on mine—if anything is going to happen in the Senate, at some point we are going to have to sit down and talk. And I thank you all very much.

Mr. LICHTMAN. Can I respond for 30 seconds?

The CHAIRMAN. 30 seconds.

Mr. LICHTMAN. Very much on this point. Yes, it is true we can never have a perfect election, but rejection rates of 16, 20, 25 percent are intolerable. In Baltimore City, a city which, as we know, has tremendous problems of poverty, and difficulties with their education system, they have been able to get their ballot rejection rates down to 1 percent or lower. It can be done. Do not give up, Nation. Do not give up.

Senator MCCONNELL. That was without the Federal Government's help too, right?

Mr. LICHTMAN. That is right.

The CHAIRMAN. We are going to come back here. Just to point out, Senator McCain asked me to express the notion that he is very supportive of the proposal that I have introduced with John Conyers. He has not co-sponsored the bill yet, but would like to be on public record as indicating he is strongly supportive of what we are trying to achieve. So if bipartisanship becomes the standard by which we decide whether or not a bill is good or not, we will achieve that as well. But my hope is we can come to some satisfactory compromise. My colleague from New York.

Senator SCHUMER. Yes. I just had one question. First, I guess, I would say, in reference to my friend, the Senator from Kentucky, I mean, to make the perfect the enemy of the good again here does not make sense. If we can cut out voter—you can call it disenfranchisement. You can call it error. It is people who want to vote and are not voting. Again, an argument that I do not think really matters all that much.

But we should try to make it—and such a fundamental right with such a relatively small expenditure that can, by almost every expert, do good, we ought to be doing it. And, no, we will never have a perfect election. We will never have a perfect person. We do not stop making people. That is just a silly argument in my judgment.

Ms. THERNSTROM. But there is no disagreement on that, Senator Schumer. There is no disagreement—

Senator SCHUMER. That is what I am saying. There is far more agreement here on the fundamental issues, than would appear.

Ms. THERNSTROM. I agree with that.

Senator SCHUMER. Than would appear. The only question that I had—and that fundamental agreement is we can do better, and the Federal Government should do better. And we have to figure out—should help the localities do better. And the question is how to figure out how.

I just have one little question, because I think it is important to clarify. When you say “voter error”, I am a little confused. Are these only errors that are the voters’ faults? In other words, they pushed one button or did not, and meant to push another? What happens—I just wanted to ask a question. I was asking Professor Thernstrom, because she has been using the term “voter error.” What happens in the example that I came to, where you waited on line an hour and your name was not in the book, and it was in a book somewhere else, and you had to go over there. Is that what you call voter error?

Ms. THERNSTROM. No, that clearly would not be called voter error. What are voter errors are over-votes and under-votes, and that—

Senator SCHUMER. People voting too often?

Ms. THERNSTROM. People who have chosen not to vote or do not understand that—

Senator SCHUMER. But that may not be error. That may be their choice.

Ms. THERNSTROM. That is correct. And I am saying that in the ballot spoilage rates, those people are actually included—people who may have chosen to leave their ballot partially blank.

Senator SCHUMER. But in the statistical study that Professor Lott did, did he look at things other than what you are defining as voter error, such as people who believe they were eligible to vote and were not allowed to vote, or people who were told go vote somewhere else, and could not get to the polling place in time? Did you look at that?

Mr. LOTT. No, I only studied the—

Senator SCHUMER. Then I would suggest, Mr. Chairman, that the study that Professor Lott did may have some value, but if you are just looking at who was able to vote—

Mr. LOTT. It was the same thing they—

Senator SCHUMER. Okay. Well, then the study of Professor Lichtman as well. If you are just looking at who voted for one office but did not vote for other offices on the same ballot, in my anecdotal—but I think laden with lots of experienced judgment—you are missing most of the people who do not get to vote and want to.

Ms. THERNSTROM. Or over-votes. You named only under votes. Over-votes too.

Ms. BERRY. And, Mr. Chairman—

Senator SCHUMER. And I will let Ms. Berry have the last word.

Ms. BERRY. Mr. Chairman, our report has only one chapter that focuses the statistical analyst. The rest is about the things that happened to people who could not vote. We may not be able to have a perfect election, but we can have an election where people who are disabled have access to the polls, where they can get into the building. We can have elections where we have standards, to ensure that those kinds of things do not happen.

Senator SCHUMER. Ms. Berry, we have no way of knowing the number of people who showed up at the polling place. We are told they were not listed or were not able to vote because they were a felon if they were not, or vice—well, we may know vice versa. But we have no idea of knowing how many of those people were there. My experience in New York City, where by the way, you cannot vote for the same person twice. The old voting machines, as clunky as they are, have that virtue. You cannot vote for the same—you cannot have what you had in Palm Beach County happening here. But I see every time I run for election now, every two years since 1974, so I guess that is a lot of elections. [Laughter.]

I see it every time. I see person after person after person, who wants to vote and cannot. Some of them are ineligible probably, many are.

The CHAIRMAN. Because we have other panelists to go, permit me to just share a couple of thoughts. There are similarities, obviously, in funding and so forth in the various bills. There is a difference, and there is a profound difference that has been identified already. Under Senator McConnell's bill and Senator Schumer's bill, of course, if you get Federal dollars, then there are certain requirements that you must fulfill. Under our proposal, we provide the Federal dollars to help modernize the equipment, but we do not make the requirements that certain things happen contingent upon your receiving Federal dollars. We say that these things should happen.

And the things that we say should happen are sample ballots—and I want to ask you all about these things—we say you should have sample ballots, national standards on equipment, not deciding what the voting machine ought to look like, but that there should be some basic standards applied so that they are accessible, that language—minorities as well as the disabled and so forth can have access to a ballot, without going into the details, without saying specifically what it is, that is, one-size-fits-all, except there ought to be a standard that makes this accessible to people, so it can take into consideration cultural or other differences that may exist. We say there ought to be provisional balloting, and both bills say that. One says it is required if you take the Federal dollars. We say we think the States ought to do this. And then, as I mentioned, the equal access.

Now, take the Voting Rights Act of '65, for example. I am not breaking new ground with this bill—I want to get at this. There are 14—I count 14 mandates from the Federal Government dating back to 1965, saying things like—this is not a choice, but rather

these are things that should happen. I mentioned earlier, in 1964, when we passed the Civil Rights Act of Public Accommodations, we did not say, "You have got to make restaurants and restrooms available to people, based on whether or not you get Federal dollars in your state." We said, "This is a basic right for people." Certainly, the same with educational opportunity. In the Supreme Court decision, *Brown v. Board of Education*, we did not decide that there ought to be equal opportunity to education based on whether or not you got Federal dollars. We said this is a matter of right. Again, with the ADA, 11 years ago, the Disabilities Act. My point simply being—and I think my colleague from New York has expressed this to me—I hope that people understand here we are not trying to overreach. But we saw some problems that emerged here, and not just in Florida, and the second panel will get beyond Florida. I think it is important that we understand this is not a one-state deal with a problem. If it were, this hearing should not be conducted in my view, nor should the Civil Rights Commission necessarily, but I understand you might want to take a look at one state. But I see this more national in scope. Florida happened to be under the microscope because of the closeness of the vote there, but there are plenty of other states where these problems persist. At least that is my opinion.

So the difference here is whether or not there are going to be enough votes to pass legislation that would say on these basic issues of sample balloting, provisional voting, we should be making some national standards on what these ballots look like and the machinery that should be used. Can we pass that? If we cannot, then I guess I can do the easy thing, which you could pass overnight in here, which is to say we will punch a lot of money over there, and we would like you to try these things. Maybe you will, maybe you will not. But my fear is, of course, what may happen there is that does not happen. So there is a distinction here in terms of the mandate, the carrot. And I do not like to think of it as a stick, any more than I like to think of the Civil Rights Act of '64 or *Brown v. Board of Education*, or the ADA, as sticks. I know there are a lot of arguments that were made in 1965—and I will put them in the record—of people who thought that the Federal Government saying you ought to eliminate a poll tax was interfering with local decision making or that literacy tests ought to be a matter of local decision making. Well, thank God the country said no. In America we do not require you to meet a financial standard or a literacy test to exercise the franchise, to decide who your congressman, senator or president are going to be. And I do not think that it is egregious overreaching to have a sample ballot, provisional voting, and some national standards that say that, regardless of your race, ethnicity or your disability, you have a right of access to that voting booth. That voting booth is hallowed ground in my view. And I would hope my colleagues would not see this as a D or an R issue, or somehow a partisan battle or an indictment over the last election. That is not my view.

The last election gave rise to this, but the idea that somehow people are embracing the view that the President is not legitimately in office is bunk. This is the President of the United States, sworn into office. We accept that. What we saw is an election that

raised some real issues that need to be addressed, and so my hope is that we can come to some common ground on this.

But I wanted to ask both of you very quickly to put aside for a second the mandate or not. Let me take the mandate out of this thing. Is there anything wrong with the suggestions that I have made on sample balloting? I particularly want to hear you address provisional voting and the issue of national standards, understanding that I am not talking about deciding for Mitch McConnell what the voting machine ought to look like in Kentucky or New York or Connecticut, but rather having a national standard that would require machines to meet some basic requirements. Do you see anything fundamentally wrong with that, except for the notion that the Federal Government may mandate it?

Ms. THERNSTROM. I would be delighted if States would adopt the procedure that every voter has a sample ballot. I would be delighted if every State adopted provisional voting. I certainly think there should be equal access to the polling place.

So, as you say, the only question here is a Federal mandate, and the way you justify the Federal mandate is to evoke the 1965 Voting Rights Act and *Brown v. Board*, and, by the way, 1965 was really the completely different context, as I said, of a national emergency. The 1965 act did allow literacy tests except in those jurisdictions in the Deep South in 1965 where those literacy tests were completely fraudulent. It was later that they were banned nationwide.

So, I do not think what you are suggesting as a Federal mandate can be justified by reference to the 1965 act, to *Brown v. Board*, when in the Jim Crow South, that was really a very, very different context.

Ms. BERRY. May I say something?

The CHAIRMAN. Yes, I wish you would, and then we will move on.

Ms. BERRY. I think the problem here is that we are behaving too bloodlessly. There are people who are in pain because they believe that something needs to be done about the system. They feel they have been disenfranchised, whether we believe it or not.

Thus, we have to consider what we can do to make sure these needs are addressed. The things that you suggested, Senator Dodd, are rudimentary, such as a sample ballot. I would only add that the sample ballot needs to be clear. We saw some sample ballots that were not. In fact, some people followed some of those sample ballots, went into the polling booth, and ended up not voting the way they intended.

The idea of a provisional ballot is great. As I said earlier, if Florida had provisional balloting, many of the problems that occurred would not have happened. We would not have had to talk about them. That one thing, a provisional ballot, would solve a lot of the problems.

As for national standards, they ought to include things that make—not assume that if you have a sample ballot it is going to be okay, or if you have this it is going to be okay. There has got to be a little more than that. And maybe the commission that the legislation talks about establishing could monitor what the States do. I do not know whether you want to write it that way.

The CHAIRMAN. Well, we did not want to make a permanent commission out of it.

Ms. BERRY. Right. The Commission would serve a valuable function if it monitors what the States do on these scores. Again, I think that—your legislation is a minimal response to the enormity of the problem and is a minimal intrusion, at most.

Finally, I want to say that the emergency situation in 1965 was not merely because African Americans could not vote. African Americans had not been able to vote for a long time. There were barriers to voting. However, there was a national emergency because of the civil rights movement and because people were in the streets, insisting that something be done. And that is what created the emergency. Today we do not have people in the streets insisting that something is done, but we have a lot of people who feel there is something terribly wrong and they want it fixed going forward. And I think that it is your duty, sir, and you are undertaking your duty, to pass some legislation. I look forward to seeing it pass.

Thank you.

The CHAIRMAN. Thank you very, very much. Again, I thank all of you. I thank the Commission, all the members, and I know we only have two here of the eight Commissioners that participated in all of this.

Ms. BERRY. Two of them are back there.

The CHAIRMAN. Commissioner Thernstrom, you are going to be submitting your dissenting views to the committee so we can include that in the record?

Ms. THERNSTROM. I am, yes.

The CHAIRMAN. Fine. And that has been also submitted, I presume, to the full Commission?

Ms. BERRY. We have not seen them.

Ms. THERNSTROM. Well, they are available this morning. They have been made available this morning.

[The dissenting report is Appendix 12 on page 817.]

The CHAIRMAN. Fine. I am going to also ask unanimous consent that a study done by Phil Klinkner, if that is the correct name, "Whose Votes Don't Count?," using, by the way, the same methods used by Mr. Lichtman. I am reluctant to tell you what town he is from. He lives in Clinton, New York. I wish it had been Bush, New York. [Laughter.]

We will make that a part of the record as well. Any other statements and information you think would be worthwhile for the committee to have, we would appreciate very much.

[The study is Appendix 14 on p. 891.]

The CHAIRMAN. It has been a little contentious here, but it is worthwhile. I appreciate your patience in all of this.

Ms. BERRY. Thank you very much for inviting me again.

The CHAIRMAN. Thank you very much.

We will go to the second panel. Mr. Blackwell has got another appointment to make, so we are going to try and move this along and ask the members of the second panel to join us. Unlike the first panel, we are going to—thank you very much, by the way—I am going to invite the members of the second panel up here. Mr. Blackwell, thank you for being here.

Mr. BLACKWELL. Good to be with you.



The CHAIRMAN. Hilary Shelton. Hilary, are you joining us up here in the second panel? And Raul Yzaguirre of the National Council of La Raza is here.

Senator McCONNELL. Mr. Chairman, if I could, while the witnesses are gathering, I am hopefully going to be able to stay for the testimony, but I did want to say to my long-time friend, Secretary of State Blackwell, that I may not be able to stay for the questions. And I am going to submit my questions to all the witnesses in writing. But I do want to apologize in advance for maybe having to duck out of here before you are finished.

The CHAIRMAN. I understand.

Senator McCONNELL. Thank you.

The CHAIRMAN. Thank you very much.

What we will do here, Mr. Blackwell, because I know you have got a time constraint, why don't I go to you first, and then if the chairman—I keep calling you the chairman.

Senator McCONNELL. Old habits die hard.

The CHAIRMAN. You are still the chairman in my view. But, Mr. Blackwell, if my colleague has some questions for you before he has to leave, we will try and accommodate him that way.

Senator McCONNELL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you all three for being here. I am going to put some lights on here. This is in no way meant to be discriminatory. I gave the Commissioners 15 minutes. You are going to get 8 minutes. I know you have lengthy statements. I have read all your statements. I promise you the full statements will be in the record and any accompanying data and material you would like to have will also be included. I am not going to hold you absolutely to the lights, but try and keep it in mind so we do not hold you unnecessarily long.

Mr. Blackwell, we thank you for coming.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF J. KENNETH BLACKWELL, SECRETARY OF STATE, THE STATE OF OHIO, COLUMBUS, OHIO; HILARY O. SHELTON, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, BALTIMORE, MARYLAND; AND RAUL YZAGUIRRE, PRESIDENT, NATIONAL COUNCIL OF LA RAZA**

**STATEMENT OF J. KENNETH BLACKWELL**

Mr. BLACKWELL. Chairman Dodd, Senator McConnell, distinguished members of the committee, good afternoon. Thank you for this opportunity to offer my support for election reform.

I am enormously optimistic about this issue. The bipartisan effort to keep the election reform movement alive is commendable, and it has been heartening for me as my State's chief elections officer. Without Federal financial assistance, Ohio will be unable to make much-needed improvements to our voting system.

As in many States, Ohio's elections process has been underfunded for far too long. Money for elections comes out of the same budgets as money for education, road repairs, mental health services, and welfare, to name a few.

We can no longer run our democracy on the cheap. We do not defend our democracy on the cheap. We can no longer afford to manage our democracy on the cheap.

Year after year, elections have gotten shortchanged as counties have tended to more urgent matters. Never a glamorous issue, it has always been an issue that has been pushed back to the back burner of budget agendas at every level of government time and time again.

But now, owing to the 2000 Presidential election, the condition of our elections process is common knowledge, as well as a common concern.

A USC-Cal Tech study published in early May showed that 77 percent of respondents still believe election reform is an “important” or “very important” issue. It is a rare situation indeed when 77 percent of Americans can agree on anything. We are a very feisty people.

In this rare situation is an opportunity to reverse the direction in which our elections process has been headed.

After the 2000 Presidential election, I convened a summit of Ohio’s most distinguished academics, election officials, community activists, and journalists to review and analyze a wide range of elections issues. I submit the executive summary of the Ohio Election Summit for your records.

The summit panelists reached six points of consensus. Two of these points were that the loss of public confidence in the punch card system must be addressed, and comprehensive voter education initiatives must be developed and implemented.

In November, 70 of Ohio’s 88 counties used the controversial ridden punch machines. With the availability of viable alternate methods, it has since become clear that we need to move away from punch card voting. Voters in my State will be best served by election devices that use precinct-count, second-chance technology. These systems are more reliable, more accurate, and more user-friendly.

With financial assistance from the Federal Government, States will be able to make these changes and improvements. But Federal funds should not come with Federal mandates, except for those advanced through the U.S. Constitution. The McConnell-Schumer bill recognizes that elections are State business, managed at the local level, and should remain so.

In no uncertain terms, the U.S. Constitution delegates this responsibility to States, and, in turn, we turn over the management of elections in all but four States to local authorities. The Founders’ wisdom in this matter is just as apparent today as it was centuries ago. Geographic and demographic differences throughout our country often make voting procedures and processes—or different voting procedures and processes preferred. Oregon chooses vote by mail. New York would never stand for it.

Of course, any method used must guarantee the secrecy of the ballot while still allowing for audits, as well as protect against fraud. And vote-counting methods must be standardized within a State’s boundaries so that each vote cast in that State receives equal consideration.

But a federally mandated voting method or process would not only be unwise, it would be an invitation for widespread fraud and disaster. One of the things that we benefit from with diversity in election processes and procedures is that it would take thousands upon thousands of people collaborating and colluding to fix a national election or statewide election. Imagine a situation such as occurred in Florida on a national scale; I fear that the resulting confusion and mistrust would be a crisis from which our democracy might not easily recover.

Election reform cannot stop with mere technology updates, however. This is another lesson well taught by Election 2000. We have seen that no matter what voting method is used, problems can and will still occur. If we do not have accurate lists of eligible voters and registered voters, and if voters and poll workers are unaware of how their system works, the technology and machinery employed is inconsequential.

The priority given to voter education in Senator Dodd's bill is highly commendable. It is absolutely necessary that election reform efforts include provisions for spending resources on educating citizens about what they will encounter at their polling place.

Voters must know how to cast a ballot and understand procedures for correcting a mistake on the ballot. They need to be informed about by how their ballots will be counted, and, of course, poll workers must learn, too, the ins and outs of their important and serious election day responsibilities. These are all issues best left to election officials across this Nation.

The many election reform hearings, forums, studies, and polls conducted this past year will be all for naught if in the end there is no action taken by our leaders in Congress. This is a true test as to whether the lip service given to this matter is mere political hype or whether you as well as we at the State level, the representatives of the American people, are sincere in our intentions to support and improve upon the high standards of our democracy. The momentum of election reform must be kept moving in order to have these critical changes in place by the 2002 elections.

I urge you to act quickly, yet cautiously, in a bipartisan manner to assist our States with their election reform efforts.

Thank you.

[The prepared statement of Mr. Blackwell follows:]

Testimony of Ohio Secretary of State J. Kenneth Blackwell  
U.S. Senate Committee on Rules and Administration  
In support of Election Reform  
Wednesday, June 27, 2001

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Chairman Dodd, distinguished members of the committee, good morning. Thank you for this opportunity to offer my support for election reform.

I am optimistic about this issue. The bipartisan effort to keep election reform alive is commendable.

The overwhelming support for this issue has been heartening for me, as my state's chief elections official. Without federal monetary assistance, Ohio will be unable to make the much-needed improvements to our voting systems.

As in many states, Ohio's elections process has been under-funded for far too long. Money for elections comes out of the same budgets as money for education, road repairs, mental health services, and welfare, to name a few.

So year after year, elections have gotten short-changed as counties tended to more urgent matters. Never a glamorous or vote-getting issue, election reform has been pushed to the backburner of budget agendas at every level of government, time and again.

But now, due to the 2000 presidential election, the condition of our elections process is common knowledge -- as well as a common concern.

A USC-Caltech study released in early May showed that 77 percent of respondents still believe election reform is an "important" or "very important" issue. It is a rare situation indeed when 77 percent of Americans can agree on anything.

In this rare situation is an opportunity to reverse the direction in which our elections process was headed. With improved technology and increased voter and poll worker education, we will restore the American voter's confidence in the elections process.

For many, it was a shock to discover that outdated and inefficient technology is so widely used in American elections.

In the November election, 70 of Ohio's 88 counties used the now-infamous punch card machines. Due to the loss of voter confidence in punch cards, and the availability of viable alternate methods, it has since become clear that we need to move away from this type of voting. It has also become clear that the necessary changes will be costly.

With financial assistance from the federal government, states will be able to make these changes and improvements. But federal funds should not come with federal mandates. Elections are state business and should remain so.

In no uncertain terms, the U.S. Constitution delegates this responsibility to the states. The founders' wisdom in this matter is just as apparent today as it was centuries ago. Geographic and demographic differences throughout our country make different voting procedures and processes necessary.

Of course, any method used must guarantee the secrecy of the ballot while still allowing for audits, as well as protect against fraud. And ballot-counting methods must be standardized within a state's boundaries, so that each vote cast in that state receives equal consideration.

But a federally mandated voting method or process would be not only unwise, it would be an invitation for widespread fraud and disaster. Imagine a situation such as occurred in Florida...on a national scale. I fear that the resulting confusion and mistrust would be a crisis from which our democracy might not easily recover.

Election reform cannot stop with mere technology updates, however. This is another lesson well-taught by Election 2000. We have seen that no matter what voting method is used, if we do not have accurate lists of eligible and registered voters and if voters and poll workers are unaware of how that system works, problems can, and will, still occur.

Resources must be also spent on educating citizens about what they will encounter at their polling place. They must know how to cast a ballot, and understand how that ballot will be counted. Voters need to be informed about procedures for correcting a mistake on a ballot. And of course, poll workers must too learn the ins and outs of their important and serious responsibilities on Election Day. These are all issues best left to election officials across this nation.

I urge you to keep the momentum of election reform moving by quickly, but cautiously, in a bipartisan manner to assist our states with their election reform efforts.

Thank you.

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The CHAIRMAN. Thank you very, very much.

Let me turn to my colleague from Kentucky because of his time constraint.

Senator MCCONNELL. Just very quickly, Mr. Blackwell, within your experience there as the chief elections officer in Ohio, have you experienced State and local officials intentionally acting or conspiring to deny eligible voters the right to vote?

Mr. BLACKWELL. Let me say that there is no evidence nor have I witnessed any conspirator activities to deny or discriminate. Because we in this country and in our State—in our State we have 88 counties, and in this country we have over 3,000 counties—I would not offer, or I would not assume that I could speak as to whether or not there ever has been any local official that has deliberately kept a person away from the polls. But I can say that in Ohio I have not—and we monitor and provide oversight. I have not seen any evidence of any conspiracy to deny voters the right to exercise their vote.

Senator MCCONNELL. The flip side of that, of course, is allowing votes to be cast by ineligible voters. Would it be your view that that is just as much a—

Mr. BLACKWELL. It is very much a concern.

Senator MCCONNELL [continuing]. Disenfranchisement of eligible voters as the other situation?

Mr. BLACKWELL. The answer, the simple answer to that, is yes, you cannot allow an illegal vote to cancel out a vote that has been legally cast.

Senator MCCONNELL. It debases the votes of everyone who legally participates.

Mr. BLACKWELL. Absolutely.

Senator MCCONNELL. Well, I thank you very much for being here today. It is good to see you again, and I apologize for—

Mr. BLACKWELL. Oh, it is no problem. I understand schedules.

Senator MCCONNELL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator MCCONNELL. I will have written questions for all the witnesses.

The CHAIRMAN. Absolutely. We will leave the record open to all of our colleagues on the committee for any written questions they may have.

Let me turn to you, Mr. Shelton, from NAACP. I appreciate your being here this morning. You have testified before this committee in the past, and we are delighted you are here again today.

#### STATEMENT OF HILARY O. SHELTON

Mr. SHELTON. Thank you and good morning, Chairman Dodd, Senator McConnell, and distinguished members of the committee. Thank you for the opportunity to come here before you this morning on behalf of the NAACP and our over 500,000 card-carrying members in 50 States, the District of Columbia, Germany, Japan, and Korea.

I am here today on behalf of Mr. Kweisi Mfume, our association's president and CEO, who is unfortunately and unavoidably detained. Mr. Mfume asked that I send you his regrets and convey to you his deep appreciation for this committee, everything this

committee has done and will be doing to address this crucial matter today.

The NAACP is deeply appreciative of the Senate Rules and Administration Committee for convening this hearing to look into the issue of voting irregularities with respect to last year's Presidential election. We are also very grateful that you, Senator Dodd, are the lead sponsor of S. 565, the Equal Protection of Voting Rights Act of 2001, a comprehensive response to the problems we encountered in the November election. I would also like to thank you, Senator McConnell, as well as Senator Schumer and others that have worked tirelessly on this issue and who are dedicated to seeing legislation passed this year to address this serious matter.

We believe that millions of voters across the Nation were denied their basic right to cast a free vote and have that vote counted. The situation in Florida obviously received the most national and media attention, and as we just heard from the previous panel, that attention was clearly merited. The NAACP believes that Florida is, in fact, a microcosm of the entire country. Throughout the United States, millions of American citizens were, for one reason or another, not able to cast their vote and have their vote counted.

The NAACP strongly believes that the findings of the U.S. Commission on Civil Rights in Florida was fully accurate and consistent with testimony, affidavits, and other information presented to the NAACP before, on, and after November 7, 2000. We are convinced that what occurred in Florida was indicative of the entire Nation and that many of the voting irregularities occurred disproportionately in African American and other minority communities, so it was racial and ethnic minority Americans who were, in disparate numbers, excluded from having their voices heard. As the U.S. Commission on Civil Rights report points out, African Americans make up 11 percent of the registered voters in the State of Florida and yet 54 percent of the total disqualified votes that were cast. I would be remiss if I did not point out that even this alarmingly high number does not take into account the tens of thousands of voters that were turned away from the polling places before they were even allowed to cast their votes.

There were, as best as we were able to determine, substantial unresolved allegations across the country of massive voter disenfranchisement in African American, Hispanic American, Haitian American, and Jewish communities. The election appeared to have been conducted in such a manner that many of the same communities now believe unequivocally that the election was unfair, illegal, immoral, and undemocratic.

Every survey, in fact, that we have found that was conducted after the election, regardless of where it was in the United States, continues to show that the greater the percentage of African American voters in a precinct, the greater was the likelihood that a significant number of ballots of those voters were never counted.

There was also a greater likelihood that computer equipment, when available at such polling places, was not adequate or on par with what was available to be used at polling places in precincts that had a relatively low or inconsequential number of African American voters.

In response to the problems that we have identified, the NAACP has developed a set of well-thought-out ideas and recommendations designed to prevent similar election day debacles in the future. With this in mind, we bring the reasonable expectation to this proceeding that the distinguished men and women of both chambers of Congress will work in earnest to move our Nation towards a universal and uniform system of fairly and accurately casting and counting ballots that can be implemented prior to the 2002 election.

Before I discuss what the NAACP believes needs to happen to correct the myriad of problems facing our Nation's electoral processes today, let me begin by recounting some of the problems that the NAACP has identified as having occurred on or around November 7, 2000.

The weekend prior to the election, the NAACP began receiving calls alerting us to the fact that a person or persons were making electronic phone calls into predominantly African American households, claiming to represent the NAACP, in support of Republican candidate George W. Bush. These calls were apparently taking place in the key battleground States of Michigan and Florida.

Beginning on election day, and still to this day, the NAACP continues to receive calls from people who believe that their rights to vote were violated.

As a result of the flood of complaints we received, the NAACP held a series of hearings throughout the Nation to look into problems faced by many Americans who wanted to vote but were not able to for one reason or another. We have also continued to receive complaints through phone calls, letters, faxes, testimonials, and affidavits.

I would like to take just a moment to share a few of the more egregious trends as well as some of the particularly disturbing accounts that we have heard.

In Georgia, State troopers pulled over a college student who was driving people to the polls. He was told that unless everyone in the van was either related to him or unless he had a chauffeur's license, he must immediately cease and desist in driving people to the polls.

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

There were African American men who were asked consistently if they had felony offenses on their records, though no others were asked the same question before being allowed to vote. As a matter of fact, a Catholic priest in Florida was told that his name had been purged from the rolls because he had a felony conviction on his record when indeed he did not.

After the election, the New York Daily News reported that off-duty police officers and prison guards wearing armbands and armed with guns were posted outside several polling stations in New York under the guise of "identifying trouble spots."

In Missouri, an African American businessman in suburban Kansas City reported a Christian Coalition voting guide on the table next to a voting machine. Upon complaining to one of the election



officials, the election official told him that “God wants you to vote for George Bush. God wants Bush to win, (Democrat Al) Gore kills babies.”

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

The president of the NAACP’s Arkansas College chapter reported at a hearing that students she had registered were having trouble with poll workers not finding their names on rolls, being turned away by poll workers who indicated that their votes would not be counted, that their votes would be thrown in the trash, and being told that the poll workers simply did not feel like looking for an individual’s name on the voting rolls.

The NAACP has received reports that some States, particularly Georgia, Illinois, and Florida, routinely disenfranchised thousands of voters, primarily in low-income or ethnic minority communities. In predominantly African American Fulton County, Georgia, one in 16 votes for President was invalidated. However, in nearby Cobb and Gwinnet counties—both mainly white—only one in 200 ballots had been destroyed because of “irregularities.” In Illinois, more than 50 Cook County precincts reported that on average one in six ballots were discounted, while almost every vote was counted in Chicago’s mostly white outer suburbs.

The NAACP has, therefore, developed a set of policies and procedures that we are asking every State, as well as the Federal Government, to adopt prior to the next election.

Specifically, the NAACP is calling on the Federal Government, as well as each of the 50 States, to promptly enact comprehensive laws, policies, and procedures that will specifically implement our 12 recommendations. For the sake of time, we have included our recommendations in the longer version of my testimony that has been distributed to each member of the committee.

The NAACP realizes that these 12 proposals, taken at once, may be perceived by some to be a tall order. And while we certainly feel that any one of them, if implemented alone, would help improve the current situation, I cannot stress enough the need to enact all of these policies sooner rather than later. What we need is a comprehensive bill, one that addresses the myriad of problems that we encountered in November 2000.

As I said in the beginning of my testimony, S. 565, the Equal Protection of Voting Rights Act of 2001, takes the most comprehensive and decisive approach towards solving the problems identified by the NAACP, the U.S. Commission on Civil Rights, and many other civil rights groups throughout the country that occurred in November 2000 during the election.

I again thank you, Mr. Chairman, and members of the committee, for holding this hearing and for your continued concern and activism in this area. I welcome any questions or comments that you might have for me.

[The prepared statement of Mr. Shelton follows:]

**TESTIMONY OF  
HILARY O. SHELTON**

**DIRECTOR, WASHINGTON BUREAU  
OF THE NATIONAL ASSOCIATION  
FOR THE ADVANCEMENT OF COLORED PEOPLE**

**ON VOTING IRREGULARITIES IN THE  
NOVEMBER, 2000 ELECTION AND  
PROPOSALS FOR CHANGE**

**BEFORE THE SENATE RULES AND ADMINISTRATION  
COMMITTEE**

JUNE 27, 2001

Good morning, Chairman Dodd, Senator McConnell and distinguished members of the Committee. Thank you for the opportunity to come before you this morning on behalf of the National Association For The Advancement of Colored People and our 1700 Branches in 50 states, the District of Columbia, Germany, Japan and Korea.

I am here today in lieu of Mr. Kweisi Mfume, our association's President and Chief Executive Officer, who was unfortunately and unavoidably detained. Mr. Mfume asked that I send you his regrets and convey to you his deep appreciation for all that this committee has done and is doing to address this crucially important matter.

The NAACP is deeply appreciative of the Senate Rules and Administration Committee for convening this hearing to look into the issue of voting irregularities with respect to last year's Presidential election. We are also very grateful to Senator Dodd for being the lead sponsor of S. 565, the "Equal Protection of Voting Rights Act of 2001", a comprehensive response to the problems we encountered in the November election. I would also like to thank you, Senator McConnell as well as Senator Schumer and others who have worked tirelessly on this issue and who are dedicated to seeing legislation passed this year to address this serious matter.

We believe that this is a matter of grave concern for our nation and its people.

We also believe that millions of voters across the nation were denied their basic right to cast a free vote and to have that vote counted. While the situation in Florida obviously received the most national and media attention, and as we just heard from the previous panel that attention was merited, the NAACP believes that Florida is in fact a microcosm of the entire country. Throughout the United States, millions of American citizens were, for one reason or another, not able to cast their vote or have their vote counted.

Furthermore, the NAACP strongly believes that the findings of the US Commission on Civil Rights' in Florida was fully accurate and consistent with testimony, affidavits, and

other information presented to the NAACP before, on, and after November 11, 2000. We are convinced that what occurred in Florida was indicative of the entire nation in that many of the voting irregularities occurred disproportionately in communities of color, so it was ethnic minority Americans who were, in disparate numbers, excluded from having our voices heard. As the U.S. Commission on Civil Rights report points out, African Americans make up 11% of the registered voters in the state of Florida and 54% of the total disqualified votes cast. I would be remised if I didn't point out that even this alarmingly high number does not take into account the tens of thousands of voter that were turned away from the polling places before they were allowed to cast a vote at all.

There were, as best as we have been able to determine, substantial unresolved allegations across the country of massive voter disenfranchisement in African American, Hispanic American, Haitian American and Jewish communities. The election appeared to have been conducted in such a manner that many of those same communities now believe unequivocally that it was unfair, illegal, immoral and undemocratic.

The specter of these allegations alone indisputably require that the record be made complete in terms of what did and did not happen during the election, and that action be taken now to see that the problems are corrected.

Because the right to vote is the most sacred franchise in our democracy, these hearings, as uncomfortable as they might be to some, must challenge all Americans to focus again on the thorny issue of equal protection under law and clearly establish whether or not such a protection was afforded to duly registered voters who went to the polls on election day last November.

Every survey that we have found that was conducted after the election, regardless of where it was in the United States, continue to show that the greater the percentage of African American voters in a precinct the greater was the likelihood that a significant number of the ballots of those voters were never counted.

There was also a greater likelihood that computer equipment, when available at such polling places, was not adequate or on par with what was available and in use at polling places in precincts that had a relatively low or inconsequential number of African American voters.

Ask the hundreds of thousands of people who now question if their vote was ever counted, often because of where they live or the color of their skin, and they will tell you without hesitation that they feel violated, robbed, and locked out.

The national response to this has been a flurry of legislative initiatives announced and undertaken by conscientious members of the House and Senate, as well as state legislatures throughout our nation on both sides of the aisle. If anything, the bi-partisan nature alone of the response thus far has been encouraging. However, the real test will be to see what if anything of substance emerges and is signed into law under the rubric of voting and electoral reform in time for the 2002 federal election.

In response to the problems that we have identified, the NAACP has developed a set of well thought out ideas and recommendations designed to prevent similar Election Day

debacles in the future. With this in mind, we bring the reasonable expectation to this proceeding that the distinguished men and women of both chambers of Congress will work in earnest to move our nation toward a universal and uniform system of fairly and accurately casting and counting ballots.

Before I discuss what the NAACP believes needs to happen to correct the myriad of problems facing our nation's electoral process today, let me begin by recounting some of the problems that the NAACP has identified as having occurred on and around November 7, 2000.

The weekend prior to the election, the NAACP began receiving calls alerting us to the fact that a person or persons were making electronic phone calls into predominately black households, claiming to represent the NAACP, in support of Republican candidate George W. Bush. These calls were apparently taking place in the key battleground states of Michigan and Florida. Specifically, the caller was identifying him- or herself as a representative of the NAACP, saying that the organization endorsed and supported the Republican candidate for President, and urged the recipient of the call to go to the polls on Tuesday and to vote accordingly.

In response to the blatantly false and extremely illegal calls, the NAACP moved quickly to make sure that the U.S. Department of Justice, as well as the Attorneys General of each state was notified. Unable to secure a cease and desist order we used public service time on local radio stations over the next 48 hours to alert people of the false nature of the calls.

Beginning on Election Day, and still to this day, the NAACP national staff, as well as some of our local branches across the nation, began to receive calls from people who felt that their right to vote had been violated. Subsequent to the election, NAACP national staff, as well as several state conferences and local branches, held hearings throughout the country to investigate allegations of voter fraud, voter intimidation, as well as technical and procedural barriers that resulted in a significant number of votes not being cast or counted.

As a result of the flood of complaints we received, the NAACP held a series of hearings throughout the nation to look into the problems faced by many Americans who wanted to vote but were not able to for one reason or another. We have also continued to receive complaints through phone calls, letters, faxes, testimonials and affidavits. Below I will list a few of the more egregious trends as well as some of the particularly disturbing accounts that we have heard. If the Committee, or any Member, would like additional material, I would welcome the opportunity to share with them some of the volumes of trends and anecdotes, as well as transcripts from our hearings, that our national headquarters has collected.

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

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

After the election, the New York Daily News reported that off-duty police officers and prison guards wearing armbands and armed with guns were posted outside several polling stations in New York under the guise of "identifying trouble spots."

In Missouri, an African American businessman in suburban Kansas City reported a Christian Coalition voting guide on a table next to a voting machine. Upon complaining to one election official telling him "God wants you to vote for George Bush. God wants Bush to win (Democrat Al) Gore kills babies."

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

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

The NAACP has received reports that some states, particularly Georgia, Illinois and Florida routinely disenfranchised thousands of voters, primarily in low income or ethnic minority communities. In predominantly black Fulton County, Georgia, one in 16 votes for president was invalidated; in nearby Cobb and Gwinnet counties – both mainly white – only one in 200 ballots had to be destroyed because of "irregularities." In Illinois, more than 50 Cook county precincts reported that on average one in six ballots went uncounted, while almost every vote was counted in Chicago's outer suburbs.

We believe that it is a part of our obligation as a non-partisan organization to insist that all voters be allowed to cast an unfettered ballot and be free from intimidation and harassment as promised by the Voting Rights Act of 1965. The NAACP abhors the countless horror stories that can continue to be heard from voters across the nation, and we are incensed and bewildered that so little is being done to address this situation.

The NAACP has, therefore, developed a set of policies and procedures that we are asking every state, as well as the federal government, to adopt prior to the next election.

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

Our policy and procedure recommendations have been crafted in response to the problems of the November 2000 election. We think that, if properly implemented, they will go a long way toward establishing uniform national voting standards that will make it easier to ensure that every American who wants to vote can.

Specifically, the NAACP is calling on the Federal government, as well as each of the 50 states to promptly enact laws, policies and procedures that secure the following:

1. Ensure non-discriminatory, equal access to the electoral process for all voters, including ethnic minorities, the elderly, handicapped / disabled individuals, overseas citizens, and members of the US Armed Services;
2. Modernize voting and counting procedures throughout the state, including voting machines and equipment, to ensure that well-defined, uniform procedures are in place so that the genuine intentions of the voters are reflected in their ballots, including the use of provisional ballots;
3. Provide necessary and adequate funding and resources to modernize and upgrade all equipment, state-wide, so that voting procedures are uniform and consistent throughout the state;
4. Re-train all poll workers and election officials so that there is fair, equal and uniform treatment of voters across the state;
5. Launch an aggressive voter education initiative so that potential, new and existing voters are knowledgeable on how to use the equipment correctly and so their genuine intent can be easily determined;
6. Expand poll worker training and recruitment programs, utilizing the best practices from across the nation;
7. Put into place systems to maintain and easily access correct and up-to-date voter rolls using the latest technology;
8. Enhance the integrity and timeliness of absentee ballots;
9. Reexamine all existing voting policies and procedures to ensure that your state and every municipality therein is in full compliance with the Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973eeet seq.), the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) and the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.);
10. Work to identify and eliminate practices which might be perceived as intimidating to certain sectors of the population;
11. Establish clear standards for bilingual ballots for language minorities and the disabled; and
12. Reexamine, simplify and standardize voter re-enfranchisement laws so that every American who is not incarcerated who wishes to vote can do so.

The NAACP realizes that these twelve proposals, taken at once, may be perceived by some as a tall order. And, while we certainly feel that any one of them, if implemented

alone, would help the current situation, I cannot stress enough the need to enact all of these policies sooner rather than later. What we need is a comprehensive bill, one that addresses the myriad of problems that we encountered in November 2000. If even one American is disenfranchised in the next round of elections, in 2002, that is one too many. Only by adopting a comprehensive package of voting reforms will we be able to say that we have done all we can to make sure that our democracy is working.

I commend this committee for your work on this issue and for trying to determine the scope of the problems that we faced last November as well as a solution to those problems. I also realize that some of the recommendations that I have laid out here today are beyond this committee's jurisdiction. I would therefore urge you, in the strongest terms possible, to work with your counterparts on other committees, as well as your colleagues in the House and Senate, to enact an omnibus bill that does address all of the points I have just raised.

As I said in the beginning of my testimony, S. 565, The Equal Protection of Voting Rights Act of 2001, takes a comprehensive approach to the problems identified by the NAACP, The U.S. Commission on Civil Rights, and many other civil and voting rights groups in the November elections.

In addition to working with members of the House and Senate such as yourselves on the legislative front, NAACP President Mfume has also personally written to all of the 50 governors of each state and asked that they too work hard to develop uniform standards throughout their jurisdictions. We have also contacted the Secretary of State of every state asking that they take the lead in making the necessary reforms. The letters are being, if they have not already been, followed up by contacts from each of the individual state conference presidents.

In short, the entire NAACP organization is determined to follow through on this issue and will do all we can to see that nothing like the November 2000 Election Day debacle is repeated.

While many Americans may decry the fact that some people's rights were trampled on last November, the NAACP is especially outraged and insulted by what happened. These are rights that people marched for and, in some cases, laid down their lives for only 35 years ago. Our members and our friends remember the days, not too long ago, when it was not only legal but also acceptable for states and local municipalities to block access to the voting booth based on a person's skin color, gender, socio-economic status, or ethnicity.

It is no longer legal, but as we just recently saw, it still happens. This is not okay, and we intend to devote all our available resources, if that is what it takes, to see that the situation is rectified.

I again thank the Chairman and members of this committee for holding this hearing and for your continued concern and activism in this area. I would welcome any questions or comments that you may have.

The CHAIRMAN. Thank you very much. I am looking forward to July 9th. I received an invitation from the NAACP to appear at your national convention in New Orleans. I am going to try to make a panel in the afternoon, I think, in which this subject matter is going to be addressed.

I thank the NAACP immensely. They have been tremendously helpful in providing us data and information, and the hearings and work of the NAACP has been tremendously productive. In addition to the work by others, you have added immensely to the richness of the picture that is developing here, not just in one State, and I am glad you made that point. We have obviously talked about Florida here this morning, but this is a national problem. It is a profound problem. It is not just a question of building a better mousetrap, as I have often said. It is not just a question of a piece of better equipment. There is something far more serious going on here than just a question of the technology. And it seems to me that if you do not accept that, then I suppose the simple fix of throwing money at it is the easy answer.

If you accept the notion there is something more serious going on here, then I think you believe that we need to do more than just make a technological fix. And that is what some of us are suggesting. I will have some questions for you in a minute, but let me turn to my good friend, Raul Yzaguirre. Thank you for your support of our legislation as well as your testimony here today and the tremendous work that La Raza does on behalf of all Americans. Thank you for coming to the committee.

#### STATEMENT OF RAUL YZAGUIRRE

Mr. YZAGUIRRE. Thank you. Thank you very much, Mr. Chairman, Ranking Member McConnell, and members of the committee. On behalf of the National Council of La Raza, thank you for holding this hearing on an issue that is very important to the Latino community. I appreciate the opportunity to appear before you today to support a thorough revision of the voting process. The right to vote is a fundamental civil right for all Americans, and the National Council of La Raza supports efforts to remove barriers that inhibit Americans, especially the most vulnerable in our society, from exercising their right to vote.

All Americans are concerned about the egregious election irregularities observed during the 2000 Presidential election. Hispanic Americans share these concerns, although they have not been as widely-publicized as the experiences of some other communities.

We believe that the discrepancies observed in Florida were not limited to that State. Many other States with close elections, New Mexico, for example, have some jurisdictions that use voting machines and procedures similar to those found wanting in Florida. And in Nevada, Hispanic Americans experienced many irregularities, including outright intimidation by election officials. Furthermore, we have received evidence of irregularities found in other States, like New York, which disproportionately affected language minority voters. We suspect that these irregularities represent the proverbial tip of the iceberg, waiting to be uncovered in subsequent close elections unless they are addressed now.



The right to vote is guaranteed to all U.S. citizens by the 15th Amendment to the United States Constitution. The right is extended to all people, including those for whom English is not their first language. Despite provision in current law, there is evidence that some jurisdictions do not comply with Federal language assistance provisions.

For example, in testimony before the United States Commission on Civil Rights, the Puerto Rican Legal Defense and Education Fund reported that many registered Latino voters who had voted in the immediate past elections went to the polls and were told their names could not be found on the rolls.

Many voters not found on the rolls were not able to cast their vote. In violation of both Federal and Florida laws, election poll workers often did not offer the use of the alternative method of voting the paper affirmation ballot.

Some registered Latino voters went to their usual voting poll sites only to be told that their names were not found. They were sent to other polling sites miles away, where again their names did not appear on the rolls.

Many new Latino voters who had registered in a timely manner were not processed by Government agencies. Because they did not have their voter registration identity cards and were not given an assignment of a voting poll site, they could not vote.

Spanish-speaking Latino voters received no bilingual assistance at most polling places. In most precincts, the entire election staff spoke only English and could not assist language minority voters.

At certain precincts, election staff told Latino voters to present more pieces of photo identification than non-Hispanics, even though no such legal requirement exists under Florida or Federal law.

Mr. Chairman, these kinds of problems were not just limited to Latinos in that State. Other language minorities, including Haitian Americans for whom language assistance is authorized in several jurisdictions under State law, faced serious barriers to voting. Testimony by Marleine Bastien before the NAACP describes lack of language assistance and other irregularities. Overall, she described an atmosphere of intimidation which greatly discouraged Haitian Americans from casting their vote.

Nor were such irregularities limited to the State of Florida. A report by the Asian American Legal Defense and Education Fund observed inaccurate translations, lack of Chinese interpreters, Chinese characters on the ballot too small to read, problems processing voter registration forms, and lack of bilingual materials.

These are clear examples of the lack of compliance of some jurisdictions with the language assistance provisions and other protections of the Voting Rights Act or State law. We believe they are no less important than the irregularities experienced by other Americans in the 2000 election, and we expect that any election reform legislation considered by the Congress should address them.

The National Council of La Raza supports prudent, bipartisan election reform legislation. NCLR has been working in concert with a broad coalition of civil rights organizations, including the NAACP, all of whom are committed to improving the electoral process. The National Council of La Raza believes that several key ele-

ments must be included in an election reform bill, which would guarantee that the voting process is accessible to all eligible citizens.

While we are encouraged to see the large number of bills that have been introduced by members on both sides of the aisle, many of them only address one or two specific problems identified in the last election. The National Council of La Raza believes that the Equal Protection of Voting Rights Act, Senate bill 565 and H.R. 1170, co-authored by yourself, Mr. Chairman, and Congressman Conyers from Michigan, and sponsored by Senate Majority Leader Daschle and House Minority Leader Gephardt, is the most comprehensive and focused of all the bills that have been introduced to date. The bill has several elements:

Number one, protection of the Voting Rights Act and the National Voter Registration Act, ensuring that any activities under the new legislation are consistent with existing laws;

Creation of a substantial, multi-year, Federal grants program to upgrade election technologies; these technologies must ensure access to language minorities and persons with disabilities;

Number three, setting of federally approved requirements for grant-eligible technologies that include user-friendly, intimidation-free procedures for language minorities, racial and ethnic minorities, and people with disability; uniform, non-discriminatory, provisional voting procedures; sample ballots and notifications of voter rights;

Number four, provision of additional matching grants to provide early implementation.

We are encouraged by recent bipartisan compromises reached by some key leaders on the issue. However, together with our coalition partners and the Leadership Conference on Civil Rights, we note that only the Dodd-Conyers bill through its mandates fully addresses all of the problems experienced by Latinos and language minority voters in the 2000 election.

The National Council of La Raza is eager to see election reform that secures the right of all Americans to vote. Election reform should be guided by current law ensuring access to language minority voters. It should not become a vehicle for adding barriers to any part of the voting process, whether it is voter education, registration, or casting a vote. We urge you to ensure that additional, unnecessary measures to “confirm” or “verify” the eligibility of voters—which have a clear, disparate impact on Latinos or language minorities—are not imposed.

I thank the chairman for his leadership in addressing the concerns of Latino and language minority communities. I also thank the ranking member and the committee once again for providing the National Council with an opportunity to address this issue.

[The prepared statement of Mr. Yzaguirre follows:]

**Statement of Raul Yzaguirre, President  
National Council of La Raza  
On  
Election Reform**

**I. INTRODUCTION**

Chairman Dodd, Ranking Minority Member McConnell, and the Committee, on behalf of the National Council of La Raza (NCLR), thank you for holding this hearing on an issue that is very important to the Latino community. NCLR is the largest national Latino civil rights organization in the country, which is an "umbrella organization" for more than 250 local affiliated community-based organizations (CBOs) and about 30,000 individual associate members. In addition to providing capacity-building assistance to our affiliates and essential information to our individual associates, NCLR serves as a voice for all Hispanic subgroups in all regions of the country.

I appreciate the opportunity to appear before you today to support a thorough revision of the voting process. The right to vote is a fundamental civil right for all Americans, and NCLR supports efforts to remove barriers that inhibit Americans, especially the most vulnerable in our society, from exercising their right to vote.

All Americans are concerned about the election irregularities observed during the 2000 presidential election. Hispanic Americans share these concerns, although they have not been as widely-publicized as the experiences of some communities. We believe that too many Latinos were unfairly denied the opportunity to vote, or had their votes discarded, through no fault of their own. Since the media spotlight was cast on Florida's electoral process, we have learned about outdated voting machines, understaffed polling places, inexperienced poll workers, and confusion that left some registered voters' names off the books. We learned about polling places that moved without adequate notice – literally in the middle of the night – leaving hundreds of voters without knowledge of where to go to cast their vote. Some duly registered voters whose names were improperly purged from the rolls were denied an affidavit, or they were not offered one, and thus were unfairly excluded from the process.

Language minority voters who requested the assistance of a bilingual volunteer or materials at the polls, as is their right in many jurisdictions, were denied such assistance. Reports indicate that in some counties, minority voters were asked for photo identification while White voters were not required to show any form of ID. Many polls in disproportionately minority precincts were closed even though voters were still in line; other polls had lines so long that some voters left the polling places without casting their vote.

Moreover, we believe that the discrepancies observed in Florida were not limited to that state. Many other states with close elections, New Mexico for example, have some jurisdictions that use voting machines and procedures similar to those found wanting in

Florida. And in Nevada Hispanic Americans experienced many irregularities, including outright intimidation by election officials. Furthermore, we have reviewed evidence of irregularities found in other states, like New York, which disproportionately affected language minority voters. We suspect that these irregularities represent the proverbial "tip of the iceberg," waiting to be uncovered in subsequent close elections unless they are addressed now.<sup>1</sup>

## II. HISPANIC AND LANGUAGE MINORITY CONCERNS WITH THE 2000 ELECTION

The right to vote is guaranteed to all U.S. citizens by the Fifteenth Amendment to the U.S. Constitution. Every voter has the right to cast an informed and effective vote. This right is extended to all people including those for whom English is not their first language. Language minorities are ensured protection and full participation in the electoral process by two separate provisions of the Voting Rights Act of 1965 – Section 203 and Section 4(f)(4).<sup>2</sup> Despite these provisions of current law, there is evidence that some jurisdictions do not comply with federal language assistance provisions. The following selected examples illustrate the pervasiveness of the lack of compliance with the language assistance provisions of the Voting Rights Act.

In testimony before the U.S. Commission on Civil Rights in January 2001, the Puerto Rican Legal Defense and Education Fund reported the results of its investigation in Florida; specifically, it found that:

- Many registered Latino voters who had voted in immediate past elections went to the polls and were told their names could not be found on the rolls. Consequently, they were not allowed to vote, were sent home, or were required to wait many hours while election poll workers sought unsuccessfully to contact supervisors for approval to allow these voters to cast their votes. In other cases, their grievances were ignored.

<sup>1</sup> NCLR is grateful for the assistance of the Asian American Legal Defense Education Fund (AALDEF), the Puerto Rican Legal Defense and Education Fund (PRLDEF), and the U.S. Commission on Civil Rights in preparing this testimony. NCLR is working in coalition with AALDEF, PRLDEF, the Mexican American Legal Defense and Educational Fund (MALDEF), the National Asian Pacific American Legal Consortium (NAPALC), the National Association of Latino Elected and Appointed Officials, the Asian Law Caucus, the League of United Latin American Citizens, the National Puerto Rican Coalition, the Asian Pacific American Legal Center of Southern California, Latinos for Political Education in Nevada, and other organizations to monitor developments on election reform. The views cited herein are those only of NCLR, and may not represent the opinions of other organizations.

<sup>2</sup> In 1975 Congress added minority language provisions to the Voting Rights Act, recognizing that large numbers of American citizens who primarily spoke language other than English had been effectively excluded from participation in the electoral process. The denial of the right to vote among language minority citizens was "directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation." 42 U.S.C. Sec. 1973aa-1(a).

- Many voters not found on the rolls were not able to cast their vote. In violation of both federal and Florida laws, election poll workers often did not offer the use of the alternative method of voting the paper affirmation ballot.
- Some registered Latino voters went to their usual voting poll sites only to be told that their names were not found. They were sent to other polling sites miles away, where again, their names did not appear on the rolls. Voters became frustrated, confused, and gave up – often leaving without voting.
- Many new Latino voters who had registered in a timely manner were not processed by government agencies. Because they did not receive their voter registration identity cards and were not given an assignment of a voting poll site, they could not vote.
- Latino voters who went to the polls after work and arrived between 15 and 25 minutes before the official closing hour were told they could not vote and were turned away.
- Spanish-speaking Latino voters received no bilingual assistance at most polling sites. In most precincts, the entire election staff spoke only English and could not assist language minority voters.
- At certain precincts, election staff told Latino voters to present more pieces of photo identification than non-Hispanics, even though no such legal requirement exists under Florida or federal law.<sup>3</sup>

Mr. Chairman, these kinds of problems were not just limited to Latinos in that state. Other language minorities, including Haitian Americans for whom language assistance is authorized in several jurisdictions under state law, faced serious barriers to voting. Testimony by Marleine Bastien before the NAACP on November 11, 2000, in Florida, describes in great detail the hardship experienced on Election Day by the Haitian American community. Ms. Bastien, a Haitian American community leader in South Florida, spent part of her day on Election Day at a Creole radio station receiving calls from Haitian American voters who called complaining about the treatment they encountered at polling places. Later, Ms. Bastien went to one of the polling places voters complained most about and witnessed the experiences of Haitian American voters; she testified to the following:

- *Lack of language assistance.* There are forty-seven precincts located in areas where the majority of the population is Haitian or of Haitian descent, for whom Creole is their native language. State law mandated that ballots be printed in Creole to serve the Haitian American community living in those forty-seven precincts. At the precinct she visited, Ms. Bastien indicated that many Haitian American voters left without voting because the ballots

<sup>3</sup> Testimony of Mr. Jackson Chin, Puerto Rican Legal Defense and Education Fund, before the U.S. Commission on Civil Rights, January 11, 2001.

confused them and there was no one to assist them. Even though there was a Creole-speaking volunteer willing to assist Haitian American voters, the polling place supervisor denied assistance to the voters, claiming that none were entitled to special treatment. Ms. Bastien showed the polling place supervisor a pamphlet printed by the Florida Department of Elections, which authorized a procedure to secure volunteer language assistance to people who needed it, but even then, Haitian American voters were denied assistance.

- *Other irregularities.* Many Haitian Americans voted, or tried to vote, for the first time last year. Many were turned away from polling places because they did not have their voting card. They were asked to show identification documents not required of White voters, even though they were duly registered. Other Haitian American voters were unable to vote because they stepped out of line and then were told they had lost their chance to vote. Many voters were denied their right to vote because their polling place closed earlier than 7:00 p.m., the official closing time. Some Haitian American voters who were able to vote reported that poll workers collected their voting cards instead of instructing them to put the voting cards in the box. People were left to wonder whether their voting cards were discarded. Overall, Ms. Bastien described an atmosphere of intimidation, which greatly discouraged Haitian Americans from casting their vote.<sup>4</sup>

Nor were such irregularities limited to the State of Florida. A report presented on December 22, 2000 to the New York Board of Elections by the Asian American Legal Defense and Education Fund (AALDEF), found that the failure of the Board of Elections to prepare adequately for heavy turnout city-wide created severe problems for Asian-language voters. On November 7, 2000, AALDEF attorneys and volunteers monitored 20 polling sites in New York City; they observed:

- *Inaccurate translations.* The Chinese translation for “Democrat” and “Republican” were reversed. Paper ballots requested by absentee voters also contained mistakes in the Chinese-language instructions.
- *Lack of Chinese interpreters.* At polling sites across the city, particularly those places with dense Asian populations, there were insufficient numbers of interpreters to serve Chinese-speaking voters.
- *Chinese characters on the ballot too small to read.* Obviously, the fundamental purpose of language translations is undermined when the characters are unreadable on the machine ballot.
- *Problems processing voter registration forms.* Asian Americans experienced many problems in registering to vote. Many newly-naturalized citizens never received a voter confirmation postcard from the Board of Elections. Thus,

<sup>4</sup> Testimony of Ms. Marleine Bastien, before the NAACP, November 11, 2000.

they did not know the location of their polling sites. In registering to vote, a number of Asian American voters complained that they were asked to show proof of U.S. citizenship before their voter registration forms would be processed, even though White registrants were not asked for such proof.

- *Lack of bilingual materials:* A number of polling sites and election districts did not have Chinese language materials or did not use them effectively, as mandated by Section 203 of the Voting Rights Act.<sup>5</sup>

These are clear examples of the lack of compliance of some jurisdictions with the language assistance provisions and other protections of the Voting Rights Act or state law. We believe they are no less important than the irregularities experienced by other Americans in the 2000 election, and we expect that any election reform legislation considered by the Congress should address them.

### III. ELECTION REFORM

The National Council of La Raza supports prudent, bipartisan election reform legislation. NCLR has been working in concert with a broad coalition of civil rights organizations representing racial and ethnic minorities, language minorities, people with disabilities, organized labor, women, and religious organizations, all of whom are committed to improving the electoral process. NCLR believes that several key elements must be included in an election reform bill, which would guarantee that the voting process is accessible to all eligible citizens.

While we are encouraged to see the large number of bills that have been introduced by members on both sides of the aisle, many of them only address one or two specific problems identified in the last election. NCLR believes that the "Equal Protection of Voting Rights Act" (S. 565/ H.R. 1170) co-authored by Sen. Dodd (D-CT), and Congressman Conyers (D-MI), and sponsored by Senate Majority Leader Daschle (D-SD), and House Minority Leader Gephardt (D-MO), is the most comprehensive and focused of all the bills that have been introduced to-date. The bill has several key elements:

1. Protection of the Voting Rights Act and the National Voter Registration Act, ensuring that any activities under the new legislation are consistent with these existing laws
2. Creation of a substantial, multi-year, federal grants program to upgrade election technologies; these technologies must ensure access to language minorities and persons with disabilities including:
  - Safeguards for maintaining accurate voter rolls and voter registration systems
  - Improved, modern voting equipment
  - Increased voter education and poll worker training

<sup>5</sup> Letter from AALDEF to Mr. Daniel DeFrancesco, New York Board of Elections, December 22, 2000.

3. Setting of federally-approved requirements for grant-eligible technologies that include:
  - User-friendly, intimidation-free procedures for language minorities, racial and ethnic minorities, and people with disabilities
  - Uniform, non-discriminatory, provisional voting procedures
  - Sample ballots and notifications of voter rights
4. Provision of additional matching grants to promote early implementation

NCLR is encouraged by recent bipartisan compromises reached by some key leaders on the issue. However, together with our coalition partners and the Leadership Conference on Civil Rights, we note that only the Dodd-Conyers bill through its mandates fully addresses all of the problems experienced by Latinos and language minority voters in the 2000 election.

#### IV. RECOMMENDATIONS

Speaking from the perspective of the Latino and language minority community, NCLR urges the enactment of the Dodd-Conyers bill and any other legislation that:

- 1) Fully protects and complies with existing civil rights laws, including the Voting Rights Act and the National Voter Registration Act
- 2) Encourages compliance with and full implementation of language minority assistance provisions of the Voting Rights Act and appropriate state laws
- 3) Provides statewide multi-year federal funding for programs to upgrade election technologies, including improvement of voting equipment and associated counting mechanisms, and technologies on a uniform basis, such as computerized voter registration lists
- 4) Promotes voter education and poll worker training
- 5) Provides jurisdictions with incentives for early implementation and compliance
- 6) Does not impose additional, unnecessary barriers to voting

NCLR is eager to see election reform that secures the right of all Americans to vote. Election reform should be guided by current law ensuring access to language minority voters. It should not become a vehicle for adding barriers to any part of the voting process, whether it is voter education, registration, or casting a vote. We urge you to ensure that additional, unnecessary measures to “confirm” or “verify” the eligibility of



voters – which have a clear, disparate impact on Latinos or language minorities – are not imposed.

In the past we have seen legislation that attempts to cross-reference the citizenship of registered voters and voter registration applicants against Social Security Administration and Immigration and Naturalization Services databases. Because of the well-documented inaccuracies with such databases, reliance on these systems for verification of citizenship will result in massive numbers of “false negatives,” i.e., legitimate U.S. citizens whose status may not be verifiable through computer matches. These systems lack the capacity to confirm the status of significant categories of both native-born and naturalized U.S. citizens. Other proposals would authorize registrars or poll workers to challenge the identity or citizenship status of persons seeking to register or vote, based on the mere suspicion that such persons may be ineligible. Mr. Chairman and Members of the Committee, such proposals would inevitably thwart the fundamental purpose of the election reform effort, which should be focused on expanding – and not further limiting – the ability of all Americans to participate fairly and equally in the electoral process.

While many of the Election Reform bills include one or more aspects of our recommendations, the only legislation that fully incorporates the concerns of language minorities is the “Equal Protection of Voting Rights Act” (S.565/ H.R 1170). Therefore, NCLR enthusiastically and wholeheartedly endorses this bill and thanks Chairman Dodd for his leadership in addressing the concerns of the Latino and language minority communities.

I thank the Chairman, the Ranking Member, and the Committee once again for providing NCLR an opportunity to share its views on election reform.

The CHAIRMAN. Very good. The red light came on. Raul, you were perfect in your timing.

Well, thank you all for your testimony. It is very, very helpful, and I appreciate immensely the endorsement of the bill that I have introduced, along with John Conyers, and cosponsored by 49 of my colleagues here. And I should say there is a lot of interest being expressed by members of the Republican side of the aisle as well who understand that this issue really ought not to be a partisan issue. I think too many people have seen it in that light because of the tremendous amount of politics associated with the outcome of the last election.

And could I be quite candid and frank with you? But for the last election and what happened, I suspect we might not be sitting here talking about this issue. So as disturbing as events were, there is a silver lining, as my mother always cautioned me to look for in even the darkest of circumstances. The silver lining here is that we are here, and we were helped through this unfortunate, to put it mildly, set of circumstances, to become aware of some glaring shortcomings in our electoral process. So we are trying to come up with some solutions here that make some sense, though of course, we are not going to create a perfect system. We all understand that. Any more than we have created a perfect system when it comes to other rights in this country. But I think we are a lot better off today because people stood up and fought for those rights in our country in times past, and today we are a richer, stronger, and better people because of it.

So I do not expect to achieve perfection—I have been around long enough to know that is not something that normally comes out of the Congress of the United States under any circumstances. But if we can advance the cause of people's rights, the basic right, the right on which all other rights are based in this country, the right to enter that voting booth, regardless of any other circumstances as citizens of this country, that the richest down to the most humble of our citizens are truly equal on that day. Everything we do that advances that equality strengthens our country.

Now, if I can, Mr. Blackwell, you are the Secretary of State. You are in charge of election laws, I guess, in your State.

Mr. BLACKWELL. Oversight.

The CHAIRMAN. I am sorry?

Mr. BLACKWELL. Oversight.

The CHAIRMAN. Oversight. So you are familiar, obviously, with the Voting Rights Act of 1965 on a national level. I was curious, because I think, first of all, the statement you made in your opening remarks talking about the respondents in the USC-Cal Tech study are right on. In fact, it may even be higher. But certainly, as you point out, the support is very, very strong. People clearly feel the need for reforms within the electoral process. So we are not debating today—despite the fact that some witnesses have indicated that this is not that big of a problem. I am suggesting I think it is a big problem, and I think you are suggesting the same by your testimony.

Mr. BLACKWELL. Right.

The CHAIRMAN. Do you agree with that?

Mr. BLACKWELL. Yes, I do.

The CHAIRMAN. You then go on in the last part of your statement—and, of course, under the Voting Rights Act of 1965, as you are familiar, there are any number of mandates. Section 1971 through 1974 of the Federal Code enumerates what those mandates are, beginning with the first, which requires, mandates uniform standards for qualifying persons to vote in all Federal, State, and local elections, prohibits race or color from being used as a qualification, prohibits discriminatory use or administration of literacy tests, and prohibits any use of threats or intimidation. It prohibits falsification of voter registration documents, prohibits voting more than once, prohibits destroying or defacing ballots, requires polling places be accessible—we are talking about the ballots themselves and machinery here—and mandates there be accommodations at polling places for the blind, the illiterate.

There are a lot of Federal mandates in that bill that have developed since 1965. Wouldn't you agree with that?

Mr. BLACKWELL. There have been, and if you go back to my statement today, I said except for those that are advanced by the U.S. Constitution, which includes the 14th and 15th Amendments, voting rights happen to be a cornerstone of our citizenship in—

The CHAIRMAN. And I agree with you. You said that.

Mr. BLACKWELL [continuing]. Our democracy. And so when I talk about mandates, I question as to whether or not there should be one machine that is used universally.

The CHAIRMAN. Do you know anyone who is advocating that?

Mr. BLACKWELL. Well, I am underscoring that point. I think, again, that mandating that a standard be used within the borders of a State so that there is equal protection of the laws in that State is, I think, imperative. And so on that you and I would agree.

What I try to recognize is that within the constitutional framework beyond those guarantees of citizenship and voting rights, there is a tradition, if not a constitutional guarantee, that elections are State business and States, you know, make a determination as to how elections are managed.

The CHAIRMAN. Well, obviously previous Congresses thought they went beyond just that, because they would not have mandated at least the 14 or 15 that I can identify of mandates that go beyond just sort of a generic constitutional requirement. They mandate certain things. They mandate uniform standards for qualifying persons to vote, for instance. That goes beyond the borders of a State.

Mr. BLACKWELL. I think if what—again, this is what these halls—you know, I go back to Nick's comment at the bar. Politics goes on here. I think this is a place where these things are fine-tuned and debated, these halls. At the end of the day, if you take a look at Ohio, going back to something that you are particularly interested in, we have statewide provisional voting. So we believe in principle what you have articulated—

The CHAIRMAN. How is that working, by the way?

Mr. BLACKWELL. It is working fine, and it actually saved us some embarrassing moments.

The CHAIRMAN. In fact, you have adopted State standards. Though, I do not know if it has passed your State senate or not.

Mr. BLACKWELL. I think we are pretty aggressive and respected for our adoption of those standards that have been promulgated by the Federal Election Commission.

The CHAIRMAN. My point is, in the State of Ohio, you have a law now that is pending that mandates, throughout the State, State standards.

Mr. BLACKWELL. Absolutely.

The CHAIRMAN. Has that become law yet?

Mr. BLACKWELL. Yes, it has.

The CHAIRMAN. Well, in a sense, then, you have superseded the local authority at the State level by saying that there should be State standards.

Now, I presume you are allowing local communities to come up with whatever voting machine that they find may work best for them.

Mr. BLACKWELL. Right. That is true.

The CHAIRMAN. Within the confines of the standard.

Mr. BLACKWELL. Right.

The CHAIRMAN. You understand, I am sure, having looked at both of these bills that are pending here, that the Conyers-Dodd bill basically mirrors the Ohio State law in a sense. Because, obviously, when something goes wrong in a State and a voting booth or in terms of access, my people in Connecticut in the Presidential election are affected because the person we are choosing—if someone is disenfranchised for whatever reason, in some State for whatever reason and that affects the outcome of that State's electoral votes, then the voters in my State are also adversely affected by it. So it goes beyond the States.

So having done what you did at the State level, my question to you, knowing what is in our bill—sample balloting, provisional voting, making sure that there are accessible places and so forth—what I want to get at is the paragraph in the last part of your statement: “But a federally mandated voting method or process would not only be unwise, it would be an invitation for widespread fraud and disaster.”

How is provisional voting on a national level, how is a national standard or accessibility for language minorities, how is that going to create widespread fraud and disaster? If it is good enough for Ohio at a statewide level to have these standards, why is it a great disaster to have it on a national level?

Mr. BLACKWELL. Again, Senator, I think what you are doing is creating your own straw man to knock down, and I will let you knock that down.

What I was saying there is that a particular method of voting should not be mandated on the States. I have no argument with you in terms of the wisdom of provisional voting. What I would suggest, though, just as the example was used during the discussion of the previous panel, North Dakota has some more liberal registration laws than Ohio. Do I think that because the experience has been good in North Dakota that it should be imposed upon the people of Ohio? The answer is no.

So I think that there are—

The CHAIRMAN. We have not included that in our bill.

Mr. BLACKWELL. I agree with you. Neither have I concluded in my comment that provisional voting is something that is inherently bad.

The CHAIRMAN. I agree with that. But you understand my point of view. You are suggesting somehow that if we had national standards, such as sample balloting, provisional voting, requiring that ballots and so forth be accessible to language minorities and the disabled, that those national standards would create a widespread fraud and disaster on a national scale. That is how I read your statement. Am I reading it wrong?

Mr. BLACKWELL. Well, yes, you are. And I think that there within lies the problem. You know, I guess the great Henry Kissinger said that ambiguity is the grease that greases the wheel of diplomacy, and as a former U.S. diplomat, I probably was too ambiguous in that statement.

Let me say it again more clearly, and I think I have said it, that when I talk about mandates, I am talking about mandated equipment and machinery, and when I talk about protection—and I said it in my comments—that I thought that the diversity in the systems we have across the country is an added level of protection against widespread fraud and corruption.

Any guarantee of access to the ballot and a right to exercise one's franchise is inherent in our citizenship, which is protected not by a State but by the Federal Government.

The CHAIRMAN. Okay. I would invite you then to take a good, close look at the bill that John Conyers and I and Tom Daschle and others have introduced, because I do not disagree. I mean, if I had a bill here that said you had to have a voting machine like the one I have got in Connecticut in some rural county in Ohio or an urban setting, I would oppose that bill. I would be vehemently opposed to the idea that there ought to be one-size-fits-all.

Mr. BLACKWELL. Right. Okay. I think we are closer than you might think.

Again, I did not think that in my statement—as a matter of fact, I know in my statement that it was not leveled as a criticism but as a caution. I really do think that this should be well debated here as to whether or not any mandate is one that enhances one's citizenship rights versus one that is bureaucratic interference.

The CHAIRMAN. And I should have begun these comments by commending you for what you are doing in Ohio. I think several States are going through this process now where they are developing State standards, which I think are very wise. And so I commend you for doing that.

Now, I understand you have time constraints, too, and if you have to get up and leave, I am not going to be offended if you walk out of here. If there are some additional questions, we will submit them to you in writing.

Mr. BLACKWELL. Yes, sir.

The CHAIRMAN. We thank you immensely for joining us.

I will submit in the record the organizations that are cosponsoring the Equal Protection of Voting Rights Act, again, the bill that Congressman Conyers and I have introduced. It is a very long list, beginning with the AFL-CIO and the Randolph Institute, moving on down, the NAACP, La Raza, just a long, long, lengthy list.

I am deeply honored that such a broad-based group of organizations in the country are as supportive as they are of our efforts.  
[The list follows:]

Submitted by Chairman Dodd  
for the Hearing Record



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

**Organizational Co-Sponsors of the  
“Equal Protection of Voting Rights Act”**

H.R. 1170 / Congressman John Conyers (D-MI) and  
S. 565 / Senator Christopher Dodd (D-CT), sponsors

*(in alphabetical order)*

AFL-CIO  
A. Phillip Randolph Institute  
African American Women's Clergy Association  
Alpha Kappa Alpha Sorority, Inc.  
American-Arab Anti-Discrimination Committee  
American Civil Liberties Union  
American Ethical Union  
American Federation of State, County & Municipal Employees  
Americans for Democratic Action  
Bazelon Center for Mental Health Law  
Center for Constitutional Rights  
Church Women United  
Citizen Action of New York  
Equal Partners in Faith  
Jewish Council for Public Affairs  
Jewish Labor Committee  
Lawyers Committee for Civil Rights Under Law  
Leadership Conference on Civil Rights  
National Asian Pacific American Legal Consortium  
National Association for the Advancement of Colored People  
NAACP Legal Defense & Education Fund, Inc.  
National Congress of American Indians  
National Council of La Raza  
National Organization for Women  
Ocean State Action  
Oregon Action  
People for the American Way  
Presbyterian Church, USA  
The Rabbinical Assembly  
Unitarian Universalist Association of Congregations  
United Church of Christ / Justice and Witness Ministries  
United Methodist General Board of Church and Society  
US Action  
Wisconsin Citizen Action  
Women for Reform Judaism

The CHAIRMAN. We have not drafted the perfect bill, but we do think that we are on the right track. And, again, there are great similarities between the various proposals except the very fundamental difference of whether or not we make this a voluntary effort or we insist that some basic things be improved so that all States in this country will have to meet those standards.

Let me, if I can, ask both of our witnesses from the NAACP and La Raza. I recently spoke, Mr. Yzaguirre, at a public high school in my State. I try to do so, almost on a weekly basis. So I have been at every public high school in my State over the last 15 years, and some of them I go back to many times. And each year I sort of shock myself when I go to some of my high schools—and I am sure this is true in Ohio as well. I was in Stamford, Connecticut, recently and spoke to a group of juniors and seniors there. I think there were about 150 young people in the audience. And I was told by the principal that there were about 40 different languages spoken by the 120 or 150 students in that classroom that day. That blows me away when I think of it, that there are that many. And I went around the room, and each student that got up, they were from literally all four corners of the globe. Their families had come to the United States, most of them as first generation kids. And so when we talk here—and you are obviously representing La Raza, the Latino Hispanic community, but I will point out that of the organizations that are supporting this legislation, Asian groups and Haitian groups and groups all across the spectrum are also supportive of our bill.

I wonder if you might just talk about that a bit. Because obviously while you are representing a Latino community here, you have great familiarity with other linguistic minorities in the country. You mentioned specifically the Haitian community in Florida. I wonder if you might expand a little bit on what your experience is in terms of dealing with the growing number of people who are coming to our country and becoming citizens, and the question of access.

Anecdotally, I will tell you that my wife and I have friends who are Cambodian who live in Virginia and became citizens. Last year was the first time they went to vote, two sisters, and they came back in tears two days afterwards. They had showed up at the voting booth in Virginia, and their English is not terrific. I mean, they speak fairly well, but it is halting. And they are shy and were intimidated at the voting booth and walked away. They had planned a party that evening because it was the first time they had voted and to celebrate their first day of voting as citizens, and never got a chance to do it because somebody there made them feel unwelcome.

Now, it is an anecdote. It is just two people. Maybe it is not widespread. Maybe it only happens once. But I have got a feeling it happens a lot more frequently. And they don't show up on a survey anyplace. They got out of line. They didn't protest. They didn't go down to the courthouse or do anything.

But I can't tell you how proud they were they were going to vote and how disappointed and saddened they were that they did not get a chance to cast a ballot.



Mr. YZAGUIRRE. Indeed. You have just related a situation which is repeated many times across the country. Senator, the immigrant community, whether it be Latino or Asian or otherwise, reinforces American values. They keep this Nation vibrant and they reinforce values, like voting.

Folks in Mexico, as you know, because you have been an observer in the electoral process throughout Latin America, spent a whole day walking to a polling booth. In Mexico, the voting rates are 80, 90 percent, so there is a culture of participation in voting, which we would do well to emulate. But, unfortunately, the situation that you describe happens all too frequently, and we need to do something about it.

Let me just mention something concrete that I would offer for your consideration. The Voting Rights Act set a pretty low standard for invoking language minority rights, and it invoked a 5 percent or a 10,000 population figure. The reason for that was because of cost. They did not want to impose too much of a burden on local communities.

But may I suggest to you that with the new technology we can bring those numbers way down, so that nobody should be denied the right to vote simply because they cannot speak the English language.

If I may be permitted to make a larger point, Mr. Chairman, that has been part of all this process, what we are talking about here is mandates versus non-mandates, and it gets into a big philosophical discussion. But I am old enough to remember the debate in the civil rights acts of the early 1960s, and I remember the arguments. And when you look at what the law did, it did not confer any new rights. I remember very clearly they were talking about rights that were already there in the 14th and 15th Amendments. But what the laws did, what those very civil rights laws that now we all agree—we did not have quite that agreement then. But now we all agree that they are the right thing to do.

What they did was to give meaning, to give substance to rights that were already there. Your legislation, Mr. Chairman, I would suggest does exactly that. It takes a general right that we all have to vote and brings the reality of the impediments to light and does something about those impediments. And I congratulate you for doing so, and we want to be totally supportive.

The CHAIRMAN. Well, I thank you very, very much for that.

Could you just take two minutes and tell me how the technology would do that? Because I should have pointed out, when I spoke to those students in that classroom, obviously some of them represent relatively small communities. The idea of having bilingual volunteers at every polling booth in anticipation of someone coming from a rather remote part of the world with a very small population is probably too much to ask of any precinct or State or locality. How would technology—

Mr. YZAGUIRRE. Well, you are asking the wrong person. I am known as a techno-peasant in my organization. But my understanding is that with electronic voting, instead of having to print out thousands of ballots, all you have to do is a couple of key strokes into the software of the program, and the screen will come

out and show you options in your language that enables you to vote.

The CHAIRMAN. I see. Terrific.

Mr. Shelton, let me again just pick up here on the last point that Mr. Yzaguirre pointed out, and that is the question of the optional approach. The word "mandate" just has this terrible connotation to a lot of people, but, again, we are not talking about—I hope you will all read the bill. These are rather modest proposals: sample balloting, national standards. And remember this is in a Presidential race or a race involving the national legislature. When we are talking about the local race for sheriff or local board of education and so forth, obviously you can make a case those have national implications when people are denied for whatever reason, whatever cause, the right to vote or have their vote counted. But particularly when it comes to deciding the leader of this country or deciding what the membership is of the national legislature, it seems to me what happens in one place does affect the rights of people in completely different jurisdictions. And I wonder if you might address, if you will, why you the NAACP believes that the Conyers-Dodd bill is a better approach than the optional approach.

Mr. SHELTON. First, it is much more comprehensive. It certainly addresses so many of the problems that we experienced in the last election. That is extremely important. We saw so many different kinds of problems that occurred. As we talk about the issue of language minorities, we had newly naturalized Haitian Americans testify before the NAACP in Florida, and we had people of African descent in other States testify before the NAACP saying they had actually even taken interpreters to the polls with them, assuming that they may not very well have ballots available in their home language, but they brought someone who could read the ballot for them, explain what was in the ballot. Those kind of basic policies in place, basic rights protections that when any American goes to the polls, you have the same kind of protection as anybody else no matter what State you are in.

I think it also shows not only a disparate impact, but also different levels of enforcing the laws when you can go into one State and have all of your rights protected as you go to the polls to vote. And yet if you move to another State, you lose those rights.

One of the examples that is very close to us is on the issue of the disenfranchisement of ex-felony offenders. In the State of West Virginia, as soon as you are released from prison you can register and vote immediately. You can go into the polls and begin voting immediately. But if I move from West Virginia to the State of Virginia, right next door, then I lose my right to vote again. That is because in the State of Virginia, to reinstate your rights to vote after a felony offense goes on to your record, you have to indeed go through a process that is unclear to either the Governor or the Secretary of State.

The only thing that we are clear on is that if you pass a law in the State legislature in your individual name, you regain your right to vote if it is signed into law by the Governor.

So, in essence, just creating a national standard, just saying basic minimal standards have to be in place to protect my right to vote, whether I am trying to vote here in the District of Columbia,

whether I am voting in Mississippi, whether I am voting in Connecticut, that my rights will be protected no matter where I go in this great country. It just makes good common sense that we bring those issues to the table.

Just to share a brief assessment, I met the Secretary of State for the State of Missouri, which also happens to be my home State, and as we sat together on an advisory committee talking about this very same issue, she looked at me with a disgruntled look on her face and said, "You know, we don't even have provisional balloting procedures in the State of Missouri at all." And the way she said it was like this seems so common sense, it just never occurred to us that it was a good idea to do.

I think in many ways laying out basic standards across the country for every State just makes good sense. They focus on it. They begin addressing these issues. And in cases that they don't really need them, things that you won't even notice they are there if you don't actually need them, they are there to protect us in the case that we run into the kind of problems that we had in the last election.

The CHAIRMAN. Well, I thank you. I thank you both. You have been very patient to wait around, and I am grateful to you for your testimony and your responses to questions. You have been tremendously helpful. I look forward to continuing working with you as we move through this process here and hopefully, probably in the fall, early fall sometime, actually get to the floor—get out of committee and to the floor with a bill that we can offer to our colleagues for their support. But your continuing involvement in this discussion and debate will enhance that opportunity tremendously. So, I thank you for your ongoing efforts, your presence here today, and in anticipation of your continuing work with us. Thank you both and thank your organizations.

Mr. SHELTON. Thank you, sir.

Mr. YZAGUIRRE. Thank you.

The CHAIRMAN. I want to invite up our last panel—our patient panel, I call them. You have had the benefit of having heard all the testimony, so you are in a unique position. I will ask you to join us here. And as I do, I am going to take a one-minute recess as I step out as you come to the table for reasons that I hope do not need to be identified. But let me invite Carolyn Jefferson-Jenkins, the president of the League of Women Voters of the United States, to join us at the table; Dr. Larry Sabato—I am a big fan of Dr. Sabato's. He probably does not know it, but I watch him with great frequency and pay attention. I apologize. I saw you come in and stand at the door. We did not have a chair for you. I apologize that we were not taking better care of you here. It's only my first day as Chairman here, but I do not want it to be said that we do not take care of our witnesses when they come in.

And Jim Dickson, who is a wonderful friend and who has been with me on so many different occasions, from the American Association of People with Disabilities. I know Bob Williams is in the audience as well. I can see him behind me here, a former Dodd staffer going back 26 years ago. I thank you Bob for being here.

As you are getting settled here, I am going to just take a minute while you get comfortable. The committee will stand in recess for one minute.

[Recess.]

The CHAIRMAN. The committee will come back to order.

Again, let me thank our witnesses for being tremendously patient, but I hope you found it worthwhile. Normally, at Rules Committee hearings we do not usually get much of a crowd here, but we have a good crowd here this morning. As I said at the outset, we have a lot of very important areas of jurisdiction on this committee, but none more important than elections and campaigns and related matters. So this is an appropriate piece of legislation for the committee to look at.

I have had the opportunity to read all of your testimony, and I am very grateful for your comments. We will give you as much time as you need here. Because I have kept you so long, do not feel constrained by this clock. I will sit here to hear you all the way out. So we will turn the clock off for the last panel, and whatever comments and additional material you would like to submit to the committee in support of your testimony, we certainly will gladly accept.

With that, Carolyn, thank you for being with us.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF CAROLYN JEFFERSON-JENKINS, PRESIDENT, LEAGUE OF WOMEN VOTERS OF THE U.S., WASHINGTON, D.C.; LARRY SABATO, DIRECTOR, UNIVERSITY OF VIRGINIA, CENTER FOR GOVERNMENT STUDIES, CHARLOTTESVILLE, VIRGINIA; AND JAMES C. DICKSON, VICE PRESIDENT FOR GOVERNMENTAL AFFAIRS, AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES, WASHINGTON, D.C.**

**STATEMENT OF CAROLYN JEFFERSON-JENKINS**

Ms. JEFFERSON-JENKINS. Thank you, Mr. Chairman, and good afternoon. I am Carolyn Jefferson-Jenkins, president of the League of Women Voters of the United States.

The League of Women Voters is a nonpartisan citizen organization with more than 125,000 members and supporters in all 50 States, the District of Columbia, and the U.S. Virgin Islands. For more than 80 years, Leagues across the country have worked to educate the electorate, register voters, and make government at all levels more accessible.

I am pleased to have the opportunity today to express the League's support for speedy enactment of legislation to provide substantial Federal assistance to improve the administration of Federal elections in this country.

Mr. Chairman, many Americans were shocked by the problems in election administration that were exposed by the 2000 election. We in the League of Women Voters, however, were not surprised. Unfortunately, the kinds of problems that we saw in 2000 are not unusual. They represent the harvest from years of indifference that has been shown toward one of the most fundamental and important elements in our democratic system, and that is our election mechanisms.

Election 2000 demonstrated that election administration systems are in dire need of repair. Antiquated voting machines, ballot systems that confuse the voter, and insufficient numbers of machines requiring voters to wait hours in line illustrated the problems at the most basic level. In addition, poll worker training issues, reports of differential application of voter ID requirements, and other civil rights concerns, chaotic absentee ballot procedures, purging practices, accuracy problems, standardization and consistency issues—all these point to fundamental and systemic problems.

The Federal Government provides no meaningful assistance to the State and local governments that pay for and administer Federal elections. The League of Women Voters believes that it is time for that wrong to be corrected. This is not only a question of equity among levels of Government. It is also a fundamental issue of fairness for all citizens of the United States. Because election administration—from the purchasing of voting equipment to the training of poll workers—has been underfunded, the fundamental rights of American citizens to vote, and to have their votes effectively counted on an equal basis, have been undermined.

Just as the Federal Government has relied on the States for the administration of Federal elections, the States have frequently relied on local units of Government for the administration of Federal and State elections. With their own responsibilities for local elections, local governments are at the base of a large pyramid, carrying the load for local, State, and Federal elections. This system too often combines the greatest responsibilities with the least capacity to provide the needed financial and administrative resources.

We believe that the States must step forward to assist their localities and to provide greater consistency of administration. But the Federal Government has a large role to play, in our view, for two simple reasons. First, it should be the Federal Government's responsibility to pay its fair share for the costs of Federal elections. And, second, the right to vote must be guarded and enforced by the Federal Government because it is the most fundamental right in our national democracy.

Many of the problems in election administration are problems of implementation rather than public policy. These implementation issues have effects on real people, on voters from all backgrounds. But all too often implementation has a disproportionate impact on minority voter participation.

There were reports from many States that the names of some citizens who registered to vote through their department of motor vehicles or other agencies were not listed at the polling places, and so those citizens could not vote. This is an implementation issue. The National Voter Registration Act requires that qualified citizens can apply to register to vote through those agencies, but States and localities evidently had problems fully complying with that Act. We believe a statewide, computer-based voter registration list that is linked to registration agencies can make a significant improvement in that system. When precincts can be linked to the statewide, uniform system, it will work even better. But funding is an issue for such systems.

Because so many of the problems in election administration are ones of implementation, we believe it is essential that new legislation clearly requires full implementation of the Voting Rights Act, the National Voter Registration Act, the Americans with Disabilities Act, and other similar laws in any Federal grant program. These laws set basic policy needed to protect the voting rights of Americans. We need to ensure that they are fully enforced and that States and localities have the resources they need to achieve full and complete compliance.

I must emphasize the importance of achieving compliance with our Nation's basic voter protection laws. The Voting Rights Act prohibits race-based discrimination in elections. The Act also provides for language assistance for citizens who otherwise would not be able to participate. Yet we still hear of local jurisdictions that lack the knowledge or resources to fully comply with the language assistance requirements of the law and of others that lack the administrative models and training to maintain the rolls in a nondiscriminatory manner.

The National Voter Registration Act provides for convenient and routine access to voter registration, but as I mentioned before, some jurisdictions are not fully implementing the law. There are problems ensuring that all who apply to register to vote through the departments of motor vehicles will actually have their names transmitted to the correct polling place. Agencies serving people with disabilities are not always supplying voter registration services as the law provides. And there are too many reports of fail-safe voters, registered voters who have moved within a registrar's jurisdiction, turned away on election day because their names cannot be found on the list at the polls.

The inability of polling place officials in many locations to check the status of the voters on the official list must be addressed. Solutions, such as the low-tech use of provisional ballots or the high-tech use of laptop computers that provide access to the official list at the polling place, need to be encouraged. Legally registered voters, including fail-safe voters, should never be turned away at the polls. Those who have properly applied to register should not be denied the opportunity to vote through administrative error or a failure to implement the law.

The problems that face our election systems are not only ones of implementation, however. Citizens with disabilities clearly need better protections to assure their access to the polls. Physical barriers still block access for many, including for those whose disabilities resulted from their service in our armed forces. Citizens who have trouble seeing do not have a full opportunity to vote independently and with a secret ballot.

Of particular concern are those practices that purge voters without the most basic procedural protections. Notice and the opportunity to correct errors are the most basic of safeguards, and these should be provided to all voters who might be purged.

As legislation is crafted, there are three key concerns we want to call to your attention. The legislation must have bipartisan support. There must be significant funding on an ongoing basis to ensure real progress. And Congress and the President must act quick-

ly so that we can begin soon in making needed changes in election administration.

The League of Women Voters believes that election reform must be bipartisan not only because that will be necessary for enactment, though, of course, this is a vital issue in an evenly divided Congress. Election reform must be bipartisan also because both major political parties need to show that they will act in the best interests of all people, without seeking partisan advantage in this very important area.

Congress and the President must act to ensure that there are sufficient Federal funds for election administration reform. A token effort will not be enough. The disparities in wealth and public revenues from jurisdiction to jurisdiction are bound to be reflected in a disparity of resources available for election administration procedures and voting technologies from one jurisdiction to the next. This disparity of funding results in a disparity of voting rights. The Federal Government has a special responsibility to ensure adequate funding to protect the voting rights of all Americans.

Quick and timely action is needed on election administration reform simply because it will be a big job and it is important to get started. It is also important for significant changes to come quickly because we want America's voters to have confidence in the systems through which they vote. An early demonstration of commitment will be incredibly important for public confidence, in our view.

Finally, quick Federal action is needed because States and localities are looking to Congress for help. There is an expectation of Federal funds, and if Federal action is delayed, it runs the risk that States and localities may delay needed action.

The League is aware that a number of different proposals have been introduced in the Senate to improve voting technologies and election administration systems. We appreciate the efforts and attention of every Senator who has taken a lead in developing proposals, including you, Mr. Chairman, and Senator McConnell. As you know, Senator Schumer has pushed ahead forcefully for strong election reform, but we are also aware that we are still in a process where ideas are being tested, new proposals are coming forward, and compromises can be achieved.

Based on the principles and concerns I have outlined here, the League of Women Voters supports the Bipartisan Federal Election Reform Act of 2001, S. 953, introduced by Senator McConnell and Senator Schumer. This is a bipartisan bill with a balanced approach to reforming our Nation's election administration systems. It does not solve every problem, but it does provide a common-sense approach to getting started on the job of fixing our Federal election systems.

In summary, the League of Women Voters believes that Congress and the President must act and that the voters should be the central concern in any legislation. A new and substantial Federal grants program to assist in reforming voting systems should be created. Clear Federal guidelines are needed. Legislation must not undermine existing protections for voters and must be sensitive to civil rights concerns. And the legislation must be able to achieve majority political support in an evenly divided Congress.

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

We commend you, Senator Dodd, for having this hearing. You are keeping this important issue at the forefront of the national agenda. We thank you for your attention and look forward to working with you on this vital issue.

[The prepared statement of Ms. Jefferson-Jenkins follows:]





THE LEAGUE  
OF WOMEN VOTERS®  
OF THE UNITED STATES

*President*  
Carolyn Jefferson-Jenkins, Ph.D.  
Colorado Springs, Colorado

*Vice-Presidents*  
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Laramie, Wyoming

M. Faye Harned Smoott  
Barrington, Illinois

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Evanston, Illinois

Carol Woodward Scott  
Oklahoma City, Oklahoma

Rosie Stephens  
Lake Oswego, Oregon

Olivia L. Thorne  
Wallingford, Pennsylvania

*Executive Director*  
Nancy E. Tate

Statement for the Committee on Rules and Administration  
U.S. Senate  
on  
Election Administration Reform  
by  
Carolyn Jefferson-Jenkins, Ph.D.  
President  
The League of Women Voters of the United States  
June 27, 2001

Mr. Chairman, members of the committee, I am Carolyn Jefferson-Jenkins, president of the League of Women Voters of the United States.

I am pleased to have the opportunity today to express the League's support for speedy enactment of legislation to provide substantial federal assistance to improve the administration of federal elections in this country.

The League of Women Voters of the United States is a nonpartisan citizen organization with more than 125,000 members and supporters in all 50 states, the District of Columbia and the Virgin Islands. For more than 80 years, Leagues across the country have worked to educate the electorate, register voters and make government at all levels more accessible and responsive to citizens.

Mr. Chairman, many Americans were shocked by the problems in election administration that were exposed by the 2000 election. We in the League of Women Voters, however, were not surprised. Unfortunately, the kinds of problems we saw in 2000 are not unusual. They represent the harvest from years of indifference that has been shown toward one of the most fundamental and important elements of our democratic system – our election mechanisms.

Election 2000 demonstrated that election administration systems are in dire need of repair. Antiquated voting machines, ballot systems that confuse the voter, and insufficient numbers of machines requiring voters to wait hours in line illustrated the problems at the most basic level. In addition, poll worker training issues, reports of differential application of voter ID requirements and other civil rights concerns, chaotic absentee ballot procedures, purging practices, accuracy problems, standardization and consistency issues – all these point to fundamental and systemic problems.

The federal government provides no meaningful assistance to the state and local governments that pay for and administer federal elections. The League of Women Voters believes it is time for that wrong to be corrected. This is not only a question of equity among levels of government. It is also a fundamental issue of fairness for all citizens of the United States. Because election administration -- from the purchase of voting equipment to the training of poll workers -- has been underfunded, the fundamental rights of American citizens to vote, and to have their votes effectively counted on an equal basis, has been undermined.

Just as the federal government has relied on the states for the administration of federal elections, the states have frequently relied on local units of government for the administration of federal and state elections. With their own responsibilities for local elections, local governments are thus at the base of a large pyramid, carrying the load for local, state and federal elections. This system too often combines the greatest responsibilities with the least capacity to provide the needed financial and administrative resources.

We believe that the states must step forward to assist their localities and to provide greater consistency of administration. But the federal government has a large role to play, in our view, for two simple reasons. First, it should be the federal government's responsibility to pay its fair share for the costs of federal elections. And second, the right to vote must be guarded and enforced by the federal government because it is the most fundamental right in our national democracy.

In looking at election administration systems across the country one is struck by how diverse they are. Not only do they use different voting technologies. They operate at different hours, apply different qualifications for voters and have widely different administrative structures.

Our election administration systems also can be fragile. Look at the workforce on election day. It is made up of thousands upon thousands of temporary workers who, though they are typically paid a minimal amount, are really volunteers. Our democracy depends on these workers and we owe them a real debt of gratitude. The management issues that this workforce raises, however, related to training and control, are daunting. Any change in election systems will be dependent on these same workers for their efficacy. With diverse and fragile systems, we must tread carefully and wisely.

Many of the problems in election administration are problems of implementation rather than public policy. Old voting machines for which replacement parts are no longer made, requiring a process of cannibalization when they break down, simply need to be replaced. Maintaining voting machines to ensure that they function properly is another

implementation issue. And educating poll workers and voters on how to use their voting technologies is also a management and resource issue.

Implementation issues have effects on real people, on voters from all backgrounds. But all too often these implementation issues have a disproportionate impact on minority voter participation.

There were reports from many states that the names of some citizens who registered to vote through their department of motor vehicles or other agencies were not listed at polling places, and so those citizens could not vote. This too is an implementation issue. The National Voter Registration Act requires that qualified citizens can apply to register to vote through those agencies, but states and localities evidently had problems fully complying with the act. We believe a statewide, computer-based voter registration list that is linked to registration agencies can make a significant improvement in that system. When precincts can be linked to the statewide, uniform system, it will work even better. But funding is an issue for such systems.

Because so many of the problems in election administration are ones of implementation, we believe it is essential that new legislation clearly requires full implementation of the Voting Rights Act, the National Voter Registration Act, the Americans with Disabilities Act and other similar laws in any federal grant program. These laws set basic policy needed to protect the voting rights of Americans. We need to ensure that they are fully enforced and that states and localities have the resources they need to achieve full and complete compliance.

I must emphasize the importance of achieving compliance with our nation's basic voter protection laws. The Voting Rights Act prohibits race-based discrimination in elections. The Act also provides for language assistance for citizens who otherwise would not be able to participate. Yet we still hear of local jurisdictions that lack the knowledge or resources to fully comply with the language assistance requirements of the law and of others that lack the administrative models and training to maintain the rolls in a nondiscriminatory manner.

The National Voter Registration Act provides for convenient and routine access to registration through driver's license agencies, public assistance agencies, agencies that serve people with disabilities, and through mail-in registration. It was designed to break down the bureaucratic obstacles that too often resulted in the disenfranchisement of American citizens. Historically, African-Americans, immigrants, low-income citizens of all races, people with disabilities and college students attending school away from home all have been excluded from the ballot through voter registration practices.

The National Voter Registration Act has been very successful. It has achieved significantly higher registration rates while, at the same time, cleaning the lists of duplicate registrations. But, as I mentioned before, some jurisdictions are not fully

implementing the law. There are problems ensuring that all who apply to register to vote through the departments of motor vehicles will actually have their names transmitted to the correct polling place. Agencies serving people with disabilities are not always supplying voter registration services as the law provides. And there are too many reports of "fail-safe" voters, registered voters who have moved within a registrar's jurisdiction, turned away on election day because their names cannot be found on the list at the polls.

The inability of polling place officials in many locations to check the status of the voters on the official list must be addressed. Solutions, such as the low-tech use of provisional ballots or the high-tech use of laptop computers that provide access to the official list at polling places, need to be encouraged. Legally registered voters, including fail-safe voters, should never be turned away at the polls. Those who have properly applied to register should not be denied the opportunity to vote through administrative error or a failure to implement the law.

The problems that face our election systems are not only ones of implementation, however. Citizens with disabilities clearly need better protections to assure their access to the polls. Physical barriers still block access for many, including for those whose disabilities resulted from their service in our armed forces. Citizens who have trouble seeing do not have a full opportunity to vote independently and with a secret ballot.

Of particular concern are those practices that purge voters without the most basic procedural protections. Notice and the opportunity to correct errors are the most basic of safeguards and these should be provided to all voters who might be purged.

In addition, there are a wide variety of policy issues that could benefit from study and recommendation from a well-respected commission. Among these are felony re-enfranchisement issues, poll worker recruitment and training, and hours of voting. Uniform procedures for overseas voters also need attention to ensure that citizens in the military and others overseas can vote and have their votes counted.

As legislation is crafted, there are three key concerns we want to call to your attention. The legislation must have bipartisan support. There must be significant funding on an ongoing basis to ensure real progress. And Congress and the President must act quickly so that we can begin soon in making needed changes in election administration.

The League of Women Voters believes that election reform must be bipartisan not only because that will be necessary for enactment, though of course that is a vital issue when Congress is so evenly divided. Election reform must be bipartisan also because both major political parties need to show they will act in the best interests of all the people, without seeking partisan advantage in this very important area. We trust that election reform will not be used to seek the special enfranchisement, or disenfranchisement, of particular voters. We need to move ahead, through bipartisan cooperation, with solutions that will work for the American people.

Congress and the President must act to ensure that there are sufficient federal funds for election administration reform. A token effort will not be enough. The disparities in wealth and public revenues from jurisdiction to jurisdiction are bound to be reflected in a disparity of resources available for election administration procedures and voting technologies from one jurisdiction to the next. This disparity of funding results in a disparity of voting rights. The federal government has a special responsibility to ensure adequate funding to protect the voting rights of all Americans.

Quick and timely action is needed on election administration reform simply because it will be a big job and it is important to get started. It is also important for significant changes to come quickly because we want America's voters to have confidence in the systems through which they vote. An early demonstration of commitment will be incredibly important for public confidence, in our view. Finally, quick federal action is needed because states and localities are looking to Congress for help. There is an expectation of federal funds, and if federal action is delayed it runs the risk that states and localities may delay needed action to await funding.

At the same time, the League believes that the problems that developed over many years will take many years to address. We will learn as the process unfolds, so we should not be dissatisfied if the answer to every problem is not available now. Neither should we delay beginning until a perfect solution to each problem is developed. The League believes it is vitally important to get started, do the things that can be done now, and come back to difficult issues in succeeding years.

Just as there is a need for a substantial federal input of resources, it is important to ensure that money is well spent and that it supports, rather than undermines, the constitutional right of each American to vote.

Federal specifications to guide the expenditure of funds are important. Currently there are voluntary standards for voting machines that were developed by the Federal Election Commission (FEC). Unfortunately, some jurisdictions do not follow these voluntary standards and problems result. We believe it makes sense for there to be federal performance standards, or "best practices," to guide the expenditure of federal monies. We believe that performance standards can also provide needed direction in carrying out federal elections that are fair, accurate, and nondiscriminatory.

The League of Women Voters believes it is essential that there be clear standards to govern both the election administration reform program and the federal entity that administers federal grants. We believe that excessive discretion should not be lodged in any agency. Instead, the program and the agency must be guided by standards that require access and convenience for the voter, including voters with disabilities; accuracy, including safeguards for maintaining voter rolls; and nondiscrimination, including full participation for language, racial and ethnic minorities and people with disabilities. We

also believe there should be opportunities for citizens to seek enforcement of program guidelines and standards.

The American political tradition, for better or for worse, is one where partisan advantage is often sought. Partisanship permeates our system, with election officials, those responsible for ensuring the fairness and balance in our election processes, often chosen in partisan elections. Because of this tradition, standards are necessary. The League of Women Voters strongly believes that these standards must focus on the voter – they must ensure that every citizen has an opportunity to vote and that every vote will count.

As the program for federal assistance is developed, broad input from diverse constituencies is needed. Election officials and other experts have a vital role to play, but additional views need to be heard as well.

We also believe it is important to move toward greater consistency and uniformity in the administration of elections. It is very troubling that some voters are more likely to have their votes count than others simply because of different error rates with particular voting machines or because of different systems for assisting voters at the polls. In addition to the need for protecting voters, however, consistency and uniformity are signs of well-run systems. A statewide system for maintaining and using voter registration rolls, for example, can reduce the errors that come from trying to administer multiple systems across a state.

The League is aware that a number of different proposals have been introduced in the Senate to improve voting technologies and election administration systems. We appreciate the efforts and attention of every Senator who has taken a lead in developing proposals, including you, Mr. Chairman, and Senator McConnell. We are also aware that we are still in a process where ideas are tested, new proposals are coming forward, and compromises can be achieved.

Based on the principles and concerns I have outlined here, the League of Women Voters supports the Bipartisan Federal Election Reform Act of 2001, S. 953, introduced by Senator McConnell and Senator Schumer. This is a bipartisan bill with a balanced approach to reforming our nation's election administration systems. It does not solve every problem, but it does provide a common sense approach to getting started on the job of fixing our federal election systems.

S. 953 has two key components. First, it establishes a five-year grants program, with an authorization for \$500 million per year. This funding is a significant commitment.

The second key component of the bill is that it requires compliance with basic voter protections, including but not limited to the Voting Rights Act, the National Voter Registration Act and the Voting Accessibility for the Elderly and the Handicapped Act. It also sets new requirements for disability access and accurate voter lists, and provides

for provisional voting and for voter education. We believe it will achieve an important step forward in fulfilling the promise of American democracy.

S. 953 also establishes a limited-term, bipartisan study commission to review and make recommendations on the administration of federal elections. In addition, it provides for "best practices" performance standards for methods of voting and administering elections, based on clear criteria, as a condition for grant eligibility.

In summary, the League of Women Voters believes that Congress and the President must act, and that the voter should be the central concern in any legislation. A new and substantial federal grants program to assist in reforming voting systems should be created. Clear federal guidelines are needed. Legislation must not undermine existing protections for voters and must be sensitive to civil rights concerns. And the legislation must be able to achieve majority political support in an evenly divided Congress.

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

We thank you for your attention, and look forward to working with you on this vital issue.

The CHAIRMAN. Thank you very much.  
Larry, we welcome you to the committee.

**STATEMENT OF LARRY J. SABATO**

Mr. SABATO. Thank you, Senator, and I would like to congratulate you on your first day as chairman.

The CHAIRMAN. Thank you.

Mr. SABATO. This has been the wildest Rules Committee hearing I have ever attended. I thought I was at "Crossfire" or "Hardball," although this panel is going to be very genteel, I promise you.

The CHAIRMAN. Good.

Mr. SABATO. And I have found much to agree with in Carolyn's statement. I would like to make a comment about that first panel, having observed it.

I think you can see why no one reads the American Political Science Review anymore. A very senior political scientist told me years ago that regression analysis is very useful, except when it is not. You can prove almost anything with it, as I think that first panel suggested.

I am delighted to hear you talk about your bill and Senator McConnell and Senator Schumer to talk about their bill. It is good to know that we are on the verge of doing something and not just arguing about the results of Florida. And whether it is your bill or their bill or some combination of the two, I certainly agree with you, and I hope that something happens before the end of this Congress.

Even if you only provided the money, Senator, it would be a banner day for election administration and reform, and it would really go a long way to solving some of the problems we saw demonstrated in Florida.

Now, I have been asked to address one particular question, and I will address it and try to go a little bit beyond it, given the tone of the hearing, and that is the intertwined issue of voter registration and vote fraud in the United States, because vote fraud is a concern. It is real. I have studied it for years. It is not invented by critics of the system for one reason or another. It is real.

It has always existed in American politics to one degree or another, and while I was researching—I am going to do what the first panel did and plug all my books, if that is okay, Senator. While I was researching the book "Dirty Little Secrets" a few years ago and researching voter fraud in particular, I was looking at an 1844 election in New York City, and there was a reasonably large voter pool of 41,000, but the turnout on election day was over 55,000, 135 percent of the registered voters. One observer at the time put it, "The dead filled in for the sick, and the city's dogs and cats must have been imbued with irresistible civic spirit." There is still some of that, I am sorry to say.

When we look at election reform of whatever type, I think we have to balance two conflicting values, and it is never easy to do that, because the truth is you would like to have both values in full. It never works out that way in a free democracy. And those two conflicting values that we are trying to balance are full and informed participation of the electorate and integrity of the system.



And there are some internal conflicts in these two particular values, and I think we saw it demonstrated in 2000.

The Miami Herald, for example, showed that the votes of a 90-year-old woman and a 21-year-old man were among more than 2,000 illegal ballots cast by Florida residents who swore they were eligible to vote but, in fact, were not. The woman voted absentee and in person. The man voted despite a felony drug conviction. Those 2,000 illegal ballots were discovered in just 25 of Florida's 67 counties, and this in a Presidential race won by only 537 ballots in Florida.

Similarly, in Wisconsin, the Milwaukee Journal Sentinel found that at least 361 felons had voted illegally last November 7th, breaking the law that disqualifies felons from voting unless they are off probation and parole. Like Florida, Wisconsin was the site of a very close Bush-Gore contest.

In years prior to 2000, I found examples, which I have included in the book, of extensive absentee ballot fraud in Alabama, hundreds of phony registrations in California; 1,000-plus illegal votes in New Jersey, including some by people who were unregistered and others who were dead, or, as we like to call them, life-challenged voters; significant absentee ballot fraud in Philadelphia; votes stolen from the elderly and infirm in Texas; and the list goes on and on—none in Connecticut, absolutely none in Connecticut, Senator.

The CHAIRMAN. Good.

Mr. SABATO. Just as with other areas of election reform, I would suggest in this case it is important to remember that in a very cynical age, one fraudulent ballot is one ballot too many. It encourages the deep cynicism of our age, that cynicism perhaps encouraged by the media and lots of events. But it does encourage that cynicism. And there are loads of fixes for the vote fraud problem, and I include them in my written testimony, and I am not going to go through all of them right now. I think a photo ID is a good start, perhaps a unique number given at the time of registration, a Social Security number or driver's license number or something like that that can be checked at the time.

I frankly think that provisional voting is a very useful process. I do not necessarily agree that it should be federally mandated, but I like it. We have it in my own home State of Virginia. It is a useful process. If you have a challenged ballot, you put it to the side. If the election is not close, you never have to worry about going back to it. If it is close, you have got the information you need to check it and so on. And I have got probably about 20 suggestions in here, and I won't bore you and the others still remaining in the room by going through them all.

The conclusion that I reach is simply that registration and voting should be as easy as possible, and the process should also be as fraud-proof as possible, again, recognizing there is some conflict there.

Finally, I would suggest that as you move to address these and other election reform issues, we need to respect the needs of States and localities for flexibility. No two States are exactly alike. Each has unique needs and challenges, not just North Dakota but the other 49 States, too. While parameters tied to Federal funding will

provide necessary accountability for fund usage, Congress should stop well short of nationwide mandates on voting systems.

I believe you should encourage reform, but you should not in essence homogenize the election process in any significant way. Instead, I think you should respect fully the diversity of federalism in the election process. We are on a kind of slippery slope. Maybe the three you suggest, and particularly, challenged ballots or provisional ballots are acceptable, but I can see over time a lot of additional requirements being attached, and I think that is a dangerous process.

There are many things that you ought to encourage without requiring: better poll worker training, desperately needed, which would have solved many of the problems in Florida, by the way; second-chance technology, which is far better than spending the money on improving the actual voting machines. A number of studies have shown, as my own center is studying right now, that there is not much difference between and among the varying machines. The punch card ballots have gotten a bad rap. They are not that bad. The computer touch screen machinery is not that good. It is not the voting technology. Instead, it is the need for second-chance technology, voters having the opportunity to correct a mistake if they make it, the poll workers being able to catch those mistakes, better maintenance of voter lists, some of the things that Carolyn discussed. And, finally, civic education, civic education, civic education.

If I can just cite from a book that I have coming out in August called "Overtime," about the 2000 election—

The CHAIRMAN. I am glad you do not have a 1-800 number.

Mr. SABATO. No, not yet, Senator, but I am working on it. In Florida, there were 111,261 overvotes in an election decided by 537 votes. There were, in addition, 64,826 undervotes, that is, no recorded choice for President. Some of these were due to the voting technology. Some were due to other problems at the polling place, as the first panel pointed out.

But tens of thousands of Floridians wasted their precious franchise. Nearly 1,000 people in Florida, twice the winning margin of George Bush, voted for all ten Presidential tickets. More than 3,600 people voted for every candidate except George Bush. More than 700 voted for every candidate but Al Gore. Many thousands voted for both Bush and Gore.

Now, some of these were statements that people were trying to make, as strange as the statements were. Others were mistakes that could have been corrected with the second-chance technology.

The CHAIRMAN. We support that in our bill very strongly.

Mr. SABATO. Yes, and I think that is a good thing. As I say, I have problems with mandates. Encouraging with money is a very useful thing.

Finally, let me mention, if I can, when I am covering civic education, my own Center for Governmental Studies at the University of Virginia has a program called the Youth Leadership Initiative which Congress has been very good to fund. We are trying to reach young people in elementary and secondary schools. We are trying to teach them about the voting process using mock elections, but most particularly, we are trying to teach them how to use the vot-

ing machines they have in their locality so that by the time they get out of school, they will know how to vote. They will not suffer from the phobia that so many voters suffer from when they go to the polling places.

We thank you for supporting that, Mr. Chairman. We hope to do more good with that program in the future.

[The prepared statement of Mr. Sabato follows:]

**Testimony**  
**U.S. Senate Committee on Rules**  
**Dr. Larry J. Sabato**  
**Director, University of Virginia Center for Governmental Studies**  
**June 27, 2001**

Mr. Chairman, Members of the Committee, thank you for this opportunity to speak with you today about election reform. I would like to talk specifically about the intertwined issues of voter registration and vote fraud in the United States.

Of course, this is a subject that has received considerable attention during the months since the ballots were cast in the 2000 Presidential election.

Let me begin my remarks by stating what all of us familiar with politics already know. Fraud and corruption in the American electoral system did not start with the 2000 Presidential election. In fact, evidence of corruption spans the entire history of our Republic. One example I cited in my book, Dirty Little Secrets: The Persistence of Corruption in American Politics, is the following: "For the 1844 election, New York City had a reasonably large voter pool of 41,000, but the turnout on Election Day was far more spectacular: 55,000, or 135 percent of the entire pool of voters! As one observer put it, 'the dead filled in for the sick,' and the city's dogs and cats must have been imbued with irresistible civic spirit, too (276)."

What could be unique at this point in our nation's history is the degree to which we, as a nation, can embark on a serious discussion of how to reform the system to limit the extent of electoral fraud and corruption.

The November 2000 election can serve as the catalyst for such a debate. By all means, we should toss out antiquated voting machines that poorly count properly cast ballots. But we ought simultaneously to spend sufficient resources to reduce vote fraud in several states.

When we look at the registration system and voting process in the U. S., we have to balance two conflicting values, two equally worthy objectives:

1. The goal of full and informed participation of the electorate.
2. The integrity of the system.

To the extent that we keep expanding the participation rate and make it easier and easier for people to register and vote, we almost certainly increase the chances for voter fraud. So, in a sense, it is a trade off. To move completely in the direction of one value as opposed to the other is foolhardy. We must achieve a balance between these two important democratic values. Currently we do not have a good balance.

As Election 2000 demonstrated, the problems are numerous. I draw your attention to several of the most egregious instances of fraud that were encountered last year, and in other recent elections.

Last November, as reported by *The Miami Herald*, the votes of a 90-year-old woman and 21-year-old man were among more than 2,000 illegal ballots cast by Florida residents who swore they were eligible to vote, but in fact were not. The woman voted absentee and in person, while the man voted despite a felony drug conviction. These 2,000 illegal ballots were discovered in just 25 of Florida's 67 counties – this in a presidential race won by only 537 ballots in Florida.

These voters cast ballots even though their names were not on precinct voter registration lists, because all they had to do was sign an affirmation swearing they were eligible to vote.

Even though they were supposed to, poll workers never checked to see if these 2,000 people were actually registered. In addition to these 2,000, there were 1,200 instances of convicted Florida felons who no longer had the right to vote, but nevertheless managed to stay on the voting rolls and cast their ballot in the last election. There is also some indication that at least a few people who maintain two residencies cast ballots in two different states, one by absentee and the other in person.

Similarly, in Wisconsin, the *Milwaukee Journal Sentinel* found that at least 361 felons voted illegally last November 7th, breaking the state law that disqualifies felons from voting until they are off probation and parole. Like Florida, Wisconsin was the site of a very close Bush-Gore contest.

But it doesn't stop with Florida and Wisconsin, and as I suggested, fraud didn't just appear during the 2000 Presidential election.

Just a glance at the past decade shows many examples of electoral fraud. You don't even have to look very closely to find, as I did in my book *Dirty Little Secrets: The Persistence of Corruption in American Politics*:

Extensive absentee ballot fraud in Alabama.

Hundreds of phony registrations in California.

Nearly 1,000 illegal votes in New Jersey including some by people who were unregistered and others who were dead.

Significant absentee ballot fraud in Philadelphia.

Votes stolen from the elderly and infirm in Texas

And the list goes on and on.

Voter fraud is not limited only to these examples. My strong suspicion -- based on scores of investigated and unexplored tips from political observers and interviewees over the years -- is that some degree of vote fraud can be found almost everywhere, and serious outbreaks can and do occur in every region of the country.

Whether fraud is Democratic or Republican, or located in the North or the South or the West, the effect on American democracy is similar. While electoral hanky-panky affects the outcome in only a small proportion of elections (mainly in very tight races), one fraudulent ballot is one too many for the integrity of the system and the confidence that the people have in the system.

The need for reform is urgent and clear. Voter turnout in the United States is traditionally too low, and cynicism among citizens too high, to permit the malodorous malady of election fraud to continue unchecked -- or to spread.

The first best step is to ensure accurate lists of registered voters. Merely replacing one type of voting machine with another does nothing to address whether the voter is legally eligible and registered.

Just as with other areas of election reform, state action, not federal mandates, is the best fix of the system. I believe states should require that a photo identification card (of any sort) should be produced by each voter at the polls.

Second, voters should be asked at the time of registration to give a number unique to them -- a social security number, a driver's license number -- that can be prerecorded on the voter list provided each precinct's workers.

Third, every voter should have to sign his name on the voting rolls at the polls so that the signature can be compared to the one on the registration form to see if they match up. This comparison would probably be made only in the event the results of a close election were challenged, although again, the computer technology already exists for instantaneously scrolling, side by side, the poll signature and the registration signature.

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

Fifth, no early-voting/mail-in and absentee ballot should ever be separated from its cover sheet and counted until the voter's signature has been carefully checked against the registration file signatures. Every envelope containing the marked absentee or early-voting/mail-in ballot should also be signed by an adult witness whose address should also be listed.

Finally, Mr. Chairman let me say that these regulations, even if adopted universally and followed to the letter, will be insufficient if:

- (1) registrars and elections offices are not staffed and funded adequately;
- (2) state statutes do not punish fraud severely – major felonies are required, not minor misdemeanors;
- (3) law enforcement authorities do not make voter fraud a priority and press for substantial legal penalties against those found violating the fraud statutes; and
- (4) the news media do not begin to look for evidence of voter fraud – a probable prerequisite to their finding it. A good first step would be for every news organization to establish and publicize an “election corruption hotline.”

The examples I listed earlier, and others throughout the nation make it obvious that the solutions required for voter fraud must necessarily be adapted to each locality’s culture and practice. But one imperative unites all the cases: While registration and voting should be as easy as possible, the process should also be as fraud-proof as possible.

As Congress moves to address these and other election reform issues, they must recognize and respect the needs of states and localities for flexibility. No two states are exactly alike—each has unique needs and challenges. While parameters tied to federal funding will provide necessary accountability for fund usage, Congress should stop well short of nationwide mandates on voting systems.

As I noted earlier, we must maximize the full and informed participation of the electorate while still preserving the integrity of our system. One can generally observe that our zealous focus on the full, but not necessarily informed, participation of the electorate may in fact challenge the integrity of our democratic process. Increasing informed participation must be our primary goal. For this reason, my Center for Governmental Studies at the University of Virginia has launched the Youth Leadership Initiative. This program helps schools to improve civic education, and it shows middle and high school students across America the value of informed participation. Many of you on this committee have supported this program in the past. I applaud you for doing so and encourage you to continue to support the Youth Leadership Initiative and other programs like it that drive young people into our political process.

Informed participation combats fraud both by increasing salience and scrutiny, and by diminishing the proportional impact of fraudulent votes. Clearly, we must do all we can to improve the implementation of our registration and voting procedures. I believe the measures I have discussed today would move us in the right direction. However, I believe strongly that a focus on civic education must also be a part of any serious effort to revive confidence in our democracy.

Thank you Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Sabato. I appreciate that very much.

Jim, I have about 4 minutes left to vote on the floor, so we are going to take a recess for 5 minutes while I go over and vote, and then come right back—

Mr. DICKSON. Sir, do you want me to—

The CHAIRMAN. I want you to pause for a second because I have got to make the vote. If I miss the vote, that will be hard to explain.

Mr. DICKSON. Fine.

The CHAIRMAN. So we will take a recess for a couple of minutes. I will come right back, take your testimony and a few questions, and we will let you go.

Be right back.

[Recess.]

The CHAIRMAN. The committee will come to order. We will try and wrap this up here for everyone.

Jim, I thank you immensely for waiting, and I apologize for having to slip out to cast that vote. But we welcome you here, and thank you not only for your presence here today, but for your wonderful efforts on behalf of the disability community, not only across the country but around the world. You have done a great job, and the association has as well. So thank you for being here.

#### STATEMENT OF JAMES C. DICKSON

Mr. DICKSON. Thank you, Senator. I am Jim Dickson. I am vice president of the American Association of People with Disabilities. I chaired a coalition of 36 national disability groups last year which worked to increase the turnout of voters with disabilities, the first time the community as a group focused on voting. According to the Harris poll, we increased the turnout of voters with disabilities by 2.7 million over 1996. That is the good news.

The bad news—and I wish Dr. Thornstrom was here—is that we do have a crisis of access to the polling places for millions of Americans with disabilities. There were 21 million Americans with disabilities who did not vote in the last election. That makes us the single largest demographic group in non-voters. We do not vote for different reasons, depending on the disability. I am blind. I have never cast a secret ballot. Much of America, after last November's election, wondered if their ballot was marked or counted according to their intent. I have wondered that, and millions of Americans like me, every time we vote. Three times I have had poll workers try to discourage me from my selection.

A couple years ago, my wife was in the polling place with me. She said, "Jim, I know you love me. Now I know you trust me because you think I am marking this ballot for that idiot." [Laughter.]

The CHAIRMAN. We do not want to know any more than that, Jim.

Mr. DICKSON. It was a local election. Based on the United States Census, there are over 11 million Americans, who because of disability, vision as well as hand mobility, cannot cast a secret ballot. The technology exists that would allow us to cast secret ballots. However, many election officials around the country are choosing



to continue to buy inaccessible voting systems. The State of Florida has been praised for their recent legislation. Their recent legislation means that over 500,000 Floridians will not have the right to cast a secret ballot. They are purchasing inaccessible optical scan systems. It is an embarrassment to me as an American, that I can get on an elevator by myself because there is Braille, but I cannot go into the voting booth and cast a ballot by myself.

The city of Philadelphia is spending \$19.5 million for new DREs that are inaccessible. They did not even request in their request for proposals that machines offer a secret ballot to the blind and visually impaired. Philadelphia has over 1,600 polling places, 46 of which a person in a wheelchair can enter. 1,600 are physically inaccessible. The good Secretary of State from Ohio seems to be saying he is not sure about national mandates. There are physically inaccessible polling places all across his state, as there are in every state except for the State of Rhode Island.

We must have—

The CHAIRMAN. You might want to point out why that is the case in Rhode Island, because it is worth nothing, I think for the record. I know the reason why, but I think you had better state it.

Mr. DICKSON. Now Congressman James Langevin is a quadriplegic. As former Secretary of State, he reached out to the disability community. They inspected every polling place in the state, over an 18-month process, set deadlines and dates, and have made every polling place physically accessible.

The CHAIRMAN. And it did not bankrupt the state.

Mr. DICKSON. It did not bankrupt the state. The average cost of making the polling place accessible was less than \$400. Yet we hear election officials all around the country say, "We cannot afford it."

We need mandatory standards for physical access. 17 years ago Congress passed a law that said you may make your polling places accessible. We do not even know how many polling places are inaccessible. The last Federal Election Commission reports 20,000. We believe the number is closer to 50. There has been much plaudits and much praise of our decentralized election system. I am going to tell you a story of how the FEC came up with that 20,000 inaccessible figure, which demonstrates the entire problem with a voluntary decentralized system.

A questionnaire was sent out by the FEC to the chief election officer in the states. The note said, "Please mail this out to all your counties." The chief election officers in the counties then, if they chose to, mailed out the questionnaire. Many counties did not even fill the questionnaire out or send it back. When that happened, the chief election officers reasoned as follows. We were asking local election officials for a report on which polling places are not accessible. Since—I am forgetting the county name, but it is Phoenix, to mention just one—did not send back a report, we are assuming that every one of their polling places are accessible, and that happened in many, many, many counties.

We need mandatory standards on provisional ballots, and I would add a provisional ballot which gives voter notification promptly on whether or not the ballot was counted. People with disabilities are routinely told by poll workers, "You cannot vote be-

cause you are too disabled. You do not know what you are doing.” We have detailed lists of where that has happened. It is not the poll workers’ right to say, “You are too disabled to vote.” Yet it happens in every single election.

There is an existing Federal law that says voters with disabilities can choose, if they want assistance, who will provide that assistance. Poll workers routinely tell people with disabilities—and I have been told this myself—“You cannot bring that person in. I have to be there with you.” In some states they say there have got to be two Republicans and two Democrats, so you have a party in the polling booth. [Laughter.]

The American Association of People with Disabilities endorses wholeheartedly your bill. We commend—as does the United Association of Cerebral Palsies and many other disability groups. We commend Senator McConnell for his bill, but tying a secret and verifiable ballot and tying physical access to the distribution of money will not fix the problem. It will not fix the problem because, number one, there is not going to be enough money to fix everything. Local election officials, as they should, have the right to decide what they want to fix first. They can choose to spend the money on fixing the voter registration roll, as was pointed out by the League of Women Voters, something that needs to be done. The estimates for computerizing the Nation’s voter registration system would use up the entire first-year allocation of your bill.

Poll worker training clearly is needed. There are counties who will choose to put that money into poll worker training. That is going to mean that they are going to turn around and say to millions of Americans, “We did not have the money to give you a secret ballot. We did not have the money to make the polling place accessible. Just wait.” We have waited for 17 years.

Just a minute. I am sorry.

As the Congress moves forward, I would like the Congress to consider a private right of action to be added to the bill. Mandates without an enforcement mechanism will not work. There is voter fraud. It ought to be punished. Every election official in the country will tell you that when they ask the District Attorney to prosecute fraud, they are told, “Too busy, can’t do it.” People with disabilities, if there is not a national mandate, will be told, “Not enough money. Too busy, we can’t do it.”

We could be the canary in the mine of American elections. If the system is accessible to us, it will be accessible to all. We heard testimony this morning about education. The audible voting systems that would allow me, for the first time to cast a secret ballot, would be audible to people who are illiterate as well. Many American citizens have immigrated to this country, as did my grandparents, from a country that never taught them to read. Electronic voting systems will allow the ballot to be translated so that a person who was never taught to read their native language and has a right to vote, can hear the ballot. We are asking that at least one such machine be placed in every polling place, and applaud you for saying by 2004. If there is not a deadline, there will not be a solution.

Senator Feinstein said this morning that she thought elections were sometimes administrated sloppily, was I think her word. I have, before joining the American Associations with Persons with

Disabilities, I have directed nonpartisan voter registration and voter turnout drives in 23 states. I have seen arbitrary and illegal actions by poll workers over and over and over again. A voter bill of rights that states clearly the voter has a right to a provisional ballot, that states clearly that the voter has a right to privacy, that states clearly that the voter has a right to bring into the polls whom he or she chooses, will hold election poll workers accountable.

I will end my remarks with just one story. In the last election in New York City, a blind MSW arranged for a volunteer reader, who happened to be an attorney, to meet the woman at the polls so she could vote. The poll worker told the woman, "You cannot wait here for your reader. You have to let me cast your ballot for you." When the blind voter refused, the poll worker called the police. Fortunately for this situation, the reader arrived, using the authority of being an attorney, the poll worker backed down. Most blind Americans do not have enough readers. Most do not have lawyers who are readers. We have a right to choose who casts our ballot if that is what we want, and we need mandatory standards to insure that this will happen.

Thank you for this hearing. Thank you for all you are doing.

[The prepared statement of Mr. Dickson follows:]



June 27, 2001

Testimonial of James C. Dickson

Senator Dodd and distinguished panelists:

I am Jim Dickson. I have worked on elections for over thirty years, ten as a volunteer and twenty as a professional. Currently, I am Chair of the Disability Vote Project, a coalition of 36 national disability-related organizations that worked for over a year to increase the political participation of Americans with disabilities. I am also Vice President for Governmental Affairs at the American Association of People with Disabilities.

The nation's entire disability community wishes to thank Senator Dodd for holding these hearings and for pointing out the need for mandatory national standards.

Over 14 million voters with disabilities cast their vote in the 2000 presidential election. This was an increase of more than 2.7 million from the 1996 election. Unfortunately, more than 21 million voting aged people with disabilities did not cast a ballot. A recent Harris Poll survey commissioned by the National Organization on Disability found that about 41% of people with disabilities voted in the November election. This is up from 31% in the 1996 election, but still far below the national average of about 52% of the public voting. The low voter turnout of people with disabilities is due to a number of causes, but a major piece of the problem is inaccessible polling places and voting systems.

The majority of Americans take for granted their right to privacy at the polling place. According to the U.S. Census more than 10 million voters with disabilities are unable to exercise this right because their visual impairment makes it difficult or impossible to see print. These voters cannot cast a secret ballot; they must rely on the courtesy of family members, friends or even sometimes strangers to cast their vote for them. This is completely unacceptable. I am blind. Everyday I walk down the street, catch a bus to go to work, get off at my stop, enter my building, board the elevator, push the button for my floor, enter my office, turn on my computer, download my emails, and begin my day at work. I do this every day, by myself. Millions of people just like me do these very same things, independently. But when I go to my polling place I have to bring my wife or my ten year-old daughter with me. Someone else has to cast my vote for me. Once, after my wife cast my ballot, she said to me, "Jim I knew that you loved me, but now I know you

**1819 H Street NW • Suite 330 • Washington, DC 20006-3603**  
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trust me because you think I marked your ballot for that idiot.” The point of that anecdote is there is always some level of uncertainty when another person marks your ballot for you. Twice in Massachusetts and once in California, while relying on a poll worker to cast my ballot, the poll worker attempted to change my mind about whom I was voting for. I held firm, but to this day I really do not know if they cast my ballot according to my wishes. Last year’s election in Florida caused many Americans to wonder, for the first time, if their vote was tallied for the person they intended to vote for. I, and millions of other American citizens, ask ourselves this question every time we vote. According to a Harris Interactive survey conducted in December 2000, 95% of Americans with disabilities, compared with 86% of the general public, believe that we have a serious problem with how votes are cast and counted.

We need accurate, effective, and accessible voting systems. These systems already exist. Money cannot be a reason to purchase inaccessible systems and continue the disenfranchisement of the nation’s largest minority. Texas has already led the way. In 1999, the state legislature passed and Governor Bush signed into law, legislation that requires any new voting system purchased to be fully accessible to voters with disabilities and the system must offer a secret and independent ballot to voters who are blind or who have low vision. (The Texas legislation and regulations are available on the web at <http://info.sos.state.tx.us>) This means computer systems with a simple adaptation that offers speech synthesis so that I, and others like me, can hear the ballot. Another simple adaptation is the use of special switches that allow voters who have arm or hand disabilities and are unable to hold a pen to cast their ballot privately. (See attached list of manufacturers who produce accessible voting systems)

According to the Federal Election Commission, 20,000 of the nation’s 120,000 polling places are physically inaccessible to voters with disabilities; other estimates put it as high as 50,000. This means voters who use wheelchairs or other mobility devices across the country are unable to enter their polling places.

The disability community’s patience, as we wait for polling places and voting systems to be made accessible, is running thin. There is a growing body of litigation. The courts are ruling that polling places must be made accessible. New York Attorney General, Elliot Spitzer, sought a preliminary injunction to modify polling place accessibility in an effort to bring the Delaware and Schoharie counties into compliance for the election primaries scheduled for March 7, 2000. The injunction was granted on February 8, 2000 by Senior Judge Howard G. Munson of the Northern District of New York. The suit followed years of informal efforts to work with the counties to achieve compliance.

In a press release, Elliot Spitzer said, ““This suit was brought because the civil rights of New Yorkers with physical disabilities were being violated and they were denied their right to vote. In addition, the elderly, and those who use a walker, cane, or wheelchair

were also being denied a fundamental right of participation," said Spitzer. "This decision will ensure that their rights are maintained."

For years, election officials have been encourage, by law, but not mandated to, make polling places accessible and they have failed to do so. Seventeen years ago Congress passed legislation encouraging, but not mandating accessible polling places and yet today roughly one-third of all polling places are inaccessible. Only a handful of states make voter information available in accessible formats. Eleven years ago the Federal Election Commission issued voluntary voting system standards addressing recounts, ballot security and other matters. To date thirteen states have failed to adopt these standards and five states adopted these standards only after last November's election. A voluntary accessibility standard will absolutely ensure that thousands of polling places remain inaccessible and that more than eleven million disenfranchised voters will not be able to cast a secret and verifiable ballot.

In order to allow citizens with disabilities to exercise their franchise with the same freedom and independence as the rest of the population, the American Association of People with disabilities submits the following recommendations.

- 1) All polling places must be physically accessible to voters who use wheelchairs and/or have mobility impairments. Legislation must require a collaborative process between the disability community and election officials to inspect every polling place and existing polling places should be made accessible or the polling place should be moved to an accessible location by the deadline of November 2004.
- 2) In every polling place there should be at least one polling device that would offer a secret ballot to all voters with disabilities. Any federal funds used for the purchase of new polling equipment must only be used to purchase accessible voting systems that offer a secret ballot, and the polling site the new equipment is placed in must also be 100% physically accessible.
- 3) The election community should conduct a coordinated outreach effort through the disability community in order to recruit people with disabilities to be poll workers. The nation must recruit and train competent poll workers. Most election officials report that it is difficult to find people who can volunteer the one or two days a year necessary to be election workers. Seventy percent of people with disabilities are unemployed. It is difficult for most Americans to volunteer a 15 hour work day, if the law mandates 6 or 8 hour shifts, the number of people willing to serve as poll workers will grow significantly.
- 4) Poll workers must be educated about disability etiquette in their training sessions. They must learn how to appropriately serve voters with disabilities. Federal law currently allows the voter to select who will assist her or him in the polls; tens of thousands of voters with disabilities report that this right has been denied – the poll workers insist that they alone should enter the booth along with the disabled voter.

- 5) Any materials prepared by election officials to educate the voter on the candidates or voting procedures must be made available in alternative formats, so that people with visual impairments and other disabilities can listen to or read this information.

Compliance with these points needs to be enforceable by an individual or organization's right to sue and if the individual or organization prevails, they should be entitled to reasonable attorney's fees.

In addition to these disability specific recommendations, the American Association of People with Disabilities also believes that any effective election reform legislation should mandate the following non-disability specific requirements.

- a) A provisional ballot must be offered to any person who appears at a polling place and is told that she or he is not eligible to vote. The voter should then be promptly notified, in writing, whether or not the ballot was counted and if not, why.
- b) Language minority access must be available; specifically including written ballots and bi-lingual poll workers (the audio ballot for the blind can be easily and inexpensively translated into a foreign language allowing those citizens who may never have been taught to read in their native country to cast a ballot with privacy and without embarrassment).
- c) The Voters Bill of Rights must be prominently displayed in all polling places and be widely distributed before an election.

On behalf of the Disability Vote Project and the American Association of People with Disabilities, I wish to commend and thank you, Senator Dodd, for your interest and for the important service you will be providing the nation when you pass legislation that mandates these reforms.



**AMERICAN ASSOCIATION OF  
PEOPLE WITH DISABILITIES**

Accessible Voting Machine Manufacturers

**Hart Intercivic**  
E-Slate System  
15500 Wells Port Drive  
Austin, TX 78728  
512.223.4278  
[www.hartintercivic.com](http://www.hartintercivic.com)

**QuadMedia**  
Kiosk System  
6580 Valley Center Drive  
Radford, VA 24141  
540.633.6739  
[www.kioskinfo.com](http://www.kioskinfo.com)

**Election Systems & Software, Inc.**  
i-votronic System  
11208 John Galt Blvd.  
Omaha, NE 68137  
800.247.8683  
[www.essvote.com](http://www.essvote.com)

**Global Election Software**  
Accuvote TS System  
1611 Wilmeth Road  
Mc Kinney, TX 75069  
972.542.6000  
[www.gesn.com](http://www.gesn.com)

**Sequoia Pacific**  
AVC Advantage System  
811 North Main Street  
P.O. Box 1399  
Jamestown, NY 14702-1399  
716.487.0161  
[www.seqpac.com](http://www.seqpac.com)

**VoteHere**  
3101 Northup Way, Suite 250  
Bellevue, WA 98004  
[www.votehere.net](http://www.votehere.net)

**1819 H Street NW • Suite 330 • Washington, DC 20006-3603**  
**Toll Free 800-840-8844 • VOICE/TTY 202-457-0046 • FAX 202-457-0473**  
**WEBSITE [www.aapd-dc.org](http://www.aapd-dc.org)**



The CHAIRMAN. Thank you, Jim. You know, sometimes we do these hearings in a bizarre order, and obviously we had the Commission on Civil Rights to hear from. But I apologize to you, because I should have had you as my first witness, because you make the case. And we fool around with a lot of language and rhetoric, and you said it so right, about being the canary in the mine in a sense. This is what we are talking about. You know, I am a great believer in carrots. I have authored more legislation where I have had carrot approaches, and it does work in some areas. But with certain basic rights, when you begin to see a pattern of behavior over a number of years, it does not. So I am not trying to be hard-headed when I talk about mandates.

As Jim knows, my sister is blind, so this is more than just a theoretical exercise for me. I know more about it, I suppose, because I grew up in a family of six children, and watched my parents do remarkable work with my sister, who has now been a teacher for years, has taught Montessori schools, has two master's degrees, and is a very independent individual. I became sensitized to what it is to not have access to public transportation. She is a little older than I am. I will not tell you how much. She would be angry if I did. But going back before World War II, we grew up in an age when a lot of the things that are available today for younger people with disabilities were not. She had the good fortune of being born into a family with a mother who cared deeply, and helped her, as my father did, and others, to see to it that she would maximize her potential. But when you hear about what happens to people who try to go in and cast ballots, and we are talking not here a few thousand, but hundreds of thousands and millions. You get some sense of why I feel it is important to have some mandates here that demand that these ballots be accountable.

Let me just ask a few questions of you because I have kept you a long time, all of you. Jim, I thank you immensely for your testimony. I thank all of you, for that matter.

Ms. Jefferson-Jenkins, you had a wonderful line in your testimony; you talked about years of indifference. That is right. That is what I said earlier. I would not be here and this hearing would not have been conducted if it had not been for the events of last fall and last winter, candidly. I doubt I would have gotten much interest in talking about doing something about electoral reform, had the country not been traumatized by watching a process unfold day after day, week after week, for several months, to decide who the President and the Vice President of the United States would be, culminating in a decision reached just a block away from here by the Supreme Court.

So it was these events, and the fact that people saw this and realized there were some serious problems, which everyone now agrees with. No one is arguing with me. You speak about years of indifference to this problem, and what I am concerned about is the approach the League is taking, that we can sort of get by here with just putting some money out there and not addressing the problems that Jim Dickson has just identified, for instance.

How does the League, in all good conscience, tell me that this is just a money problem, when you know when you hear from the disability community with millions of people who are denied the right

to vote in place after place, despite the fact 17 years ago we dangled the carrot?

Yet here we are today, the beginning of the 21st century. I am not faulting you, and I do not expect you to get involved in one bill or the other. But you place so much emphasis on bipartisanship, and I am a great bipartisan guy. I love bipartisanship, but we are talking about something far more significant and important than bipartisanship, and a lot of times the best ideas do not have the luxury of being bipartisan. When that is not an element it is nice, but I hope the League is not taking a position that a bad bill or a less-than-good bill that is bipartisan is better than doing something that is right.

We have got a unique opportunity here, as a result of the events of last fall. They are not going to come around again. I have got an interested country. Larry, you mentioned young people. I cannot tell you the number of young people who are interested, for the first time, in elections because of what they watched happen last year. I mean, there is a tremendous interest among younger people. We have been wondering how to get them interested. Ironically, it was the debacle of last fall that has provoked probably the greatest interest among young people about elections. I do not know when that is going to happen again.

And so, one, I want to know why we should not mandate some guidelines here for the next election; and, secondly, if you would mention to me costs because, I am going to have a hard time funding anything around here with limited resources.

Now I have been quoted some pretty significant numbers of what it would take just to make the voting machines accessible for the disabled community in this country. Do you have any idea what we are talking about dollarwise?

Ms. JEFFERSON-JACKSON. Dollarwise, I do not, but I need to start by saying, with all due respect, Senator, the League is not just about money, and that is not the premise of our remarks, that money will solve all of the problems. We have been looking at this issue since our studies of the 1970s, and we look at all aspects of election administration reform. What is uncanny is, other than the technology pieces, what we have been saying since the 1970s are still the issues—the poll worker training—

The CHAIRMAN. Right.

Ms. JEFFERSON-JACKSON [continuing]. The access, the Motor Voter implementation, the compliance with the existing laws. Those are the things that we are looking at, but we know that in most instances, the most egregious infractions have occurred primarily because of lack of funding.

We also know that in order for anything to be—

The CHAIRMAN. Well, you just heard the situation. We are going to put in 1,600 polling places, \$19 million—they're not lacking funds.

Ms. JEFFERSON-JACKSON. Well, no, but it is how you use those funds to implement the law to make sure that every voter has access. And I think, fundamentally, we are all in agreement. I have heard all day long that.

The CHAIRMAN. Had we mandated 17 years ago that those machines be accessible to people, do you think they would be spending \$19 million on machines that were not accessible?

Ms. JEFFERSON-JACKSON. You could mandate it, but are you going to enforce it, and are you going to mandate it at a level where the implementation is going to be a consistent piece of it?

The CHAIRMAN. Yes, hopefully.

Ms. JEFFERSON-JACKSON. So here is what our bottom line is, and we can argue about the need for money and the need for all of these other things. I do not disagree with any of the panelists all day. The League has the full support for every aspect of election administration reform.

But what I am saying is, and what we are saying is that something needs to happen, and we can argue about the detail of how that is implemented, but fundamentally we all are in agreement that there needs to be some kind of legislation passed that will address the most egregious issues that have occurred and were highlighted in the 2000 election because I think we keep focusing on 2004. 2002 is just as important, and we need to do something now.

The CHAIRMAN. Well, I do not disagree. Let me ask you this: Is compliance with existing civil rights laws enough? The Voting Rights Act, Motor Votor, ADA—does the League take the position that if we just enforce those provisions than the idea of sample balloting, provisional voting, some national standards on equipment and so forth are not relevant and not important? Or are they important?

Ms. JEFFERSON-JACKSON. They are important. Of course, they are.

The CHAIRMAN. Well, then why would you want to leave it up to whim? You have seen and listened to testimony that talks about the times we have taken the carrot approach that have not worked. Why would we not take advantage of a mood where the country realizes some things need to be done? And why would not the League support mandating these things—just as we mandated some of the other provisions in the Voting Rights Act since 1965? I do not understand that.

Ms. JEFFERSON-JACKSON. In principle, in principle, we are not opposed. But everything that happens has to be carefully evaluated and fully understood because there are consequences on every aspect of election administration reform.

The CHAIRMAN. I agree.

Ms. JEFFERSON-JACKSON. It is not just one aspect. So, if we do something as it relates to funding, does that mean it is going to affect poll workers, it is going to affect election officials, it is going—is it multi-year funding or not? I mean, we need to look at the details, and we need to understand that there are some, sometimes, unanticipated outcomes, and we need to just make sure. What we are asking is that we make sure that we fully understand what those details are.

The CHAIRMAN. Let me ask you this: In the League's support of 953, the area of agreements certainly are noted, however, you specifically testified regarding the League's position on one of the central aspects of that bill and that is the establishment of a new Federal agency. Now, I get uneasy about new Federal agencies. I think

you have got existing agencies that you can empower, the Justice Department, for instance. Why would you support the creation of a new Federal agency? Do we not have existing agencies such as the Federal Elections Commission and the Justice Department, that are capable to manage this, rather than creating a new agency?

Ms. JEFFERSON-JACKSON. There are existing agencies, within the appropriate constraints, probably could administer this. However, we do not see the need to place all of that responsibility on a currently existing agency. If this is as important as we all are saying it is, and have been saying it is, then we need to make sure that the proper mechanisms are in place to monitor implementation, to reinforce the existing laws and compliance, and to make sure that the integrity of this whole process is not questioned.

The CHAIRMAN. You understand that under the bill the new agency would oversee all aspects of Federal elections, including the grants program. Is that really what is needed?

Ms. JEFFERSON-JACKSON. Is it really what is needed? I would say, Senator, that that is our best-case scenario.

The CHAIRMAN. Okay.

Ms. JEFFERSON-JACKSON. But we are willing to evaluate other options. We are always looking at what the ideal is, and that is what we are presenting as our best-case scenario.

The CHAIRMAN. All right.

Larry, again, thank you for your presence here today.

Mr. SABATO. Thank you, Senator.

The CHAIRMAN. I am just curious about the fraud you mentioned. I know there have been a number of questions raised about it. Certainly, as Jim and others have pointed out, we have got to be doing everything as well as balancing how you increase access and reduce the commissions of fraud. I think Jim's point was that you go to local legal authorities and ask them to prosecute when there are cases of fraud, and it is very difficult to get people to do it.

I am certainly not averse at all to the idea of including something in our legislation that would help to reduce fraud and promote the best practices when it comes to the reduction of voter fraud. Could you give us some guidance on what you think we might do? If you do not have it right here, you may submit it later, but I am just curious if you had some specific ideas on how we might try to incorporate that.

Again, I understand your reluctance on sweeping mandates.

Mr. SABATO. Sure.

The CHAIRMAN. But, obviously, if we are going to be talking about Uncle Sam writing a check and sending it out to 50 States, and I do not know how many of the jurisdictions, and we see just a continuation of the same voter fraud, then we are sort of subsidizing it.

Mr. SABATO. Sure.

The CHAIRMAN. So it would seem to me that there might be some value in putting some mandatory provisions in here. If you are going to use Federal dollars, you ought to take some steps to minimize the fraud problem as well. Do you agree with that?

Mr. SABATO. Yes. If you are going to do that, as you know, I have doubts because of the principle of federalism and because I think

you may be stifling diversity in the States on election processes, I wonder, for example, how would you deal with Oregon's 100-percent mail-in ballots, how that fits into the system. And there may be other systems that States, from time to time, may choose to adopt.

But to address your question, Mr. Chairman, I would—and I have got a good dozen suggestions about fraud right in the testimony—but one that I did not include that I really wish you would consider. I saw Senator Bond's op-ed in one of the local newspapers this morning about voter fraud and the registration problem stemming from Motor Voter, in part. You know, the last thing I want to do is discourage people from participating.

On the other hand, I really believe that one of the worst parts of an otherwise good bill, Motor Voter, was the abolition of the regular purge because there are so many deadwood voters that build up over time, that have died, and moved, and so on, it encourages people in the system who are of a mind to commit fraud to commit fraud.

Now, do I want to go back to the kind of general purge that some States used? No, because I think that was too broad-brush. But let us just propose for an example that every 4 years the voters who have not cast a single ballot in that entire 4-year election cycle are taken as a list, and they are mailed a certified letter from their local electoral board with a very simple form enclosed, where they just have to check a box, "I wish to remain on the list, on the voter list," and they have a postage-paid envelope, so that it is made as easy as possible for them to remain on the list. I would even be willing to do it twice, to do two certified mailings for those who are not returned by the post office as having moved or having passed away.

You could eliminate literally millions of deadwood voters from across the United States on the voting rolls. And honestly, Senator, from what I have seen in looking at this seamy practice of voter fraud for many years, it is the presence of those deadwood names that is an irresistible temptation to many people in both parties, consultants—it does not come from the top, frequently it comes from the bottom of a campaign—it is an irresistible temptation to them to pad the margin a bit.

That would be, if you are going to look at a mandate—I am not in favor of mandates—but if you are going to balance your mandates with a voter fraud mandate, *some kind of purge* that is not as broad-brush as we once had, but does address the problem of deadwood voters, would be very useful.

The CHAIRMAN. Okay. Jim, you mentioned Texas when you discussed accessibility of voting equipment and secret and independent ballot capabilities. I am intrigued by that.

Texas, apparently, has been pretty progressive on this front. You mentioned Rhode Island, but Texas, I gather, is also fairly progressive; is that accurate or am I misinformed?

Mr. DICKSON. Yes. Well, Texas passed a law 2.5 years ago, and President Bush signed it into law as governor, that requires any new purchase of a voting system to offer a secret, verifiable and independent ballot. That is the best single-State law. However, you run into the problem if you happen to vote where they choose not

to buy a new system, you lose your right to a secret and verifiable ballot. It is a wonderful law, but it is only a partial fix.

The CHAIRMAN. Okay.

Mr. DICKSON. There were two other points, Senator, that I neglected to mention earlier.

The CHAIRMAN. Certainly, go ahead.

Mr. DICKSON. There is a Michigan Federal Court ruling that says there is no right to a secret ballot in Federal elections. That is why we need a mandatory standard that says there is such a right.

One other point on why we need mandatory standards. Eleven years ago the Federal Election Commission put out a best practices document called "The Voter System Standards," a voluntary document that dealt with relatively inexpensive things that could be done dealing with counting of ballots and voter system security. Eleven years after that was published, there are still 13 States that have not adopted the voluntary standard. There were four or five States that only adopted the voluntary standard after Florida. If we do not have mandatory standards, we are going to have the same thing in at least 15 of our States.

The CHAIRMAN. You mentioned poll workers. What are the actual numbers of poll workers with disabilities, do you have any idea?

Mr. DICKSON. Very, very small. We have a few, the disability community has volunteered to help recruit poll workers. One of the problems, however, is this rule that says you have got to work a 15-hour day. Well, a 15-hour day is a guaranteed invite for mistakes in the first place. For many people with disabilities, a 15-hour day prevents them from being able to volunteer. Seventy percent of us are unemployed. If there were a 4- or 6-hour shift, hundreds of thousands of us would volunteer to be poll workers.

The CHAIRMAN. Are any States particularly good at this?

Mr. DICKSON. No.

The CHAIRMAN. Rhode Island, for instance, I wonder—

Mr. DICKSON. I know of no specific State that is better or worse.

The CHAIRMAN. Okay.

Mr. DICKSON. I think a lot of it, up to now, has been driven by the individual county election official and the local disability community.

The CHAIRMAN. Okay. Lastly, I wonder if you have been involved in any studies on the disproportionate impact current voting systems have on disabled voters with respect to their ability to cast a vote and have that vote counted? Have you been involved in any of those?

Mr. DICKSON. No.

The CHAIRMAN. Okay.

Very good. Any final comments at all? Ms. Jenkins? Larry, anything else you want to add here?

Mr. SABATO. I just hope you forge forward, Senator, and get a good bill passed.

The CHAIRMAN. Well, we are going to try. Again, I want you to know, when I wrote this bill with John Conyers, it is a draft. These are bills you put out, and we have had co-sponsors come forward. I do not naturally gravitate to mandates, except when I look around, and I see that on occasion they are needed. I mentioned it earlier—I will repeat it again—I am fully sensitized to the notion

that a one-size-fits-all approach is dangerous. The wonderful thing about our country is the diversity of it, and we need to keep that in mind.

But standards do not mean one size fits all. For within those standards there is great flexibility on what you can do and of how it ought to be achieved. But I am saddened when I hear that you have 20 million disabled Americans who do not vote, and you have 11 million who are blind or disabled who do not participate. When you talk about an election decided by 537 votes, and again, putting all of the other issues aside, there is something that cries out for some answers here.

I have got to believe that if we can discard the political labels, as hard as that may be to do, and remind ourselves of this most fundamental right that Thomas Payne, a former constituent of your State, a resident of your State, as the right upon which all other rights are based. I think I am quoting it exactly. This is the right upon which all other rights are based in our society.

I have observed elections in other countries. My brother, Tom, and my sister-in-law just observed the elections in Peru, and the two of them spent two days in Iquitos on the Amazon River, which is part of Peru, monitoring the elections there. They said they wish they could have taken the entire country there to watch what happens. Here are people who are without education and are desperately poor, who stand in line for hours to go in and exercise their right to choose their leaders.

We lecture the world; we send observers all over the world. In the last election, out of 200 million eligible voters in the country to choose the President of the United States, the Congress of the United States, only 100 million people showed up. And we think that was a pretty good turnout. One out of every two eligible voters participated in the choosing of the President of the United States.

And so I disagree with my good friend, the woman from the Civil Rights Commission, who says this is not a crisis. When only one out of every two voters cast a ballot in this country and millions more cannot show up and vote because of their physical disability, I think that is a crisis. Now, maybe I am naive, but I do not like the trend lines. I do not like what I see among younger voters telling people "It does not make any difference, and why should I get involved?"

I get teased a lot by my staff. I walk around every day, 7 days a week, with this tattered old copy of the Constitution and the Declaration of Independence. This was given to me by Senator Robert Byrd of West Virginia, who sits right at this very seat next to me here, and I sit next to him on the floor of the United States Senate. I cherish it, and it reminds me every day why I am here. There is nothing more valuable in all of the words that are written in this small document than the right people have to choose the people who are going to represent them.

And when only one out of two people who are eligible show up to choose the President of the United States and millions more are told, basically, that they cannot be accommodated, for whatever reason, then this document suffers. And, of course, more importantly, the rights that we share as Americans are in jeopardy.

So I am deeply grateful to all of you for being here. This has been a very long day. I apologize. We have had a hearing going on for almost 5 hours, and I know that is a long time without a break. But as my first act as the chairman of this committee—I have never chaired a full committee before of the United States Senate, after 20 years here—I could not think of anything more important than to have a hearing about than this, what Thomas Payne has described as the most basic of all rights, the right of all citizens of this country to be able to choose their elected officials.

And my fervent hope is that, in the midst of all of these other debates about important issues here, we will address this issue in some way that will be constructive and not create a perfect world, but will get us closer to the ideals incorporated in the Bill of Rights, the Constitution, and the Declaration of Independence.

And on that high note, I thank all of you for being here. The record will stay open. Statements from the Mexican-American Legal Defense and Education Fund will be included in the record, a statement by the Leadership Conference on Civil Rights will be included, and members will have until Tuesday, July 10th, to submit questions to the committee to be forwarded to the witnesses.

[The materials and statements appear in Appendixes 15–42, 44.]

The CHAIRMAN. All submissions for the record, including responses to questions, must be received by July 17th.

And with that, the committee will stand adjourned.

[Whereupon, at 3:13 p.m., the committee was adjourned.]

[The Additional Questions submitted for the hearing record are in Appendix 43.]



## **ELECTION REFORM**

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### **MEMBERS OF THE HOUSE OF REPRESENTATIVES ON ELECTION REFORM ISSUES**

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**THURSDAY, JUNE 28, 2001**

U.S. SENATE,  
COMMITTEE ON RULES AND ADMINISTRATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:27 a.m., in room SR-301, Russell Senate Office Building, Hon. Christopher J. Dodd (chairman of the committee) presiding.

Present: Senators Dodd and McConnell.

Staff present: Kennie L. Gill, Staff Director and Chief Counsel; Veronica M. Gillespie, Elections Counsel; Carole Blessington, Administrative Assistant; Tamara Somerville, Republican Staff Director; Brian Lewis, Republican Chief Counsel; Leon R. Sequeira, Republican Counsel; Jill Szczesny, Deputy Chief Clerk; and Lindsay Ott, Staff Assistant.

#### **OPENING STATEMENT OF HON. CHRISTOPHER J. DODD, CHAIRMAN, A U.S. SENATOR FROM THE STATE OF CONNECTICUT**

The CHAIRMAN. The committee will come to order. Let me first of all apologize to my colleagues who are here. Of course, no group understands this better than House Members. We had a couple of votes here this morning at around 10 o'clock, so I apologize for any inconvenience we have caused you.

I am delighted to welcome you to the committee. Let me take a couple of minutes, if I can, and just sort of frame the discussion after yesterday's rather good hearing, a wonderful discussion here about the election results last year from the Civil Rights Commission and other witnesses from around the country. So I am pleased and honored that we are having this second day of hearings.

Yesterday I had the pleasure, as I mentioned, and unexpected privilege to convene the Rules Committee as its chairman in order to receive testimony from the U.S. Commission on Civil Rights, and others, regarding election irregularities in Florida and, more importantly, across the Nation. Because this is not exclusively a Florida issue or Florida problem.

This is our second day of hearings on what I believe is the most crucial issue facing this Congress. I say that with all due respect to those who are dealing with issues such as a patient's bill of rights or prescription-drug benefits and related questions.

But Thomas Paine may have said it best years and years ago, that this is the right—the right to vote and to have your vote counted—upon which all other rights are based. And so everything else we deal with here is a reflection of who gets to come here, who makes the choice, and whether or not those choices are counted. And so this is the most fundamental issue. If we cannot get this one right, then every other right, it seems to me, is in jeopardy.

Yesterday, the committee heard the single most compelling reason for enacting minimum national standards for voting systems, and that is, more than 20 million voting-age Americans with disabilities did not cast a ballot in the last election.

More than 10 million voters with disabilities are unable to exercise that right to vote because his or her visual impairment makes it difficult or impossible for them to read the print on the ballot. What we take for granted, many of us—that we can read the ballot and cast that ballot independently and in private—is only a dream to those who are blind in this society.

For those individuals, our current election system and antiquated voting equipment result in their disenfranchisement.

But that is only the beginning of the story. For racial minorities across America, the level of economic resources of the community in which they live has a direct correlation to whether their ballot is ultimately counted. African American voters have a 16 percent greater chance that their ballots will be thrown out than other voters in this country.

And the findings of the U.S. Commission on Civil Rights regarding the disproportionate disenfranchisement of racial minorities, language minorities, and the disabled were uncontroverted by testimony received by the committee yesterday.

While these hearings are not about Florida, and certainly not about assessing blame for what happened, no one who observed the events of last November and December can fail to have deep concerns about the health of our electoral systems.

It is astounding that nearly 2.5 million eligible voters—some would argue more than that number—who went to the polls last November, stood in line to participate in their democracy were denied the right to have their vote counted.

Some had ballots improperly validated; the names of others were erroneously purged from the rolls or were unable to vote because their polling precinct did not accommodate voters with disabilities or people for whom English is not their native language.

Just to put this in perspective, my State of Connecticut has about a 3 to 3.5 million population. Imagine almost the entire population of my State being denied the right to vote, after having shown up to vote. That gives you some idea of the magnitude of the problem.

In my view, if voter error results from a confusing ballot, from outdated technology that does not accommodate language minorities or the disabled, or from vague procedures that make it unclear as to whether former felons can vote, the result is the same as if a poll tax or a literacy test had been applied at the voting booth.

And just as the Nation refused to stand by and watch State and local election officials disenfranchise minorities through the use of poll taxes and literacy tests, I hope this Nation will not stand by

and watch millions of Americans of color or language minority or disability be disenfranchised by inadequate voting systems and procedures which serve to turn eligible voters away from the polls.

Today I am going to ask each of my colleagues to tell me and the American public how, in light of these findings, we can enact anything short of minimum national standards to ensure the non-discriminatory, independent, private franchise for all eligible Americans.

I submit to my colleagues that it would be a dereliction of our duties to uphold this Constitution and an act of conscious negligence to fail to enact election reform this year that requires basic, common-sense protections for our democracy.

I have had the honor of introducing legislation with my good friend, John Conyers, who is with us here this morning. Our bill requires that by the 2004 elections, three minimum national standards be met: that voting systems meet minimum non-discriminatory standards for ensuring accessibility; that States provide for provisional balloting; and that States provides voters a sample ballot and instructions before they go to the polls.

In a democracy, the voting booth is the instrument by which we participate in our Government. It is there that the promise of freedom finds its purest expression. The right to vote is the cornerstone upon which all other rights are guaranteed, as I said at the outset.

My hope is that we will commit ourselves together to finding a bipartisan solution to the problems that were highlighted last November in Florida and elsewhere around the country. And let us leave here, if we can, rededicated at the end of this Congress to the ideal that all eligible Americans, regardless of race, ethnicity, or language, disability or financial condition, will have the right to participate in this democracy by casting their votes and having those votes counted.

[The prepared statement of Senator Dodd follows:]

STATEMENT OF SENATOR CHRISTOPHER J. DODD  
CHAIRMAN, COMMITTEE ON RULES & ADMINISTRATION  
HEARINGS BEFORE THE COMMITTEE ON ELECTION REFORM  
JUNE 28, 2001

Good morning. It is a privilege and honor to welcome to the Committee so many of our distinguished colleagues from the House of Representatives.

Yesterday, I had the pleasure, and unexpected privilege, to convene this Committee as its Chairman in order to receive testimony from the U.S. Commission on Civil Rights, and others, with regard to election irregularities in Florida and across this Nation.

This is our second day of hearings on what I believe is the most critical issue facing Congress this year: how to ensure that every eligible American has an equal opportunity to cast a vote and have that vote counted.

Yesterday, the Committee heard the single most compelling reason for enacting minimum national standard for voting systems — and that is that more than 20 million voting-age Americans with disabilities did not cast a ballot in the last election.

More than 10 million voters with disabilities are unable to exercise that right to vote because his or her visual impairment makes it difficult or impossible to read the print on the ballot. What we take for granted — that we can read the ballot and cast that ballot independently and in private — is only a dream to the blind.

For those individuals, our current election system, and antiquated voting equipment, result in their disenfranchisement.

But that is only the beginning of the story. For racial minorities across America, the level of economic resources of the community in which they live has a direct correlation to whether their ballot is ultimately counted. African American voters have a 16% greater chance that their ballots will be thrown out than other voters.

And the findings of the U.S. Commission on Civil Rights regarding the disproportionate disenfranchisement of racial minorities, language minorities, and the disabled were uncontroverted by testimony received by this Committee yesterday.

While these hearings are not about Florida, and certainly not about assessing blame for what happened there, no one who observed the events of last November and December can fail to have deep concerns about the health of our election systems.

It is astounding that nearly two and a half million eligible voters who went to the polls last November to participate in their Democracy were denied their right to have their vote counted.

Some had ballots improperly validated; the names of others were erroneously purged from the rolls or were unable to vote because their polling precinct did not accommodate voters with disabilities or people for whom English is not the native language.

Just to put that in perspective, I represent a state with a population of roughly 3 million people. The equivalent of 83% of the population of Connecticut were disenfranchised last November. That is simply unacceptable by anyone's standards.

And let's not kid ourselves — to suggest, as a few witnesses did yesterday, that somehow voter error should not be counted as disenfranchisement is disingenuous.

If voter error results from a confusing ballot, or outdated technology that does not accommodate language minorities or the disabled, or vague procedures that make it unclear as to whether former felons can vote, the result is the same as if a poll tax or literacy test had been applied at the voting booth.

And just as this Nation refused to stand by and watch state and local election officials disenfranchise minorities through the use of poll taxes and literacy tests, this Nation will not stand by and watch millions of Americans of color, or language minority, or disability disenfranchised by inadequate voting systems and procedures which serve to turn eligible voters away from the polls.

Today I will ask each of my colleagues to tell me, and the American public, how, in light of these findings, we can enact anything short of minimum national standards to ensure the non-discriminatory, independent, private franchise for all eligible Americans.

I submit to my colleagues that it would be a dereliction of our duties to uphold this Constitution, and an act of conscious negligence, to fail to enact election reform this year that requires basic, common sense protections for our Democracy.

I have had the great honor of introducing legislation with my good friend, John Conyers, which will do just that.

Our bill requires that by the 2004 elections, 3 minimum national standards be met:

- that voting systems meet minimum non-discriminatory standards for ensuring accessibility;
- that states provide for provisional balloting;
- and that states provide voters a sample ballot and instructions before they get to the polls.

In a Democracy, the voting booth is the instrument by which we participate in our government. It is there that the promise of freedom finds its purest expression. The right to vote is the cornerstone on which all other rights are guaranteed.

Let us commit, together, to find a bipartisan, solution to the problems that were highlighted last November in Florida, but have existed across this nation for many years.

And let us leave here rededicated to the ideal that all eligible Americans, regardless of race or ethnicity, or language, or disability, or the financial condition of their community, will have the right to participate in this Democracy by casting their vote and having that vote counted.

The CHAIRMAN. We have been joined by my friend and colleague from Kentucky. Mitch, if you want to make some opening comments, then we will turn to our colleagues from the House.

**OPENING STATEMENT OF HON. MITCH McCONNELL, RANKING MEMBER, A U.S. SENATOR FROM THE STATE OF KENTUCKY**

Senator McCONNELL. Thank you very much, Mr. Chairman. Welcome, everyone. We certainly had a spirited hearing here yesterday, and I cannot wait to find what might happen today.

One message we did hear yesterday was unanimous, and that was that Congress must act, and act soon, to come to the aid of States and localities. There is not one nationwide answer that will address the 50 States' different needs. Many States have already taken action. Indeed, the Civil Rights Commission was unanimous in its praise of the significant steps the Florida Legislature and the Governor have taken to improve their elections systems.

We also heard once again about problems experienced outside the State of Florida and recommendations on how to deal with issues such as fraud. Fraudulent voting is a fundamental threat to our democratic process and to public confidence in American elections.

Senator Kit Bond's editorial in yesterday's Washington Post elucidated startling facts about voter fraud in St. Louis, where dead people registered to vote and even filed lawsuits. It used to be the "Spirit of St. Louis" was known as an airplane, not a plaintiff.

I am committed to working expeditiously toward a solution and once again urge movement of the only bipartisan bill with substantial support here in the Senate known as the McConnell-Schumer-Torricelli-Brownback bill.

I welcome the Members of the House of Representatives who will testify today. I know you have had six hearings since April. I am encouraged by press reports of a bipartisan compromise being drafted. I urge you to address this issue in time to have a positive impact on the 2002 elections and do so in a manner which respects the need for flexibility in the States.

As Ken Blackwell, the Secretary of State of Ohio, testified here yesterday, "Federal funds should not come with Federal mandates. Elections are State business and should remain so."

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much.

We will now turn to our colleagues. In the first panel, John Conyers. We welcome you to the committee. I know that there are markups and business you have. So, we will just run down the testimony, and then for those of you who may have to run off and leave, we will submit some questions to you, if we can. If not, we will try to get to our second panel. I know how busy people are.

But I cannot tell you how grateful I am to all of you for coming over. Your presence here underscores the seriousness with which this issue is taken, and as I say, in my first job as a full committee chairman in the 20 years I have been in the Senate, I cannot think of a better issue we could be talking about. I am so honored that so many of our House colleagues are here.

John, we welcome you.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF THE HON. JOHN CONYERS, JR., A U.S. REPRESENTATIVE FROM THE STATE OF MICHIGAN; HON. ROBERT W. NEY, A U.S. REPRESENTATIVE FROM THE STATE OF OHIO; HON. STENY H. HOYER, A U.S. REPRESENTATIVE FROM THE STATE OF MARYLAND; HON. ROBERT WEXLER, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA; AND HON. ROY BLUNT, A U.S. REPRESENTATIVE FROM THE STATE OF MISSOURI**

**STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, RANKING MEMBER, HOUSE COMMITTEE ON THE JUDICIARY**

Mr. CONYERS. Thank you, Chairman Dodd, and to Ranking Member McConnell. I am very honored to be here today to join Chairman Ney and Ranking Member Steny Hoyer and my dear colleague from Florida, Brother Wexler.

You know, I may be wrong, but in this room, if the spirit of Martin Luther King, Jr., is anywhere in the country, it is probably right here, trying to see if we are going to have the skill and ability to move this country forward in a very important way on its most critical issue.

I appreciated your opening statement, Chairman Dodd, and I appreciate the compelling observation of Senator McConnell in which he said that everybody has agreed there ought to be some action taken, that that is the one thing that unifies us all. And I think that is the critical beginning point.

Now, the second part of it is what actions should we take, and there is where legislative skill and some experience and some understanding of history has to play into the kind of decisions that will be made.

Around the country, this question is being examined and re-examined and studied carefully. This is the number one responsibility of the national Federal legislature to take care of this problem. It reverberated around the world. Countries and its leaders were astounded that we could have had the number of days elapse, more than a month, before we could figure out what had happened.

In Detroit tomorrow, we are having full hearings on election reform and what we ought to do about it. And it is not about Florida. It is about Michigan. It is about Detroit. It is about Lansing and Grand Rapids and other places I am going to be getting an earful about in the State of Michigan. So there is no area of the country that has not been touched by this very important problem.

So what we are doing here is, we are hooking up the Emancipation Proclamation, the Civil Rights Act, the Voter Rights Act, and the 15th Amendment. What we do here is going down the trail of this critical piece of our constitutional obligation and how we deal with it in this new century. And so I will be with you only a few minutes, but I pledge to you, my staff and my entire commitment and resources to work behind the scenes with all parties, everyone that has a measure, a bill, an idea, because there is nothing more important in my career than helping shape this important matter to a successful resolution.



And so we have one option, a measure that would allow a State to simply elect to opt out of any standards if the State refuses to accept Federal money.

Now, look, how much study do we have to give that? I mean, if civil rights and voter rights obligations are optional, then we can all just send letters to the various jurisdictions and tell them the money is on the way. I like Secretaries of State that say we want Federal funds, but we do not want any instructions with it, just send the money.

Well, that is not the way civil rights law is written, ladies and gentlemen. It is not a matter of whether you want it, you want strings attached to the Federal bread. Voting is not optional. The requirements of voting are not up to whatever current leadership in a State government may have. It is not even optional up to us in the Senate and in the House.

We have a duty, a constitutional duty, to deal with this question, not to send a message with money out there that we hope you guys will do better than you did last time. This is the most serious business to which we may be called to attend.

And so a State cannot continue to use machinery that disenfranchises, even unintentionally. We cannot have procedures that disenfranchise many different groups in a community. And so to me, the first thing I hope we can get to some conclusion is this whole notion of opting out. We are all in this together. There are not opt-outs.

And so we need to provide constitutionally—this is not—the Constitution in Article I, Section 4, did not say you may describe what you want people to do. It is our job to set minimum Federal standards for every jurisdiction in the United States of America. It is not discretionary.

States did not want to abolish the poll tax. That was not optional. States did not want to abolish literacy tests. They did not have a choice. States did not want to make buildings accessible to the disabled. And, by the way, on all three of those areas, we are still working to make it. We passed the laws. Even if we pass the perfect legislation, it does not mean that we will not still have plenty of work to do.

So I am not excited about States rights and local control and that we should not have a one-size-fits-all approach to civil rights. We better have a one-size-fits-all for civil rights. That is the only way you are going to get them.

So at this historic moment, please join with me, pray with me, work with me, march with me, to make sure that the American people understand that we in Government, the policymakers, are not turning a blind eye to the greatest political tragedy that has occurred in our lifetime.

We know that in the end opt-out is a cop-out, and we have another course of action, a measure that would provide every American with a guarantee, every American who deserves a competent and accessible voting machine and the right to cast a provisional ballot.

And so we have just got to do our job here, and for some of my colleagues, I will not call them faint-hearted, but to say we have got to be realistic, we have got to get something through fast, let's

be practical, well, you know, constitutional rights do not turn on being realistic because there is opposition. The civil rights struggle was never informed by let's just tailor a remedy to get through this period, this very troublesome period of our history. It is not about political cynicism or so-called political reality. And I like to think of so many things that Martin Luther King, Jr., said during that time keeps my feet to the fire.

So join with me, Members of the Senate. Let's try to do what we can here. We cannot squander this historic moment, and I hope that we will all be proud of what each of us has done that is consistent with our philosophical belief of what our constitutional role is.

I thank you very much for letting me start this discussion.

The CHAIRMAN. Thank you very much, John. I am honored to be a chief sponsor with you of the bill we are sharing together. Having worked together for so many years, I am truly honored that you are here, and thank you for your leadership on the issue.

[The prepared statement of Mr. Conyers follows:]

STATEMENT OF JOHN CONYERS, JR.  
SENATE RULES COMMITTEE HEARING  
"IMPROVEMENT OF THE CONDUCT OF FEDERAL ELECTIONS"  
JUNE 27, 2001

Members of the Committee: today, and in the weeks to come, you face a historic choice. There is nothing new about this choice.

We have one option -- the McConnell bill -- that would allow a state to simply elect to opt out of any standards whatsoever if that state decides to decline to cash a federal check. As such, a state could continue using most disenfranchising machinery and procedures for minority communities. A "bad apple" state, like Florida in the 2000 elections, could once again use substandard machines and procedures and bring a federal election to a standstill.

The Civil Rights Act of 1964, the Voting Rights Act of 1965 and the Fifteenth Amendment to the Constitution in 1868 provided minimal guarantees to citizens in all fifty states by creating a fundamental standard which every state must follow. Had we used such a paradigm, had the McConnell bill been around -- and states who didn't like such laws could simply opt out of them -- we would have never achieved the civil rights progress that we did.

States who didn't want to abolish poll taxes could have refused federal money and continued to disenfranchise minorities.

States who didn't want to abolish literacy tests could have refused federal money and continued to disenfranchise minorities.

States who didn't want to make buildings accessible to individuals with disabilities could have refused federal money and continue to build barriers to access.

Back in the 1960's, we heard about states rights and local control and that we should not have a "one size fits all" approach to civil rights. And, at those historic moments, the United States Senate turned away from these excuses and courageously stood for minimal federal guarantees for every citizen. The federal government has protected us all because only the federal government can.

We all know the truth: when it comes to election reform, opt out is a cop out.

We have another option, the Dodd-Conyers bill, that provides every American a guarantee. Every American deserves a competent and accessible voting machine and the right to cast a provisional ballot.

Setting minimum federal standards is constitutional. Article I, Section 4 of the Constitution gives Congress broad authority over federal elections. The United States Supreme Court held just last December that disparities in the treatment of votes violate the Equal Protection Clause. We have a constitutional duty to fix this problem.

From some of my Democratic colleagues, I keep reading that we need to be "realistic" because they believe that minimum guarantees will not pass this Congress. Remember that the civil rights struggle has never been about political cynicism, it has been – as Dr. King said – about dreams.

To them, I say: don't count us out yet. Republican Congresswoman Connie Morella has already joined us in this fight and more of her Republican colleagues are on the way.

I have been a Member of Congress for more than 35 years. I have been in countless fights for the civil rights of African-Americans, language minorities, and the disabled. Just as it was then, today there are proposals dangled before us that put expediency over substance. Just as we did then, we should put those proposals aside, work together and dream of something greater.

The amazing thing is that no one seems to disagree with the substance of our bill. Everyone seems to be saying that every American deserves to vote on a machine that is easy and accessible. Everyone seems to be saying that provisional balloting is a common sense solution to bad purges.

But, if we all agree that every American should have these rights, why don't we all want to make sure that happens? Why would these reforms be optional?

The Dodd-Conyers bill has the support of a growing list of 125 Members of the House and 50 Members of the Senate. This IS a bipartisan bill. It has the support of every major civil rights organization. It has been hailed as the bill that will truly fix the problem.

So I am here to ask you not to squander this historic moment. Some day, maybe in three years or maybe in 100 years, there will be another razor thin Presidential election. History will then judge what we do today.

The CHAIRMAN. Mr. Chairman, it is a pleasure to welcome you here, and I look forward to working with you. We ought to get together on some other matters as well since we share some common responsibilities. I know you know my colleague from Kentucky well, but we do not know each other that well, and I look forward to getting to know you. So I am delighted to welcome you here to the committee.

**STATEMENT OF HON. ROBERT W. NEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO, CHAIRMAN, HOUSE ADMINISTRATION COMMITTEE**

Mr. NEY. Well, thank you, Mr. Chairman. Actually, our offices are beginning to communicate to get something set up.

The CHAIRMAN. Good.

Mr. NEY. So I am looking forward to it.

The CHAIRMAN. Thank you.

Mr. NEY. Thank you, Chairman Dodd and Ranking Member McConnell. I want to just thank you for this opportunity to be here today on a critical and important issue and to share some of the views I have.

Since I became chairman of the House Administration Committee in January, we have diligently worked to continue the election reform hearings, to dig into the subject. We had an expo in our committee of the different technologies that are out there, but we have also discussed, obviously, substantive issues. And the feedback I have had from members of both sides of the aisle is that we have had some of the most substantive hearings and some of the best minds we could have in the country, whether it was the panel that had the scholars and intellectuals who think about it, whether it was the people in the front lines that deal with this every day. We have had a wide variety of hearings and experts that have gathered from across the Nation.

Our work was not motivated and is not motivated by partisan politics. It is motivated by our desire to find a solution. And, you know, Florida is over with, but Florida raised this for discussion. And we had Katherine Harris who testified, in fact, in our committee. We had a panel of Secretaries of State. And Florida has moved to rid themselves of the punch card ballots, and I applaud them for that. And I do not think they should be penalized, or any other State that has moved to another process. We also have to realize they need some educational help and some support down in the future.

We are also fortunate on the committee on both sides of the aisle to have Steny Hoyer, who is seated to my left—more to the middle sometimes on issues, but on my left today. Mr. Hoyer, our ranking member—and I would say this publicly, and I have said it many times—is a person motivated to find solutions on this issue, not motivated by politics. We could not be here today in the committee if it was not for Mr. Hoyer and members on both sides of the aisle, and I should say also our staffs are working together to get to the point we are today.

Mr. Hoyer's approach and his contributions have made our efforts possible. We all have to work together, I think, to remedy

some of the inefficiencies in the system and to restore public confidence.

In the House, some of the colleagues of mine on both sides of the aisle came to me and said: Well, you know, this is kind of over with. We did not have a revolution. We went through a process. There was a lot of debate. And, you know, the issue has waned a little bit.

Well, that is not true. Many of the schools I go to in the district I represent, the people I talk to, I ask them a question. Do you naturally expect we are going to do something about this in Congress? And their answer is yes.

So if there are not thousands of letters being written in, it is not off of the minds of the voters, whether it is the high schoolers, who are not even registered to vote yet but saw this whole issue play out in the media, or whether it is the adults or people of any age.

So we have kept it alive, I believe, and you have kept it alive by showing that on a bipartisan basis there is interest. We have to all work together; again, to restore public confidence I believe is the critical point in the election process. The status quo is simply not acceptable. No one should be turned away from a poll in this country to be able to vote. Countless local, State, and Federal groups have made a variety of observations and recommendations designed to help the Congress to improve the legislation. And although these reports come from different perspectives, one thing is clear: The American public expects action. We have an obligation to provide them with an effective solution that counts their votes equally and accurately before the next national election.

The House Administration Committee has held, again, four hearings on election reform and two additional processes in the hearings. In April, the committee held its first hearing during which we heard from Secretaries of State, State legislators, county Commissioners, representatives from the disabled community, and the American Legion.

Our second hearing focused on the nuts and bolts of the elections. We heard from those people who actually do the real work, the local election officials.

At the committee's third and fourth hearings, leading vendors of voting equipment and prominent academics testified.

From these hearings, Representative Hoyer and I identified four principles that we agreed would be critical to the success of election reform.

First, the Federal Government must not enter this by simply mandating solutions. The administration of elections is a complex enterprise. According to the National Association of Secretaries of State, it involves 200,000 polling places, 7,000 jurisdictions, 1.4 million poll workers, more than 700,000 voting machines, 100 million voters, and 22,000 election officials. It would be presumptuous to assume that a Federal-mandate-driven, one-size-fits-all approach will solve the election problem. However, guidelines are necessary, and working to make sure that everything is fair completely in this country is essential.

Let me share with you what we heard from some of the officials.

Kansas Secretary of State Ron Thornburgh sharing what Senator Nancy Kassebaum Baker told him, “The pencil on a string works very well in Burdick, Kansas, Ron. Don’t change it.”

Conny B. McCormack, Registrar-Recorder/County Clerk of Los Angeles County, “State and local governments need to retain the flexibility of choice among various types of vote-counting equipment. One size does not fit all. We need diversity and innovation.”

State and local governments have managed elections for over 200 years. We need to keep it that way, but we need to be involved.

Another principle of agreement is that punch cards must go. Punch cards have the potential for a higher error rate than other modern voting technology. Because of high error rates, the public has lost confidence in these voting machines. During the 2000 election, Fulton County, Georgia, registered a 6.25-percent spoilage rate; Cook County, Illinois, threw out 5 percent of their punch card ballots. Consequently, Representative Hoyer and I do believe that we should offer the States and local jurisdictions grants to replace punch card machines with more accurate and reliable technology. I hope that the next time we see punch cards will be on a tour of the Smithsonian.

One of my local officials said to me, “You know, Bob,” he said, “I don’t want to get rid of them.” I said, “Well, I am not going to sit here and force you to do it.” We think we have incentives that are good. We think this is a good thing to do. But I also told him the next time a vote ties and they have a hanging, dimpled, or pregnant chad, don’t call me. They are going to be into the controversy to decide it.

Also, Mr. Chairman, you mentioned about different people being able to have access that they do not have today. Technology can help with that. Again, I do not want to stress that it is all technology-driven, but those are issues we are looking at.

Also, the final principle, I think, is that there is a need for new resources for voter education, poll worker training, and technology research development. The voting process must catch up to the 21st century, also with technology. But training and research on affordable, reliable, and accessible new technology can help State and local governments meet this challenge.

The other area that we are exploring is strategies to get young people involved in the election process. This was an idea Mr. Hoyer put forth. It is a tremendous idea. We are working on that.

I will conclude by again saying that you are embarking—both you and the ranking member, other members of the Senate, are embarking on the issue that is important. Today I am going to have a very interesting markup on campaign finance reform and—

The CHAIRMAN. Mitch has a passing interest in that subject.

[Laughter.]

Mr. NEY. And we are going to have two bills. I will not predict that mine is favorable to the floor and the other one is not favorable to the floor. But we are going to have a free-wheeling process. But I tell you, people talk about campaign finance, obviously, and we talk about how we are going to clean up elections and how we are going to do this and that. But you know what? You have got to get people elected first before we talk about process.



So I just want to highlight that this measure is very, very important because the people have to have the confidence that they were able to vote, everybody was able to vote, it was accurate, as accurate as humanly possible so they have a confidence in their election system. Then we can come out here and debate other pieces of legislation, how we run the system. So this is, I think, one of the most critical issues. We are keeping it alive. We are very close in agreement and language, and we really look forward to working with you.

Thank you.

The CHAIRMAN. Thank you very much. We appreciate immensely you being here today. We know you have a busy schedule and you have that markup pending. We will understand if you have to move along. So we thank you, and if we have some questions, we will submit them to you. But you are more than welcome to stay as well.

Mr. NEY. Thank you.

[The prepared statement of Mr. Ney follows:]

**REMARKS OF THE HON. ROBERT W. NEY, CHAIRMAN  
COMMITTEE ON HOUSE ADMINISTRATION**

**Senate Rules and Administration Committee  
June 28, 2001**

**Testimony on Election Reform**

Chairman Dodd and members of the Committee, thank you for this opportunity to present my views on election reform to you. Since becoming Chairman of the House Administration Committee in late January of this year, we have held several hearings on election reform, gathered testimony from experts, and worked diligently toward producing bipartisan election reform legislation. Our work was not motivated by partisan politics; it was motivated by our desire to find a solution to a complex problem. The House Administration Committee and I are fortunate to have Steny Hoyer as our ranking member, a man who is motivated to find solutions, not to merely score partisan political points. His approach and contributions have made our bipartisan efforts possible. We must all work together to help remedy the voting inefficiencies that continue to face our election system, and thereby restore public confidence in our election process. The status quo is simply not acceptable, certainly not in the world's greatest democracy.

Countless local, state, and federal groups have made a variety of observations and recommendations designed to help this Congress develop legislation to improve the election system. Although these reports come to us

from different perspectives, one thing is clear, the American public expects action. We have an obligation to provide them with an effective solution that counts their votes equally and accurately before the next national election.

The House Administration Committee has held four hearings on election reform. In April, the Committee held its first hearing, during which we heard from Secretaries of State, State Legislators, County Commissioners, representatives from the disabled community, and The American Legion. Our second hearing focused on the nuts and bolts of elections. We heard from those people who actually do the real work of running elections ... local election officials. At the Committee's third and fourth hearings, leading vendors of voting equipment and prominent academics testified. From these hearings Representative Hoyer and I identified four principles that we agreed would be critical to the success of election reform.

First, the federal government must not mandate solutions. The administration of elections is a complex enterprise. According to the National Association of Secretaries of State it involves 200,000 polling places, 7000 jurisdictions, 1.4 million poll workers, more than 700,000 voting machines, 100 million voters and 22,000 election officials. It would be presumptuous to assume that a federal mandate driven, one-size fits all approach will solve our election problems. I think this is particularly important to keep in mind as both bodies of Congress craft election reform legislation.

Let me share with you what we heard from some state and local officials:

- Kansas Secretary of State Ron Thornburgh sharing what Senator Nancy Kassebaum Baker told him, “The pencil on a string works very well in Burdick, Kansas, Ron. Don’t change it.”
- Conny B. McCormack, Registrar-Recorder/County Clerk of Los Angeles County, “State and local governments need to retain the flexibility of choice among various types of vote counting equipment. One size does not fit all. We need diversity and innovation.”

State and local governments have managed elections for over two hundred years... Let’s keep it that way.

Our second principle of agreement is that punch cards must go. Punch cards have the potential for a higher error rate than other modern voting technology. Because of high error rates, the public has lost confidence in the voting machines. During the 2000 election, Fulton County, Georgia registered a 6.25% spoilage rate, and Cook County, Illinois threw out 5% of their punch card ballots. Consequently, Representative Hoyer and I agree that we should offer the states and local jurisdictions grants to replace punch card machines with more accurate and reliable technology. Punch card machines belong in the Smithsonian, not a United States voting booth.

Our third principle is that the federal government can play an important

role in election reform by providing financial assistance to state and local governments. As Ohio Secretary of State J. Kenneth Blackwell remarked before our committee, "While election reform continues to have widespread public support, the resources to implement these costly upgrades are few or nonexistent."

If our legislation is crafted with states and localities in mind, the officials that manage our elections will welcome our assistance. However, if we weigh reform down with federal dictates and mandates, we risk disrupting this complex system, alienating the very same local officials we are trying to assist, stifling innovation, and making our system less efficient than it is now.

Our final principle is that there is a need for new resources for voter education, poll worker training, and technology research development. The voting process must catch up to the twenty-first century and technology. Training and research on affordable, reliable, and accessible new technology can help state and local governments meet this challenge.

One other area that Mr. Hoyer and I are exploring is strategies to get young people involved in the election process.

Again, now is the time for action. Two hundred thousand polling places, 7,000 jurisdictions, 1.4 million poll workers 700,000 voting machines 22,000 election officials, and most importantly, 100 million voters are waiting. I urge the members of this Committee to move diligently toward producing an

election reform bill that embodies the principles I have outlined.

Thank you again for the chance to testify, and I ask for unanimous consent that my statement in its entirety be submitted for the record.

The CHAIRMAN. Steny, we welcome you. I was mentioning the testimony of Jim Dickson yesterday, whom many of you know, who heads up the American Association of People with Disabilities. He talked about one jurisdiction in the country that just acquired \$19 million worth of new voting equipment and 1,600 polling places, none of which is accessible to the disabled. We have had a law on the books for 17 years with a carrot approach. Now, you tell the disabled community that we are going to hopefully leave this up to local decision making, and it does not fly, unfortunately.

So I feel strongly that when we are voting for President and the national Congress, if a system is unfair in one place, it affects us all. It is not just isolated cases. We are not just voting for local boards of education, planning commissions, and so forth. There is a direct and immediate effect on the national system.

I wish I had had him on first, I said yesterday. He was the last witness we had, and he should have been the first in many ways, just to make the compelling case of what is going on today rather than just what has gone on over the years.

Steny, we welcome you here, and as always, I look forward to working with you on this issue and so many others. So thank you for coming by.

**STATEMENT OF HON. STENY H. HOYER, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MARYLAND, RANKING  
MEMBER, HOUSE ADMINISTRATION COMMITTEE**

Mr. HOYER. Mr. Chairman—I emphasize that word “chairman,” with all due respect to my good friend, Mr. McConnell.

The CHAIRMAN. This thing could flop around three or four times in the next six months. [Laughter.]

I am trying to get used to not calling him “chairman.” I’ve called him “chairman” seven times, I think.

Senator MCCONNELL. We treat each other very nicely.

Mr. HOYER. I understand that.

The CHAIRMAN. This is a very fragile deal.

Mr. HOYER. Mitch, you will enjoy the fact that a couple of hours after Senator Jeffords’ announcement, I called my very close senior Senator, Senator Sarbanes, and I had a 5-minute conversation. And I think I called him “chairman” 17 times in that 5 minutes. But I am very, very pleased to be here with both you, Chris, and you, Mitch, because I know both of you are very hard-working, focused individuals who will work with Bob Ney and me. I want to wish you the kind of relationship that Bob Ney and I have. Bob has brought to the Committee on House Administration a very positive, open, working relationship between the two of us, one I appreciate and I think it can be, frankly, a model, at least in the House. Frankly, I think there is a little more collegiality here in the Senate—not at all times—that we have not always enjoyed in the House. But I want to thank Bob Ney for his leadership and his commitment to working together.

I want to thank you for inviting us to speak to this hearing today. I also want to commend you for your continuing commitment to election reform. No issue, as John Conyers said so compellingly, in my view is more important to our country and to its citizens.

Our election system affects literally every American, and it animates the very soul of democracy whose independence we celebrate days from now.

When our Nation's Founders adopted the Declaration of Independence 225 years ago, they recognized not only that citizens are created equal and endowed with certain unalienable rights, but also that governments derive, and I quote—and all of us know this language—“just powers from the consent of the governed.”

Eight months ago, our process for determining the will of the American people essentially failed us. The consequences of that failure are manifest today for an estimate 2 million Americans, not to mention the millions of those with disabilities of whom you spoke a little earlier, Chris. As you know, I sponsored the Americans with Disabilities Act on the House side, worked for its passage, and believe, frankly, that the law currently, as with most public accommodations, demands accommodation of those with disabilities in the polling place today. And to the extent that that is not recognized, it should be and is, in my opinion, a violation of law.

If you can ride a cart in the PGA, you darn well ought to be able to go to the polling place and have it totally and fully accessible to you, irrespective of the disability that you might have.

The CHAIRMAN. Jim made the point yesterday that there is not an elevator he can get on in most of Washington and not find Braille to tell him what floor to go to yet, there is rarely a voting booth in the country that will allow him to walk in and find Braille to allow him to cast a vote.

Mr. HOYER. Right.

The CHAIRMAN. So the law is still very weak when it comes to those basic issues.

Mr. HOYER. I agree with that. The pain of disenfranchisement, of which you spoke, remains an open wound that will not soon heal. For our Nation, last November's election debacle left an indelible scar that will follow us for a long time in our history. We, therefore, must make it our calling in this session of Congress to address these deficiencies in our election system. The American people demand and deserve real reform now, and we have a duty and an opportunity to deliver it.

Today, I am pleased to report to you, as has the chairman, that in addition to the hard work on this issue by members of this body, the Committee on House Administration is very close to producing bipartisan legislation that will address some, not all, of the most serious problems that plagued us last November.

Chairman Ney and I, as he has told you, held four productive hearings on election reform this spring. Consistent with our committee's jurisdiction, we have focused extensively, but not exclusively, on the technological aspects of election reform. Our proposal contains several key components.

For example, it would provide Federal grants to help States and localities replace outdated and unreliable punch card voting systems. There are clearly jurisdictions which want to provide better technology but cannot afford it.

It would create an additional election administration commission that would evaluate and award such grants. The commission also



would work to ensure access to the polls for every eligible voter—every eligible voter—and make sure that every ballot will be accurately counted. And it would provide funding for States to improve their entire voting process, including registration systems and poll worker and voter education programs.

However, we cannot, as you have dramatically said, and John Conyers has as well, pretend that real election reform begins or ends with simple mechanical fixes or high-minded model election codes. It does not.

As Chairman Dodd stated earlier this year, this is not just about helping States and localities build or buy better mousetraps. Election reform is the civil rights issue of the 107th Congress. We were reminded of that fact 2 weeks ago when the Commission on Civil Rights, which testified yesterday, released extremely disturbing findings. African American voters in Florida were at least 10 times more likely than other voters to have their ballots uncounted last November. That is appalling and it is unacceptable.

Thus, we must recognize that election reform requires a renewed commitment to improving poll worker training and voter education, to enforcing the Civil Rights Act, Voting Rights Act, Disabilities Act, and local election laws, as well, obviously, as every part of our Constitution, to ensure accurate voter registration lists that never exclude—never exclude—those who are legally registered to vote, and to accommodating disabled voters.

And without doubt, Mr. Chairman, we must ensure that provisional ballots are available in every voting jurisdiction to safeguard this most precious and most basic American right.

As this issue moves forward in Congress, I look forward to working with the members of this committee to ensure that the election debacle of last November is never repeated and that every legal vote counts.

I am pleased to be joined by Congressman Wexler and Congressman Blunt. I might say that Congressman Blunt, who is the Speaker's point person on this issue, has been working with us very cooperatively; Silvestre Reyes, the chairman of the Hispanic Caucus; Eddie Bernice Johnson, the chairwoman of the Black Caucus; Corrine Brown, who has been so intimately involved in this; Dale Kildee, who knows so much about this issue as well.

Let me close, Mr. Chairman, by saying that mechanical fixes must not be viewed as enemies of civil rights realization. In my opinion, we need to move forward on both paths, and both paths before we finish must intersect. I expect that to happen. But I also hope and pray that we do not delay because of a disagreement on moving ahead. Local jurisdictions need help to move forward quickly if 2002 is to be better than 2000. And if we do not move quickly, there will be no opportunity to have 2002 be substantially better from a mechanical standpoint, as well as—and we will discuss this—the concerns about opt-out. When Chairman Conyers mentions that, he mentions it in terms that a State that does not take Federal funds will not be under the prescriptions that they would have to sign on to if they did take the money. Verification of votes, which Congressman Blunt is very interested in, is essential so that voters will know before they leave the polling place—which would have been critical in Mr. Wexler's and Corrine Brown's districts be-

fore they leave the polls that they have cast an accurate vote, and that it would not be shunted aside because of overvotes or undervotes.

Lastly, let me say this: Mr. Ney mentioned an idea of mine that we are going to include in our bill. It is the "HAV program, Help America Vote." All of us are concerned that young people are not participating in our elections. All of us also understand we are having trouble getting election workers. "Help America Vote" will be a program run by the commission, which will encourage every college in the United States, every institution of higher learning, to have a program which allows their students to participate in an election experience and work as poll workers in their local areas. We think it is a very positive program, which will go a long way towards helping local jurisdictions have sufficient workers to ensure accurate implementation of constitutional, legal, and procedural rights that every voter in America deserves and should have.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very, very much. We thank you, Steny, for being here.

[The prepared statement of Mr. Hoyer follows:]

STENY H. HOYER  
5TH DISTRICT, MARYLAND  
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CO-CHAIR  
DEMOCRATIC STEERING COMMITTEE  
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COMMISSION ON SECURITY AND  
COOPERATION IN EUROPE

Congress of the United States  
House of Representatives  
Washington, DC 20515-2005

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AND EDUCATION  
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LEGISLATIVE  
COMMITTEE ON  
HOUSE ADMINISTRATION

Remarks of Congressman Steny H. Hoyer  
U.S. Senate Rules and Administration Committee  
Hearing on Election Reform  
June 28, 2001

Chairman Dodd, Ranking Member McConnell, and Members of the Committee:

I want to thank you for inviting me to speak at this hearing today. I also want to commend you for your continuing commitment to election reform.

No issue, in my view, is more important – to our country and to its citizens.

Our election system affects literally every American, and it animates the very soul of our democracy – whose independence we celebrate six days from now.

When our nation's Founders adopted the Declaration of Independence 225 years ago, they recognized not only that all citizens are created equal and endowed with "certain unalienable rights," but also that governments derive their "just powers from the consent of the governed."

Eight months ago, our process for determining the will of the American people failed us.

The consequences of that failure are manifest today. For an estimated 2 million Americans, the pain of disenfranchisement remains an open wound that will not soon heal. For our nation, last November's election debacle left an indelible scar that will follow us through history.

We, therefore, must make it our calling – in this Session of Congress – to address these deficiencies in our election system. The American people demand and deserve real reform now. And we have a duty and opportunity to deliver it.

Today, I am pleased to report to you that, in addition to the hard work on this issue by Members of this body, the Committee on House Administration is very close to producing bipartisan legislation that will address some of the most serious problems that plagued us last November.

-more-

Hoyer, pg. 2

Chairman Ney and I have held four productive hearings on election reform this Spring. Consistent with our Committee's jurisdiction, we have focused extensively – but not exclusively – on the technological aspects of election reform.

Our proposal contains several key components. For example:

- It would provide federal grants to help States and localities replace outdated and unreliable punch card voting systems.
- It would create an Election Administration Commission that would evaluate and award such grants, in addition to working to ensure access to the polls for every eligible voter and that every ballot will be accurately counted.
- And it would provide funding for States to improve their entire voting process, including registration systems and poll worker and voter education programs.

However, we cannot pretend that real election reform begins and ends with a simple mechanical fix or a high-minded model election code. It does not.

As Chairman Dodd stated earlier this year: "This is not just about helping States and localities build – or buy – better mouse traps."

Election reform is *the* civil rights issue of the 107<sup>th</sup> Congress. We were reminded of that fact two weeks ago when the U.S. Commission on Civil Rights released this extremely disturbing finding: African American voters in Florida were at least 10 times more likely than other voters to have their ballots uncounted last November.

That is appalling and unacceptable.

Thus, we must recognize that election reform requires a renewed commitment to improving poll worker training and voter education . . . to enforcing the Civil Rights Act, Voting Rights Act and local election laws . . . to ensuring accurate voter registration lists that never exclude those who are legally registered to vote . . . and to accommodating disabled voters.

And without doubt we must ensure that provisional ballots are available in every voting jurisdiction to safeguard this most precious, most basic American right.

As this issue moves forward in Congress, I look forward to working with the Members of this Committee to ensure that the election debacle of last November is never repeated and that every legal vote counts.

Again, I thank you for the privilege of attending today's hearing, and welcome your questions.

The CHAIRMAN. Congressman Wexler and Congressman Blunt, we welcome both of you. Congressman Wexler, the events of last fall were an intellectual exercise. For those watching the events in Florida and for you, obviously, it was a very real situation in that you represent a district that was directly involved in some of the most significant controversies. So we welcome you here today. We know of your passionate interest in this subject matter, and we are anxious to receive your testimony.

**STATEMENT OF HON. ROBERT WEXLER, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. WEXLER. Thank you very much, Mr. Chairman, Senator McConnell. Thank you for having me here.

America is the freest, most prosperous Nation on Earth. We are the strongest, most resilient democracy on the planet. Yet last November, we failed our citizens in the most fundamental way.

The right to vote cuts to the very bone of our democracy. When tens of thousands of Americans cast their ballots—only to have them thrown out—whether you like the results of the Presidential election or not, it is undeniable that something is wrong in America. If we fail to learn from this tragic experience, then shame on us.

As you said, Mr. Chairman, what happened in Palm Beach County, Florida, on election day is personal to me. I saw it with my own eyes. I experienced it myself. I stood in front of voting precincts and witnessed a horrible state of confusion.

I am here today representing the citizens of my district who went to vote on election day only to be confronted with a puzzle rather than a ballot.

I watched the dismay and felt the anger of patriotic Americans, many of whom fought in World War II and Korea and haven't missed an election in over 50 years, as their votes were rendered meaningless.

I am here to give a voice to those Floridians whose votes were callously discarded due to a ballot that was so confusing, intelligent men and women unknowingly cast two votes for President or one vote for the wrong man.

I am here because the collapse of the election system in Florida was not colorblind. The facts speak for themselves. Fifty-four percent of Florida's discarded voters' ballots were cast by African Americans, even though African Americans only comprise 11 percent of Florida's voters.

Think about that. African American voters were ten times more likely than white voters to have their ballots rejected in Florida. This reality is indefensible, and we must act now to repair our citizens' faith in the system.

Have no doubt about it, this is not just a Florida problem. You have said it. It stretches coast to coast. Many of the problems that confronted Florida on election day occurred in other States. In fact, more votes were thrown out in Illinois than in Florida. This is a Federal problem that demands Federal attention.

What happened in Florida on election day highlighted for the entire world that in America, even for a Presidential election, we have no national standards for the design of ballots; we have no

national standards for the counting of ballots; we have no national standards for voting machinery; we have no national standards to prevent thousands of Americans from being purged from voter rolls; and we also have reliable way to count the overseas ballots of the men and women in the military.

What we do have in America is partisan election officials deciding which votes count.

Truth be told, we do have an equal protection problem in America.

This past November, in Florida, African Americans were not equally protected. The Floridians wrongfully purged from voter rolls were not equally protected. Overseas servicemen and -women casting absentee ballots were not equally protected. All Floridians were not equally protected when certain absentee voters had their ballots doctored by partisan representatives inside county election offices.

And, yes, thousands of my constituents who still choke up when they hear the Star Spangled Banner because they love America so much were not equally protected when they intended to vote for Al Gore whose name was second but whose punch hole was third.

The good news is this problem can be solved, but we must commit the necessary resources.

I strongly support, Mr. Chairman, the legislation sponsored by you and Representative Conyers. It exemplifies the level of commitment needed to fix the problems that plagued the 2000 election.

I also endorse the bill sponsored by Representative Hoyer that would eliminate the punch card system and do much more.

Electoral reform must not be a partisan cause. It is not Democrats, it is not Republicans. It is our national obligation.

It has been 8 long months since the Presidential election. It is time for Congress to take aggressive action.

I applaud you, Mr. Chairman, for calling this hearing. It is about time. But I must call attention to the devastating silence from 1600 Pennsylvania Avenue.

President George W. Bush must be the only person in America who has forgotten what happened on election day.

Election 2000 was a wake-up call to all Americans that we must not take our democracy for granted.

We must commit the money, the resources, and the energy to fix our election process once and for all. To do anything less is unforgivable.

And if I may follow just very quickly the comments by Congressman Ney with respect to Florida, he is right. And you are right, Mr. Chairman. The Florida Legislature and Governor Bush in Florida adopted a very important piece of electoral reform. In some ways, it is a model for the country. I applaud that. But let's not fall asleep at the switch and think that the problem is solved. The Florida Legislature allocated what I think is \$34 million to fix the problem. Already, as the individual counties are beginning to analyze how much money it will take for them to actually implement what the Florida Legislature is talking about, the counties are woefully short.

So to think that Florida has just resolved the problem I think would be inaccurate. The money that it takes, unfortunately, par-

ticularly in urban areas, to resolve the issue, not just the technology but the voter education and the host of other problems that we have witnessed, takes a lot more, unfortunately, than what local jurisdictions can often afford.

[The prepared statement of Mr. Wexler follows:]

**Statement by Representative Robert Wexler  
Senate Committee on Rules  
June 28, 2001**

Mr. Chairman and distinguished Senators,

America is the freest and most prosperous nation on earth.  
We are the strongest and most resilient democracy on the planet.  
Yet last November,  
we failed our citizens in the most fundamental way.

The right to vote cuts to the very bone of our democracy.  
When tens of thousands of Americans cast their ballots -  
only to have them thrown out -  
Whether you like the results of the Presidential election or not -  
It is undeniable that something is wrong in America.  
If we fail to learn from this tragic experience -  
then shame on us.

What happened in Palm Beach County, Florida  
on election day is personal to me.  
I saw it with my own eyes.  
I experienced it myself.  
I stood in front of voting precincts  
and witnessed a horrible state of confusion.

I am here today representing the citizens of my district  
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many of whom fought in World War II and Korea,  
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whose votes were callously discarded  
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intelligent men and women unknowingly cast two votes for President  
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I am here because the collapse of the election system in Florida was not color-blind.  
 The facts speak for themselves.  
 54% of Florida's discarded ballots were cast by African-Americans, even though African-Americans only comprise 11% of Florida's voters.

Think about that -  
 African-American voters were ten times more likely than White voters to have their ballots rejected in Florida.  
 This reality is indefensible  
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 In fact, more votes were thrown out in Illinois than in Florida.  
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We must commit the money, the resources and the energy  
to fix our election process once and for all.  
To do anything less is unforgivable.

The CHAIRMAN. I thank you for that, and you have raised a very good point. Obviously, we would like to see a lot of this done to improve the elections in 2002. I am waiting to sort of get some sense of the estimated cost of doing this. I do not think I am exaggerating—and Congressman Blunt may correct me—but using the word “billions” is probably not hyperbole when we are talking about this. Whether or not the Congress and the President, are willing to put their proverbial money where our mouth is on these issues remains to be seen. It is one of the reasons why I think requiring and having some mandates on standards, without one size necessarily fitting all on machinery, and some national standards on second-chance ballots or second-look provisional ballots, some basic modest proposals, that would go a long way toward achieving the desired results. In fact, it would more certainly guarantee it than would relying on whether or not we are going to appropriate the billions of dollars and, get it to the States and the precincts in order to make the changes necessary to happen.

I have been around long enough to know that we can talk about authorization bills, but then when it really comes down to appropriating the money, sometimes it does not quite work out as people intend.

But I am taking time here. Congressman, we welcome you and thank you for coming over to this committee.

**STATEMENT OF HON. ROY BLUNT, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF MISSOURI**

Mr. BLUNT. Chairman, thank you. It is great to be able to come over and be with my colleagues and friends here who care deeply about these issues. We do not fully agree on all of the potential solutions, but we, I think, are fully committed to the future of democracy in the country and, frankly, hopefully understand this opportunity to bring focus to the election system.

I sit here today as somebody who, for a decade, was a local election authority in the third largest county in my State. For 8 years, I was the chief election authority of the State, as the Secretary of State. In the quarter of a century that I have been involved in elected politics in one way or another, usually as both an elected official and an election administrator, there have not been too many occasions when people really wanted to talk about the mechanics of election. I would like to start by following up on what both Mr. Wexler and Mr. Hoyer said to suggest that whatever we do, we need to do it quickly.

I think there is less focus on election reform this month than there was last month. I think there is substantially less focus today on changing election systems around the country than there was in December. And we need to do what we are going to do, and make it clear to local election officials who are deciding whether they want to make the budgetary commitment or not that this is what the Federal role is going to be. Don't continue to make them wait for us to make a decision. We need to make that decision so they know whether or not it is in the best interest of their jurisdiction to continue to wait and see what kind of Federal guidelines there are going to be, what kind of Federal money may be available.

I think there is a lot of waiting going on right now, because nobody wants to go back to their taxpayers and voters and say, oh, if we had waited 3 more months, we could have got a 50/50 matching grant, but we did not quite meet the criteria to receive the grant, and so we made a mistake. I think officials do not want to make that mistake, and so they are holding back.

At the same time, the longer you wait, the further you get away from last November and December, the closer you get to the traditional decision-making process as it relates to elections. Local officials are asking themselves, do we want to replace the system we just used that, after all, probably elected the people you are asking to replace it? Or, in fact, do we want to take the same amount of money and put it into a new bridge, put it into a new industrial park, do the other things that compete for the money that will be needed to solve this problem?

I do think, Mr. Chairman, in response to your last comment that in terms of the actual cost of the system of the kind of transition that my friend Mr. Hoyer and Mr. Ney have talked about, going from a punch card system where 34 percent of the people in America vote on that system, to some other kind of system, you are talking in the billions and probably in the \$3 to \$6 billion range. And that assumes the infrastructure of providing that kind of equipment would even be out there to do that in not just 2 years but even in 4 years.

Let me say also, as someone who did spend quite a bit of time as an election official, I obviously have a preconceived view of the importance of responsibilities of local election officials. I think the worst thing we could do is take away the responsibility for conducting elections from people who are close and answerable to the voters that can see them on election day. The last thing we need to do is create an environment where local election officials from the Secretary of State to the lowest precinct worker say: Well, we just cannot do anything about that because the Congress somehow failed to realize this would be a problem for us; I am sorry, this is not my responsibility, we are really restricted by what the Congress of the United States said we would have to do. And so I think that having front-line responsibility within a State does matter.

I also think that education is an important part of this process. I think Mr. Hoyer's concept, the HAV program, the Help America Vote program, other things that we could do to empower States to provide more education to voters, particularly if we do anything to encourage moving toward new systems, would be critical. The hardest transition obviously in an election and the most likely errors are going to be made when you change from a system you have used for a long time to a system that nobody has used. And we need to be sure that we are thinking about how you help with education.

I frankly think that education is the bigger problem, and the evidence is the symptom of overvoting and undervoting. I know in the State of Georgia, in a study they did, their highest percentages of overvotes and undervotes were not in the punch card counties. They were in the optical scan counties. One of the reasons that we have talked on the House side about the importance of maybe looking at precinct verification is something we would encourage, even

if you kept the punch card system, is so that at the precinct you would have a device you could put your ballot in, you would get an immediate sense of whether you had overvoted or undervoted, and you know that at the time you drop that in.

That probably is a more substantial protection and an easier transition. My point of view as a former election official, not necessarily a Member of Congress, is that it is probably an easier transition and a greater protection than changing the entire system.

Frankly, the entire system is not going to change unless the Federal Government wants to provide 100 percent funding.

When Chairman Ney and Mr. Hoyer had their hearings, the largest jurisdiction in the country that uses punch card voting is Los Angeles. They told them, they have told you already, they are not going to change. My guess is 34 percent of the voters in America used punch card voting in 2000 and about 30 percent of the voters in America will use it in 2002.

But I think we could do some things to give voters the assurance they need before they leave the polls that they have done what they intended to do.

In terms of establishing standards for counting ballots, I do believe the lesson of Florida was that States need to be encouraged, possibly even required, to have a consistent standard within the State. If you go to one national standard, I am also firmly convinced that—

The CHAIRMAN. No one is advocating one national standard.

Mr. BLUNT. Good.

The CHAIRMAN. We are talking about national standards, and then allowing States to accommodate within those standards of how you do it. So there is this idea of we are going to design one voting machine, but I do not know of a single bill that advocates that.

Mr. BLUNT. I am talking about standards, Mr. Chairman, for counting ballots. And I believe Mr. Conyers is for one standard for counting ballots, how every ballot in America should be counted at every precinct in America. Let me tell you what I think is the problem with that.

The problem with that is—again, back to education—the long-held traditions of a State do matter. My guess is that you vote a straight party ballot or a split-ticket ballot slightly differently in Maryland than you do in Kentucky. Everybody in Maryland and Kentucky or at least the vast percentage of voters in those two States already understand that. If you decided you are going to have one standard that might be the same as either State has now, for several elections there would be people in Maryland and Kentucky who were voting the way you had voted for generations to cast a ballot who would not make the change.

I think, however, one standard within the State—which was really the challenge in Florida, how are you counting these ballots everywhere in this State?—is significant, is easily achievable, and most States do not have that as part of their process now, because up until now most Secretaries of State have not been empowered to establish a standard. They have been empowered to give local

officials advice on what they thought the law meant, but not usually to establish a standard.

I would like to see us do some things at the Federal level that provided more research, more testing of equipment, help establish some standards on equipment that the States could adopt. Certainly an idea of sharing best practices, how different jurisdictions deal with the challenges, would be a good idea.

The problem with, again, even trying to prescribe ballot design is that every election in every jurisdiction has a slightly different and usually unique set of circumstances that the local election official or the Secretary of State has to deal with. Having a true Federal effort where they could go to one place and find out the best way others had found to deal with these is probably better than us trying to anticipate what happens when you have the fire district election, the ambulance district election, the school board election, a special congressional election, and whatever else on one day.

I am not as concerned about—I do not fear the idea of model standards as much as some do, but I would like to see us at a minimum encourage a model standard. We have a uniform code for almost everything else that States adopt. There is a uniform commercial code. There is a uniform electrical code. There is a uniform—almost every kind of code except a uniform election code. Letting States look at that uniform code, move to it, invest in it as local and State election officials would be a good idea.

The registration process creates some challenges. Voter records do need to be accurate. At the same time, in a system as big as the voter registration system, with people moving, with people changing their name, you are going to have some problems in that system.

Mr. Hoyer has mentioned the idea, you have mentioned the idea, calling it a couple of different things. We normally are referring to it as provisional voting, something that would be a significant protection for voters who get to the polling place, find out their name is not on the list, are sure that they should be voting, or not, to let them vote, put their vote in an envelope with some kind of explanation of the problem. At the end of the process, you then go back and insure that person hasn't already voted somewhere else. You know, once that unidentified ballot goes into the ballot box, every ballot in that ballot box could be the ballot that you later decide should not have been cast. If you cast it provisionally, not only do you more fully ensure that everybody that should have voted got their fair say in the process, but you also more fairly ensure that not only does the person who almost was not allowed to vote gets their vote counted, but that they also get their problem solved.

So often when that ballot goes in the ballot box, that is the last time anybody thinks of this person's problem until the next election. That is why provisional voting, rightly designed, would be a good thing.

For military and overseas voters, particularly for military voters, I think we do have a unique set of Federal responsibilities, and we have always asserted those. The Federal Government has always played a different role for military voters, usually expanded that to Americans overseas. We can continue to do that. If you are serving in the armed forces, whether you are from Maryland, Kentucky,

Missouri, Florida, there is no reason you should not know that there is one deadline by which to get the ballot application submitted. Maybe there can even be one application for an entire year's elections. There is one deadline to get the ballot back by. There is one deadline that determines whether the ballot will be counted or not if it is received by the State. And we need to be sure that our APO process works so that if an employee of the Federal Government in a military uniform decides not to postmark the ballots as they are dropped in a sack, that their decision does not count against the voter who got the ballot mailed in good and reasonable time.

Again, I think time is critical. I think in terms of the cost factor, a grants program that would require some sort of local match and maybe on some appropriate scale of determining the ability of the county to participate. Some sort of local match always requires the local official to make a better deal, to make the best possible financial arrangement that if the Federal Government is paying 100 percent of this transition that many people believe we need to be part of, and I don't disagree with that. But I think some kind of local commitment is also important, and I hope that whatever we do in the House and Senate, we do it quickly so that there is a chance it would have some helpful impact by 2002.

The CHAIRMAN. Thank you very much, Congressman. I appreciate it very, very much.

I would just raise one issue with you, and that goes to the very last point you were making. You raised the issue of how difficult it has been to get funding. I know in my State, which had some of the first voting machines in the country, going back to the late 1950s in Connecticut, we have not purchased a new one, I am told, in 20 years or more. You made a point of the fact that when there are other requests being made, new equipment for voting and expending local tax dollars or even State tax money to improve the technology has been very difficult. When you start talking about fraud issues, you hear how difficult it is to get local prosecutors to even pursue fraud questions when they come up.

The obvious question I have is: If you make it a voluntary program, an optional program and leave it up to some sort of match, it seems to me you are leaving yourselves open to the obvious question of whether or not any of this is going to get done, considering what a low priority it has been for people, and that people may have other reasons why they don't want to see the changes occur at all. Whereas, I can make a case, I suppose, in an optional program where you are trying to get this done, but you do not want to mandate it.

Now, I think a mandate in certain areas makes some sense, particularly when we are talking about the election of the President and the national Congress, because my constituents in my State are affected. When a jurisdiction in some remote part of the country decides not to do something, I am affected by that. So I think there should be some national standards.

But if you are going to go the optional route, then it seems to me that having the Federal Government step up and say we are going to help you negates the argument that we cannot afford to do it or do not want to do it.

How would you respond to that concern?

Mr. BLUNT. I think in terms of encouraging this to happen that matching money, whether it is a charitable effort or to a local or State government, is always a huge incentive. At the same time, having some of your own money on the table ensures you to be the best and most careful spender of the Federal dollars you are getting along with those dollars.

Senator, it would not really matter to me, I do not think, whether you started at 50-percent match and went down for some categories of jurisdictions to a 10-percent match on their part. I think a 10-percent match is infinitely better than a 0-percent match, because it makes the local officials get very serious about the kind of system they are designing. And, frankly, it allows our money to go a lot further.

If we try to put in the ultimate "don't worry about the money" system in every jurisdiction in America, we will not—this job will not get done, I guarantee you. We will not come up with the kind of money that would accomplish that goal ever.

The CHAIRMAN. I do not disagree.

Mr. HOYER. Mr. Chairman, we had—

The CHAIRMAN. I will ask you, Steny, to comment on this. But, again, I am reminded of the testimony yesterday from the disability community. For instance, it has been 17 years that we have had the optional program in place to make not just to the building you go into accessible, but the equipment. And we just had the example cited of one major jurisdiction, in Florida, in fact, Congressman, in your State, where you have done a lot of good things. However, we heard yesterday from the disability community that again the issues affecting the disabled in the State of Florida were not addressed in the recent reforms in your State.

So you have 20 million Americans who are disabled, waiting for a voluntary program to work, and their testimony is it still has not been forthcoming. That is my concern.

Go ahead.

Mr. HOYER. Let me say that I think that is a violation of the Civil Rights Act and the Disabilities Act. If it were taken to court, I would like to argue that case on the plaintiffs' side, because I think it is a specious access—if the purpose is for voting, it is a specious access to have a ramp to get into the building. I really think you could argue that pretty persuasively.

I want to make just two points. First of all, on the dollars, Mr. Ney and I have agreed on the funding formula to be 90/10 for most jurisdictions, and for those in the lower quartile of per capita income, the lower quarter, it would be a 95 Federal, 5 local match for funds. This would apply to the first \$400 million. Mr. Young of Florida, the chairman of the Appropriations Committee—and I am on the Treasury, Postal Appropriations Subcommittee, as you know, Mr. Chairman—I think we are going to—we are in agreement on the \$400 million. I think we are going to be able to appropriate that. I think we are going to be able to appropriate it for 2002, and hopefully jurisdictions will know by early October that there are dollars available so that they can move forward.

Secondly, let me emphasize again, if I can, I think it will be useful to this effort to make the mechanical fix the enemy of the



civil rights fix. And I think it will not be useful to have the civil rights fix the enemy of the mechanical fix. This is my strong belief—and I am a supporter of your bill and Mr. Conyers' bill. There is some dispute in the States, non-partisan, as you know, as to the flexibility that States should have. I am supportive of both efforts.

What I believe to be the case in the House, Mr. Chairman, is we could move this bill pretty quickly. I hope you can move your bill, frankly, from my perspective, with all of the provisions that you have discussed. Ours are at least optional to the extent if you want to get a nickel, you have got to comply with all of the issues that we have just discussed. And you have to certify that you are complying or are in the process of complying.

So I am uncomfortable making one the enemy of the other. We ought to move both of these efforts, both on the mechanical side and on the civil rights side.

The CHAIRMAN. I agree. Let me just point out that Congressman Blunt is absolutely correct in this regard. We would not be talking here and we would not have a packed hearing room for two, consecutive days here were it not for the events last fall. If there is any silver lining, it is the fact that we are here, because, again, as we have all said, this was not just Florida, and it was not just this election. It has gone on for a long time, and it goes on all across the country.

So there is an interest in this. Young people got interested in the electoral process. I love to tell it was because we went out and gave speeches in schools all over the country. But, frankly, it was the events of last fall that provoked this interest. So there is a window here to do something, because it is an opportunity that is not going to come back again. We are going to be running around claiming that we have already solved the problem. So it is important to do this as quickly as we can, but it is more important, in my view, that we do it right.

To do something quick that does not solve the problem is going to only increase the frustrations and maybe depress further participation in the voting process if people feel we really have not addressed the problems that exist out there.

So I am very much interested in getting something done quickly. But I am also very interested in us doing it right. And I think we can. We have more than 50 sponsors and, frankly, a number of inquiries coming from the Republican side of the aisle in the Senate, to claim bipartisanship, if you will, on the bill that Congressman Conyers and I have introduced. Mitch has pointed out, obviously, the bill that he and Chuck Schumer have has, what is it, 70 or 60 or high 60s—

Senator MCCONNELL. Seventy.

The CHAIRMAN. Sponsors. Fifty of those are sponsors of the bill I have introduced as well. So hopefully we can get something done here quickly. But I am absolutely determined we do it right, because we will not be back at this issue again, I suspect, until there is some other debacle which forces us back, because that is how we legislate.

But I have already spoken long enough. Mitch, do you want to ask some questions?

Senator MCCONNELL. Yes, let me just say there are several things that we know. We know that the conduct of elections is dramatically different in this country, from same-day registration in North Dakota to 100-percent mail-in ballots in Oregon. There is enormous diversity in how people put on, stage, administer elections in this country. And as you pointed out, Congressman Blunt, there is no chance that we are going to federalize that.

We also know that looking at Florida in 2000—well, let me also say that we also know that no matter what kind of system you use, if you have a razor-thin election, a really, really tight election, and someone chooses to go to court, you could have the experience that we had in Florida all over again, no matter what kind of system you use. It is not possible to invent a system that will prevent a razor-tight election. It is not possible to invent a system that will have a perfect election.

So I do not think we should delude ourselves into thinking there is anything we can do that will prevent spirited litigation in the wake of a razor-thin election in the future when the stakes are high, and that is precisely what we had in Florida.

There has been a sort of undertow in the hearings concerning race and the election. I think it is important to note that the African American vote in Florida increased by 50 percent from 1996 to 2000. That also was the case in Texas, a 50-percent increase from 1996 to 2000. In your State, Congressman Blunt, the African American vote went up 140 percent from 1996 to 2000. The Civil Rights Commission majority report found no evidence of intent or conspiracy to deny people the right to vote based upon race.

So this is really not, in my judgment, about race. It is about trying to see if we can encourage localities to administer elections better. There are some things that simply cannot be prevented. There were 1,000 people in Florida who voted for all 10 candidates. Obviously, they were making some kind of statement. We are not quite sure what it was. But they were making some kind of statement.

The bill that Senator Schumer and I are pushing that has 68 other Members of the Senate on it does not go down the Federal mandate path. It seeks to create one Federal agency with four presidentially appointed Democrats and four presidentially appointed Republicans which would be the one place in America that you could get an honest answer rather than some vendor trying to sell you his particular model of voting machine, the one place in America where you could get an honest answer from an unbiased source about which kind of election system might fit your community best.

It would take out of the Defense Department the office that currently deals with overseas voting, put it there. It would take away from the Federal Election Commission, which has little interest in this, the Election Administration Office and put it in there. And it would have available something that I think everybody agrees on—Senator Dodd and I agree on, I gather all of you agree on—some funds for matching localities that want to upgrade and improve their systems.

That is the kind of bill that could pass the Senate and be signed into law. So as we move down—and also in terms of hearings, I appreciate the chairman having these hearings. There have been a lot

of hearings on this subject by some group or another, I think over 60. I think we ought to go forward and legislate and see if we can get this done fairly soon, because as several of you have suggested, the closer we get to the 2002 election, the less likely anything we do is going to have any impact on that.

So I would urge the new majority here in the Senate to think about turning to this issue early. Obviously, I have a preference in terms of which bill we pass. But I think we could all sort that out on the floor of the Senate, and as the ranking member now, I want to thank all of you for being here today.

The CHAIRMAN. You want to say something, Congressman?

Mr. WEXLER. If I may very quickly, I respectfully differ with Senator McConnell as to the characterization and the resulting action that Congress should take with respect to what happened in Florida. In the business that we are all in, we win elections and we lose elections, either individually or our parties. You deal with that. As an American, hopefully you understand our democracy demands that you abide by the will of the people.

But what happened in Florida, at least from the perspective of some—I would characterize it as many—It was not a question of who won, or who lost. The question was: Did my vote count? And that is a very different question as an American than, “Oh, 6 million people cast their votes and there are only 500 votes between us, this system can never really tell us.” That you can live with. But when you believe your vote as an American has not been counted, that is when you cannot accept it. And, respectfully, I would argue we can devise a system that would at least take that element out of it.

Senator McCONNELL. Well, Congressman, I hope you are equally concerned about the sanctity of the vote, convicted felons voting, people serving our country overseas having their votes discounted, early projections by television networks that caused people to stay home in your State because they thought the election was over.

It was not a perfect election in many ways, and people who were on our side of this election found much in Florida that happened that we did not like.

So, really, it is interesting to discuss all of those things. The question is: Where do we go from here? And I hope that whatever path we take, we will be just as concerned about not disenfranchising members of the military, just as concerned about making sure that only people who are eligible to vote vote, and vote only once, which leads to the other question I want to ask about the St. Louis situation. I want to ask Congressman Blunt his observations about that. And to call on the networks to have some kind of responsible treatment of projections, which, you know, has disadvantaged both sides at various years, depending upon when it was.

Congressman Blunt, I have read with interest Senator Bond’s piece in the Washington Post yesterday. I do not know whether you mentioned that while I was out of the room or whether you had any thoughts about that.

Mr. BLUNT. I did not see what the Senator wrote in the Post yesterday. I did have the new mayor of St. Louis in my office, I believe

it was yesterday, and we were talking about the voter registration challenge, the administrative challenge of any system like that.

According to census figures, the city of St. Louis was 104 percent registered. I think about 90 percent of them voted. That is a pretty good turnout. And we had the unique problem in our State where one State court judge decided to keep the polls open only in the city of St. Louis for an extra 3 hours.

Now, at some point that was reversed by the State Supreme Court. I think the message got to some places later than it got to others. Probably all those polls stayed open an hour more than everybody else in the State got to vote. And some of them stayed open longer than that. I think this has been for the States a significant understanding of consistency, responsibility, and also a wake-up call about the integrity of the voter rolls themselves.

No one benefits by voter rolls that are erroneous. And I think we can come up with a system that protects people's legitimate right to vote without letting everybody who purports at that moment to be a registered voter, whether they are on the rolls or not, to be able to cast a ballot that then goes into the rest of the system.

It seems to me I remember in the Florida election there was a question in one case about how some ballot applications were dealt with. And one of the big overriding problems with doing anything about that ballot application process was that all 1,500 of those, or whatever, had been mixed in with the tens of thousands of other votes already. So there was no way to do anything to really do anything about that particular set of concerns without trying to eliminate maybe all of the votes counted. So you do not want to do anything in the registration process that somehow, again, encourages people at the end of the day to believe that their vote was not counted or somebody else's vote was counted twice or three times. And we had some of those concerns.

Senator MCCONNELL. Well, motor-voter, which I vigorously opposed with the argument that it would put a lot of people on the rolls and have no impact on turnout, has done exactly that: put a lot of people on the rolls and had no impact on turnout.

As a result of motor-voter, the Federal Government stepped in and guaranteed that the rolls would be huge. It has produced some interesting by-products. I saw a piece on "60 Minutes" one night basically focusing in on California, in which it was noted that not only had an animal registered to vote but had, in fact, voted in California.

So I think the whole issue of the sacredness of the vote, that real voters be the people voting and voting only once and that they be alive, is also a matter, if we are going to go down the road of federalizing everything, that we ought to have significant interest in.

Mr. BLUNT. Just talking about St. Louis, the new mayor, again, who is a Democrat, as all mayors of St. Louis have always been, I believe, reminded me that on the Friday before the deadline, even after all of the focus on the November election, the Friday before the deadline for his March election, a group brought in 3,000 names of new voters, most of which were quickly proven not to exist. One was a pet. One was a long-deceased local alderman. You know, this system needs some real help, and part of that help is

giving more flexibility to people who understand how to make the system work at the local level.

Senator McCONNELL. Let me just say finally, do not feel like this is a St. Louis-only problem. In eastern Kentucky, it has long been a tradition that passing away should not keep you from voting. And so I think, you know, there are isolated areas in our country, both urban and rural, where this has been a significant issue.

Thank you, Mr. Chairman.

Mr. HOYER. Senator, can I make a comment? I think everybody that I know agrees that people who are not eligible to vote should not vote. But we ought not to distract ourselves because of that proposition. An awful lot of people whom Bob Wexler talked about, and we know throughout the country did vote and did cast their vote, did not have their vote counted, either because it was not checked before they left, they were not allowed to cast a provisional ballot, the registration lists were lousy, on the purging was wrong. Those we can solve, and I think there is no disagreement by any of us that those ought to be solved.

The CHAIRMAN. Let me just say, too, there were almost 3 million people last year who stood in line to vote, but were told when their turn came up they could not vote. Now, I am always fascinated by anecdotes about animals. Those are the ones we know about. Out of 100 million people who voted, when you get the population of my State, almost, being turned away from the polls after standing in line, that is more than just an anecdote.

We are losing our members here, I can see, with the votes that are coming up. We will let you go and vote. We will stand in recess. I do not have any additional questions. I thank both of you here. Congressman Wexler, thank you. Steny, thank you.

We will stand in recess for 15 minutes until the members get a chance to come back.

[Recess.]

The CHAIRMAN. The committee will come to order. We are having a chaotic morning around here. Good to see you. I understand that this is the patients' bill of rights on the floor. We are getting votes all the time, and you are having them. Xavier, nice to see you. So my apologies to you, with your colleagues coming and going.

What I am going to do is work the light system here, but only for instructive purposes, just so you get some idea. We will do it for every 5 or 6 minutes, but you do not have to follow it religiously, it is just to give you some sense of where you are time-wise.

Congresswoman Johnson, I cannot thank you enough for your patience, and, of course, you and I have talked on numerous occasions about this. I know how passionately you feel about this issue, and I am deeply proud of your leadership of the Congressional Black Caucus, and deeply grateful to you, again, for being here.

Xavier, my thanks to you on numerous occasions for your support and help on so many different issues.

We will begin with you, Congresswoman Johnson, if that is all right. We would be glad to receive your testimony.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF THE HON. EDDIE BERNICE JOHNSON, A U.S. REPRESENTATIVE FROM THE STATE OF TEXAS; HON. XAVIER BECERRA, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA; HON. CORRINE BROWN, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA; AND HON. CARRIE P. MEEK, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA**

**STATEMENT OF HON. EDDIE BERNICE JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, CONGRESSIONAL BLACK CAUCUS**

Ms. JOHNSON. Thank you very much, Mr. Chairman.

Let me say at the outset that election reform is the number one legislative priority for the Congressional Black Caucus for the 107th Congress. And let me also state that I and every other member of the Congressional Black Caucus are cosponsors of Representative Conyers' and Senator Dodd's Equal Protection Voting Rights Act of 2001.

Earlier this year, the Congressional Black Caucus held hearings focused on election reform. We received testimony from civil rights organizations, labor leaders, members of the Florida congressional delegation, a bipartisan group of House members who were former Secretaries, and then a current Secretary of State, research experts who have studied election reform issues, and State and local elected officials.

We have compiled a wealth of information about what went wrong during the election 2000 and what we need to do to correct the problems.

I firmly believe that in order to fix our election system, we must have uniform guidelines that every State needs to follow. I do not believe that we can have a patchwork of different standards in different States. It is confusing to everyone, and the public expects us to do a better job than that.

At a minimum we must have Federal standards for voting machines and technology, provisional voting on election day, voter education, and the distribution of sample ballots that are the same as the real ballots that will be used for that election before election day. Those are the standards that the Conyers-Dodd legislation promotes, and those are the standards which will guarantee the voting rights protections that every American should have in every election.

As a national legislative body, the Congress has the power, the authority, and the absolute obligation to ensure that the apparent disenfranchisement which occurred in several places throughout the United States does not ever happen again. Allegations of voter intimidation, inadequate voter registration lists, subjective, vague, or non-existent ballot-counting standards, and flawed ballot designs all led to confusion before the election, during, and after the election. What happened is no way to elect a President of the United States of America, the most powerful position in the world.

Under the civil rights amendments, the 19th, the 24th, and the 26th Amendments of the Constitution, the Congress has the authority to prevent discrimination in access to voting and has exer-

cised that power extensively over State and local elections as well as Federal elections. The Congress also has expansive authority to ensure that State and local officials comply with national standards for election procedures.

We do not support an unfunded mandate, nor do we intend to dictate to States. However, uniformity and consistency must be the bedrock standards for all elections.

Mr. Chairman, I congratulate you and Mr. Conyers and all of the cosponsors of your legislation for their attention to election reform. All over the world, the United States is seen as the guarantor of democracy. This country has sent countless scores of observers to foreign lands to assure that the process of democracy is scrupulously maintained. We cannot do less for ourselves than we have done for others. We owe it to ourselves, our democracy, our citizens, and the citizens of the world to ensure that our elections are conducted without the slightest hint of inequity or inequality.

I thank you and I look forward to taking any questions that you might have.

The CHAIRMAN. Thank you very much, Madam Chairman. Again, I am deeply appreciative of your testimony and the work that, the Congressional Black Caucus has done. It has provided a wealth of information for us, very valuable information, and testimony that we will receive today and that we have also heard in the past, particularly from members of the CBC who come from Florida, who were very directly affected. As the overwhelming majority of the U.S. Civil Rights Commission reported, the overwhelming majority by a vote of 6-2 of that commission, there were significant transgressions in the State of Florida. To Florida's credit, at least in major part, Florida has stepped up and corrected these flaws. What better evidence could we offer than that, the State of Florida felt so compelled as a result of what had happened in its own State last year that they raced to fix those mistakes. And we applaud them for that. But the comments of members of the Congressional Black Caucus from Florida, as well as around the country, have been tremendously helpful at highlighting the problems of Florida, but also making the point that this was not a one-time event in one State. This has been an ongoing problem that has affected jurisdictions across the country.

My good friend Congressman Becerra, we thank you immensely for coming, and as a member of the Congressional Asian Pacific American Caucus, we thank you for being here. We know Dale Kildee is going to be coming by, who represents the Native American Caucus in the House, and Silvestre Reyes, the head of the Congressional Hispanic Caucus in the House. So we are very appreciative of having the thoughts and comments from all of these caucuses in the House whose membership reflects the concerns of people, throughout the country. So we thank you, Congressman, for being here.

**STATEMENT OF HON. XAVIER BECERRA, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA, CONGRES-  
SIONAL ASIAN PACIFIC AMERICAN CAUCUS**

Mr. BECERRA. Mr. Chairman, thank you very much for allowing us to testify. We appreciate the work that you have done on this

issue. Your footprint is large, in fact, on many issues, and we thank you for all the things that you have done over your years of service to this country.

I would like to join in the remarks that were made by some of my colleagues, including the chairwoman of the Congressional Black Caucus and others, who have talked about the need for electoral reform. Today, the hat I wear is as a member of the Congressional Asian Pacific American Caucus. I am a member of that Caucus. I am one of 31 different Senate and House members who is a member of that caucus. I am here representing the chairman, David Wu from Oregon, in that capacity, and I thank you for the opportunity to testify.

Mr. Chairman, my district is a snapshot of the American quilt. In my 30th Congressional District in California, one of every four constituents is Asian Pacific American. In my city of Los Angeles, which contains my congressional district, 10 percent of the population is Asian Pacific American. In fact, Los Angeles, the second largest city in the Nation, is a majority minority city. So when we talk about the American quilt, certainly Los Angeles and my district reflect it very well.

The two issues I would like to concentrate on, Mr. Chairman, to get to the point, are very important issues to the Asian Pacific American community. The first is the poor enforcement we have seen to date of Section 203 of the Voting Rights Act; and, secondly, the issue which in today's parlance we would call "racial profiling" at the polls.

If I can address the issue of Section 203 of the Voting Rights Act first, in the context of the Asian Pacific American community, we are seeing the fastest-growing community in America still being discriminated against, and oftentimes being deprived of its opportunity to use its franchise of the vote.

Today, some 10.5 million Americans are of Asian descent. That is a 46-percent increase from about 10 years ago. Of that, more than half of that population is still limited English proficient. More than a third live in households where there is no one who is proficient in English above the age of 14.

Immigration obviously has a lot to do with these populations, including the Latino population as well. But even after 200 years since the publishing of the Declaration of Independence in English in this country, which was immediately followed by its publication in German, we still continue to see discrimination heaped upon many of our new citizens, especially those who are limited English proficient.

Section 203 of the Voting Rights Act was enacted in 1975 in order to provide voting assistance in communities where a substantial percentage of the population consists of individuals with limited English proficiency. Today, Section 203 mandates that bilingual ballots, voting materials, and oral translation services be provided when, within a State or political subdivision, 5 percent of the citizens of voting age or more than 10,000 citizens of voting age are members of a particular language minority and/or limited in their English proficiency.

Several Asian Pacific American organizations in the most recent elections of November 2000 monitored many polling sites through-



out America. The Asian American Legal Defense and Education Fund, headquartered in New York, gave us some very startling statistics and information. During that November election which just passed, for Asian Americans, for example, Chinese-language ballots were incorrectly translated such that the party affiliation for those who were candidates on the Democratic State tickets were labeled Republican, and those who were Republican candidates on the State ticket were labeled as Democrats.

Further, in the Manhattan area of New York, in the Chinatown area of Manhattan, inaccurate instructions were given to those using Chinese ballots so that they were not afforded the opportunity to vote appropriately for State Supreme Court Justices. Therefore, their ballots were discarded if they voted improperly.

In Southern California, the Asian Pacific American Legal Center in the November 2000 ballots also gave us information and reports that several polling sites failed to display or make available information in a language that was necessary for those individuals who were going to be voting, the result of which was that many individuals were not aware of what they were voting for and how to vote.

And if I could turn briefly then to the issue of racial profiling, we would think that that would be a thing of the past, especially with individuals who in many cases have been here for centuries. Asian Americans, unfortunately, too often are labeled as perpetual foreigners.

Just recently, last month, in fact, one of our own colleagues, Congressman David Wu, of Oregon, you may be aware, went to visit the State Department at the request of State Department personnel—

Ms. JOHNSON. Energy.

Mr. BECERRA. I am sorry. Entered the Energy Department—thank you, Eddie Bernice, the Energy Department. He was there on an invitation. He displayed his congressional ID along with other ID, and he was denied entrance into the Department of Energy, not once, not twice, but on three separate occasions.

If a Member of Congress is denied entrance, what are the chances that someone of limited English proficiency will be denied access to the polls?

We must do something about racial profiling which goes on not just in the Department of Energy, but in San Marino, California, in the November elections, we have evidence that there were election workers who were asking only Asian Americans who were voting to provide voter identification and proof of citizenship before they were allowed to vote. And beyond that, in 1999, there was a Department of Justice investigation that showed that South Asian and Arab Americans in the town of Hamtramck, Michigan, were being denied the opportunity to vote. They were being challenged by electoral workers in 19 of the town's 36 polling sites. They were being harassed. There were individuals who were told that they had to provide citizenship papers and passports before they could be allowed to vote, and they were forced to read an oath of allegiance to the United States before being allowed to vote.

This type of behavior cannot be permitted. It is unacceptable. It strikes at the heart of our democracy. This type of treatment discourages Americans, particularly new Americans, from partici-

pating in our electoral process. Racial profiling, whether on our streets or at the voting booth is insidious, and we must address this issue of racial profiling at the polls as we move forward with electoral reform.

Mr. Chairman, let me conclude by expressing my commitment to work with you and this committee to address the challenges our citizens face as they seek to exercise the precious freedom to vote. At a time when voter participation is at a depressing low, we have a chance to invigorate the American people and restore their faith in our electoral system. Your legislation, S. 565, and its House companion, which I am a cosponsor of, H.R. 1170, by Congressman Conyers, present a constructive framework to produce the much needed reform within our electoral system.

I thank you for giving me the chance to testify.

[The prepared statement of Mr. Becerra follows:]

283

**Testimony**

**By**

**XAVIER BECERRA**  
**Member of Congress**  
**30<sup>th</sup> Congressional District of California**

**On behalf of the Congressional Asian Pacific American Caucus**

**Before**

**The Senate Committee on Rules and Administration**

**June 28, 2001**

**10:00a.m.**

**Russell Senate Office Building, Room 301**

Chairman Dodd, Ranking Member McConnell, distinguished Members of the Committee, thank you for affording me the opportunity to testify on election practices and procedures and initiatives such as S. 565 and H.R. 1170 to reform our electoral process. I am here to submit testimony on behalf of the Congressional Asian Pacific American Caucus (CAPAC) as one of the 31 Members from the House and Senate who sit on this caucus.

I am proud to represent California's 30<sup>th</sup> Congressional district located in the City of Los Angeles. My district is a snapshot of the American quilt. It is representative of the awesome diversity in our nation. Woven into the fabric of this quilt are people from all walks of life – young and old, those with means and those with dreams, and people from different backgrounds but bound by the common values that make us American. Within the City of Los Angeles is a thriving Asian Pacific American (APA) community. More than 375,000 residents of the City are APA – that constitutes more than 10% of all Angelenos. My district is about 24% APA – ranking it 8<sup>th</sup> in APA population for all congressional districts in the country. This is indeed a vibrant community and I am honored to have the opportunity to represent my constituents before you today.

Safeguarding the integrity of our elections is fundamental to our democratic way of life. There is nothing more basic to our system of government than the right of every citizen to participate in shaping the course of our country by casting a vote. When the electoral process is marred, the very foundation of America is compromised. Unfortunately, for

many in our country, including APA's, the electoral process is, if not broken, in need of repair.

There are two major issues that I believe create barriers to voting in the APA community: first, poor enforcement of Section 203 of the Voting Rights Act which guarantees assistance to language minorities at the polls; second, voter discrimination, or what we would call in today's vernacular, "racial profiling."

Since 1990, the APA population has grown by at least 46% from close to 7 million to more than 10.5 million today. The Census in 1990 reported that approximately 56% of the APA population was limited English proficient. More than 35% of APA's lived in households in which none of the individuals age 14 or over was proficient in English.

Much of the growth in this community is fueled by immigration. Like the early German settlers who arrived before our nation was independent, immigrants from Asia may come with a different tongue but they arrive with the same heart. But even in the days of our infancy, our great nation worked to enable the early German settlers with limited English proficiency to take part in the greatest democratic experiment in history. As soon as our Declaration of Independence was issued, it was immediately printed in German so that American's of German descent could read that great document.

More than two-hundred years later people from all over the world continue to come to this country beckoned by the torch of liberty. While the right to vote is fundamental in

the practice of democracy, many of our newest citizens are denied that right because they are not proficient in English. Language barriers should not prevent any American from effectively participating in the political process. That is why it is so essential for those of us in Congress to understand the importance of enforcing Section 203 of the Voting Rights Act. In addition, we must become more sensitive and aware of the problems that people with limited English proficiency face in the process of voting as we consider ways to improve our electoral system.

Section 203 was enacted in 1975 in order to provide voting assistance in communities where a substantial percentage of the population consists of individuals with limited English proficiency. In 1992, Congress reauthorized and strengthened Section 203 to improve language assistance at the polls for American voters. Specifically, Section 203 mandates that bilingual ballots, voting materials, and oral translation services be provided when within a state or political subdivision, 5% of the citizens of voting age or more than 10,000 citizens of voting age are members of a particular language minority are limited in their English proficiency.

Several APA organizations monitored polling places for Section 203 compliance during the last election cycle. Their findings demonstrate that there is more that needs to be done to empower Asian Pacific American voters.

The Asian American Legal Defense and Education Fund (AALDEF) headquartered in New York monitored 20 polling sites for the November 2000 elections in the boroughs of

Brooklyn, Manhattan and Queens, all with large Korean and Chinese populations.

AALDEF's findings are reported in a New York Times article dated January 1, 2001.

Let me provide a couple of examples of errors that occurred in the City of New York which has an APA population of about 10%.

For the November 2000 elections, Chinese language ballots were incorrectly translated at six New York voting sites. In these cases, party affiliation was switched for candidates in state races. The term "Democrat" was translated as "Republican" and the term "Republican" was translated as "Democrat." In Manhattan's Chinatown, ballots printed in Chinese provided inaccurate instructions for selection of State Supreme Court Justices. While election officials scrambled to correct the error by Election Day, absentee ballots had already been sent out. The erroneous instructions likely led to the rejection of many of the absentee ballots returned. Other concerns raised by AALDEF included a lack of Chinese interpreters at polling places and the verbal conveyance of inaccurate instructions at the polls.

In Southern California, the Asian Pacific American Legal Center (APALC) monitored 54 sites in 19 Los Angeles and Orange County cities for the November 2000 elections. APALC's findings, while more encouraging, were still troubling. According to APALC, there have been improvements in bilingual assistance in both counties in terms of poll worker recruitment, display of multi-lingual materials, and poll worker familiarity with language needs. In addition, both counties had a hotline for voters to call with problems. However, in Los Angeles County alone, 14 poll sites failed to display or make available

the bilingual materials provided to them by the local county registrar. In almost every instance, the multilingual card with the 1-800 hotline number was not properly displayed at polling sites and many poll workers did not know of the hotline number's existence or purpose.

These examples illustrate a need to continue our efforts to enforce the requirements of Section 203 of the Voting Rights Act. Better planning and training are necessary to ensure that polling sites comply with the law and that workers are equipped to meet the needs of voters with limited English proficiency. As we endeavor to usher our election procedures and practices into the 21<sup>st</sup> century utilizing new voting technologies, we cannot forget the needs of limited English proficient voters.

Let me next address the troubling trend of a form of "racial profiling" that occurs within the APA community and how that affects the right of individuals to vote. I should start by saying that "there is no foreign face in America." We wear our patriotism in our hearts and through our actions, not on our skin. Unfortunately, the APA community has long had to endure the label of "perpetual foreigner" even though many APA's today trace their roots in this country back to the 1800's. While these loyal Americans salute the same flag to which we all pledge our allegiance, members of this community have too often been singled out as un-American simply because of the color of their skin. I know I don't have to remind the Members of this Committee of the burdens endured by Japanese Americans during World War II who were forced into internment camps because of unfounded questions of loyalty.



More than fifty years later, the patriotism of members of the APA community is still too often unjustly called into question. Little more than one month ago, one of our own colleagues and Chairman of CAPAC Congressman David Wu of Oregon was initially denied entry into the U.S. Department of Energy on question of his citizenship. Here is a Member of Congress on official duty, present at the invitation of DOE personnel and displaying appropriate identification – including his official Congressional identification – asked whether he is an American citizen not once, not twice, but three separate times.

Some may say this was just a simple misunderstanding and a minor inconvenience. Congressman Wu did after all make it into the DOE building. But what happens when this takes place at the polls? Will the intimidated voter make it into the voting booth? According to APALC, during the November 2000 elections, Asian American voters were singled out at a voting site in San Marino, California by election workers who evidently asked only Asian American voters for identification and proof of citizenship.

Indeed, this is a troubling form of voter discrimination not unique to San Marino, California or to the November 2000 elections. A federal investigation has confirmed voter discrimination against South Asian and Arab Americans in the town of Hamtramck, MI during the 1999 elections. These voters were singled out and had their voting eligibility challenged by election workers at 19 of the town's 36 polling sites according to the U.S. Department of Justice. This investigation was prompted by allegations of voter harassment. One such case was the experience of a voter named Nurjahan Ali who was

asked to provide citizenship papers or a passport before voting. She was then forced to read an oath of allegiance to the United States before voting.

This kind of behavior by poll workers is unacceptable. To engage in racial profiling at the polls strikes at the heart of our democracy. There is nothing more un-American than to deny a citizen the right to vote or to challenge that right simply because of skin color. This kind of treatment discourages Americans, particularly new Americans, from participating in our electoral process. Racial profiling, whether on our streets or at the voting booth, is insidious. We must address the issue of racial profiling at the polls as we move forward with electoral reform.

Mr. Chairman, let me conclude by expressing my commitment to working with this Committee to address the challenges our citizens face as they seek to exercise the precious freedom to vote. At a time when voter participation is at a depressing low, we have a chance to invigorate the American people and restore their faith in our electoral system. Your legislation, S. 565, and its House companion, H.R. 1170 by Congressman Conyers present a constructive framework to produce the much-needed reform within our electoral system.

Again, thank you for giving me the opportunity to testify before this Committee.

The CHAIRMAN. I thank you, Congressman, for that testimony, and I think you have raised two very important points that we are familiar with. I made note of it. You can get caught up in anecdotal stories, but in some instances, the anecdotal stories highlight a much larger picture. And the one on racial profiling in voting is certainly one that we are familiar with.

I shared with my colleagues yesterday that my wife and I have some friends who are Cambodian Americans who live here in the greater Washington area. And Sopom and Sopiaf took great pride in the fact they had become U.S. citizens. My wife is a Mormon, and these two women are Mormons from Cambodia, born in Cambodia, who have their families here. They got very excited last year, frankly, at my urging, that they ought to register to vote and they ought to participate in the election. They got very excited about it, went out and registered to vote, and they had planned to have a family party that evening to celebrate the first time they had voted on election day. And they went to the polls in Virginia, and both of them were denied the opportunity to vote.

And I cannot tell you the sadness that they went through. You know, I tried to tell them, look, the next time, we will work it out and so forth. But for them, this was a huge moment. And for the first time in their lives to be able to cast a ballot in a free election, to have the family plan on getting together for a celebration of the first time that anyone in their family would be exercising this right.

Now you say, well, that is just two cases in some local place here. But it goes on all the time. In fact, we know that almost 3 million people in last year's election—that is almost the population of the entire State that I represent. Connecticut has 3.5 million people, by the most recent census. So imagine the entire population of my State being denied the opportunity to vote last November 7th. And those are the ones we know about, because they were in line, they went up and asked to vote, and were told they could not.

That does not include the people who were in line, and got out of line or who did not go at all because someone said they probably could not do it.

This is out of 100 million people who voted where 200 million were eligible. And we heard yesterday, as I have mentioned already today, from the disability community of some 20 million people who did not exercise their franchise, 10 million who were blind or visually impaired. And people tell me this is not a serious problem, that this was merely a failure of equipment and if we just put some money out there, we can take care of the problem.

So I want to raise the issue to both of you, because there is a difference here. There is a lot of commonality between the various proposals that are out there in terms of where we are going to put resources or make resources available to the States. We call for various things such as provisional voting in both bills, and I think both bills include such things as sample ballots and improving the quality of equipment and so forth. But a fundamental difference, at least in the two major bills in the Senate side, is that in one it is optional. It says if you take some money, we hope you will do the following things. Whereas, the bill that John Conyers and I have introduced, which is sponsored by 49 other Senators here, and

I think around 112 Members of the House is different. We have said, that, on these basic points, without coming up with a one-size-fits-all on national standards, provisional voting, sample ballots, this is not a question of options. This is going to be a matter of law, much as it was in 1965 when we passed the Voting Rights Act. We did not say it is optional whether or not you can discriminate on the basis of race. It is not optional whether or not you have a poll tax. Literacy tests were banned. Those reforms were not optional.

There were arguments made to make them optional. But the Congress, in its wisdom, and an American President said no. It doesn't matter whether you vote in Connecticut or California or Texas or Florida or anywhere else in this country, these are basic rights that are guaranteed to all Americans regardless of where you reside.

Now, we leave it up to local officials to conduct elections. No one is suggesting that that be changed. No one is suggesting we come up with one machine as a means of voting in the country. But we are saying that there are single standards that every citizen ought to be able to expect when they show up in the sacred place of a voting booth.

In 1964, we said restaurants and rest rooms must be available to all Americans. If we can say it about a rest room and a restaurant, then we ought to be able to say, the same, at the very least, about a voting booth. And so I like you, if you would, to comment on this distinction between an optional program and some basic mandates when it comes to voting, because that is where there is a difference.

I could pass a bill tomorrow probably just by writing a check and getting some money out there. But I happen to believe that while it is important to do this quickly, it is more important to do it right. So, I would like you to comment on the two options that are being presented, at least here, and I think generally in both chambers.

Ms. JOHNSON. Thank you, Mr. Chairman. I do think that standards are important. Now, as you were speaking, I was thinking about an experience that we had in Texas last year where standards differed in less than 100 miles apart. There was a group of people that had come to Texas during the winter. They are called snowbirds. They normally vote absentee back in their States, but they were encouraged to vote in a State senate race where they really made a difference. And there was a challenge, but the court upheld it.

Less than 100 miles away, there was an African American man who worked in Houston but lived in this small town, ran for mayor and won, and he was indicted because his work was in another place and they questioned where he lived. And yet he was a native Texan, had grown up in this little town down in southeast Texas.

If we had had national standards where at least residents could be considered the same, the time that persons had registered at the local level or whatever, this could not have happened. But it did.

We have other situations where just where the polling places are located are intimidating to people. So that is where we need some standards. We are not trying to say that every State has to do ev-

everything in the same manner. I am certain that many of the technology companies will have different machines. But minimum standards and the protection of voters with the same types of protections, no matter where they live, will be very, very important. And we had a lot of that in Texas last year.

I was not really that concerned about whether I was going to win or lose, but I knew that we were expecting a large turnout, and we had lots of problems. I had asked a group of attorneys to take the day off so that they could be available. We had to get court orders to allow people to vote. There were a number of things that happened that should not happen in this democracy.

And I do not say that the people did a lot of this intentionally, but because they did not know what the protections were, there was a very haphazardly held election throughout the State. There was such a heavy turnout in some areas that the election persons were not informed. They were new to the area. They had been assigned where there traditionally had been African American election judges. The majority of Republican county commissioners named all Republican persons. Many did not live in the areas and admitted that they really did not know what the rules were.

So there were some people—he did not know whether people were voting more than one time, because they were coming in so fast, he said they were coming in too fast to sign, and he could not keep up with everybody. It was too much work. That should never happen at a polling place. Everyone should have standards where you come in, you sign before you vote, and walk out.

So we do need that protection, and it is not just protection because of the color of one's skin. It is protection because that is where a democracy works best.

The CHAIRMAN. You bet.

Congressman.

Mr. BECERRA. Mr. Chairman, let me just say to you very enthusiastically, please, plow forward with S. 565. You are heading in the right direction. That famous line, "Failure is not an option," that is the case here. We cannot afford to fail when it comes to electoral reform. And, therefore, options should not be part of our electoral reform laws. We cannot afford to make options the way we conduct our affairs in trying to move forward in reforming those areas of the country that have not gotten where they need to be in providing access to all of our voters.

I will say this, which I believe will be very important for language minority populations. Existing laws are not being well enforced, and as a result, we are finding not only that we are discouraging individuals like your friends from voting, but we are providing a chilling effect because the message it sends to them is that we do not trust them. Even if they are citizens, it makes no difference if they have sworn allegiance to our country. If they have forsaken their previous allegiance, we still do not trust them. That is a very chilling message to send to anyone who is still trying to learn the art of this country, the culture, the norms.

And I would hope that as we go forward in reforming the election laws, as you have proposed in your legislation, and Mr. Conyers in his legislation, that we also make sure that we are cognizant that we also must be sure to provide the teeth that we need to get Sec-

tion 203 of the Voting Rights Act moving forward to make sure that we are not racially profiling, because racial profiling just means a poll worker who is not obeying the law, who is being either ignorant or negligent with the law, and as a result is depriving that individual who may feel very intimidated of the right to vote.

So we have to be sure that we constantly raise the banner of enforcing good civil rights laws and voting rights laws at the same time that we go about doing, as you said, requiring that these jurisdictions provide everyone with that franchise.

The CHAIRMAN. Thank you. You made a very good point, by the way. Because the two women I mentioned to you, they obviously are part of a community. And think of what the reaction would be of these two women coming back and that evening gathering with family and friends, presumably many from the Cambodian community, talking about this wonderful day they had had, where they had gone for the first time and walked into a voting booth and cast a ballot for President of the United States. The two of them were born in a country where their rights were not always protected, but they had come to America and could participate in choosing a President of the United States. Think what the reverberations could have been within that community that night, as opposed to the real story of two people who walked up to cast a ballot and were turned away. The ripple effects throughout a community as a result of that message? That I cannot quantify for you, except to the extent that the next time around where some people would have gone out of their way to get registered, assuming they were not, now there are those who will say, Why am I going to go through this if this happened to two people who went out and tried to do this?

These are not isolated stories. I wish I could make people understand that this is not a narrow group of people who are complaining because we are disappointed about an election result. Putting that aside—and we are going to hear in a couple of minutes from people who were very directly affected by what happened in their State. But, you know, when things happen like this, they affect everybody.

I have often said that in Presidential races and the races for the national legislature, put aside for a second, if you will, what happens locally. If there are people denied the right to vote, people denied the right to exercise their franchise in a small precinct in Texas or California, and that in some way affects who is chosen to serve in the Congress of the United States and as President of the United States, no matter how well it was done in Connecticut, my constituents have been adversely affected by the failure of your folks to do it right.

So the idea that somehow these are isolated events that have no effect beyond the borders of their geographical political boundaries is foolishness. It has a huge effect nationally when this is done wrong in any one place.

The idea that these are only matters of local business and local decisionmaking that have no effects beyond the borders of their State or jurisdictions is just not true. Obviously, there is not a question mark on the end of that, but if you want to comment on

that, then we will let you escape here as I see a few other members have arrived.

Mr. BECERRA. Mr. Chairman, if I could just add, the chilling effect perhaps is more insidious than the failure of our law to provide the openings for people to go vote, because once you lose them, chances are you are never going to get them back.

And countless numbers we know never go to the polls because they are afraid to or they do not wish to be embarrassed or humiliated again. We will never get them, regardless of what changes in the law we make here in this wonderful body, and that is why I want to continue to emphasize that. For language minority populations, this could be crucial. We could actually further what we tried to do in the Voting Rights Act by making it clear that we will enforce the law, we will have people at the polls who not only are good Americans and doing work for very little pay for the whole day, but who also understand that there are people who are coming for the first time who need some assistance.

The CHAIRMAN. Eddie Bernice made the same point, and I should have made it myself, and I thank you for making it. That is, we are not talking about malicious intent. Now, there may be isolated cases of that. But you made the point that many of these people out there are doing the best they can under the circumstances. The Voting Rights Act does not talk about intent when it was passed in 1965. It says that, whatever the intent was, if the effect is to disenfranchise someone, then that is a violation of the law. Eddie, I thank you for raising that point because it goes to the very heart of what we are talking about.

I am not in the business of the blame game here. There is a place to discuss that. But we are looking ahead now, and I want to talk about what we can do to fix the system, as you said in your opening comments, so that in the year 2002 and 2004 we never see what happened in Florida or other places around the country happen again. That is why there is a sense of urgency about this, but a sense of urgency to do it right. Because I doubt whether we will come back again to address this issue, or that we would even be addressing it now, were it not for the sad events of last November 7th and the weeks that followed thereafter.

So because of that we are here, and now we are in the mood, in a sense, to try and address this. It is important that we do it correctly, in my view. So I am anxious to get it done soon, but I am more concerned about getting it done right. Eddie, I thank you and, Xavier, I thank you immensely for your presence here today.

Ms. JOHNSON. Thank you very much, Mr. Chairman.

The CHAIRMAN. Stay in touch with us, Eddie, and, again, my congratulations on your chairmanship of the CBC, and I look forward to continuing our work together.

Ms. JOHNSON. Thank you.

Two other members have arrived: Corrine Brown from Florida and Carrie Meek, who I mentioned a moment ago will bring some very specific information to our attention. Congressman Wexler was also here earlier this morning. Peter, we thank you as well for being here. We know of your direct involvement. I apologize this morning that we went a little long, Peter and Carrie and Corrine. I apologize that we got messed up with votes.

The lights are on here more for just guidance. I probably should have had them on this morning to at least let people know when time had expired, because we Members of Congress, particularly in the Senate, can go on a little longer than we may think we are doing. I thank you for coming back to be here and share your thoughts with us.

As I said to your colleague from Florida this morning, Congressman Wexler, obviously for all of us this was a very poignant set of events last year. We could intellectually and passionately get involved. But for those of you who represent the voters who were directly affected by events last year in Florida, it is very important that we hear from you. So I am very anxious to hear your testimony, and I want to be careful about seniority here in terms of who ought to go first.

Mrs. MEEK. Ms. Brown.

The CHAIRMAN. All right.

Ms. BROWN. Yes, sir, and we all got elected to Congress in the same Congress.

The CHAIRMAN. All right. Well, I am not going to then proceed on seniority issues beyond that, then.

**STATEMENT OF HON. CORRINE BROWN, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF FLORIDA**

Ms. BROWN. First of all, Senator Dodd, I want to thank you very much for your leadership, and I would ask that my complete statement be submitted to the record.

The CHAIRMAN. In fact, for all of your statements and supporting documents—and for those of the people who testified before you or who come after you—that will be the case.

Ms. BROWN. Let me just briefly say that I was the first, along with Carrie Meek and Alcee Hastings, the first African American to be elected to Congress from Florida in 129 years when we won the election in 1992. And so I take my responsibility as a member of Congress very seriously.

Let me tell you, my philosophy has been when America has a cold, the African American has pneumonia. And this election is exactly what happened.

African Americans in Florida are 12 percent of the population, but we were 54 percent of the ballots that were thrown out.

I represent from Jacksonville to Orlando. In my district, in Duval County, the 3rd Congressional District of Florida, I can tell you now, first of all, point one, the election was not close. In my district, in my precincts, in my neighborhood where I grew up, Precincts 7, 8, 9, and 10, 27,000 votes were thrown out, 16,000 of them African Americans that vote 98 percent Democratic. So if you see pain in my face, it is because I know that we in Duval County and in the State of Florida have been disenfranchised.

And let me just talk about two or three points that I think are very important. The first one, motor-voter needs to be fixed. The law speaks for itself, but it is not working in Florida. This is my driver's license. Thousands of voters, would-be voters before October deadline, went to the driver's license division, motor-voter, and filled out a form. They got their driver's license, filled out a form to register, but to this day, they never have received their cards.



The CHAIRMAN. How many people is that?

Ms. BROWN. Thousands. There were many editorials and documents—

The CHAIRMAN. This is in Duval County.

Ms. BROWN. Duval County. But it is not working all over Florida.

The CHAIRMAN. Okay.

Ms. BROWN. And I want to say that motor-voter comes directly under Governor Jeb Bush's office. Now, why it is not working? When you go to the motor-voter and you fill it out, it should be some—you should get, first of all, some kind of verification. But they have to turn those forms over to the Supervisor of Elections Office. Both divisions are blaming each other, but the point is that the voter did not get an opportunity to vote.

The CHAIRMAN. You will recall, of course, that motor-voter legislation was a very contentious debate in Congress, and there were people here who were vehemently opposed to it. I do not ever question motives as to why people are against things, but obviously that law was going to increase dramatically the ability of people to get registered and try and make the voting booth more accessible. Obviously, the success of that law depends upon States than getting the job done and seeing to it that when people registered to vote, when they went to the Motor Vehicles Department, that that information is then transmitted to the election officials within their State. We are hearing similar complaints to those that you have expressed are happening in Duval County. But I have my suspicions that too often that is not happening because people do not want it to happen.

Ms. BROWN. Absolutely. I have talked to people who have gone to the Social Security office, and one woman told me she filled out the forms three times, and to this day she has not received her card. So the system does not work, and that is one area.

I want to talk a little bit about what happened in Florida as far as the disenfranchisement of African American voters. The State of Florida spent \$4 million with a company, a Republican company out of Texas, asking them to go through the rolls and purge felons, \$4 million. We did not spend \$100,000 on voter education. In fact, the Governor vetoed it. But we spent \$4 million. The only problem, 60 percent of the people they identified were African Americans that had never been arrested, much less was a felon. And after the election, people have gotten letters in the mail that say, Oh, we made a mistake. That is unacceptable in this democracy.

The experience that I had, a Congresswoman had on election day, I went to my precinct to vote. I went in, of course, I had to show my identification. Everybody in there knew me, and they said, Oh, you can't vote because you asked for an absentee ballot. Well, you know, that was in the primary, but more than that, that ballot was in Washington. They said, well, if you don't have the ballot, then you cannot vote.

And so I was there for about an hour and a half trying to wait until they get in touch with downtown. It did not happen, so I got in my car, along with the TV cameras and went downtown. And finally I was able to vote. It took me 2 hours to vote.

Well, when I went there, I ran into three young men that had come. When they went to their precinct to vote, they were told that

they could not vote because they were felons. These young people had never been arrested, and they were determined that they were going to vote. So that problem, people being taken off of the roll, were not informed that they were taken off of the roll and had no recourse. And to get a "Dear John" letter after the election is not acceptable.

I want to clear up one very important point. Florida did not clear up their problems with the bill. As the elected official for 19 years, when everything else fails, read the bill.

Let me talk about provisional balloting, which is very important, and we all agree you have to have certain standards. In Florida, the devil is always in the details, particularly in Florida. You can go to a precinct—this is the new bill that they passed—and you can sign an affidavit. But if it is not your precinct, it will not count.

Help me now. The reason why you are going to a precinct and signing the affidavit is that you are confused about whether or not it is your precinct. You are not sure where to vote. So I want to be clear that that problem has not been fixed.

Now, let me talk about another area, the canvassing board. Each community has a canvassing board. In Duval County, our canvassing board was four members. No other place in the State of Florida has a four-member canvassing board. Four white men, all Republican, made the decision about what happened in Florida as to whether or not we have a recount.

Let me just say that we had attorneys working during the election, also, and we were talking with the Supervisor of Elections Office. And the entire discussion centered around 500 ballots, period. That is what the discussion was. On November the 10th, on the 11 o'clock news, I found out that we had thrown out 27,000 ballots.

Now, the importance of the timing is that you have 72 hours in order to ask for a hand count or a recount. We were not told until after the 72-hour period had passed.

So my people, over 10,000 votes were never counted, not one time, because the machines kicked them out.

This is extremely hard for me and my constituents. We are standing on the shoulders of Martin Luther King and William Sawyer Cherry and all of those other people that have died so that we could have the opportunity to have our votes counted.

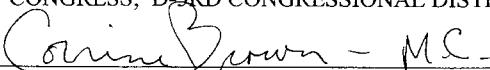
And let me say one last thing about the military ballots, because I think it's very important that we count all of the ballots, not just the officers, the enlisted men's ballot also needs to be counted. But when I read in the New York Times that one military person from Duval County whose ballot was counted indicated that he mailed it on November the 8th, after the election, he wanted his vote to count for Bush. And he just mailed it in to see what was going to happen. And they counted it.

But I have the grandmothers and all of those people that have been voting for years without problems, their votes were not counted. And one of the universities did a study, and I want to submit that study to the record, because the analysis shows that it was not the first-time voter that got their ballots thrown out. It was the same whether you were white or black. What was a determining factor, just like driving while black, was voting while black in Florida.

Thank you, Mr. Chairman.  
[The prepared statement of Ms. Brown follows:]

**Senate Election Reform Hearing**

Statement for the Record by THE HONORABLE CORRINE BROWN, MEMBER OF CONGRESS; D-3<sup>RD</sup> CONGRESSIONAL DISTRICT, FLORIDA

  
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TESTIMONY – “VOTING PROBLEMS IN FLORIDA’S 3<sup>RD</sup> CONGRESSIONAL DISTRICT AND THROUGHOUT THE STATE”

SENATE COMMITTEE ON Rules  
JUNE 28th, 2001

The Honorable Chairman Christopher Dodd,  
The Honorable Mitch McConnell, Ranking Member,  
Members of the Committee,  
and other distinguished guests,

Thank you for inviting me to testify before your Committee. It is a privilege and an honor to speak to you today about a subject that is close to my heart -- the hard won right of EVERY AMERICAN to vote and to have their vote *accurately* counted.

In 1992, I was one of three African Americans elected from Florida to the U S House of Representatives in 128 years! My election that year, along with two other newly elected African Americans from Florida -- Alcee Hastings from central Florida and Carrie Meek from Miami – ushered in a new political era in Florida and a time of greater representation for Florida’s African Americans. The road to our success had huge hurdles all along the way. We were successful only because we fought in the courts while taking peacefully to the streets to garner every possible vote.

Eight years later, on November 7, 2000, millions of Americans went to the polls to vote their choice for President. Each came to the poll with the good sense, the determination, and the dignity of a United States citizen who has a right to cast a vote, believing it will be accurately counted. Those discarded votes in Duval County in my district were never publically examined, never really questioned. Such behavior made me wonder how many Democratic votes were tossed out without examination throughout Florida and across America.

By one vote, Governor George Bush rushed into the White House with the blessing of the Supreme Court (a five to four decision), leaving tens of thousands of Florida votes behind – discarded, dismissed, uncounted. Each of these discarded votes represents a citizen -- the life of some person who got up the morning of November 7 and made a conscious decision to get to a polling precinct to cast their vote. For some poor, handicapped, or elderly citizens, the effort was particularly great. Some Jacksonville voters have testified that they waited in line at a precinct and then were told to go to another precinct and another. Others could not read and needed assistance, while other voters had registered to vote when they were issued a driver's license, but when they arrived at their precinct were told that they were not on any of the voting lists.

The whole nature of our last presidential election – from the road blocks set up in Black areas, to the misidentified felons kicked off the rolls, to the votes being thrown out – is simply inexcusable. Our current president was selected by the Supreme Court, not the American people, in complete disregard for the dangerous precedents set in our country's history when the supreme court justices undermined the will of the people.

Instances such as the following that occurred in Florida during the last election absolutely cannot be allowed to happen again:

in Duval county, 27,000 votes were thrown out, 16,000 of them from African-American voters. We know that more than 20 percent of the votes cast in predominantly African-American precincts were discarded and that the Duval County Supervisor of Elections issued a sample ballot that was different from the official ballot, in complete violation of the law that mandates them to be the same. This proved more than confusing to voters since the sample ballot instructed people to vote on every page, and the actual ballot instructed people to vote on appropriate pages. Since there were two pages of presidential candidates, the 22,000 over-votes for president should not come as a surprise to anyone. Even more disturbing to me is that the Supervisor's office didn't release these figures to local officials until after the deadline had passed to request a recount. Having been an election monitor in countries across the world, I can tell you that we would never certify another country's election if it had as many flaws as we had in Florida.

I am troubled by these patterns. The facts speak for themselves. Before election day we learned that there were severe problems with the Motor-Voter registrations. Hundreds of people who had registered to vote through the Department of Motor

Vehicles who were not allowed to vote. On October 10, the last day to register in Florida, I traveled to colleges throughout the district and registered more than 1,000 new voters. Many of these people were turned away from the polls and told they could not vote. Not surprisingly, most of these college students were African-American.

We also know that the Governor of Florida spent \$4 million dollars of taxpayers money to purge a list of suspected felons from the rolls across the state of Florida – but whether or not this list of felons was accurate was not anyone’s concern. Apparently, it was the responsibility of the accused citizen to correct his or her status. There should be some process for taking people off the rolls, instead of just randomly deciding to purge people.

Whether it was deliberate or not, the system that we have in place disenfranchised African-American voters in record numbers. We have a system that discourages people from voting and we have a system that discriminates against minorities and against the poor.

Throughout the 20<sup>th</sup> Century, African Americans have fought injustice. In the heart of my district in Jacksonville, during the 1960's, blacks were forced away from the food counter at Woolworth’s by police with ax handles, but we kept coming back, demonstrating, and following the lead of Dr. Martin Luther King. We saw our schools integrated, and we kept demanding more. We will never, ever settle for anything less than equality.

Since the election, I have listened to hours of testimony from Florida citizens who were denied their right to vote or were harassed at the poll in some way. I have listened to attorneys testify to the unbelievable arrogance of persons officially involved in the election whose behavior resulted in injustice to, especially, African American voters.

Regarding this matter, I have with me the report of the NAACP and of the Commission on Civil Rights. The House Democratic Caucus is conducting hearings and was recently in Jacksonville’s historic LaVilla area to hold a hearing. That report will soon be available. Again, I appreciate your time and your sincere interest. I am available to answer any questions.

**The Supervisor of Elections: Administrator or Civic Educator?**

A central tenet of democracy is that all votes should count and be treated equally. Particularly since the civil rights struggle and implementation of the Voting Rights Act in 1965, Americans generally believed fair elections were the norm; irregularities were assumed to be both relatively rare and unlikely to affect the outcome. According to a recent Gallup poll, however, all this changed with the 2000 presidential elections. Their December poll showed less than half (48%) of Americans thought George W. Bush "won fair and square," another 32% felt he "won on a technicality" and 18% believed he "stole the election."<sup>1</sup>

The popular upheaval this caused led to demands for immediate legislative remedies. The purpose of this short study is to provide elected officials with intellectual constructs to inform the resulting debates. The focus here is on the role of the Supervisor of Elections.

For some, the Supervisor of Elections should simply provide the administrative framework for fair elections; for others, in an effort to promote a more inclusive democracy, the Supervisor also should have a responsibility to inform and encourage citizens to vote as well as anticipate voter problems. Proponents of the latter view believe these efforts to increase voter accessibility for all citizens must take into account demographic factors and social inequities.

The 2000 presidential election in Jacksonville, Florida provides a very useful case study to illustrate the "administrator" vs. "civic educator" models for Supervisor of Elections. In 1968 Duval County in Florida merged with the City of

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<sup>1</sup> Gallup Poll conducted December 15-17, 2000 and released December 20, 2000.

Jacksonville to form one of the nation's few consolidated governments; at 841 square miles it is also the country's largest city geographically. The 2000 Census showed Jacksonville with 778,879 residents of whom 423,967 were registered voters. Demographically the registered voters are 70% white, 24% African-American, 2% Hispanic and 4% other.<sup>2</sup> Approximately one-third of those registered are 55 years of age or older with another third 30 years or less. Over the past decade Democrats have seen their portion of the electorate slip from about two-thirds to barely half while Republicans have increased their share from about 30% to 36%; the major political gain has been with those identifying themselves as "nonpartisan," especially among younger electors.

Race relations in Jacksonville have been mixed. The city had its share of race problems in the 1960s and 1970s and is just this year settling a twenty year court-ordered school desegregation agreement. By the late 1980s Jacksonville remained largely segregated in its residential pattern—the vast majority of precincts were 90%+ either black or white, and blacks were concentrated in the inner-city core. Through the 1990s more blacks settled in other areas of the city, particularly the southeast and north portions. Today only 33 of the 268 precincts are 90%+ black and 65 are 90%+ white.

Thus neither the politics nor demography of Jacksonville is unusual for a Southern city. The 2000 presidential election changed all that and made this city (and a few other Florida localities) quite unusual.

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<sup>2</sup> The 2000 census figures show a higher minority population with 66% white, 28% African-American and 3% Asian.



George W. Bush clearly garnered more votes than Al Gore in Jacksonville. In the end, of the 291,646 ballots cast, Bush received 152,460 compared to Gore's 108,039. There were 4967 undervotes (where the vote counting machine did not detect a preference for any presidential candidate) and 21,942 overvotes (the machine count detected a preference for more than one candidate). This meant 9.2% of those who participated in the election did not have their vote count for president. While this figure is disturbing in any democracy, it probably would have had minimal impact if these uncounted votes had been randomly distributed. Of even more democratic concern is that these questionable ballots (especially the overvote) came preponderantly from the inner-core portion of the city with the highest concentration of African-American residents. Maps detailing race distribution in the city as well as the distribution of overvotes and undervotes are available on the Internet.<sup>3</sup>

Jacksonville has 14 single-member city council districts (and another 5 at-large council seats). Four of these (7, 8, 9, and 10) were designed as minority-access districts and this constitutes the inner-city. Although this part of the city represents only 20% of the ballots cast, it had 45% of the overvotes and 28% of the undervotes; 23 of the 82 precincts in this area had more than 20% of their ballots not counted.

The same pattern emerges when the entire city is viewed. The precinct is the basic unit for aggregate political analyses. Jacksonville has 268 of these relatively homogenous neighborhood entities (precincts). Since Jacksonville was covered by the Voting Rights Act of 1965 for many years, the Supervisor of

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<sup>3</sup> See <http://users.ju.edu/~sbaker/elect.htm>

Elections has collected a considerable amount of data for the voter registration file. Each registered voter is identified by precinct and lists information on age, race, sex, party and voting history. These individual-level data can then be re-aggregated to the precinct level and merged with election data to correlate race distribution in each precinct with level of undervoting and overvoting. The results illustrate a stark pattern (see Table I).

Table I

Pearson Correlation coefficients for race, overvote, and undervote across precincts (n=268)		
	<u>% White</u>	<u>% African-American</u>
% Overvote	-.893	.893
% Undervote	-.436	.441

There is virtually a mirror-image between white and black tendencies to overvote; the same is true at a lesser level for undervoting. Overvoting is strongly associated with percent African-American (as shown by the high positive correlation). Thus as percent African-American increases, so does percent overvote; the opposite is true with percent white where the correlation coefficient is both high and negative.

The first popular reaction to these correlations was to suggest the presidential ballot in Jacksonville with ten candidates spread across two pages was very confusing to first-time voters. Since the National Association for the Advancement of Colored People (NAACP) Florida voter mobilization drive resulted in a 70% increase in African-American voting, blacks would be

overrepresented among first-time voters. This, it was argued, accounted for the correlation between race and overvoting. The data, however, provide little support for this otherwise comforting assumption. Since the voter registration file contains individual voting histories, the percent of first-time white and black voters per precinct can be calculated. We find the same (though somewhat muted) pattern among first-time voters compared to their more experienced counterparts (compare Tables I and II).

Table II

<u>First-time voter only</u>		
Pearson Correlation coefficients for race, overvote, and undervote across precincts (n=268)		
	<u>% White</u>	<u>% African-American</u>
% Overvote	-.638	.807
% Undervote	-.391	.354

The problems of misvoting cannot be explained simply as a first-time voter phenomenon.

A related question is whether this was a quirk of the 2000 election or represents a previously unrecognized anti-minority systemic bias. Earlier election data are not as detailed. For the 1996 presidential election in Jacksonville we can calculate the number of uncounted ballots by subtracting the sum of the votes for all candidates from the number of ballots cast. Included in this figure will be a very small number of people who intentionally left their ballot blank.

Overall, about 3% of the 1996 ballots in Jacksonville cast for president were not counted. For the inner-city precincts (Council Districts 7, 8, 9 and 10) the figure was 5.7%; those areas outside the inner-core had 2.0%. Across the city there was a .753 correlation between percent African-American and percent ballots not counted. This pattern is similar to the 2000 election, though more muted.

Confidence in the election system was seriously compromised by exposure of these problems following the 2000 presidential vote. This was especially true in the African-American community. A Jacksonville University/WJCT news poll conducted between November 20 and December 8 of that year demonstrates the racial divide on this critical question. (See Table III)

Table III

"How confident are you that the election process in Duval County produced a fair outcome? Are you . . ."

	Percents (n=393)		
	<u>Total</u>	<u>White</u>	<u>African-American</u>
Very confident	36%	45%	7%
Somewhat confident	28	33	14
Not very confident	13	11	19
Not at all confident	19	7	56
Don't know/uncertain	4	4	4

Where almost four out of five whites were very or somewhat confident in the election outcome, only about one in five blacks agreed. Even more ominous, 56% of black respondents had no confidence in the outcome, a major problem in any democratic order.

This reality confronts the Supervisor of Elections with a classic political problem: Is the Supervisor primarily an administrator (whose responsibility lies in providing an honest and efficient administration of elections) or a civic educator (who should facilitate voter turnout and aggressively address questions of group underrepresentation in the voting process)? This gets to the heart of election administration in a democracy.

One can make a reasonable argument in favor of either the Supervisor of Elections as administrator only or as civic educator/ombudsman.<sup>4</sup> The one area of universal agreement is that no election procedure is without bias. Any election law will help or hinder various types of voters.

For instance, the "administrator only" model suggests responsibilities of the Supervisor of Elections ought to be both few and circumscribed--all people have the same access to voting information and should be treated equally. Providing special assistance to any group, even one with a history of discrimination, makes government into a paternalistic entity that treats people differently according to their race. This hardly seems appropriate in a society that values individualism, self-reliance, and equal treatment of all races.

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<sup>4</sup> For some people it is hard to understand how anyone could spoil a ballot or vote for more than one candidate (the largest portion of the problem in Jacksonville). We can only speculate as to the reasons this occurred so frequently in the inner-city. Voting is a relatively rare occurrence for most people, sometimes only once every four years. The sample ballots distributed and published in Jacksonville had all ten presidential candidates listed on a single page yet the real one was spread across two pages. This posed a problem for many voters since they had been activated by Democratic Party leaders who, to promote support for all their candidates, encouraged people to "vote on every page." Many inserted their candidate's name in the "Write in" section on the ballot's second page and proceeded to punch that column as well. This overvote rendered that an invalid ballot. This type of redundancy is common in other human

Proponents of this perspective argue that an effort to rectify perceived imbalances will only further aggravate existing social cleavages.

Supporters of the “civic educator/ombudsman” model of the Supervisor of Elections may point to the recent Supreme Court decisions that upheld the basic principles of *Miranda v. Arizona* where some constitutional issues are considered so fundamental that it becomes the responsibility of government officers (here the interrogating police) to enforce them. One could argue that if the courts found 5<sup>th</sup> and 6<sup>th</sup> amendment rights in this category, the right to vote—the fundamental democratic activity—must also receive special treatment. This interpretation is reinforced with the 1983 amendment to Section 2 of the Voting Rights Act of 1965 that defined “disparate impact.” This type of discrimination is illegal simply by its existence—there is no need to establish an intent to discriminate before a remedy is legally required. Further, the biases built into society virtually guarantee unfair treatment for the disadvantaged. Those in advantaged groups will normally have significantly more opportunity to achieve their goals than others. If the government continues to treat all people equally, proponents of this perspective argue, these advantages will only be reinforced and further aggravate existing social cleavages.

In the end elected officials, in consultation with the voting public, will have to make the appropriate determination. Further analysis is needed.

This remains a work in progress Stephen C. Baker, Ph.D.  
Professor of Political Science  
Jacksonville University

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endeavors. For example, a valid check requires the amount to be listed in two separate places, one with the numerals and another where the amount is spelled out.

**COMMITTEES:**

TRANSPORTATION AND INFRASTRUCTURE  
 COMMODITY, TRADE AND MARITIME TRANSPORTATION, RANKING MEMBER  
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 PROGRESSIVE CAUCUS  
 THE OMAHA CONGRESSOR STUDY GROUP

**Congress of the United States  
 House of Representatives  
 Washington, DC 20515**

**CORRINE BROWN**  
 3D DISTRICT, FLORIDA

**PRESS RELEASE  
 THE HONORABLE CORRINE BROWN  
 THIRD CONGRESSIONAL DISTRICT OF FLORIDA**

**REPLY TO:****WASHINGTON OFFICE:**

766A RAYBURN BUILDING  
 WASHINGTON, DC 20515  
 (202) 225-9123  
 FAX: (202) 225-2556

**DISTRICT OFFICES:**

101 EAST LINCOLN STREET  
 SUITE 202  
 JACKSONVILLE, FLORIDA 32202  
 (904) 354-1822  
 FAX: (904) 354-3721

75 WINDSOR BOULEVARD  
 CHAMBER OF COMMERCE  
 ORLANDO, FLORIDA 32804  
 (407) 872-0658  
 FAX: (407) 872-9783

DAYTONA BEACH, FLORIDA  
 TOURISM  
 (904) 254-0914

FOR IMMEDIATE RELEASE: June 28, 2001

CONTACT: David Simon  
 202-225-0123  
[David.Simon@mail.house.gov](mailto:David.Simon@mail.house.gov)

(Washington, DC) In support of the Dodd-Conyers election reform bill at the Senate Rules and Administration Committee hearing, Congresswoman Brown made the following statement:

On November 7<sup>th</sup>, 2000, millions of Americans went to the polls to vote for the President of the United States. The whole nature of this presidential election – from the road blocks set up in Black areas, to the misidentified felons kicked off the rolls, to the votes being thrown out – is simply inexcusable. Our current president was selected by the Supreme Court, not the American people, in complete disregard for the dangerous precedents set in our country's history when the supreme court justices undermined the will of the people.

Instances such as the following that occurred in Florida during the last election absolutely cannot be allowed to happen again:

in Duval county, 27,000 votes were thrown out, 16,000 of them from African-American voters. We know that more than 20 percent of the votes cast in predominantly African-American precincts were discarded and that the Duval County Supervisor of Elections issued a sample ballot that was different from the official ballot, in complete violation of the law that mandates them to be the same. This proved more than confusing to voters since the sample ballot instructed people to vote on every page, and the actual ballot instructed people to vote on appropriate pages. Since there were two pages of presidential candidates, the 22,000 over-votes for president should not come as a surprise to anyone. Even more disturbing to me is that the Supervisor's office didn't release these figures to local officials until after the deadline had passed to request a recount. Having been an election monitor in countries across the world, I can tell you that we would never certify another country's election if it had as many flaws as we had in Florida.

Whether the mistakes made during election day were deliberate or not, the system that we have in place disenfranchised African-American voters in record numbers. We have a system that

TESTIMONY -- "VOTING PROBLEMS IN FLORIDA'S 3<sup>RD</sup> CONGRESSIONAL DISTRICT  
AND THROUGHOUT THE STATE"

SENATE COMMITTEE ON Rules  
JUNE 28th, 2001

The Honorable Chairman Christopher Dodd,  
The Honorable Mitch McConnell, Ranking Member,  
Members of the Committee,  
and other distinguished guests,

Thank you for inviting me to testify before your Committee. It is a privilege and an honor to speak to you today about a subject that is close to my heart -- the hard won right of EVERY AMERICAN to vote and to have their vote *accurately* counted.

In 1992, I became one of three African Americans elected from Florida to the U.S. House of Representatives in 128 years! My election that year, along with two other African Americans from Florida -- Alcee Hastings and Carrie Meek -- ushered in a new political era in the state, and a time of greater representation for Florida's African Americans.

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Since the election, I have listened to hours of testimony from Florida citizens who were denied their right to vote or were harassed at the poll in some way. I have listened to attorneys testify to the unbelievable arrogance of persons officially involved in the election whose behavior resulted in injustice to, especially, African American voters.

Throughout the 20<sup>th</sup> Century, African Americans have fought injustice. In the heart of my district in Jacksonville, during the 1960's, blacks were forced away from the food counters throughout the city by police with ax handles. Yet the community kept coming back, demonstrating, and following the lead of Dr. Martin Luther King. We saw our schools integrated, and we kept demanding more.

We are here today, at the beginning of the new millennium, to discuss the disenfranchisement of thousands and thousands of voters. I would like to end by saying that the African American community will not settle for anything less than equality, and I in particular, will not sleep in peace until fair, inclusive, election reform is implemented throughout our nation. Simply providing money to states with so called conditions is entirely unacceptable, as prescribed by the McConnell bill. I strongly believe that there should be mandatory standards that every state should be required to meet. Civil rights laws have never been optional and should NOT be optional today. This is the principle reason why I am a cosponsor of the Dodd-Conyers bill.

I appreciate your time and sincere interest. I am available to answer any questions.

98

Congresswoman  
Corina Brown  
Submission to  
record

With the confident politician trailing badly in the polls, however, HOH is holding off on his travel plans.

"Somebody has a little too much time on their hands — there's no grand conspiracy."

**Miami Redux.** Several of the House GOP aides who rushed down to Miami at the behest of House Majority Whip **Tom DeLay** (R-Texas) to lead an effort that prevented local officials from recounting presidential ballots behind closed doors — helping to end Al Gore's quest for the presidency — had a little reunion in southern Virginia last week.

Sporting campaign buttons that said "19" — that was the floor of the Miami-Dade government building where the mad rush through the hallways occurred — the House staffers parachuted in to make sure there was no funny business during the special election won by new Rep. **Randy Forbes** (R).

"When you're in a pressure cooker like that, you become fast and furious friends," **Doty Heye**, spokesman for Rep. **Richard Pombo** (R-Calif.), told HOH. "And that makes you more likely to go to Virginia" or anywhere else to help the party.

Since Democrats have charged that the merry band of staffers were actually disenfranchising minority voters in the Florida presidential fight, they were not amused by the meddling in Virginia, especially because race was a major factor in last week's contest.

"Sounds like the Republican Party's voter intimidation program is so successful that they're taking the show on the road," cracked Gephardt spokesman **Erik Smith**. "Coming soon to a polling place near you."

Heye sharply denied there was anything improper in Florida, where the battle was known as the "Brooks Brothers Revolt."

He added that this time the aides were just doing "mundane poll checking. I wish I could say that it was exciting."

Later this month the GOP staffers are planning a reunion barbecue. Will they be plotting another "Preppy Riot" for 2002?

**Fuzzy Math?** With President Bush vowing to veto spending bills that soar beyond his requests, HOH couldn't help but wonder whether the House Appropriations Committee was trying to pull a fast one on the Big

**Lotta Tips.** He may not always be nice to reporters, but Senate Minority Leader **Trent Lott** (R-Miss.) is apparently very generous to drivers for Domino's Pizza.

**Waheed Awsim**, general manager for Domino's outlets in the D.C. area, tells HOH that Lott often places orders from his Capitol office and home on the Hill.

"He likes pepperoni pizza; he's a typical American," Awsim commented. "He's a very generous tipper."

Lott tips about \$5 for a pie, according to Awsim. (The generosity may have something to do with the fact that Lott's son owns a Domino's franchise in another area.)

The 30-year-old Awsim recently won the World's Fastest Pizza Maker Competition in Las Vegas by making 14 pies in 155 seconds. It was the seventh crown for Awsim, who also says that White House tips have soared since the end of the Clinton administration.

"Ever since George W. Bush took office, tips have gone up about 40 percent."

From the time that *The Washington Post* reported that Sen. **John McCain** (R-Ariz.) might launch an independent bid for president in 2004, however, Awsim claims that "tips from the White House have gone down."

Could it be that White House political aide **Karl Rove** is having heartburn?

**Greasy Spoon?** Speaking of indigestion, HOH kicked up a little bit of a storm recently by referring to Sen. **Strom Thurmond's** (R-S.C.) favorite spot for Sunday brunch as a "greasy spoon."

Letters and calls came in protesting the use of that term to describe *Elsie's Magic Skillet* in northern Virginia, where the 98-year-old Senator loves the eggs and grits, among other delicacies.

Just to be clear, as a native New Yorker partial to "greasy" diners, HOH truly meant it as a term of endearment.

Besides, given the fact that this restaurant has helped sustain Thurmond for all these years, everybody should probably think about giving it a try.

AP Photo/Chris Wedel; AP Photo/Chris Wedel; AP Photo/Chris Wedel; AP Photo/Chris Wedel; AP Photo/Chris Wedel

The CHAIRMAN. Thank you, Congresswoman. You know, I have tried to convey to my colleagues here a sense of passion about this issue, and I probably do not do a very good job. All of your constituents could not be here, but you have expressed to me—and I have seen you do it now on several occasions—the sense of hurt. I know there is also a sense of anger, but I think there is a deeper sense of hurt, on the part of those people who have made that extra sacrifice, who have gone out and registered, gone to the Motor Vehicles Department, taken all the steps necessary, shown up and walked in to express their choice and preference, it is an act of faith when people do this. It is an act of faith that they believe that their votes counts and they can make a difference. At a time when we are trying to encourage more than 50 percent of the eligible people in this country to choose our elected officials, it becomes awfully difficult, in succeeding elections to make that case when people hear about how people who have taken the extra steps to make sure that their vote counts in an election are denied that right.

Ms. BROWN. May I have 30 more seconds?

The CHAIRMAN. Certainly.

Ms. BROWN. One other area, Seminole County, I represent Seminole County, and Seminole County and Martin County was on the news. That is because the Republicans went into the precinct and filled out forms for absentee, which was illegal. The unique thing about it, they decided not to throw out the ballots because they said these people were innocent.

The unique thing about that was the supervisor of elections in Seminole County still does not know that that is illegal, because after they threw it out, she took the people that brought the suit to court and asked for payment for her legal fees. At least the court has the sense—not only did they not grant her that, they made her pay the other side.

But that is illegal to have someone come from the outside, to come into the supervisor's office, and fill out forms. If that person, Mr. Chairman, was an African American supervisor, that person would be in prison today.

The CHAIRMAN. Thank you very much, Congresswoman.

Dale Kildee, by the way, has joined us. Dale, why don't you come up and sit at the table? We will work down the line here. But I see you sitting there, and I do not want you not to be up here.

Now, Carrie or Peter, who is going to go next?

**STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. DEUTSCH. Mr. Chairman, I am happy to go. We will just go right down the aisle.

The CHAIRMAN. Welcome to the committee, by the way.

Mr. DEUTSCH. Thank you, Mr. Chairman. Obviously, we appreciate your efforts and hopefully this work will yield results.

I do not think any of us in a sense dwell on the election, but none of us has forgotten the election, and I think we can learn a lot about it and a lot about your legislation based upon what occurred. And I think it is not yet totally internalized in the entire country, but for those of us who lived it and for those of us who have spent time looking back, in the State of Florida, Al Gore and Joe

Lieberman, in terms of people who went to the polls, did not win by 500 votes, did not win by 5,000 votes, but more likely probably won by about 50,000 votes. And in a sense, I mean, again, from a historical perspective, it is important to sort of accept that and literally go forward from that point, because one of the perspectives is that the exit polls were, in fact, more correct about voter intent than the actual counting of ballots in Florida.

Congresswoman Brown mentioned Duval County. In Broward County and Palm Beach County, in Leon County and other counties, we can look at specific results in terms of votes that were not counted. And, you know, that number is a significant number and it is very real.

Some of us were saying that immediately after the election, but I am sure you aware of the Civil Rights Commission sort of post-election research. And I think what they uncovered, which we knew almost immediately, is that there was a racial factor in terms of which votes were not counted.

What some people are not aware of, especially because most States are not Voting Rights Act States, in Florida race is on your voter registration card. When you register to vote in the State of Florida, because we are under the Voting Rights Act, because of past discrimination in the State of Florida, you self-designate your race on your voting card. When we say that we know which votes were not counted or what was the percentage of African American turnout in Florida, we are not doing it statistically. We are doing it factually in terms of people's voter registration cards.

I guess this is a sub-point, but it goes to what you were saying on some of what was on the ground in a sense in Florida.

Something very positive happened on election day in Florida. As Representative Brown mentioned, the African American population in the State of Florida is about 12 percent of the voting-age population. The African American community, which I am not aware of any other case where this occurred, although there very well might be cases where it occurred, actually voted in higher percentages than their percentage of the voting-age population. The African American turnout in that election was about 15 percent, which really is unheard of in American politics, that the African American community was voting at a higher percentage than their population, because they were energized and they got to the polls and were trying to get their votes to count.

Let me also sort of follow up on something that you mentioned, the Voting Rights Act, and the Voting Rights Act really talks about results. I do not believe there is any question that the process in Florida in terms of individual counties and the way the counties set up their balloting process, because the results are discriminatory. The results are discriminatory. And so because the results are discriminatory, I think by definition—and, in fact, there is litigation going on right now which hopefully will yield those results through the legal process, through the court process, that will find Florida's election law today in violation of the Voting Rights Act, because, again, as you are well aware of, it was—I mean, the computer ballots were much more likely in counties that had higher African American population, those ballots, the percentage of those ballots being discarded was much higher than in other forms of balloting.

So, again, it is irrefutable. You cannot really debate the issue of the results were racially discriminatory. If you were an African American, the chance of your vote not counting was probably about 300 times greater than if you were not an African American in the State of Florida.

If you talk about a situation of why the Federal Government should be involved, I think you laid it out as well as anyone possibly could. There is a reason why there is a Voting Rights Act in the United States of America, because of discrimination and past discrimination. And it still is in enforced. And if we talk about a reason, this election is the reason for the Federal Government trying to effectively do fair elections. If we do not have fair elections, if there is not a sense of acceptance of results, then literally our entire society has a problem, and an incredibly serious problem in terms of the legitimacy of results.

I think the reality is that the results—you know, we accept the President as the President. But I think when we look at the facts, we acknowledge—and I think we do acknowledge, and I think anyone objective acknowledges—that the results are illegitimate results at a variety of different levels.

Let me just mention two other points—

The CHAIRMAN. Are these votes I hear? Is that your beeper that is going off? I want to give Carrie a chance to—

Mr. DEUTSCH. Let me just close very quickly. On a couple of other points related to that, one of the issues in terms of the balloting—and this is really a societal issue in terms of Federal involvement—is that on some of the ballots, like in Duval County, where there were two-page ballots, or there were other ballot issues, post-election it was analyzed that the average person to read a particular ballot might need, you know, a fourth or a fifth grade education. Well, what about if you do not have a fifth grade education? What do you do about that situation in the United States of America, which is very real? And one of the acknowledgments is that, unfortunately, we still live in a society where the chance of someone not having that is more likely for African Americans. And that is reality that we live with.

The last thing or the last two things very quickly to mention is this whole issue on the felons. If there is an issue which still is out there—and you mentioned you do not care about intent. Well, I think we do care about intent to some extent, because the result of that purge was literally probably about 10,000 people who were eligible to vote, a majority of which historically would have voted for the Democratic candidate were people who were not felons who were denied the right to vote. Again, there still is a question that is out there. What was the intent of that? They could have chosen other paths. They chose to cast the net wider instead of narrower. And so they picked up people who they know—I mean, we know this now from press accounts that they had a choice of how to structure their purge, and they cast it wider rather than narrower. And why did they make that choice?

Now, the last thing very quickly on the military ballot is that is clearly an issue. Florida, you know, has the latest—which, again, many people are not aware of. Florida actually has the latest election in our runoff in October. Florida is under a Federal court de-

cree in terms of overseas absentee ballots. The whole issue of counting the ballots after the election is because we have literally the latest election of any State in the country. Our runoff is the latest election in the country, the first Tuesday after the first Monday in October. And that is an issue, again, where clearly the Federal Government is already involved in terms of overseas absentee ballots of military personnel. And it needs to—there is absolutely an appropriate reason for the Federal Government to be involved.

The CHAIRMAN. Thank you very much.

Carrie, you have been very patient and I thank you.

**STATEMENT OF HON. CARRIE P. MEEK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mrs. MEEK. Senator Dodd, I want to compliment you on your aggressiveness and your sincerity and following up and trying to bring about election reform. I am almost a skeptic because I think I have lived much longer than most of the people who will come before you to testify. And when they began to make comparative analysis of the negative impact of this on certain groups, I think they were very remiss and that they have forgotten lessons of history in that—

The CHAIRMAN. Corrine, thank you very much. Thank you, Peter.

Mrs. MEEK. It is the black American who had to go through the poll tax and the literacy test and all of those things to detract them from voting. So I think that is a dimension that we must keep in proper perspective when you are trying to change for election reform.

I am going to submit my longer statement to the record, but I must stay here to say a few things. Even if I am to miss this vote, I must say this.

We accept the simple truth that our electoral system failed us. It is not the first time it has failed us. It has been failing us all over the country. But this is the first time that it failed us where everybody in the whole Nation and the whole world knows that we are pushing a system that is false.

So I, too, express the outrage and exasperation of the people I represent, and the outrage and exasperation of the people I represent should be felt all over this country. And it is beginning to be so. If you do not feel it, then this catastrophe will happen again. And the next time it will be in some other Senator's back yard because it is already in there now.

So there seems to be a lot of people who have forgotten about these lessons, and they tell us to get over it. We will never get over it. We will always have it in the back of our minds. We will always be looking for fairness, as we always are.

This is sort of a funny thing that—this election was sort of a plaything for some people, and I just want to give you an excerpt of what appeared in Roll Call. I am from Miami, and Dade County was a very crucial place. South Florida could have won or lost this election in Dade County, Broward County, and Palm Beach County, the largest population in the State. But from this article, it is very clear to see that some people were sent to Dade County to disrupt the election. What did that mean? That meant to invalidate

and to disenfranchise the people I represent. So that is why I will never forget what happened there.

I was down there when they came. I want to quote a few things from the Roll Call article. It is called "Miami Redux." And I quote: "Several of the House GOP aides who rushed down to Miami at the behest of House Majority Whip Tom DeLay, Republican of Texas, to lead an effort that prevented local officials from recounting Presidential ballots behind closed doors helped to end Al Gore's quest for the Presidency. They had a little reunion in Southern Virginia last week. Sporting campaign buttons that said 'No. 19,' that was the floor of the Miami-Dade government building where the mad rush through the hallway occurred. The House staffers parachuted in to make sure there was no funny business during the special election won by new Representative Randy Forbes, Republican," who incidentally won over a Democrat. End of that quote.

"When you are in a pressure cooker like this, you become fast and furious friends," Doug Hay, spokesman for Representative Richard Pombo, Republican of California, told Roll Call, "and that makes you more likely to go to Virginia or anywhere else to help the party. Since Democrats have charged that the merry band of staffers were actually disenfranchising minority voters in Florida's Presidential fight, they were not amused by the meddling in Virginia, especially because race was a major factor in last week's contest."

So I want to be sure that this committee does not forget that race is an important factor in this contest, and we cannot overlook it. And it sounds like—and I end up that quote, and I am beginning another one. "It sounds like the Republican Party's voter intimidation program is so successful that they have taken the show on the road."

Mr. Chairman—

The CHAIRMAN. Do you want to make that article a part of the record?

Mrs. MEEK. I am leaving it as part of the record.

The CHAIRMAN. I will make the announcement to make it part of the record.

[The article follows:]

ROLL CALL

Monday, June 25, 2001

**Miami Redux.** Several of the House GOP aides who rushed down to Miami at the behest of House Majority Whip **Tom DeLay** (R-Texas) to lead an effort that prevented local officials from recounting presidential ballots behind closed doors — helping to end **Al Gore's** quest for the presidency — had a little reunion in southern Virginia last week.

Sporting campaign buttons that said "19" — that was the floor of the Miami-Dade government building where the mad rush through the hallways occurred — the House staffers parachuted in to make sure there was no funny business during the special election won by new **Rep. Randy Forbes** (R).

"When you're in a pressure cooker like that, you become fast and furious friends," **Doug Heye**, spokesman for **Rep. Richard Pombo** (R-Calif.), told HOH. "And that makes you more likely to go to Virginia" or anywhere else to help the party.

Since Democrats have charged that the merry band of staffers were actually disenfranchising minority voters in the Florida presidential fight, they were not amused by the meddling in Virginia, especially because race was a major factor in last week's contest.

"Sounds like the Republican Party's voter intimidation program is so successful that they're taking the show on the road," cracked Gephardt spokesman **Erik Smith**. "Coming soon to a polling place near you."

Heye sharply denied there was anything improper in Florida, where the battle was known as the "Brooks Brothers Revolt."

He added that this time the aides were just doing "mundane poll checking. I wish I could say that it was exciting."

Later this month the GOP staffers are planning a reunion barbecue. Will they be plotting another "Preppy Riot" for 2002?



Mrs. MEEK. This was by design that this voter intimidation occurred.

The CHAIRMAN. I recall a photograph in one of the national newspapers of people down there banging on the doors, and then identifying them later. Most people thought, I guess, when they saw the photograph—I certainly did when I saw it the first time—that these were citizens and constituents within that congressional district.

Mrs. MEEK. They were not.

The CHAIRMAN. I was shocked later to find them identified as people who had come from out of State. They had come from Washington.

Mrs. MEEK. They were hired hands sent there by the Republican Party, and I want to say on the record, when they come back again, we will be ready for them.

But we cannot have a repeat of this. Too much is at stake here, and I am so proud to be an original cosponsor of the Dodd-Conyers Equal Protection of Voting Rights Act of 2001 and the Voting Rights Protection Action of 2001. It is going to be a great help in that you have outlined all of the needs that we could see right now that it would take for good election reform. I am only hoping and praying that you will be able to get it out of this body, and then, of course, there will even be more trouble when you get it into the House.

As you know, I represent Florida's 17th Congressional District, which covers the largest portions of Miami-Dade County. There are more African American voters and more Hispanic voters in my district than in any other district combined in this State. It runs north of the cities of Homestead and Florida City and south to Broward County line.

The 2000 election revealed something that each of us has known for a very long time, and I want to make this very clear. Not every qualified voter who wanted to vote had an equal opportunity to vote—my colleagues have demonstrated that—and to have his or her vote counted. Most of the studies you see—and you will hear quite a few people in the majority party say that nothing really happened, that they were all not by design. I want the word “irregularity” explained because everything that happened that was a diminution of the African American vote was called an “irregularity.” Therefore, when the Miami Herald published their much heralded report called “Democracy Held Hostage,” their finding was that nothing illegal happened. Well, you have got to differentiate between irregularities and illegal. But I call to your attention there were a lot of things done, whether they were illegal or not by these definitions, the end result of it, people were not allowed to vote who should have been.

One of the most hurtful things was to see Haitian Americans who had never voted before to line up—I was in that line—the Thursday before the election. We were inspiring people to vote early because we know there would be an overwhelming outpouring of African American voters in that election. So we pushed hard for everyone to vote.

When they got up to the line, our elections department—that is why we need a new federalism. We do need the Federal Govern-

ment to be aware that these things do happen. You cannot expect what is going to happen from the Supervisor of Elections in Dade County, and it is not going to happen with any other Supervisor of Elections unless there is some national standard to be sure that people are given the right to vote when they get to the lines.

Many of these Haitian voters were turned back because they told them they did not understand what they were saying, and after they tried to mark their ballot and it was marked incorrectly, presumably, they were not able to correct it. And they were just turned around.

Now, that is not something that I read in the Miami Herald's report. I was there. I saw all of this. I saw the intimidation by Hispanic people who were not from Dade County, who were apparently bused in to disrupt the election as well. These are things that I saw and will stand anywhere and say this to be the truth.

So not every qualified voter was able to vote. We were far more likely to have our votes invalidated. Few African American voters, Mr. Chairman, lived in counties with modern precinct optical techniques. When there was some problem at the polls in my district, they tried to call, if they felt like it, but if they did not, those people did not get a chance to vote. But if you went just across town to the polls in Coral Gables, an upper-class community, they had computers that they could get in touch with the Election Central. So I cannot put the election of the constituency on someone having a chance in these various counties to do the right thing.

Now, they are not going to do the right thing. They have not done it all this time. I do not expect it to be done now, because this is not due all the time to a machine. You can throw out the punch card ballot, but you cannot throw out the people who are doing this. You cannot throw out the operators of these various machines. So there has to be some federalism here. There has to be some legislation passed on the Federal level that will standardize some of these things. You cannot standardize all of them, but you can give people the right to vote. You can give them the same equal protection that they gave the Bush administration. That is one of the many reasons why your bill is so desperately needed. The Equal Protection of Voting Rights would create a bipartisan commission to examine ways to improve voter participation, registration, and election technology. Grants from the Department of Justice would be awarded to States to meet the national requirements and to purchase voting equipment, train election personnel, educate voters, and help implement the commission's recommendations. This is a good bill, Senator Dodd. It is very inclusive. It covers a lot of things. Hopefully it can be passed.

I also saw some of—I could say a great deal, but I wanted to talk a little bit about a piece of legislation that I have already filed because it has to do with improper purging of voters in Florida. This was done. No one took credit for it. The Governor's office said they had nothing to do with it. The Secretary of State pled immunity in it. The Supervisor of Elections said they had nothing to do with it. But it is a national problem that requires a national solution.

As a result of that, to prevent improper purging from occurring again, last month I introduced House Resolution 1971, the Voting Rights Protection Act of 2001. My bill amends the National Voter

Registration Act of 1993 to require notice and an opportunity to be heard before a registered voter may be removed from the voting rolls on the basis of an alleged criminal conviction. Such notice and opportunity to be heard will prevent improper purging of the voting rolls.

States should not be able to remove a registrant from the official list of eligible voters for Federal office on the basis of inaccurate information that the voter is not given the chance to challenge. That is just basic fairness.

Senator Dodd, in a nutshell, the African American community and minorities have a history of segregation. They have not received equal protection that the laws have given us. Through the type of legislation that you have filed, they will get the equal protection that is needed. So we will need to do it as soon as we can.

I remember the Supreme Court laws before regarding education where they said we were to proceed with all deliberate speed, if you remember that.

The CHAIRMAN. Yes.

Mrs. MEEK. What happened was not deliberate speed. It was with all deliberating speed. So the terminology is important, and if this Senate and this Congress is able to pass election reform and get it out in a timely fashion, I think it will help a great deal. We do not want to see some of the inaccuracies and the confusion of the past, and that is a very bad testament on those of us from Florida that the polls showed that 84 percent of black voters in Florida believe a greater portion of African Americans were rejected or not counted than votes from Floridians of other races.

I was elected to the Congress, first woman since Reconstruction. My constituents look to me to be able to do something about this. The talk is good, but they want to see some action. And the fact that you are having these hearings goes much further than anything we have had so far.

I want to thank you and may God's spirit go with you.

[The prepared statement of Mrs. Meek follows:]

CARRIE P. MEEK  
17th District, Florida  
COMMITTEE ON  
APPROPRIATIONS  
SUBCOMMITTEES  
VA, HUD, AND  
INDEPENDENT AGENCIES  
TREASURY, POSTAL  
SERVICE, AND GENERAL  
GOVERNMENT



Congress of the United States  
House of Representatives  
Washington, DC 20515-0917

Please Respond To:  
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OFFICE BUILDING  
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(202) 226-0777 FAX  
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SUITE 500  
MIAMI, FL 33137  
(305) 576-8903  
(305) 576-9753 FAX

Statement of

## U.S. Rep. Carrie P. Meek

before the Senate Committee on  
Rules and Administration  
on the Need for Electoral Reform

June 28, 2001  
SR-301  
10:00 A.M.

Good morning, Chairman Dodd, Senator McConnell, Members of the Committee. Thank you, Senator Dodd, for convening this very important hearing and for your leadership on the issue of electoral reform. I will submit my longer statement for the record and, because of time constraints, will focus my presentation here on just a few issues.

All of us in public service must accept the simple truth that government and our electoral system failed in the 2000 Presidential election. Mr. Chairman, I know that you agree with me that we must never again allow an electoral system where all legally qualified voters do not have the same opportunity to cast a vote and have their vote counted. That's why electoral reform is so critical.

I'm here this morning to express the outrage and exasperation of my constituents. I share it. I also want to discuss some of what we need to be doing to prevent such

catastrophes from ever happening again.

There seem to be some who want to forget the horrendous lessons of the 2000 Presidential election and put electoral reform on the back burner. That's simply intolerable. We cannot allow this to happen. Our constituents deserve better. This issue requires our attention now. It cannot wait.

We cannot have a repeat of the problems that occurred last fall when voters go to the polls for the 2002 elections. That's why I'm proud to be an original cosponsor of the Dodd/ Conyers Equal Protection of Voting Rights Act of 2001 (H.R. 1170 /S. 565), and to be the sponsor of H.R. 1971, the Voting Rights Protection Act of 2001, my bill to prevent improper purging of the voting rolls.

As you know, I represent Florida's 17<sup>th</sup> Congressional District which covers large portions of Miami-Dade County. My Congressional District runs from the county line on the north to the cities of Homestead and Florida City on the south. We were ground central for many of the problems that arose in the year 2000 election.

The year 2000 Presidential election revealed what many of us have known for a long time: namely, not every qualified voter who wanted to vote had an equal opportunity to vote and to have his or her vote counted. As the recent report of the U.S. Commission on Civil Rights confirmed, not every voter had the same opportunity to vote. African American voting rights were diluted in the year 2000 election.

African American voters were far more likely to have their votes invalidated than other voters because a greater percentage of African American voters lived in counties that used defective, outmoded punch card voting machines or central optical scanning systems. Few African American voters lived in counties with modern precinct optical scanning systems, a technology that prevents voter error by requiring voters to correct mistakes before their ballots can be cast.

In the year 2000 election, there were many incidents in Miami-Dade County with a disparate impact on African American voters that had the effect of disenfranchising or diluting their voting rights.

- African Americans were wrongfully turned away from the polls. Qualified voters were not on the voter rolls. Others were denied the right to vote because the Supervisor of Elections could not be reached to confirm their voter registration. Large number of African American voters were turned away simply because they did not have photo IDs.
- It is clear that a voting list purge resulted in the deletion of valid voter names from the rolls.
- Because a subcontractor supplied the State of Florida with an erroneous database and the state and local election officials did not take adequate steps to verify the accuracy of the information in this database, many voters were told they were felons and were not allowed to vote even though they were

not felons. Others were removed because of an alleged address change even though they never moved.

- **Sample ballots and voting instructions in Creole were not available to assist Haitian voters even in precincts with large concentrations of Haitian voters. Bilingual translators who spoke Creole were not available in many polling places to assist Haitian voters.**
- **Voting machines and equipment in African American neighborhoods were of the oldest vintage and poorest quality. While optical scanning equipment was used in some Miami-Dade precincts with a heavy concentration of Cuban voters, African American precincts used only the faulty, outmoded punch card machines, technology with a much higher rate of errors and defects. This resulted in a disproportionate rate of disqualification of ballots from African American voters who intended to cast a vote in the year 2000 elections.**
- **While 2.7% of Miami-Dade's ballots were not counted because of over votes, in African American inner city neighborhoods, the number generally was between 8 and 11%. As many as one in ten ballots cast in some precincts in Liberty City were voided and not counted because of over votes.**
- **Consider the following charts:**

- The first chart shows that **73%** of African American voters lived in counties using unreliable, outmoded, error-prone punch cards, while only **59%** of white voters lived in punch card counties. A lower percentage of blacks live in counties with much more accurate optical scanners at each precinct that give voters a chance to fix errors in their ballots.
- The second chart shows that a significantly greater percentage of black voters had their ballots discarded in the November 7<sup>th</sup> election.
- **16%** of ballots cast by black voters were discarded in counties using central optical scanning systems compared to only 5% of ballots cast by white voters.
- **11%** of ballots cast by black voters were discarded in counties using punch cards compared to only 4% of ballots cast by white voters.
- **3%** of ballots cast by black voters were discarded in counties using precinct optical scanning systems, the most modern technology, compared to only 1% of ballots cast by white voters. More black voters than white voters had their ballots discarded regardless of the type of voting machine used, but, as indicated, the black discard rate drops dramatically when precinct optical scanning systems are used.



- Simply put, as the third chart demonstrates:  
**Punch Card Ballots Cheat Voters and They Are Much More Likely to Cheat African American Voters:**
  - ▶ Voters in punch card counties were nearly three times as likely to have their ballots rejected as those in “optical scanning” counties.
  - ▶ **88%** of the 51 Florida precincts where more than 20% of the ballots were rejected used punch cards.
  - ▶ **78%** of the 336 Florida precincts where more than 10% of the ballots were rejected used punch cards
  - ▶ Overall ballot rejection rate for the 43 Florida counties using optical scanning technology was **1.4%**.
  - ▶ Overall ballot rejection rate for the 24 Florida counties using punch cards was **3.9%**.  
(Source: December 2, 2000 Miami Herald)

Fortunately, the Florida state legislature recently passed legislation to eliminate punch card voting. This reform was entirely needed. Yet, while Florida proposes to eliminate

punch cards, it has not provided the necessary resources to achieve a prompt transition to alternative voting systems, nor does it have the resources to do so. Federal funds are urgently needed to finance a buyout of punch card voting systems so that state and local governments can afford to replace them.

That's one of many reasons why the Dodd/Conyers bill is so desperately needed. The Equal Protection of Voting Rights Act would create a bipartisan commission to to examine ways to improve voter participation, registration, and election technology. Grants from the Department of Justice would be awarded to states to meet the national requirements and to purchase voting equipment, train election personnel, educate voters, and help implement the commission's recommendations.

To be eligible for this funding, states would have to meet requirements by 2004 addressing updated voting systems, provisional voting, and advance distribution of sample ballots and voting instructions.

The bill is a comprehensive attempt to address many of the concerns raised in last year's presidential election, including the accuracy of voter registration records, the ease of accessibility for all voters, including the disabled, the elderly, limited-English speakers, persons of color, women, and overseas and military voters, and the assurance that every voter have a fair and equal opportunity to cast a ballot. Senator Dodd, I commend you and Representative Conyers on this legislation and hope that it will move forward promptly in both bodies.

I could say a great deal more, but in the limited time available, let me focus on just one issue of particular concern to me-- how to avoid improper purging of voters from the voting rolls. No one of good conscience can support the purging of legally qualified voters. I fervently support provisional voting. But regardless of whether we adopt provisional voting procedures, we need to take steps immediately to prevent the improper purging of voter rolls.

It is inexcusable that, last November, voters who were not felons were falsely charged with being felons and prevented from voting because a subcontractor supplied the State of Florida with an erroneous database and the state and local election officials did not take adequate steps to verify the accuracy of the information in this database. This is an outrage that must never be repeated.

The problem of improper purging of voting rolls is not limited to Florida. This is a national problem that requires a national solution. To prevent improper purging from occurring again, last month, I introduced H.R. 1971, the Voting Rights Protection Act of 2001. My bill amends the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) to require notice and an opportunity to be heard before a registered voter may be removed from the voting rolls on the basis of an alleged criminal conviction. Such notice and opportunity to be heard will prevent improper purging of the voting rolls.

States should not be able to remove a registrant from the official list of eligible voters for Federal office on the basis of

inaccurate information that the voter is not given a chance to challenge. That's just basic fairness.

The right to vote is precious. Many have given their lives to secure it. Democracy is diminished whenever a legally qualified voter is denied the right to vote. None of us can accept voting systems or procedures that allow qualified voters to be falsely accused of being felons and therefore be denied the right to vote. Notice and opportunity to be heard is necessary. Fairness requires it.

Mr. Chairman, I cannot overemphasize the depth of the African American community's concern about the electoral process in Florida. In March of this year, the St. Petersburg Times published a poll of African American Florida voters which reflects the African American community's pervasive mistrust of the electoral process in Florida.

The poll showed that 84% of black voters in Florida believe a greater portion of African Americans were rejected or not counted than votes by Floridians of other races, a fact borne out by the statistics I have discussed. 40% of those voters cited a "coordinated effort by state government to make it more difficult for African Americans to vote" as the reason that more African American voters had their votes rejected more often, a greater percentage than those who blamed faulty voting machines or voter error.

Yet despite these deep-seated concerns, it seems to me and the people that I represent that, after our experience in Florida, the high-minded talk we so often hear about the importance of voting rights is just platitudes and lip service.

We are outraged because African American voters in Florida did everything they were supposed to do—we studied the issues, we did our civic duty and went to the polls, and we voted—and yet massive numbers of our votes were not counted, and in the end, our opinions and decisions did not count.

We are exasperated because our serious, desperate pleas about the disenfranchisement of our citizens, and the disqualification of our ballots, and the violations of our election laws were ignored, delayed, denied and dismissed as mere “irregularities” and, in many cases, trivialized or reduced to jokes.

African American voters feel like we have been here before, for this country has a long history of keeping us from voting. In my own case, I am 75 years old. My grandfather was a slave, who had no rights at all. I grew up in a Southern town, Tallahassee, Florida. My father used to take me into the State Capitol Building on New Year’s Day--the one day each year that African Americans were allowed in that public building.

Within my lifetime, every conceivable effort was made to keep African Americans from voting, and to keep our votes from counting.

My generation, like my parent’s and grandparent’s generations, struggled mightily against poll taxes that you had to pay before they would let you vote; and “literacy” tests that required African Americans—and only African Americans--to recite whole sections of state constitutions or answer

obscure questions to the satisfaction of examiners who could never be satisfied.

African Americans are alive today who were denied the right to vote in “white only” primaries; and who had to search for polling places that were moved with no notice in the black community, or moved so far that it was hard to get to them. I remember the intimidation of being greeted at the polls by disdainful and unhelpful poll workers, or even police officers at the doors.

African Americans today remember when the district lines for cities and counties and legislative districts were gerrymandered and drawn to exclude our neighborhoods or to dilute our vote. We remember how registration records would “disappear” when we showed up to vote and how the law, administrative procedures and the “official discretion” of public officials were used to postpone and delay our attempts to assert our rights.

The Voting Rights Act was supposed to change all of that, and government was supposed to be protection, helpful and on the side of equality and inclusion. In the case of Florida, government has failed miserably.

It is clear that the phrase “voting rights” is a mere platitude to many of our justices and government officials. One local official was even ignorant enough to opine that it was “not anyone’s fault if they couldn’t understand the directions on the ballot.” My message today is this:

It is a failure of government and our electoral system

when any legally qualified person who wants to vote is denied the opportunity to do so.

It is a failure of government and our electoral system when courts, the laws, and government officials do not do everything possible to insure that every vote is counted and that the final count is correct.

The right to vote is the cornerstone of our democracy. We need real electoral reform, like that offered by the Dodd/Conyers bill and by H.R. 1971, my bill to prevent improper purging of the voting rolls, and we need it now.

Senator Dodd, these issues will not wait. With your help, that of our Colleagues, and our continued vigilance, we can give the American people the electoral system that they deserve, one that makes equal voting rights a reality, not just a pious slogan to be spoken on ceremonial occasions and then ignored. Thank you for inviting me to appear before the Committee and for your commitment to this critical issue.

# # #

The CHAIRMAN. Carrie, Congresswoman, I thank you immensely, and your constituents are rightfully proud of you. I realize again, listening to Corrine and yourself, Eddie Bernice Johnson obviously speaking for the CBC—we are going to hear shortly from my good friend Maxine Waters and Congressman Gonzalez from Texas, Dale Kildee with whom I had the privilege of serving in the House many years ago—you really are capturing and putting a face on this story. Too often there can be a debate of numbers and statistics and theories and all sorts of projections, and that is valuable. I do not minimize it. But for the average person watching this and listening to this debate and trying to determine whether or not there is a problem, you have provided this committee with invaluable testimony to demonstrate the human level of all of this.

I have been chairman now for all of about a week or 2 weeks, whatever the time is, and I was determined that as the first time ever to be a chairman of a standing committee of the Senate, after 20 years here, that the very first action I would take would be on this legislation.

Mrs. MEEK. Thank you.

The CHAIRMAN. My colleague Senator McConnell had a hearing actually on this matter earlier, and he wants to move quickly. I do as well, and you have stated that. It is important that we move quickly. But as I have stated over and over again, I know I could get a certain type of bill done quickly, but I also know it is important to get the right bill done quickly.

Mrs. MEEK. Yes.

The CHAIRMAN. So, while I am determined to do it quickly, I am more determined to do it right. Because I do not know the next chance we will get to come back and do this. So while money is important to get back to our States and precincts so they can acquire the equipment and do the things that are necessary, my view is that if we do not also set some standards here, we will write the checks but we will not see the improvements made.

I am deeply grateful to you for your presence here today and your continuing involvement. I am determined. My State is a long way from Florida. We are at one end of the east coast from each other. But I stand here today and tell you that I am determined to see to it that what happened in your State will never happen again or happen in any other State. And I am confident that a majority of my colleagues in both chambers will join us in this effort before it is over with.

So we thank you.

Mrs. MEEK. Thank you, Senator.

The CHAIRMAN. Thank you very much. You are welcome to stay.

I see my friend from Texas, Congressman Gonzalez, here and my partner in so many efforts in the past, Maxine Waters, is here as well. Let me invite both of you to come on up and join Congressman Kildee. I am impressed that in this heat you have been running back and forth from chamber to chamber.

Carrie, you are more than welcome to stay if you would like, but I know you may have other obligations. So we will certainly excuse you.



By the way, if there are any additional questions, the two of you will have them submitted to you in a timely fashion. But I realize you have got busy schedules.

Thank you all for being here. I have watched you come in and out of the room all day here, and, again, I know how difficult it is managing schedules, as complicated as they are, because I know all three of you very well. I will be calling you Congressman and Congresswoman and Congress-people, but, Congressman Gonzalez, our fathers served together in the Congress, and I had the privilege of serving with your Dad in the House of Representatives back in the 1970s. Maxine Waters and I have been great friends for a long time. I know her family well. They have been great public servants on so many different levels, and she is a person of great passion and belief. I love the passion that she brings to almost any debate and discussion. And Dale Kildee has been a tireless worker for so many years on so many different issues, and he is here today representing the Native American Caucus in the House. So I am, on a personal level, very grateful to all three of you and honored that, in my first hearings as chairman of this committee, you would be here, along with, I think, around 15 others of your colleagues. Some 17 to 20 Members of the House will have appeared before this committee today, both Republicans and Democrats, expressing their support for us to do something about this. That is the good news.

While there are some debates, obviously, about what we need to do, we always like to talk about the good news. The good news is that we are not debating whether or not we ought to do something, which is a major breakthrough here. The question is simply whether or not we will do the right thing or just try and do something and call it electoral reform. So I am anxious to hear your testimony, and however you want to proceed is fine. I do not know what your schedules are like and how you would like to go, but you all know each other well. Dale, if you want to start, I put the lights on here not to cut off your statements, but as sort of a reminder of where you are. So it is about a 5-minute light and you will get some sense of where you are in your statements.

Dale, thank you for being here.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF THE HON. DALE E. KILDEE, A U.S. REPRESENTATIVE FROM THE STATE OF MICHIGAN; HON. MAXINE WATERS, A U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA; HON. SILVESTRE REYES, A U.S. REPRESENTATIVE FROM THE STATE OF TEXAS; AND HON. CHARLES A. GONZALES, A U.S. REPRESENTATIVE FROM THE STATE OF TEXAS**

**STATEMENT OF HON. DALE E. KILDEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CONGRESSIONAL NATIVE AMERICAN CAUCUS**

Mr. KILDEE. Thank you very much, Mr. Chairman. Good afternoon.

As co-chairman of the Congressional Native American Caucus, I am honored to be here today to speak on election reform as it affects Native Americans.

According to an article written by Ms. Suzan Shown Harjo in *Indian Country Today*, in 1919, Congress authorized U.S. citizenship and the right to vote to any Indian veteran of World War I who requested that. Congress in 1924 extended dual citizenship and the right to vote to all other Indians. But it took 50 years for every State to permit Indians the right to vote.

In her article, Ms. Harjo writes that Native American voter turnout in most tribal elections has ranged between 75 percent and 95 percent since the 1960s. By contrast, Indian voter participation in our national elections rarely hits 50 percent and did not do so in November 2000.

Voter apathy on Indian reservations is high, according to Ms. Cate Montana's article in *Indian Country Today*, published after the 2000 election. In her article, Ms. Montana focuses on the Seminole tribe of Florida, which has 2,700 tribal members. She writes, "Decades of shallow-voiced stumping by . . . politicians through the reservations at election time, followed by two to four years of cold indifference, has left many tribal members bitter and disinterested in the political process . . . Without the impact of a solid voting block in any one district, [tribal] members say they . . . could not make a difference."

However, the events surrounding the election 2000 results may have changed voter attitude on the Seminole reservation and among the Seminole citizens. Since the margin of victory in the Presidential election was so slim, tribal members now believe—and I am in constant contact with the Seminoles of Florida—that their votes can make a difference.

I anticipate that in future elections, particularly in Florida, the Indian vote will be very, very high.

To assist tribal members participating in the voting process, the Seminole tribe has voting booths in the tribal offices and provides assistance to those members in need of language interpretation.

Mr. Chairman, I am concerned that certain barriers exist that hinder large voter turnout from tribal members. These include but are not limited to the following areas:

Rural accessibility. Oftentimes tribal members do not have access to ballots or polling places because the tribal reservations are generally located in remote areas far from the polling places. Tribal governments should be afforded the opportunity to establish polling places on the reservation.

In my own city of Flint, if people have to walk more than a few blocks, they complain about not having a polling place and a polling place is put there. Very often with the Seminoles, they have to go miles and miles to vote. And I think that in your bill, if you could have a section perhaps on Indian voting, that could be very, very helpful.

Another area is transportation. Getting tribal members to the polls is a difficult task for several tribes. During election 2000, the Cherokee Nation of Oklahoma used its own tribal resources to fund shuttle services for any registered voter wishing to cast a ballot on

election day. Most tribes do not have the resources to provide shuttle service to its members.

Another problem is language. The Navajo Nation Election Administration informed me recently that the tribe must provide interpreters for their members at the polling places located on the reservation. The Navajo interpreters often have a difficult time interpreting the ballots to the tribal members.

Mr. Chairman, during World War II, one of the reasons we won that war, particularly in the Pacific, was because of the Navajo code talkers. It is a shame that the Navajo language becomes a barrier to balloting. And, again, I think perhaps your committee would like to look at that.

Communication. I am concerned about the lack of communication between the tribes and local governments overseeing the election process. Very often in certain areas—and Florida has not had a great relationship with its Indians on a number of matters. There has not been good communication between the local government, the township or the city, and the nearest Indian reservation.

Also, there is no national data collection on Native American voter registration or voter turnout. Lack of information gives the impression that the Native American voter does not count, even in Indian communities.

Tribes should be afforded the opportunity to apply directly for Federal resources to assist them in the administration of election for Federal offices. Tribes should also be provided technical assistance to assist them in fulfilling this goal.

Mr. Chairman, I support all of the findings and concepts contained in S. 565. I suggest, however, that the bill treat tribes much as we treat other units of government. They are sovereign. I always carry with me, Mr. Chairman, two articles: the Constitution of the United States Article I, Section 8—you carry it probably, too. Okay. Very good.

The CHAIRMAN. I carry it with me every day, Dale, as well.

Mr. KILDEE. Congress shall regulate commerce among the several States, with the foreign nations, and with the Indian tribes. We have a special obligation.

Another thing I carry with me all the time is John Marshall's decisions on the rights of Indians, a very strong, strong decision. Unfortunately, Andrew Jackson did not carry it out, but the decision still stands.

I think we have a special obligation here in the Congress, and the trust responsibility between the Indian Nations and the United States is not just with the BIA. It is with the entire United States Government, including the Congress of the United States and this Senate. And if you could include in some way Indians and their needs, particular needs in voting, I think that would be very helpful to assure their participation.

[The prepared statement of Mr. Kildee follows:]

**Congress of the United States**

Washington, DC 20515

TESTIMONY OF DALE E. KILDEE, M.C.

SENATE COMMITTEE ON RULES AND ADMINISTRATION

HEARING ON ELECTION REFORM

JUNE 28, 2001

**I. INTRODUCTION**

MR. CHAIRMAN, GOOD MORNING. AS CO-CHAIRMAN OF THE CONGRESSIONAL NATIVE AMERICAN CAUCUS, I AM HONORED TO BE HERE TODAY TO SPEAK ON THE ISSUE OF ELECTION REFORM. I WANT TO THANK CHAIRMAN DODD FOR INVITING ME TO APPEAR BEFORE THE COMMITTEE ON RULES AND ADMINISTRATION.

**II. BACKGROUND OF CONGRESSIONAL NATIVE AMERICAN CAUCUS**

FOUR YEARS AGO, I FOUNDED THE CONGRESSIONAL NATIVE AMERICAN CAUCUS TO FIGHT LEGISLATIVE ATTACKS ON TRIBAL SOVEREIGNTY. THE 104<sup>TH</sup> CONGRESS BEGAN TEARING DOWN PROGRAMS DESIGNED TO BENEFIT NATIVE AMERICANS. ONE PROPOSAL WOULD HAVE IMPOSED A 35% FEDERAL TAX ON BUSINESSES ON INDIAN LAND. ANOTHER PROPOSAL WOULD HAVE MADE IT DIFFICULT FOR THE SECRETARY OF INTERIOR TO TAKE LAND INTO TRUST FOR TRIBES. THE BUREAU OF INDIAN AFFAIRS SAW A DECREASE IN ITS BUDGET. FUNDING FOR THE INDIAN HEALTH SERVICE WAS REDUCED, AND THE INDIAN CHILD WELFARE ACT WAS UNDER ATTACK.

OFTEN, WE WERE TOO SLOW TO RESPOND TO THESE ATTACKS ON TRIBAL SOVEREIGNTY AND WE PAID THE PRICE FOR IT. SOME OF THESE PROPOSALS PASSED THE HOUSE BUT WERE FORTUNATELY DEFEATED IN THE SENATE.

IT BECAME CLEAR THAT THE HOUSE NEEDED A BI-PARTISAN ORGANIZATION TO FIGHT FOR TRIBAL SOVEREIGNTY, TO PROMOTE TRIBAL SELF-DETERMINATION AND TO EDUCATE MEMBERS ABOUT LEGISLATION AFFECTING TRIBAL GOVERNMENTS AND THEIR MEMBERS. THE CAUCUS CURRENTLY HAS A MEMBERSHIP OF 103.

Testimony of Dale E. Kildee, M.C.  
June 28, 2001  
Page 2

III. SUMMARY OF FEDERAL LAWS GRANTING NATIVE AMERICANS THE RIGHT TO VOTE

ACCORDING TO AN ARTICLE WRITTEN BY MS. SUZAN SHOWN HARJO IN INDIAN COUNTRY TODAY, IN 1919, CONGRESS AUTHORIZED U.S. CITIZENSHIP AND THE RIGHT TO VOTE TO ANY INDIAN VETERAN OF WORLD WAR I WHO REQUESTED THEM. CONGRESS IN 1924 EXTENDED DUAL CITIZENSHIP AND THE RIGHT TO VOTE TO ALL OTHER INDIANS. IT TOOK 50 YEARS FOR EVERY STATE TO PERMIT INDIANS THE RIGHT TO VOTE.

IV. THE NEED FOR ELECTION REFORM

IN HER ARTICLE MS. HARJO WRITES THAT "NATIVE AMERICAN VOTER TURNOUT IN MOST TRIBAL ELECTIONS HAS RANGED BETWEEN 75 PERCENT AND 95 PERCENT SINCE THE 1960S. BY CONTRAST, NATIONAL VOTER PARTICIPATION RARELY HITS THE 50 PERCENT LEVEL AND DID NOT DO SO IN NOVEMBER 2000."

VOTER APATHY ON INDIAN RESERVATIONS IS HIGH ACCORDING TO MR. CATE MONTANA'S ARTICLE IN INDIAN COUNTRY TODAY PUBLISHED AFTER THE 2000 ELECTION. IN HER ARTICLE, MS. MONTANA FOCUSES ON THE SEMINOLE TRIBE OF FLORIDA, WHICH HAS 2,700 TRIBAL MEMBERS. SHE WRITES, "DECADES OF SHALLOW-VOICED STUMPING BY...POLITICIANS THROUGH THE RESERVATIONS AT ELECTION TIME, FOLLOWED BY TWO TO FOUR YEARS OF COLD INDIFFERENCE, HAS LEFT MANY TRIBAL MEMBERS BITTER AND DISINTERESTED IN THE POLITICAL PROCESS.... WITHOUT THE IMPACT OF A SOLID VOTING BLOCK IN ANY ONE DISTRICT, [TRIBAL] MEMBERS SAY THEY...COULD NOT MAKE A DIFFERENCE."

HOWEVER, THE EVENTS SURROUNDING THE ELECTION 2000 RESULTS MAY HAVE CHANGED VOTER ATTITUDE ON THE SEMINOLE RESERVATION. SINCE THE MARGIN OF VICTORY IN THE PRESIDENTIAL ELECTION WAS SO SLIM, TRIBAL MEMBERS NOW BELIEVE THAT THEIR VOTES CAN MAKE A DIFFERENCE.

TO ASSIST TRIBAL MEMBERS PARTICIPATING IN THE VOTING PROCESS, THE SEMINOLE TRIBE HAS VOTING BOOTHS IN THE TRIBAL OFFICES AND PROVIDES ASSISTANCE TO THOSE MEMBERS IN NEED OF LANGUAGE INTERPRETATION WITH THE BALLOTS.

Testimony of Dale E. Kildee, M.C.  
June 28, 2001  
Page 3

MR. CHAIRMAN, I AM CONCERNED THAT CERTAIN BARRIERS EXIST THAT HINDER LARGE VOTER TURNOUT FROM TRIBAL MEMBERS. THESE INCLUDE, BUT ARE NOT LIMITED TOO, THE FOLLOWING AREAS.

1. RURAL ACCESSIBILITY. OFTEN TIMES TRIBAL MEMBERS DO NOT HAVE ACCESS TO BALLOTS OR POLLING PLACES BECAUSE THE TRIBAL RESERVATIONS ARE GENERALLY LOCATED IN REMOTE AREAS FAR FROM THE POLLING PLACES. TRIBAL GOVERNMENTS SHOULD BE AFFORDED THE OPPORTUNITY TO ESTABLISH POLLING PLACES ON THE RESERVATION.
2. TRANSPORTATION. GETTING TRIBAL MEMBERS TO THE POLLS IS A DIFFICULT TASK FOR SEVERAL TRIBES. DURING ELECTION 2000, THE CHEROKEE NATION OF OKLAHOMA USED ITS OWN TRIBAL RESOURCES TO FUND SHUTTLE SERVICES FOR ANY REGISTERED VOTER WISHING TO CAST A BALLOT ON ELECTION DAY. MOST TRIBES DO NOT HAVE THE RESOURCES TO PROVIDE SHUTTLE SERVICE TO ITS MEMBERS.
3. LANGUAGE INTERPRETATION. THE NAVAJO NATION ELECTION ADMINISTRATION INFORMED ME RECENTLY THAT THE TRIBE MUST PROVIDE INTERPRETERS FOR THEIR MEMBERS AT THE POLLING PLACES LOCATED ON THE RESERVATION. THE NAVAJO INTERPRETERS OFTEN HAVE A DIFFICULT TIME INTERPRETING THE BALLOTS TO THE TRIBAL MEMBERS.
4. COMMUNICATION. I AM CONCERNED ABOUT THE LACK OF COMMUNICATION BETWEEN THE TRIBES AND THE LOCALITIES OVERSEEING THE ELECTION PROCESS.
5. DATA COLLECTION. THERE IS NO NATIONAL DATA ON NATIVE AMERICAN VOTER REGISTRATION INFORMATION OR VOTER TURNOUT. LACK OF INFORMATION GIVES THE IMPRESSION THAT THE NATIVE AMERICAN VOTE DOES NOT COUNT, EVEN IN INDIAN COMMUNITIES.

Testimony of Dale E. Kildee, M.C.  
June 28, 2001  
Page 4

6. FEDERAL FUNDING AND TECHNICAL ASSISTANCE. TRIBES SHOULD BE AFFORED THE OPPORTUNITY TO APPLY DIRECTLY FOR FEDERAL RESOURCES TO ASSIST THEM IN THE ADMINISTRATION OF ELECTIONS FOR FEDERAL OFFICES. TRIBES SHOULD ALSO BE PROVIDED TECHNICAL ASSISTANCE TO ASSIST THEM IN FULFILLING THIS GOAL.

V S. 565 A BILL SPONSORED BY SENATOR DODD ON ELECTION REFORM

MR. CHAIRMAN, I SUPPORT ALL OF THE FINDINGS AND CONCEPTS CONTAINED IN S. 565. I SUGGEST, HOWEVER, THAT THE BILL TREAT TRIBES AS STATES SINCE TRIBES ARE SOVEREIGN GOVERNMENTS. THE BILL CURRENTLY DOES NOT INCLUDE TRIBES IN ANY OF ITS PROVISIONS. I WOULD RESPECTFULLY SUBMIT TO YOU THAT TRIBES BE INCLUDED AS DIRECT RECIPIENTS OF FEDERAL GRANTS ESTABLISHED IN TITLE II AND THAT THEY BE SUBJECT TO THE REQUIREMENTS OF TITLE III, AS LONG AS TRIBES ARE PROVIDED ADEQUATE FUNDING AND TECHNICAL ASSISTANCE TO MEET THE REQUIREMENTS OF TITLE III.

IN ADDITION, MR. CHAIRMAN, I HOPE THAT YOU WILL TAKE INTO CONSIDERATION THE BARRIERS THAT I DESCRIBED TO YOU AS YOU MOVE FORWARD WITH THE BILL. I WOULD ALSO RECOMMEND TO YOU THAT THIS COMMITTEE HOLD A FIELD HEARING IN INDIAN COUNTRY ON ELECTION REFORM. I WILL VOLUNTEER MY SERVICES TO YOU SHOULD YOU WANT TO PURSUE MY RECOMMENDATION.

THAT CONCLUDES MY REMARKS. THANK YOU.

The CHAIRMAN. I thank you, Congressman, very much. Those are good suggestions. We would like to hear from your caucus, maybe in conjunction with Senator Inouye, who chairs the Indian Affairs Committee of the United States Senate, and who is also a member of this committee. He was here yesterday for some opening comments when we started the hearing, as well as John McCain, who has been very active on these issues, and Ben Nighthorse Campbell, who is a great friend. I made a note to myself to talk to Ben and Dan Inouye about what we might do in this legislation that would accomplish what you have described.

So I look forward to hearing directly from the caucus on some suggestions you may have to incorporate in the bill, and I will see that it gets done.

Mr. KILDEE. Thank you, Mr. Chairman.

The CHAIRMAN. And you are more than welcome to stay, if you can. If not, if you have to get back to business, you are excused.

Mr. KILDEE. Thank you very much, Mr. Chairman.

The CHAIRMAN. Well, my two colleagues are here. Again, I will leave it up to Maxine. Welcome. Nice to have you in this committee room.

**STATEMENT OF HON. MAXINE WATERS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Ms. WATERS. Thank you very much, Mr. Chairman, and I appreciate being here, and I am just delighted that you are holding these hearings.

I think that the effort that you are making is going to go a long way toward us coming out of here with very good legislation that will address many of the problems that we have discovered.

Let me just start by saying while the November elections are now behind us, the lessons of Florida remain. Last year's election revealed shortcomings in our election system which must be repaired to assure that voters do not lose confidence in our electoral process. The events in Florida highlighted these shortcomings on a national stage for the first time, but election officials and experts from around the country freely acknowledged that irregularities in our voting processes and equipment are not unusual. In fact, many of the deficiencies that were identified in Florida occur on a regular basis in other jurisdictions.

Problems at the polls and computer glitches inevitably and routinely arise on election day. Protracted election returns and recounts are not uncommon. In many instances, voters are improperly denied the right to cast their votes on election day.

Some of this you have probably heard already. During this last election in one New Mexico county, election officials withdrew 58,000 ballots because of an error in the database, leaving that State's five electoral votes up in the air for days. In New Orleans, voters were not allowed to vote because the State's Department of Motor Vehicles never processed people's voter registrations, as the State's motor-voter law requires.

In Maine, many voters were refused the opportunity to cast votes at the polls because they were improperly purged from the voter rolls. In Virginia, there were reports that voters were asked for multiple forms of identification before being given their ballots. In



Gadsden County, Florida, a largely poor rural area, approximately one out of every eight ballots were thrown out as invalid. In Jacksonville, Florida, alone, 22,000 ballots were not counted because of overvoting, while over 10,000 votes were not counted in Miami-Dade County because of undervoting.

Further, there were reports of voter intimidation, failed machinery, overwhelmed poll workers, and general confusion received from voters and election officials all over the country.

We recognize that our election system involves a number of complex elements, and that uniformity may not be the answer in all circumstances. Nonetheless, reforms are necessary to ensure that eligible voters are afforded the opportunity to cast their ballots and to make sure that their votes are properly counted. The events in Florida suggest that the time is now to review our electoral process and gain the necessary insight and perspective to implement changes designed to restore voter confidence.

Much has happened in the past few months since the Democratic Caucus heeded the call of the American people and formed the Democratic Caucus Special Committee on Election Reforms, and I was asked to chair that committee.

Our committee has traveled to four States: Philadelphia, Pennsylvania; San Antonio, Texas; Chicago, Illinois; and Jacksonville, Florida. And we still have a long way to go. We plan on at least four more hearings in Cleveland, Los Angeles, Baltimore, and perhaps both Alabama and Mississippi. And I am confident that the results will lead to a voting system in which the people of our Nation can be proud.

We Democrats in the House began this process hoping that the Republicans would join us in a bipartisan effort to reform our electoral system. After all, the right to vote is an issue that transcends partisan politics. It is the cornerstone of our democracy. Unfortunately, the Republican leadership did not agree to a bipartisan committee, and that is why we formed our very special Democratic—

The CHAIRMAN. Did you seek to have a bipartisan committee? Was that the—

Ms. WATERS. Yes. We had numerous meetings trying to have a bipartisan committee. But we could not agree on a true bipartisan committee, so that is why we had to move forward with the Special Democratic Caucus Committee to try and get out into the American public and—

The CHAIRMAN. I knew you had been out, and you have been offered tremendous evidence already just in the hearings you have had and with the schedule you have got in front of you. This committee is considering having some field hearings as well. I always think it is important to give average citizens an opportunity to be heard. Not that we are not average citizens, but too often in Washington, it is more difficult for average people to be heard. So I have great respect for the fact that you have made this extra effort, Congresswoman, to go around the country and listen to what people have to say, so that this goes beyond being a Florida issue and we look ahead to the future. I regret that you were not able to achieve a bipartisan committee in which to conduct these kinds of hearings.

Ms. WATERS. It is unfortunate. However, we find that Democrats and Republicans out in the State, our constituents, are all pretty much concerned about what happened, and people are shocked to find out that their vote may not count. And so we think that we have tremendous support out there for real reform.

When we started this committee, we knew that we had some very special issues we must pay attention to: uniform voting systems, standardized ballots, standardized equipment, uniform poll-closing times, and the impact of television and network projections, alternative voting methods, a national holiday for Federal elections, weekend voting, week-long elections, instant runoff elections, voting equipment, punch card systems, optical scan systems, lever systems, touch-screen voting, Internet-based voting, voter registration requirements and increasing voter participation, such as same-day registration, motor-voter laws.

We looked at easing absentee ballot requirements, satellite voting facilities, drop-off locations, expedited mail delivery, overseas voters, alternative voting methods, easing application deadlines. We looked at—we knew that we were going to have to pay some attention to military balloting, ensuring timely delivery, expedited mail or other alternative delivery methods.

We want to take a look at voter education issues, efforts by election officials to educate voters on voting procedures and equipment. Ballot design and literacy issues, to get rid of voter confusion and deal with voter sensitivities, voter disability issues, the difficulty in operating voting equipment, adequate design of polling locations.

We want to look at non-partisan election officials to ensure voter confidence at the State and local levels, poll worker training and pay, such as incentive programs and use of city or county employees.

We want to look at the precinct irregularities we have learned so much about, polls that open late or close early, precincts with an insufficient number of ballots, long lines, voters whose names do not appear on the precinct roster, and voters who are mistakenly turned away at the polls.

Provisional balloting is something that you have already, I am sure, discovered is a real problem out there, and we first heard about it in our travels in Philadelphia. We know that in some States they have very easy provisional balloting rules. In California, if your name is not there, you just fill out a provisional ballot.

We discovered when we went up to Philadelphia that if your name is not there and you insist that you are registered, they send you to the police station where a judge there decides whether or not you can fill out an affidavit. We know that is a deterrent to voting.

And as you may already know, there are some States, some jurisdictions, where they have no provisional balloting whatsoever. So we know that that should be looked at as something that we can develop some uniform standards around.

Voter intimidation, enforcement of voting rights laws, disenfranchisement issues such as standards for purging voters from the rolls. I will never forget in San Antonio a woman came and she said, "I don't understand. I went to the polls. I have been reg-

istered for the past 30 years,” I believe she said, “and they told me that my name was not there.”

What she didn’t know is she had been purged. And the purge laws are all over the place. Different States, different jurisdictions do different things.

I know that a lot of it is driven by campaign consultants. I used to manage campaigns, and one of the things I learned was when you do a mailing, if you have a lot of dead mail of people that haven’t voted for a long time, it increases the cost of sending out those mailings. So many consultants start to lobby for dropping people from the rolls so that they can reduce the cost of the mailings. And so the purging is a little bit outrageous in some places, and I think we can set some standards there also.

I think people should feel that, if they haven’t voted maybe for several elections, that their name will be there or that they will at least have an opportunity to understand that their names may be purged from the rolls.

Let me just close by saying whether it was Chicago, Illinois, or Jacksonville, where we had our last hearing, some issues emerge as very important issues that we can set Federal standards on. I believe that I have alluded to some of those, such as purging and such as provisional balloting. But I want you to know this business of identification must be dealt with.

Some States require identification, and I am not suggesting that we should usurp the State’s role in determining these kinds of things, except I think we can do something to encourage or to leverage the resources we may be putting in to help with the payment of new machines, et cetera, to get people to understand you do not turn people away from the polls because you do not believe that the picture looks like the person that is before you. We have stories of people having to give two pieces of identification, polling workers not knowing what is acceptable identification, on and on and on. We think something can and should be done about that.

Let me just close by saying that I am—we have joked for many years about elections problems. For example, we know all of the jokes that have been told about Chicago. We have joked about the dead voting. We have joked about the count, et cetera. Well, you know, we are all at fault for not having taken the problems seriously that were identified and that have been identified year in and year out.

We have just kind of made political jokes out of it, but now it is time to get very, very serious. Florida helped us to understand how serious this is. It helped us to understand the difference that every vote could possibly make.

And so we owe it to the American people, as you know, to fix the system, to fix the infrastructure of the system, to do everything that we can to make sure every vote counts. We have got to do everything from correct some of the problems that we are identifying, but we have got to respect the work that was done to get the Voting Rights Act and to enforce it, because we have a tool by which to guarantee that voters are not disenfranchised, that we do not have new laws and new rules that just substitute for literacy tests and poll taxes. And so we have the power to do it, and I think we can do it, and I thank you for the leadership that you are giving.

Thank you very much.

The CHAIRMAN. I thank you very, very much, Maxine. Again, my compliments to you and the other members who have traveled with you for, taking very important time out of your schedules to listen to people across the country talk about the issue. The point deserves being repeated. If there is faulty equipment, if the system is breaking down, and as a result of the system breaking down then voter error, as the other side likes to call it, occurs and people are disenfranchised, it has the same, effect of someone turning you away from the polling booth because of racial discrimination or some other outrage.

Now, obviously, there may be intent in one, and a lack of intent, or a lack of resources, or simply a lack of commitment in the other. But the bottom line is that it creates the same result, that is, a voter whose vote was not counted. So what we are talking about here—again, I am not going to get into the intent game, although I am worried about it, but if we can set some standards here on some of these basic questions and provide resources—I am prepared to ask our colleagues for resources. Some have suggested earlier today—and I will ask Congressman Gonzalez and Congressman Reyes to comment on this as well. They said maybe a 50-percent match might work. Well, normally it would. But I have listened to some of our colleagues from the Republican side of the aisle talk about how difficult it is to get people to commit resources locally for voting efforts, because there is always a demand for a new snowplow or a new piece of equipment or the addition at the school—all very valid requests. But voting machinery and support for voting, as fundamental and as important as it ought to be in everyone's mind, does not always have the priority that other issues do.

So if you are going to leave it to a 50-percent match or even a 10-percent match, without a mandate there at all, the likelihood that resources are going to be expended at the local level to make these improvements I think is very low. That is my opinion. But I want to hear from Congressman Gonzalez and my good friend Congressman Reyes as well on their thoughts. So why don't we hear from both of you?

And I put the light on here, Silvestre, just as sort of a watch thing here, not to hold you to the lights.

Who is going to go first?

Senator GONZALEZ. I yield to the chairman of the Hispanic Caucus.

The CHAIRMAN. All right. Well, Silvestre Reyes is a great friend of mine and has just been identified as the chairman of the Hispanic Caucus in the House. He also has years of experience working in the border patrol areas of Texas. He and I just spent a long weekend together with our colleagues from Mexico in the Napa Valley, where we got to know each other even better. I was glad to be at that meeting with our fellow Mexican parliamentarians for many reasons, not the least of which, Silvestre, is I got to know you much better.

**STATEMENT OF SILVESTRE REYES, CHAIRMAN,  
CONGRESSIONAL HISPANIC CAUCUS**

Mr. REYES. Thank you. I appreciate the opportunity. I think, perhaps, the third time is a charm. I have been over here twice and had to rush off to vote.

The CHAIRMAN. My apologies to you as well.

Mr. REYES. But thank you so much, Mr. Chairman. I want to thank you and other members of the committee for an invitation to come before you to testify on what I think is a very important issue and a need for a very positive and comprehensive revision that we all call election reform.

It is important, Mr. Chairman, to I think set the issue in terms that the United States was founded on democratic principles, which are fundamental to the preservation of our basic freedoms. Our country has relied on the confidence of its citizens to defend these principles from all challenges and from all enemies. These principles are our rights as Americans, and we are privileged to be citizens of a free and democratic society.

One of the most valued principles is the right to elect our leaders, as you have indicated, and others have indicated, today. The vote allows citizens to register their voice and express their will. It is a prime example of our ability to freely express ourselves in a democratic political process. Unfortunately, we have seen recently, through experience, some compelling evidence that our electoral process is tainted by barriers and obstacles that inhibit many Americans, not only from exercising the right to vote, but also in having that vote counted.

The 2000 presidential election demonstrated the severity of those obstacles and brought attention to the fact that many voters across this country were not able to vote properly, within expected standards of fairness. Furthermore, minority communities suffered a large-scale and disproportionate disenfranchisement during the last election, which can be blamed on a flawed electoral system and the electoral process.

Since 1965, Congress has addressed the issue of voter protection. The passage of the Voting Rights Act of 1965 demonstrated that this country has no intolerance for voter intimidation and voter discrimination based on race and ethnicity. Yet, the struggle to ensure the voting rights of all citizens after the passage of this landmark continued for many decades. As a result of positive efforts to improve the way that we vote, Congress has since recognized that, not only is it inappropriate and against constitutional provisions to hinder a person's right to vote based on their race, but it is equally inappropriate to hinder a person's right to vote based on their ability to speak English.

Amendments to the Voting Rights Act reflected this provision. Yet, in the year 2000 and in the elections of the year 2000, it was proven that these measures have been poorly enforced, with many jurisdictions across this country not complying with them. We must, once again, reconsider and review our election process in order to prevent the mistakes of this past year. We cannot have another election where the voices of our electorate are jeopardized in any way.

This is why I am a strong supporter of your efforts, Mr. Chairman, and those of my friend in the House of Representatives, John Conyers. The Dodd-Conyers Election Reform Bill is exactly what America needs for reforming its electoral system. It is my belief that the essential elements for election reform include language accessibility at the polls and voting booths, accessibility for the disabled, voter access to provisional ballots, a system of education to inform voters and to also train election volunteers and poll workers, and a comprehensive system of accountability. The Dodd-Conyers bill takes great steps in achieving these goals, and I am proud to be a co-sponsor and to support this legislation.

As chairman of the Congressional Hispanic Caucus, I represent a wide constituency of Hispanics who live all across the country. Currently, the Hispanic Caucus is working to develop its official principles on election reform. I am proud to say that many of the priorities discussed among our members on this issue of election reform are reflected in the provisions of the Dodd-Conyers bill, and I would like to recognize the hard work of my good friend and colleague, Representative Charlie Gonzalez, whose efforts in chairing the Hispanic Caucus's Civil Rights Task Force have helped outline the priorities of election reform for our caucus.

As Representative Waters has indicated, Charlie and many other members have traveled across the country listening to first-hand testimony on the problems that occurred in last year's election. I wish to further recognize and thank Representative Steny Hoyer for the work on this issue as well. There are many, many of our colleagues, as you know, Senator, that are very much concerned about this issue, and I look forward to working with your committee, as well as all of our colleagues in the House and Senate, to pass effective election reform legislation.

In the Hispanic community, we are celebrating the growth of our electorate. As our population grows, so does our voting strength. We often say, in Spanish, "Su voto es su voz" or "Your vote is your voice." However, without legislation to guarantee fair and accurate elections, the volume of our voices is muted. The Dodd-Conyers bill stands out as being especially sensitive to our Latino voters, as it recognizes and reaffirms the importance of making the voting process accessible to voters with limited English skills. And the Dodd-Conyers bill ensures fairness not only for Latinos, but also for elderly voters and first-time voters, for rural voters and urban voters, and for voters with disabilities. In short, this is a bill that fulfills the promise of voting franchise for all Americans.

The battle to protect a citizen's right to vote achieved a major victory with the passage of the 1965 Voting Rights Act. However, it is evident that this battle continues to this day and will continue to resonate until we pass meaningful election reform that protects the right of all citizens to have their voices heard and to have their voices counted through their vote.

It is our duty, I believe, to respond to this important issue, and I therefore have been urging both Senate and House leaderships to move swiftly and pass election reform legislation. The Dodd-Conyers bill will help ensure that all of our voices are heard. Let us ensure, Mr. Chairman, that future generations understand their

rights and obligations to a free society by us recognizing our's today.

I want to thank you for this opportunity to testify before your committee this afternoon. Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Chairman. And please pass along my thanks to the entire Hispanic Caucus; I know you express their views. How many members are there now in the Hispanic Caucus?

Mr. REYES. We have 18 members.

The CHAIRMAN. Eighteen members.

Mr. REYES. Eighteen members.

The CHAIRMAN. It is very heartening to hear your expression of support. We talk about language minorities in the country and immediately people think of Spanish-speaking minorities, because obviously that is the largest ethnic minority, if you will. Or even the, majority in some places in the country is the Hispanic Latino population. And their contribution to the richness of our Nation is being felt every single day. But I made the point when I spoke at a high school in my State recently, as we are all inclined to do. I spoke to about 150 juniors and seniors, and the principal of the school wanted to make note of the fact that of the 150 students, I believe something like 45 different languages were spoken by the 150 students in the room. They literally came from every country you could think of. First-generation families who had come to America, making their wonderful contribution, as my grandparents and great-grandparents did, coming from the European stock back in the 19th and the early part of the 20th century.

So, when we talk about language minorities, obviously, the Hispanic community and Latino community is a significant percentage. But, as you pointed out and as Congressman Wu has pointed out: from the Asian American community and others to the Haitian American community, and maybe you would like to address this and maybe Charlie wanted to chime in as well on this, that what we are talking about here is a broad mosaic of people. The idea in this day and age that you cannot accommodate language minorities with the technology that exists. The standard is 10,000 people or 5 percent, but obviously in certain communities there may be language minorities that do not rise to that level. And the idea that in the 21st century you could show up and not be able to have immediately appear instructions on what to do in almost any language you could think of is archaic, in my view. But, I wonder if you might comment on that point.

Mr. REYES. Well, absolutely, and I would like to comment on two issues that you have brought up.

The first one is, and I mentioned it in my testimony, the lack of training for our election judges, our poll watchers, the fact that it is already, for some members of minority communities, it is already an intimidating process because, in some cases, this is their first attempt at participating in the democratic process by voting. So it should be a voter-friendly environment, with individuals that are trained and that have the ability not just to answer questions, but to communicate with the electorate. That is vitally important.

Secondly, as you say, in the age of technology, in the Information Age, I know that we have the capability to make sure that we do

not—we cannot afford to subscribe to the cookie cutter, one-size-fits-all procedure or process. We have to make accommodations for the mosaic that we all recognize and proudly point to that is the strength of this country.

I believe, when we talk about what is at stake here, we have to make that commitment to investment in ourselves, invest in our future. Because as we debate and talk about what has occurred, as we talk about the problems and the issues that are coming out through testimonials all across the country, our young people are watching. They are listening to a contradictory message: those of us that speak to them and tell them how important they are to our process, how important it is to this country that they are able to participate in the process, on the one hand, and on the other hand, a process that we have identified is very unfair, very unfriendly, and we want to make sure that the third component is not uncaring.

So I, again, want to thank you for your leadership in this very vital area on behalf of the Hispanic Caucus, but really on behalf of Americans all across this country.

The CHAIRMAN. Thank you, Silvestre. I take note that, while the audience has thinned out over the last 5 or 6 hours that we have been here, the room still has a fairly good number of people. And without having done a survey, when I look in the back of the room, it is mostly young people who are here. And yesterday, at the conclusion of the hearing, a group of them came up here and sat here all day.

I had made the point that with, the events of last fall, everyone talks about what went wrong. But there is always a silver lining in things that go wrong. First of all, we are here. As I said earlier, I doubt we would be even talking about this had it not been for the events of last fall. We would have talked about it, but there would not have been this kind of interest.

But, secondly, young people, I do not know if you saw the same thing in your districts, but in my State the interest that young people developed in the electoral process as a result of watching events unfold was really remarkable.

Mr. REYES. Absolutely.

The CHAIRMAN. And these young people yesterday came up and said you do not know what a heightened degree of interest there is among young people to participate in the electoral process, as a result of what people saw last year.

So, again, we do not want to have these events occur as a way of provoking interest, but it seems to me there is this silver lining in terms of, a heightened degree of interest among young people, about how they can be involved and whether or not they vote and their participating to make a difference.

So you made the point. I just wanted to underscore it, that I think it is extremely worthwhile.

Mr. REYES. Thank you.

The CHAIRMAN. Charlie, we thank you. You have been very patient. We have been joined now by two of our colleagues from the House, and I thank them immensely.

Congressman Foley and I know each other very well. We have known each other for a long time. Congressman Sweeney, we do



not know each other that well, but I welcome you to the committee and look forward to hearing from you as well. I thank you immensely for coming back and forth. I have seen Mark come in and out of the room I do not know how many times over the last 4 or 5 hours. And to those who may not understand all of this, between the votes in the House and the votes in the Senate, the best-laid plans do not always work out. So I am very grateful to you for your persistence in wanting to be here.

Congressman Foley, whom you will hear from shortly, is a Congressman from Florida and a member of the Republican Party. We will also hear from Congressman Sweeney from New York, a member of the Republican Party as well. Some of your colleagues have been here today, and I made note of the fact that almost 5 percent of the House has now testified before this committee today, which may be a record. I am going to probably worry some of my Senate colleagues that you guys were over here checking out office space. [Laughter.]

Nothing makes a Senator more nervous than to have a Congressman show up over here to take a look at our digs. But I am deeply honored, that in my first role as chairman of this committee, and my first time to be a chairman of a committee in the Senate, that so many House members have come over to express an interest in this legislation. The good news is there seems to be a lot of interest about doing something, and we are not debating about whether we should be doing something.

Congressman Gonzalez, again, thank you for your patience. I am anxious to receive your testimony.

**STATEMENT OF HON. CHARLES A. GONZALEZ, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. GONZALEZ. Sure. And thank you very much, Mr. Chairman. It is a real pleasure to be here today.

As chair of the Congressional Hispanic Caucus Civil Rights Task Force, I am charged with overseeing and making recommendations on election reform efforts, as they affect the Nation's Hispanic community. I can tell you today that the caucus fully supports uniform election technology modernization efforts. However, we feel strongly that updating machinery alone cannot be considered true election reform or a solution to the Nation's voting problems. Therefore, I would like to focus my comments today on election reform issues and recommendations of particular importance to the Hispanic community. We believe that these recommendations will serve to strengthen any election reform effort and the very foundations of our great democracy.

Over the last several months, in discussions with members of the Hispanic Caucus, at a town hall meeting in my district, in meetings with election officials throughout and across South Texas, in field hearings across the country, and in meetings with representatives from some of the national Hispanic organizations, I have heard of voting experiences, as well as concerns and recommendations on election reform. I have heard reports of language minority voters requesting, but being denied, bilingual assistance or bilingual materials at the polls, a right guaranteed to them by the Voting Rights Act.

There were reports of minority voters being asked for multiple forms of identification, while no such request was made of non-minority voters. And there were extremely troubling reports of Hispanic voters going to the polls only to find out that their names had been dropped or purged from the voter rolls since the last election, and in some cases, these voters were not informed of their legal right to a provisional ballot.

To address these issues, the Congressional Hispanic Caucus has been actively developing a set of principles on election reform. The first and foremost principle is that Congress should move expeditiously to pass election reform legislation in time for the 2002 mid-term elections, and I hope that we can do that, and we understand that you are going to do it very carefully.

Election reform legislation would also include a Voters' Bill of Rights provision, which would ensure enforcement of bilingual language provisions of the Voting Rights Act, establish uniform provisional ballot standard, ensure disability access, and propose accountability measures for jurisdictions seeking Federal funds to upgrade their voting machines. A Voters' Bill of Rights should empower voters and encourage voters' participation through efforts to educate them about voter rights and the voting process. It should also include provisions to ensure election workers are properly trained. This is where we get into the biggest disagreement about mandates.

Without any type of mandates, Senator, we are given localities an opportunity to opt out of enforcing the laws of this Nation and extending the rights to all citizens that reside in those localities. You are not going to get it any other way, even with incentives which, again, they can simply bypass and decide not to have any of their energies devoted in that area.

Any election reform legislation must reinforce the language minority access provisions of the Voting Rights Act, which we have already covered and the necessary percentages. These measures seek to ensure that voters who have limited English proficiency do not face language barriers in the voting process. However, these measures have been poorly enforced, if at all. In many jurisdictions, they fail completely to comply with it.

Earlier in my comments, I made mention of voters going to the polls on Election Day only to find that their names had been purged from the voter rolls, for no legitimate reason, since the last election. While we understand the need for purging the system, we feel strongly that the shortcomings of such a system and our inaccurate voter rolls should not result in those eligible voters being refused the opportunity to vote. Election reform legislation must guarantee the voters' right to a provisional ballot when a regular ballot cannot be issued.

On the issue of disability access, little needs to be said. No one should be prevented from exercising their right to vote because of a physical disability, and you already pointed out that is more than just a ramp that allows access to the building.

Finally, funds for improving election technology should be tied to requirements to implement a Voters' Bill of Rights and enforce the Voting Rights Act and the National Voter Registration Act.

I would venture to guess that all of us here in this room today, at some point in our careers, participated in efforts to encourage American citizens to register and to vote, but in Latino communities, and especially Latino communities, as Chairman Reyes has already pointed out, we start that drive with "Su voto es su voz," which simply again translated is, "Your vote is your voice," and it is a wonderful concept, and it just sounds beautiful. But if you were listening carefully on November the 7th, 2000, you heard the sound of silence. Why? Because far too many Latinos encountered difficulty in exercising their right to vote, and when successful in casting their votes, suffered the ultimate indignity of having their vote go uncounted.

We learn from the past to ensure a better tomorrow. Again, thank you for this opportunity, and I have been speaking on behalf of the Congressional Hispanic Caucus, and I am authorized to have gone over this, Senator, but I am going to leave with maybe just two observations because I have a satellite feed regarding a panel presentation back in San Antonio.

While I was sitting here, there were certain observations made by certain witnesses and other members of the committee. Without trying to make this into kind of any partisan debate, because I think there is enough here that we share that needs to be addressed, one of the observations was that this is not about race, this is not about ethnicity, not about bigotry, racism and so on. And I am going to agree to that. I am going to give everybody the benefit of the doubt where we had problems, that that was not what motivated individuals.

But I do know what this is all about, and it really is about everyone, but especially minorities. If you think of the main thrust of this legislation and what problems we are trying to correct, who are we trying to protect? Who are we trying to make sure that they get their right to vote? Is it a voter that comes from the majority of the community? Is it a voter from the upper economic class? Is it a voter who is English proficient? Is it a voter that is not disabled? Or is it a voter who comes from the minority or who comes from the lower economic strata or who has limited English proficiency or suffers from physical disability? Make no doubt about it what we are trying to do here, and there is nothing wrong because that is where the problems really exist.

I know there is an argument, but there are other things that are wrong with the system. There is fraud. We have felons that are out there registering to vote. We have people that vote two or three times, and I am going to agree that is wrong, that is illegal, and we need to prosecute. But at the present time we have a system that is hemorrhaging, and it is hemorrhaging at the cost of minority rights. That is where we have the hemorrhaging. Let us take care of that first, then we can take care of the rest of the ailments of this patient. But that which needs immediate addressing is what is happening to the minority voter throughout the Nation.

And with that, again, I want to say thank you very much. I do have to leave, Senator, and thank you.

The CHAIRMAN. I thank you for that. I would, just as you are packing up, make the point to you that I do not disagree with you at all about the fraud and those people who abuse the system out

there, but I always find it somewhat intriguing. I have not suggested we ought to federalize the criminal statutes in this regard, although some may want to do that, but I have always found it to be interesting, when you talk to local prosecutors about whether or not they want to prosecute election fraud, none of them ever do. It is very difficult to get people to step up to the plate and go after these problems here.

So I am not unsympathetic. I will be happy to include some language in our bill if they want to federalize this and have some mandates from the Federal Government on fraud. But do not ask me to do that and exclude federal mandates in other areas. After all, we have had them for 36 years. We did not make it optional to ban poll taxes. We did not make it optional to ban literacy tests. If an error is caused by faulty equipment or bad training or people who do not know what they are doing, and the net effect is someone is disenfranchised, then we ought to figure out a way to fix it. And the fact is, when something goes wrong in a presidential race or a race for the national legislature in one precinct in the country, and that affects the outcome of that presidential race it affects the entire country. The fact that we have done it right in some other State does not mean that citizens of that State have not been adversely affected by these problems. So, there is a national perspective on this that has to be kept in mind.

I appreciate your testimony immensely.

We have been joined by Sheila Jackson-Lee, who I see behind you. So, Sheila, why do you not come up and join your colleagues.

We thank both of you. We thank you, Charlie, immensely. Thank you, Silvestre. And, Mark, I do not know who is more senior. I think you are more senior. He is more senior, is he not—

Mr. SWEENEY. He is certainly older, Senator.

[Laughter.]

The CHAIRMAN. I want you to know, Congressman, I have always had a particular affection for young Congressmen with gray hair.

Mr. FOLEY. And it is getting grayer—

The CHAIRMAN. It is getting grayer all the time, Mark.

Sheila, we welcome you immensely, the Congresswoman from Texas, it is so good to have you here with us. Actually, as I said earlier, we have had almost 5 percent of the House of Representatives here. It is making my Senate colleagues nervous by this flood of members of the House coming over to look at the drapes. It is, no doubt, causing some concern. [Laughter.]

But we thank you all for coming.

And, Mark—Sheila, if it is all right with you, we are going to go with Mark. I will do it in the order in which you came on over here. So, Mark, we will hear from you. The lights are instructive only, just so that you get some sense—having Senators talk about limiting their time is a little bit of an oxymoron, as you know. The House members constantly remind we Senators of our verbosity.

So we thank you for being here. Any statements you have, documentation, whatever you want to be included in the record, we will make sure it is part of it.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF THE HON. MARK FOLEY, A U.S. REPRESENTATIVE FROM THE STATE OF FLORIDA; HON. JOHN E. SWEENEY, A U.S. REPRESENTATIVE FROM THE STATE OF NEW YORK; AND HON. SHEILA JACKSON LEE, A U.S. REPRESENTATIVE FROM THE STATE OF TEXAS**

**STATEMENT OF HON. MARK FOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. FOLEY. First, thank you very much, Mr. Chairman, and as you can imagine, now you may understand, after Charlie's testimony, why Senator Teddy Kennedy and I have been doing Spanish lessons. We are trying to get up to—

The CHAIRMAN. [Speaking in Spanish.] I want to say something to you in Spanish. [Speaking in Spanish.]

Mr. FOLEY. Very good. Si, there you go.

Thank you very much, Mr. Chairman. I used to have to describe where I am from, West Palm Beach, Florida, but since the election, no longer is that necessary. In fact, in Rome recently I asked for directions to St. Peters, and as I was being given directions, he said, "Where are you from?"

And I said, "West Palm, Florida."

And he said, "Well, then I better walk you there because you may not make it." [Laughter.]

Obviously, the embarrassment and the attention focused on Florida 37-plus days was both regrettable and painful, but it could have been anybody's State.

The CHAIRMAN. That is right.

Mr. FOLEY. And I think after we have looked at many States, Illinois and others, you have seen even a greater degree of undervotes and overvotes in those same communities. Florida was about in the middle, but because there were 25 electoral votes at stake, there was a higher priority in trying to determine whether the election was properly conducted.

There have been accusations by the Civil Rights Commission and others that the election was stolen at the behest of the governor of Florida or the secretary of State. Obviously, in Florida, every county's Elections Office is operated by an independently elected supervisor of elections. The butterfly ballot was in Palm Beach County, and that of course has been an office held by Democrats for 47 out of 67 years. There is enough credit and blame to go around the room as to what happened.

We look back with regret. There is no question we do not want people to believe, under any circumstance, that their vote was ignored or that it was not counted. The suggestion Mr. Gonzalez made about multilingual ballots is a good idea, but again it is not always practical. There are 47 languages spoken in the Palm Beach County school system. It becomes a question of what are the languages to be printed and published? Is it that easy? Should it be Spanish, since that would be a larger minority? What does that say to the French person getting ready to vote. It may be their first time as a new American now given rights to vote. Should we translate the ballot in their language as well? These are the compelling questions we must address.

We were barraged by jokes on nightly news, but you look at what can come out of this, and it is my hope and my fervent prayer when Alcee Hastings, and I, and others work together, we can make some things occur here. The questions are how do we do it and should the Federal Government play a role? There is a role to be played, and I think part of that is financial. I am not sure mandates work from Washington because oftentimes mandates are both difficult and burdensome on the localities. Local Government and local control has been the hallmark of our system.

Let me describe for you, because I think now that Florida has witnessed or at least been party to history, we have also been in the forefront of election reform. Gov. Jeb Bush, against some objection by my own colleagues in the Florida legislature, advanced a bill that would do a number of things that I think bring us to a point where we will finally have some very, very important election reforms.

The CHAIRMAN. You should know, Mark, there have been a number of expressions here, including my own, of compliments to the Florida legislature and the governor for moving expeditiously with their bill. There have been some who have raised some concerns about things that were not in the bill, but that aside, as we have been critical about what occurred, you should know that members up here have also been very complimentary about how fast Florida did move to address, at least many of the issues.

Mr. FOLEY. And I hope other States follow our lead. This is, again, why I want to illustrate, while Illinois was never in question, it had 190,000 votes that were discarded. That begs the question, were those as important as the Floridians who may have voted incorrectly?

Technology is so critical. I cannot underscore this enough. The lottery in Florida is a multimillion-dollar operation. Every week they come, and they fill in an optical scanner-type card, and every Saturday, without fail, Florida delivers results to the person, if they won or if they lost, but we will know at 11 o'clock Saturday what the week's total was, who got the prize, and if not, it rolls over. When it comes to elections, we seem to take for granted.

I traveled to polling places throughout my region in Florida, which of course were alleged to have been confusing, difficult, blocked. Nowhere did I find problems during Election Day. I traveled between Century Village, Golden Lakes, from the wealthiest enclaves to the poorest, the same equipment used in each precinct, whether it was minority communities or the high-brow Palm Beach, they got the same punch card technology. Yes, archaic. Bad, yes. Even acknowledged by our own supervisor of elections, "Oh, we have known these problems existed. We just did not realize how critical they would become in one fell swoop."

So again, we are going to voting technology, that is important, and that is where again the Federal Government can help. Florida is stepping up to the plate with over \$24 million in an attempt to buy new technology for the 67 counties. That is where I think the Federal Government could be immensely helpful in matching some of those dollars.

Again, while I believe in my heart that States have the valid function of running the election, the Federal Government benefits

from a strong State system because they obviously have been given the place on the ballot for Federal officeholders to run, the U.S. Senators, the members of Congress, and of course, the President of the United States.

The other thing that troubles me is the lack of voter education. Motor Voter—and I think Senator McConnell mentioned this earlier and voter education was a concern I had in 1992 when I served on the State legislature elections panel in Florida.

We were not ever concerned with whether the person who is signing up to vote, be it at a driver's license bureau or at a welfare office, we never seemed to care if they were legal citizens of the country. That was troubling to me because we were starting to enroll people, consequently now as they are purging, they are trying to determine the accuracy of those individuals being eligible to vote. You have to have citizenship in which to cast ballots. That was a troubling aspect of Motor Voter that I do not think we fully vetted. That has to be tightened up.

Also the education component is important, because there was a lot of bravado during our Florida elections about how we were getting people to the polls in record numbers. We brought the minority turnout, in Florida from 9 percent of the total vote cast by African-Americans to well over 15 percent in the 2000 cycle. It was a dramatic increase of new voters, and that is heartening. Hopefully the younger people, as you mentioned, will join in that same increase in voter turnout.

But regrettably, many had never voted before and were ill equipped to vote for the first time. Few were helping in the polls because of the crowds that were generated.

So all of these lessons learned are instructive. They are helpful and they are important. That is why as we proceed down the path of the election reform, and I have urged my colleagues on both sides of the aisle to take this issue seriously. We may have, again, been embarrassed, but the embarrassment should bring about a heightened awareness that every vote counts, and no matter what the composition of the voter or where they may reside, the equipment should be uniform, the instructions should be, clearly, understood and given.

At the end of the day when you close the polls you pray that all of the people that were eligible were able to cast their vote and nobody was singled out, nobody was treated differently, no one created a bias against them under any circumstance.

[The prepared statement of Mr. Foley follows:]

**Congressman Mark Foley  
Testimony -- Election Reform  
June 28, 2000**

Mr. Chairman, Senator McConnell, members of the Committee, thank you for the opportunity to speak with you today about election reform in my home state of Florida.

Recently, I was in a city I didn't know and I got lost. While I was standing on the street corner trying to establish my bearings, a passerby stopped and asked if I needed directions. After explaining where I should go, he asked where I was from. When I told him I was from West Palm Beach, Florida, he joked, "In that case, I should probably walk you there."

While the remark is funny, it is also a reflection of the unfair criticism cast over Florida. Never before in the history of the United States has one state been subject to the scrutiny that ensued in the days following the presidential election last year. The barrage of late-night television jokes made Florida a running punch line. But Florida, Mr. Chairman, could be Any State, USA.

Today, I hope to draw a distinction in our discussion between the practical aspects of election reform and the highly polarized and political melee that took place in Florida. Many individuals and organizations have tried to make political hay from those events and I would like to commend your efforts to separate fact from fiction.

The scrutiny that focused exclusively on Florida obscured the larger picture. While any election, virtually anywhere, has its share of invalid ballots, the general public was led to believe that Florida had an abnormal spike in the number of ballots thrown out. Some asserted the election was stolen others have asserted that certain groups of voters were systematically disenfranchised. This is simply not true. In reality, Florida's experience was not unique. States like Idaho, Illinois, Georgia and Wyoming actually had higher percentages of discounted votes -- they just happened to have fewer electoral votes. Of the many assertions made regarding the election in Florida, very few have been supported with more than anecdotal evidence. However, Florida is now leading the nation in 21st Century election reform.

Traveling around Palm Beach County on Election day for my own reelection, I visited an array of polling locations from the wealthiest Republican enclaves along the coast, to the heavily Democratic condo communities sprinkled throughout West Palm Beach. Nowhere did I witness the alleged impediments that supposedly disenfranchised so many voters. From Belle Glade to Jupiter Island -- two economically and racially different communities -- Palm Beach voters cast their ballots with the same type of voting machines. The same ballots were used in predominately white neighborhoods as those in communities of color. Yet in the wake of the election, a vocal minority of



political activists would claim that some had been prevented from ever casting their ballots. As I drove from polling location to polling location, not once did I observe someone upset with the poll workers, denied access to the polls, or hear reports of any impropriety.

It is worth noting that even the dubious Civil Rights Commission report indicated they "did not find conclusive evidence that the highest officials of the state conspired to produce the disenfranchisement of voters."

Once the outcome of the Florida election was finally certified and the camera crews, activists and celebrities had gone home, Florida was left standing at a crossroads. Despite the fact that many of the allegations made during the recount were later proved to be untrue, our state lawmakers knew there was a need to modernize our election procedures. I am happy to report, we have moved forward from this intersection with great strides. After a vigorous debate in the State Legislature, a landmark election reform program was passed and signed into law -- establishing Florida as an example for other states to follow. We have achieved a great deal and it is a story that bears repeating.

Following the 2000 election, Florida aggressively pursued a course of action to correct deficiencies in the election process -- from the ballot box to the role of supervisors of elections. As we look toward the 2002 election cycle, the Florida legislature and Governor Jeb Bush have made decisive moves to protect the integrity of our election process. Florida has taken a number of steps to ensure the legitimacy of the ballot box:

- Our state will require voting technology that is precinct-based allowing the voter to correct mistakes made while voting.
- Florida will eliminate punch card and other antiquated voting systems.
- Counties will receive \$24 million over the next two years for the purpose of modernizing voting equipment.
- Florida will provide \$6 million for the development of voter education programs and the recruitment and training of poll workers.
- \$2 million will be provided for the development and implementation of a statewide centralized voter registration database. Voters who do not appear on the voter registration rolls will be allowed to vote a provisional ballot that will be counted once their registration has been verified.
- There is clarification for absentee voting by military and overseas voters and the new law removes justification requirements for absentee ballot voting to make the voting process more convenient.

- Vote totals will be certified no later than 7 days following a primary election and 11 days following a general election.
- A Voter's Bill of Rights and Responsibilities will be posted in each polling place in Florida.
- And finally, the Secretary of State is exploring ways to make the election process accessible to voters with disabilities.

Mr. Chairman, Florida has demonstrated that states have the ability to address critical concerns that have a national impact -- and I would strongly urge states to look at Florida as a model.

In Congress we have focused on legislation in a bipartisan manner to address voter education, eliminate antiquated voting practices and provide financial assistance for updating polling location. We are working to aid states in their own election reform without passing unfunded mandates. Florida is a perfect example of a state that, without the heavy hand of the federal government, was able to pass effective and timely election reform.

I would encourage members of this committee to review the progress we have made in Florida. The time to address election concerns is now. Congress can play a careful role in aiding states with their own election reform -- without dictating the terms.

The recently passed election legislation in Florida is a testament to the hard work and commitment of many citizens and legislators. As Floridians, we are leading the way in election reform and this is something we are very proud of.

Thank you.

The CHAIRMAN. I thank you, Mark. Very good. That is very good advice and strong testimony. We have had a good representation from Florida here today. Your colleagues, Corrine Brown, Carrie Meek, Peter Deutsch, Congressman Wexler, and now yourself. I am heartened by it. While there are obviously some different opinions, I think all agree that this was not an event that occurred at just one time or in one place. This is a national problem, and it is one that has been going on for sometime.

But it is so difficult. I do not need to tell you how hard it is at a local level with all the priorities mayors have, and town committees, boards of aldermen, city councils and governors, with the pressures on them to take scarce dollars and use them for education, transportation, health, we could go down a long list. We have not made enough of a case that an election infrastructure which provides the right to vote, which is the basis of all other rights, has as high a priority as some of these other issues.

In my own State, we have not had a new voting machine in 20 years, and we had some of the first voting machines in the country back in the 1950s. We have not bought a new one in that long length of time. Now they fix them and they work fairly well.

But this is not a Florida issue, or a Connecticut issue, or New York or Texas. It is true across the country. Clearly, resources are going to be important.

Now we heard this morning from your colleague, Congressman Blunt. He estimates that, if you are really serious about this, you are probably talking around \$3 billion, maybe more, dollars, when you start talking about the thousands of precincts across the country and what has to be done.

I question—if you are going to make that a match, whether local folks are going to want to do it and whether or not we are going to have, beyond this appropriations process, the commitment to appropriate those kinds of dollars even half of that, if you wanted to make it a match—without some requirement on at least some modest proposals, such as provisional voting, sample ballots, second looks and so forth. These would not be things that we can say, do it if you like; this is a mandate.

Not to say, here is the voting machine; they get to choose. But among voting machines that are accessible to people and so forth. You could set national standards and still allow for the wonderful diversity that is America not to be lost in the process. So I am very anxious to find some common ground here we can work on.

Congressman, you have been very patient. Where is the 22nd District?

Mr. SWEENEY. Saratoga primarily, up and down the eastern border of New York.

The CHAIRMAN. Great terrific. Welcome.

**STATEMENT OF HON. JOHN E. SWEENEY, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. SWEENEY. Senator, I appreciate the opportunity to be here. You may ask, why is an upstate congressman from New York here, and there are a number of reasons. I come primarily before the committee to offer my emphatic support for the bipartisan Federal Election Reform Act of 2001, a bill that I intend to introduce on the

House side. I hope to introduce it with bipartisan support and a co-sponsor from the other side of the aisle.

I also come to this committee with some experience in election law, as an attorney who practiced in New York in election law, as a former party official in New York, and as one of the folks on the ground in Florida who witnessed firsthand many of the problems that we faced there and who was deeply troubled by the process as it existed in Florida. As I recognized through my number of recounts that I had been a participant in in my prior life in New York and New York City more specifically, that there is indeed a role for the Federal Government and I welcome the opportunity to participate in what I think is going to be an important journey on behalf of all of us, Democrats and Republicans alike in really defining that Federal role and then providing real tangible and specific resources to that.

I happen to agree with your statement earlier in terms of how much money it is going to cost, and I do not know over what time and specifically what it needs to be used for, but I think that this will begin that process of finding those parameters.

This is an imperfect system, and the imperfections of this system are exacerbated substantially by our lack of wanting to provide foresight into any of this. This is, as I know, the first attempt, serious attempt, on behalf of Congress to step into the breach and try to begin to define that.

As I said, I have worked in a number of areas and a number a places and recognized that in most instances many of the deficiencies exist because people just had not thought about the application of whatever it was that they needed to think about. But I also skeptically suspect that in many instances those deficiencies exist for purposes. I hope that is not true, but I think we are going to begin to define that more clearly.

If I could, I am going to submit a statement formally that talks about the bill and talks about how important it is. I am pleased that my colleague from New York, Senator Schumer, has joined me, and in fact asked me to join on this bill with Senator McConnell, and I think that gives us substantial opportunity to pass it and bring public attention to it.

The CHAIRMAN. We hoped you would also do it, Congressman—Senator Schumer did, and of course, he is a co-sponsor of the Conyers-Dodd bill as well. So we would encourage you to co-sponsor the Conyers bill.

Mr. SWEENEY. We will take a look—

The CHAIRMAN. To truly emulate Senator Schumer—

Mr. SWEENEY. Senator, I just think you wanted to make sure I did not come over just for the purpose of measuring the drapes. But that is another discussion. [Laughter.]

If I could respond to my friend Charlie Gonzalez too and what he spoke of. I agreed with substantially everything he said, and I would make this point, having done 15 years of election law and recounts. That we need to cure—we certainly need to treat all of the ailments of this patient, because any single one of them could be tragic and devastating. It certainly would shake the confidence of the American people.

I think the ultimate in sausage making is the process of recounting an election because it does tend to point out all of the deficiencies in a system. We have gone far too many years not wanting to address those deficiencies. I think it is time we Republicans and Democrats, conservatives and liberals, need to step to the plate on this, because it is going to have, and I think it already has to some degree had a very substantial debilitating effect on the confidence of the American people. We cannot let that happen.

With that, I too must return to the House.

The CHAIRMAN. I understand.

Mr. SWEENEY. I want to thank you for the opportunity. I will submit my statement and any questions—

The CHAIRMAN. It will be a part of the record, I promise you. I thank you for coming over, and I look forward to working with you.

Mr. SWEENEY. Thank you, Senator.

[The prepared statement of Mr. Sweeney follows:]

**Rep. John E. Sweeney**  
**Testimony on Bipartisan Federal Election Reform Act of 2001**  
**Senate Rules and Administration Committee**  
**June 28, 2001**

Mr. Chairman, thank you for this opportunity.

I come before this committee today to offer my  
emphatic support for the Bipartisan Federal Election  
Reform Act of 2001 and its comprehensive, balanced  
approach to repairing the administration and  
management of elections, which ultimately serve as  
the machinery of our system of self-government.

My endorsement of this legislation—and my pending  
sponsorship in the House of Representatives—is  
derived from my sincere devotion to once again

restoring a sense of infallibility to our election process. I believe this legislation's bipartisan effort to improve the system's current imperfections represent the best chance to achieve this goal.

Having witnessed firsthand a post-election process in Florida devoid of standardized rules and regulations specifically designed to maintain the integrity of votes that were cast, I believe our joint effort on this legislation presents all parties involved a judicious opportunity to introduce real solutions to the inconsistencies that plagued the election process during the recent Presidential recount.

The Bipartisan Federal Election Reform Act of 2001 should be embraced not only because of its bipartisan nature, but because its approach to the election system is one intent on cooperatively delivering solutions to problems, rather than exploiting them in a partisan manner. It seeks to negotiate terms, rather than dictate them.

This legislation provides comprehensive solutions to the most critical problems facing our election systems in this country today:



This bill establishes a bipartisan blue ribbon study commission will examine a range of election issues and recommend best practices.

These issues include voting equipment and ballot design, making voting as accessible as possible, ensuring that registration lists are accurate and well maintained, improving the way we recruit and train poll workers and educating voters about the election process.

The Blue ribbon commission will identify the methods that are most accurate and easiest for voters,

and which guarantee the right to vote is neither impeded nor denied.

We will then provide \$2.5 billion in grants to be administered by a new, bipartisan agency called the Election Administration Commission. The grants will fund adoption of the best practices by states and counties.

In exchange for grant funding, we will make sure that states provide provisional balloting, so no one is prevented from voting based on a voter roll mistake or because the voter went to the wrong precinct.

States will also expand and improve voter education and poll worker training programs, and improve voting procedures for members of our Armed Forces.

States receiving funding will have to maintain accurate voter rolls and put in place safeguards against erroneous purges of voters.

And States that receive grants will be required to see to it that disabled voters get the same opportunity to vote in privacy and independence as the non-disabled, since research used to develop this legislation revealed that close to 20,000 polling sites are deemed not accessible.

Finally, I ask that our respective legislative bodies go forth from this point on with our efforts squarely focused on achieving a bipartisan, bicameral remedy for our systems ills. With adequate resources and collaborative judgment on this issue, I am confident we can fashion a bill ultimately resulting in the restoration of the highest degree of faith in our democratic election process.

Thank you.

The CHAIRMAN. Sheila, welcome.

Ms. JACKSON LEE. Thank you very much.

The Chairman. You are the clean-up hitter here. We have been at this for 10 hours over two days and we have had a lot of very worthwhile testimony. The fact that you are our last witness does not in any way diminish the importance of your participation and your contribution. You have been active on this issue for a long time. At every single press conference, at every single hearing that I have attended over the last four or five months on this issue, Sheila Jackson Lee has been there.

So we thank you for your tremendous involvement on this question. We really are anxious to not only hear your testimony today but to count on your participation as we try as quickly and as thoughtfully as we can, to craft legislation that will be meaningful. And not merely by responding to a problem that clearly everyone has identified, but to do so in a way that really will have the desired effect of minimizing the kind of tragedy we saw occur in this country last year.

**STATEMENT OF HON. SHEILA JACKSON LEE, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Ms. JACKSON LEE. Chairman Dodd, I cannot thank you enough for the perseverance and determination that you have evidenced both by the calling of this hearing, marathon of two days, but as well the most thoughtful legislation that you have proposed, S. 565 and H.R. 1170. I am, I guess, described as being last but not least.

The CHAIRMAN. Absolutely.

Ms. JACKSON LEE. I have left a Judiciary Committee markup. I appreciate the committee's indulgence and the fact that it was a marathon. We are marking up H.R. 7, Charitable Choice, and of course you realize the constitutional ramifications of that legislation.

But I think that legislation may be symbolic of what we do here today. The people embrace the question of freedom of religion, but they also embrace the question of the fact that we are a nation that advocates and encourages the practice of one's faith. Those two dilemmas have to be joined together as to how we are able to maintain the concept of freedom of religion and at the same time possibly respect those efforts being made by the religious community.

This hearing speaks to that dilemma, which is that it is well known that an election is a political process. You are in a race and you want to win. Invariably, many times the tactics that have been used are all attributable to the idea of, it is the best man or woman wins. Whoever can get to the finish line first, whose tactics overcome the final counting.

But on the contrary, I think that we are blessed by the fact that we live in a democracy. Starting from the early days of our Founding Fathers where they characterized the importance of voting, one person, one vote. I know this hearing started out with a number of senators, and I appreciate the fact that we now are looking at the remaining senator who happens to be the chairperson. One might describe your leadership in many ways, but it might be characterized in this session as one vote, one person. And one person has the ability to move the world.

So I view this hearing as an enormously important recharacterization of America's commitment to the Fifteenth Amendment, and a restatement that the Fifteenth Amendment, though narrowly described in its writing, applies to everyone; senior citizens in West Palm Beach who I spoke to, Hispanics in San Antonio who I spoke to, and traveling throughout the country on hearings, Polish in Chicago, and just plain folks in Philadelphia, who came forward in hearings that I participated in and argued that the system was broken.

I spent more than 20 days in Florida, in a variety of capacities. One, overseeing the recount, being in the room when the judge in West Palm Beach called to the secretary of state at 7:14 on a Sunday night asking and begging, would you allow these final votes to be counted. Of course we know the story there. And I would suggest that Florida is not the only story. Those votes were not allowed to be counted because they had missed the 5:00 p.m. deadline set forth by the secretary of state of Florida when they were doing the recount.

But I think what that emphasized for me was the fact that we could cavalierly discard a vote count, or the votes of any person. When I left that room I spoke to some senior citizens, who did not look like me, women who lived in West Palm Beach who said, I know for a fact I voted for the wrong person because of the butterfly ballot. Of course, we did not have that terminology then.

So I believe that Federal standards are imperative. Because if I can go from Florida to Chicago to Philadelphia and back home to Texas and find that citizens are confused by balloting, then this rises above a question of race or ethnicity. It says that the American people are being denied their right to vote.

I am always reminded of the civil rights movement when it was said, leave it to the States, States' rights, something we hear quite frequently in the House Judiciary Committee. But we know that it had to be the Federal Government who began to reaffirm the constitutional privileges and rights of all citizens. So Federal standards would not be a burden, and that is what the legislation that we have before us would emphasize, that Federal standards would be important.

That the emphasis would not only be on technology, but it would be on a variety of elements to contribute to people understand how they could vote. The distribution of the sample ballots, so that one printed in the newspaper, which I have seen many voters bring to the polls, would not be completely contrary to what they would utilize in the polls.

This past two months my office sat as a member of the team in Harris County trying to select who would be our electronic voting contractor. All energy was placed upon that source, of who it would be and the technical aspects of its particular usage.

But in addition to that, we must ensure that the voter is confident and educated about voting. Standards help give us a sense of calm. Incentives help provide the encouragement to local governments, who may not be the New Yorks, or even the Houston Harris Counties, the Los Angeles, who have the resources possibly to do their own system. What about the hamlets, both urban and rural, who are in need of those kinds of incentives?

I think it is important to have a commission to be able to secure data. I have legislation that includes that as well, but I think this is important to be able to do that. And I think we should emphasize the fact that we are here to elevate the Voting Rights Act of 1965, which I am clearly a product of. A product of that because it eliminated the last vestiges of preventing people of color, or inhibiting anyone on the basis of race, color, or creed, the right to vote.

Out of that 1965 Voting Rights Act and the redrawing of districts in 1970, this very seat that I sit in was created, in 1970, and therefore, the first holder of the seat was Barbara Jordan. This particular seat is only about 28 or so years old. It generated because it elevated the numbers of minorities who had the right to vote in Houston, Texas. So I believe that we benefit from the fact of having those requirements coming from the Federal Government.

Might I also say that it is important that the teeth be put in this particular legislation by funding. I was disappointed to note, at least in the early stages of the President's budget, that there was no funding proposed for election reform. I do believe it is important on our behalf to secure that funding, and find it both in this body and in the House, though it is run by two different parties.

Let me cite very briefly some indignities that were experienced by the individuals who did not vote in Florida, but also as I listened to testimony around the country we saw it everywhere. Citizens who were properly registered but were denied the right to vote because election officials could not find their names on the precinct rolls. That registered voters were denied the right to vote because of minor discrepancies and clerical errors.

That first-time voters who sent in voter registration forms prior to the State's deadline for registration were denied the right to vote because their registration forms were not processed. That African-American voters were required to show photo ID while white voters at the same precincts were not subjected to the same.

And while voters of color in Florida in particular were singled out because of some mishap we are told for suggesting that they had a criminal reason for not being able to vote, we are told that the computer company that was utilized had sent a corrected list to take off individuals and it had gone to the State. But yet in their testimony before the U.S. Civil Rights Commission they felt that it had not gotten to the local elected officials that were presiding over the local elections in the various counties and cities. That, however, denied a large number of individuals the right to vote.

As I conclude let me simply say that the President himself has emphasized that this is an America that everyone deserves the right to vote. I would hope that what he is generating is a bipartisan effort to be supportive of this kind of legislation.

For example, I would say that the provision dealing with provisional voting answers many questions, because it will answer the question of whether or not you can find someone's name who may be off because of clerical reasons that you may suggest. It might even allow a courageous person to go ahead and say, though you find a criminal reason, I am going to sign an affidavit because that is not me. I would encourage voters and citizens to do so. This leg-

isolation would allow such, with provisional voting, to be able to take that extra step.

Interestingly enough, under the old Florida law you had to leave the polling place, as in many other jurisdictions, and go to a courthouse. In my community, you have to wait by a phone that has probably 3,000 phone calls coming into the county center, to get on the line and be able to argue your case. Most times you were never able to get through.

So I encourage the use of provisional voting, and I would like to encourage the look for an additional provision. That is, the heinousness of purging.

One of the most moving testimonies that I heard was a Hispanic woman who could still not speak English but had been in this country for many, many years. She came as a senior citizen. And when she went to vote, motivated and inspired by the election of 2000 she took her card, or took what she thought was a viable card, her address, and she went with all her dignity and courage in San Antonio, Texas to vote. And almost like saying there was no room at the inn, they told her she could not vote.

But she could not speak English. And for the life of her, she knew she was a citizen, but she could not vote. Probably because she had not voted in one or two local elections.

I would argue the consideration of a 10-year disallowance of purging for a citizen of the United States who is registered. By the new technology one could check whether or not they were still residing at maybe the same house; they could use their address. Therefore, even if they missed a local election—Federal elections are so important, that to purge someone off the list, and the notice may have gone to a previous residence, is really a deniable of citizenship rights. I would argue vigorously for some relief as it relates to purging.

In my community alone, the State of Texas, we had some 700,000 purged from the voting rolls. What an insult.

I would also say that as it relates to education, I have legislation, H.R. 934, to ask for a holiday on the second Tuesday of the fourth year. Why do I say that, Mr. Chairman? Not only for a holiday for people to say that is frivolous, do not do that. But the level of opportunity for people of all walks of life to work at the polls. High school students, college students, white collar workers, blue collar workers, others who are otherwise obligated, as opposed to a Saturday, I think would be extremely helpful.

The education of the voter would be helpful because you would then have people who might be spared at the polls to actually be there to help assist people, as opposed to the shortage that we usually have.

Sometimes they say that lawyers and ministers have two and three times to close, but Mr. Chairman, I promise you that I am closing. Let me simply say that it is important to have legislation to emphasize the vitality of the right to vote. I do acknowledge the legislation by the ranking member, Mitch McConnell, and I thank him for introducing such legislation. I hope ultimately we will come to a conclusion to work together.

But with my legislation of H.R. 934 and H.R. 60, I am certainly enthusiastic about the legislation that you have proposed along



with my ranking member. I will simply say that the Fifteenth Amendment of the Constitution tells us that the Congress shall have the power to enforce this Article by appropriate legislation. Certainly jurisdiction precedes the creation of this legislation before us.

I would like us to make a commitment to the American people, and to those of us who experienced gratification at the passage of the Voting Rights Act of 1965 and the Civil Rights Act. It changed my life and the life of my family, and the life of those who have had a history similar to mine.

I believe that Americans should look at this election reform as their birthright, and it should not be color-coded. They should recognize that votes are important. Elections are political, but the right to vote is imperative, and I believe it is imperative that we pass this legislation. I look forward to the House Judiciary Committee holding such hearings and this legislation being passed post-haste, immediately.

[The prepared statement of Ms. Jackson Lee follows:]

**Congress of the United States**  
**Washington, DC 20515**

TESTIMONY

CONGRESSWOMAN SHEILA JACKSON LEE

SENATE COMMITTEE ON RULES AND ADMINISTRATION

ELECTION REFORM HEARING

JUNE 28, 2001

Chairman Dodd, Ranking Member McConnell, distinguished members of this Committee, I would like to thank you for holding this important hearing on Election Reform. **I look forward to legislation this session such as S. 565, THE Equal Rights Voting Act introduced by Senator Dodd (D-CT) and in the House as H.R. 1170, introduced by Judiciary Committee Ranking Member John Conyers (D-MI), so that we can continue to address the process of reforming our democratic voting system.**

Four decades ago, thousands of Americans from all races, economic classes, and from all walks of life, risked their lives raising their collective voice in the civil rights movement which challenged the un-American systems of discrimination that prevented millions of Americans from exercising their right to vote. While many Americans

sacrificed and lost a great deal in this struggle, one of the great fruits of their sacrifices was the 1965 Voting Rights Act.

Mr. Chairman, I am a product of the 1965 Voting Rights Act. But I'm also a direct result of the 1965 Voting Rights Act, which created the 18<sup>th</sup> Congressional District of Texas, which I represent. Since its creation, three other Americans and myself have proudly served the people of Texas. As a product of this process and the 1965 Voting Rights Act, I have always believed that voting is a right, a privilege, a responsibility, and a passion.

The people's vote is the people's voice. It is our most precious instrument of democracy, justice, and the truest manifestation of freedom. Yet, thirty-five after the passage of the Voting Rights Act there are still members of our Southern states including Texas who remain to this day unregistered to vote. This is deeply disturbing.

On November 7<sup>th</sup>, 2000, only a fraction of Americans were able to exercise their right to vote and have those votes counted, while thousands, and perhaps even millions of voters were denied this constitutional right as guaranteed by the Fifteenth Amendment. But beyond these mistakes, there have been serious allegations of violations of the Sections 2 and 5 of the *Voter Rights Act of 1965*, 42 U.S.C. sec. 1973, which mandates the obligation and responsibility of the Congress to provide appropriate implementation of the guarantees of the Fifteenth Amendment to the Constitution, which states "the fundamental principle that the right to vote shall not be denied or abridged by the States

or the Federal Government on account of race or color.” Perhaps it was James Baldwin who anticipated this reality in 1962 when he wrote in The Fire Next Time: “Color is not a human or personal reality; it is a political reality.”

Section 2 states of the Voting Rights Act similarly states:

No voting qualifications 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 rights of any citizen of the United States on account of race or color.

The Voting Rights Act of 1965 clearly affirms the right of *every* U.S. citizen to cast a ballot and have that ballot be counted. These fundamental rights must be protected and enforced without compromise and without regard to the voter's race.

The House Report on the Voting Rights Act reiterated this:

[Section 2] grants... a right to be free from enactment or enforcement of voting qualifications... or practices which deny or abridge the right to vote on account of race or color.” H.R. Rep. No. 439, 89<sup>th</sup> Cong., 1<sup>st</sup> Sess., 23 (1965).

In the aftermath of the 2000 election, it has become horrifyingly clear that the nation's voting procedures are still plagued by a systemic cancer that disenfranchises Americans by preventing them from casting their votes and from having those votes counted.

These violations of the Voting Rights Act in the 2000 elections represent an American tragedy of justice of monumental proportions. Yet, despite the clarity of the

law on this subject, we know today that such violations of fundamental voting rights did occur during the November 7<sup>th</sup> elections throughout the nation. Victims and witnesses to Election Day irregularities and discriminatory practices at voting precincts came forward in significant numbers to tell their stories of how their votes were discarded and their voices silenced. My office remains inundated with countless letters, phone calls, and e-mails of stories of violations, and demands that justice and order be restored to this process.

In recent months several public hearings have been held around the nation to discuss and analyze the testimony of witnesses and victims of voting irregularities, and to seek solutions. Some of these hearings include a Democratic Caucus Special Committee on Election Reform hearing held in San Antonio, Texas, an NAACP hearing, and a Florida State Assembly hearing. Testimony heard from law enforcement, poll workers, educators, civil rights organizations, state and federal legislators, and disenfranchised voters and recounted the following:

1. That citizens who were properly registered were denied the right to vote because election officials could not find their names on the precinct rolls;
2. that registered voters were denied the right to vote because of minor discrepancies and clerical errors;

3. that first-time voters who sent in voter registration forms prior to the state's deadline for registration were denied the right to vote because their registration forms were not processed;

4. that African-Americans voters were singled out for criminal background checks at some precincts and that one voter who had never been arrested was denied the right to vote after being told that he had a prior felony conviction;

5. that African-American voters were required to show photo identification while white voters at the same precincts were not subjected to the same requirement;

6. that voters who requested absentee ballots did not receive them but were denied the right to vote when they went to the precinct in person on Election Day;

7. that hundreds of absentee ballots of registered voters in various counties throughout the nation were improperly rejected by the Supervisor of Elections and not counted;

8. that African-American voters who requested assistance at the polls were denied assistance;

9. that African-American voters who requested the assistance of a volunteer to translate the ballot for limited proficient voters were denied such assistance.

The need for election reform is the challenge of all Americans. That's why it's imperative that Congress continues its serious review and comprehensive reform of our election process in this nation. President Bush himself recognized this urgency, telling members of Congress: "This is America. Everyone deserves the right to vote." Congress was reaffirmed of President Bush's commitment to the protection of the right to vote when the President's spokesman later assured members of Congress that the "President wants to make certain that one of the focuses of attention this year is electoral reform." A letter recently sent to President Bush by virtually every House Democrat, called on the administration fulfill this promise by providing "essential guidance and leadership on a national problem", yet today, half a year after the election, we are still without such leadership. So I call on the Attorney General of the United States to begin a full investigation of all alleged voting improprieties, because we must clear the air.

So what be done to remedy these problems for the future? Recent studies, including one done by the House Committee on Government Reform indicate that outdated technology is part of the problem, and that newer technologies reduce mistakes, and may even expedite increased volume of votes cast. This study analyzed upgrading voting technologies in Detroit which has the highest poverty rate of any U.S. city, as well as one of the highest minority populations. It studied the effects of voter education and the replacement of the antiquated punch card machines, such as those used in Florida,

with new optical scanner machines that let voters know when the voter made a mistake and gave the voter an opportunity to fix it. The results of this study are staggering. The percentage of uncounted votes for President in Detroit decreased by almost two-thirds, from almost 50% above the national average in the 1996 election in which punch cards were used, to almost 50% below the national average in the 2000 election in which the new machines were used. Detroit also reduced the percentage of uncounted votes significantly, from 7% in precincts with high rates of uncounted votes in 1996, to less than 1% using the new machines in 2000.

Another process that must be reformed is “purging” which includes eliminating a person’s name from the voting rolls when that person has not voted recently, thus requiring the person to re-register before voting again. This is particularly problematic because voters are often not notified when their names have been purged. As a result, when the person arrives at the polls to vote, he or she is denied access. According to testimony by Hilary O. Skelton of the NAACP before this Committee, in the 2000 election in Florida, purging occurred disproportionately in predominately African-American precincts and counties including Duval and West Palm Beach.

This kind of automatic and simplistic process of purging people from the voting rolls is an extremely harsh and unfair practice. Worse still, this process varies from state to state and from county to county. If someone has voted recently, it demonstrates his or her intent to be involved in the electoral process. We must ensure that they have every



opportunity to demonstrate that intent, have their vote counted, and have their voice heard.

I suggest that there be a uniform national ten-year period of inactivity before a voter's name is purged. This is a reasonable and set amount of time that would give people an opportunity to anticipate being purged, so that they can either vote, thereby resetting the ten-year clock, or, if they have already been purged, to allow them the opportunity to re-register before going to the polling location to vote.

Another necessary improvement is to ensure "provisional voting" in every election. As a result of voting roll irregularities and purging, many voters are erroneously denied the right to vote at the polls. To remedy this problem, many jurisdictions have begun using "provisional ballots" which can be cast at their regular voting precinct in the event that they are denied a regular ballot, but may also be obtained by voters at another precinct within the jurisdiction in the event their precinct closes early or runs out of ballots.

Also needed is education. We must educate those who work at the polls and in the local precincts, so that they can anticipate problems beforehand, and prepare. Workers should also be educated in the newer voting technologies that are developing. We must also educate our law enforcement officers, so that they understand the legalities and cultural sensitivities inherent in the voting process, and do not inadvertently interfere.

We must also educate the media so they are more sensitive to the influence and impact that their reporting has on people who have not yet made it to the polls. Many people, myself included, believe that the media played a key roll in last year's election by calling the election too early for Al Gore and Joe Lieberman, which resulted in many people not going to the polls to vote, believing that their vote would not have an effect on the election.

And lastly, we must educate and empower our voting citizens, so that they know their rights, understand how the voting process works, and can operate the newer technologies that are anticipated in the near future.

We must also address the great problem of the language barrier, which disadvantages millions of Americans every election. Chapter 20 of The Voting Rights Act of 1965 anticipates this:

[W]here State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process... The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting English-only elections

As such, at the very least, in precincts where there are large numbers of non-English-speaking people, workers should be informed so that bi-lingual poll workers are on-site.

To help facilitate greater and more regular voter turnout, I strongly believe that we need to make Election Day a national holiday in order to reconcile employment and

school commitments, which keep many people from voting or participating in this important election process. Such a holiday would also allow our young people to get involved in the voting process, and would allow for the hiring of more young people at the polling locations. In order for there to be true electoral reform, our youth must take a more active roll, and we must give them the tools and the opportunity to do so.

That's why I introduced H.R. 934 in Congress on March 7, 2001, establishing National Election Day on the 2<sup>nd</sup> Tuesday of November, in presidential election years as a legal public holiday. This bill will merely federalize what some states have done with great success, so that students, employers, and employees in the private sector will be able to exercise their constitutional right to vote or take part in the electoral process as election volunteers with no restraints. Everyone should be able to afford to cast his or her vote. As a nation, we simply cannot afford not to.

To ensure that this sacred right is secured, I have also introduced H.R. 60, the Secure Democracy for All Americans Act, which would develop greatly needed uniform electoral standards which may be adopted by the States by calling on the establishment of a Commission on the Comprehensive Study of Voting Procedures to study and report to the President and Congress on all issues relating to voting procedures in Federal, State, and local elections. This study can be extremely helpful in federal government research of voting technologies, and can also provide important information on the actual testing of new voting systems prior to their widespread implementation in local governments.

In addition, I have drafted a bill that would modify the Secure Democracy for all Americans Act by assigning the Federal Election Commission the roll of providing grants to states and local communities to enable them to efficiently implement this study.

Finally, I have recently founded the bipartisan Congressional Election Caucus to enable all members of Congress to engage in a serious review and dialogue of the election process in this nation as a recognition of the disenfranchisement of voters who lost their fundamental rights as citizens of the United States, to vote because of voter confusion, poor voter machinery, or work commitments. I invite member from both sides of the isle to join this important Caucus, because a bi-partisan effort is needed.

**It is in this spirit of bi-partisanship that I would like to thank all members engaging in electoral reform legislation, and would like to thank Ranking Member Mitch McConnell (R-KY) for his effort in introducing S.218, the Election Reform Act of 2001.**

While statutes were not enacted during this past election to prevent minorities from voting, deliberate actions were taken that prevented minorities, women, the disabled, the elderly and thousands of Americans from invoking their constitutional right to vote. Section 1973i of the Voting Rights Act of 1965 unequivocally forbids such disenfranchisement:

No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote... or is otherwise qualified to vote, or willfully fail or refuse to tabulate, count, and report such person's vote.

These actions demonstrate a grave injustice upon our democratic system that dims the light of justice and freedom that many follow around the world. We must not let these actions be revived again, because if we do, we diminish the blood, the sweat, and the tears of the struggle that our Founders and our ancestors fought to preserve the right of every citizen's voice to be heard regardless of race, ethnicity, gender, age, and yes, even political affiliation.

The Fifteenth Amendment of the Constitution tells us that "The Congress shall have the power to enforce this article by appropriate legislation." Let us make a commitment to the American people today, and to those around the world, to rise together to this challenge. Thank you.

The CHAIRMAN. Thank you very, very much. I should have noted as a matter of truth in advertising that your involvement and your time in Connecticut is something we cherish as well. I know that the folks at Yale University take great pride in your accomplishments over the years, Congresswoman.

Barbara Jordan was a great friend of mine. I served with her on the House Judiciary Committee years ago and enjoyed her friendship immensely. We served on the same subcommittee together dealing with constitutional rights when I was a member of the House. So you come from a great tradition, and it has been a joy to serve with both of you. Your ability, both of your abilities, to articulate issues and to explain the feelings of people are tremendously important.

I wanted to mention two things; one on the holiday issue, and I have talked about this. Senator Hollings here has expressed strong interest in a similar proposal, and others have as well, choosing different times.

My feeling was that in part of my bill we form a commission, one serving for a relatively short period of time, to make some recommendations. Because there is some division over whether or not Election Day ought to remain the same, occur on a weekend, be a holiday. So we leave that for the commission to make some recommendations as part of a larger package of proposals. But certainly that is one that I think has great merit, and many countries have tried it.

One of the things we ought to look at is what people are doing in other countries. We always send observers from America to watch how other elections occur. It might not be a bad idea, given the results of last year, and some of the stunning positive results in other countries. Brazil is one nation that has now a tremendously high voter participation rate and almost a non-existent fraud rate as a result of fundamental changes they have made in their process. We in this country can learn from others, just as they have learned from us. So it might be worthwhile.

I had one question for you because of your wonderful knowledge of the Constitution and your role on the Judiciary Committee. Maybe I have not articulated this question well enough. It goes to the equal protection clause, but it also relates to the notion that elections are purely local matters. I have heard on numerous occasions over the last two days that historically we leave the conduct of elections to local folks. That these are local matters, and that the Federal Government's involvement is really an excessive intrusion into what has historically been a local decision-making matter.

I have tried to make the case—and I am not asking you to necessarily agree with me, because you may disagree—but that certainly on presidential elections, and elections involving the national legislature, they are federal issues. Of course, they usually occur along with elections the effects of which are purely local in matter: deciding who will be on your local board of education, who may be the mayor of your town, or in my case, the first selectperson as they call them in Connecticut, which I know you are familiar with, or the State legislature. But rarely is there an election that occurs that does not have people being elected to local, State, and Federal offices. It happens occasionally, but on most elections on that day

we are choosing people to serve at the national, State, and local level.

So my point is that, particularly with the Electoral College, when there is a major collapse in one State, it affects the outcome of congressional or presidential elections. The point I have tried to make, and I do not think with necessarily any great success, is that that does affect the rights of a voter in another jurisdiction, even if that jurisdiction has not suffered from the same problems.

So the idea that a failure at one level does not affect the results on other levels, or in other places, is just untrue, to put it mildly. But maybe you can articulate this better than I can, if you agree with me. That this idea that the Federal Government's role is really one that has no place here, I think is fundamentally flawed reasoning. But I wonder if you might comment on that?

Ms. JACKSON LEE. As you know, Mr. Chairman, we have gone through these arguments through the decades as it relates to the Federal Government's balance between State and Federal, and I would argue, surprisingly I guess, your position.

I would view it from the perspective of the utilization of the Electoral College. No local election requires an extra body, on a school board, or selectperson, or council member, or State legislators, do not have to go somewhere else to be confirmed, if you will, as the President of the United States position that draws from the body politic of the entire Nation.

Therefore, if one—this is probably—it may be more of a politic argument, and I will get to the legal argument. But if one aspect of the Electoral College is flawed, then it does in fact impact the ultimate result, which is a Federal question, political question.

I have cited the Fifteenth Amendment which has to do with, at that time, the slave amendments, giving the right to vote. But it did provide the suggestion that legislation that might be necessary to ensure that, which is the basis upon which the Voting Rights Act of 1965 was crafted. There was no basis to be able to say, let's craft a colored person's initiative, might I be unpolitic, if you will. We had to find some grounding in the Constitution, or the legislators had to find some grounding in the Constitution.

I believe you have grounding in the Constitution now because you are protecting the right of any person to vote, and that is regardless of color or creed. So this election reform rises to that level, Fifteenth Amendment, and might I say, the Fourteenth Amendment on equal protection. Because I would argue that your election reform legislation is to give equal protection to all because it is not labeled. Because if the little lady that I spoke to, Jewish lady in fact, who was in tears, that I met in West Palm Beach, who just knew that they had voted incorrectly once they left the polls and it dawned on them with their analysis that they did not vote properly. So we had an unequal opportunity for them to have their vote counted.

I would say to my good friends who believe that all issues are States issues, that if nothing else, the Federal Government has a right to protect its American citizens. And if any way they feel violated, or that they feel that their right to vote has been denied, I think we have cause to come in and reform it, and fix it, because it provides or it adds to national policy.

So I would argue that we do have grounding and that in many instances—and I think you have been very judicious in where you have emphasized the corrections; national standards. You have not tried to govern days in the local community, and when someone might vote, or how you run your elections, whether you are in a barnhouse or you are in a tent, I assume. There are certain national standards that we want to ensure that people have the right to vote. If they are in a tent voting or in a barnhouse voting, that is acceptable to us.

So I think there is a distinction, and I would argue the case vigorously, but that this is somewhat analogous to the civil rights movement in that we were seeking to correct denials, and we are seeking to correct what has now been prohibitions or denials; language barriers, structural barriers as it relates to people with disabilities, who I have listened to who were appalled that they could not access places in Florida. Florida was highlighted. They probably could not access places in Chicago or places in Jackson, Mississippi. My friends who hear me calling the names of their cities, it is by no way a negative other than to cite examples; Houston, Texas, Dallas, Texas.

So I think it is important that we try to correct the elements that would keep individuals from the right to vote.

I started by saying that elections are political. The right to vote is not. I want to win on election day, and I may be in a different party. But the right to vote is not.

The CHAIRMAN. Thank you immensely. I apologize for keeping you a little longer, but you are so articulate and explain things so tremendously well, that it was valuable to have your testimony. You are hardly the least. You may have been the last, but you are hardly the least.

Ms. JACKSON LEE. Your patience is very kind. Might I add my appreciation to you and your staff. They have been dutiful in their efforts in working with members. You already gave the percentages of members. That is why they are holding the vote in the House because they knew that we would be engaged elsewhere in front of this very, very august body. I thank you very much.

The CHAIRMAN. Thank you very much, Congresswoman Sheila Jackson Lee from Texas. We thank you.

That concludes the hearing. The record will stay open for additional questions or comments that people may have. We have some specific dates by which the questions should be submitted and responses should be made so that we can complete the hearing record on this day.

We are going to have an additional hearing, at some point here after the July break, for members of the Senate. Senator Bond of Missouri has expressed an interest in being heard by the committee. I know that Senator Clinton of New York has expressed a similar interest. My colleague from Connecticut, Senator Lieberman, who had more than just a passing interest in the events of last fall, I am confident would like to be heard as well, and I know there are others. So I am going to try and allocate some time when members of the Senate can also be heard on this issue.

Then my hope is to be able to have some field hearings, to take this issue out over the month of July and in August, maybe early



September if necessary, with a goal in mind of working towards a markup of legislation in the very early part of fall, after the August break, to present to our colleagues at an appropriate time in consultation with the leadership, Senator Daschle and Senator Lott.

But we will clearly have an opportunity to vote on these matters soon. My hope is that we can come to some meaningful compromise that will allow this legislation to go forward and be submitted to the President so that by the year 2002 there will be resources available and some clear guidelines, national guidelines, national standards, to improve the quality of our elections and increase the participation of all eligible Americans.

With that, this committee will stand adjourned until further call of the chair.

[Whereupon, at 3:33 p.m., the committee was adjourned.]

[Submissions for the record appear in Appendixes 45–47 for the record.]



## **ELECTION REFORM**

### **FIELD HEARING IN ATLANTA, GEORGIA ON ELECTION REFORM ISSUES**

**MONDAY, JULY 23, 2001**

U.S. SENATE,  
COMMITTEE ON RULES AND ADMINISTRATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:27 a.m. in room 2306, Richard B. Russell Federal Building, 75 Spring Street, Atlanta, Georgia, Hon. Christopher J. Dodd (Chairman of the committee) presiding.

Staff Present: Kennie L. Gill, Staff Director and Chief Counsel; Veronica M. Gillespie, Elections Counsel; Carole Blessington, Administrative Assistant; Mike Malone, Professional Staff Member; Laura Roubicek, Committee Intern; Marvin Fast, Senator Dodd Staff; Tam Somerville, Republican Staff Director; Brian Lewis, Republican Chief Counsel; Joel Whitley, Republican Staff; Bill Chapman, Senator Cleland State Director; Donnie Turner, Senator Cleland Staff; Thom Williams, Senator Cleland Staff; Jeff Schoenberg, Senator Cleland Staff; Patricia Murphy, Senator Cleland Staff; Matt McKenna, Senator Cleland Staff; Elsie Hand, Senator Cleland Deputy State Director; Trey Ragsdale, Senator Cleland Staff

#### **OPENING STATEMENT OF HON. CHRISTOPHER J. DODD, CHAIRMAN, A U.S. SENATOR FROM THE STATE OF CON- NECTICUT**

The CHAIRMAN. Good morning. The Committee will come to order.

This is a hearing of the United States Senate Committee on Rules and administration. My name is Chris Dodd, I'm a United States Senator from southern New England—I'll say that here, from the State of Connecticut. It is truly an honor to be in this great city and this great state and to be sharing this dias, if you will, with my wonderful friend, Max Cleland, who is a wonderful member of the United States Senate and does a remarkable job on behalf of the people of Georgia, as well as citizens all across this great country of ours.

Just as a side note, I should tell you that being in the Richard B. Russell Federal Building is a unique and special pleasure, in that my father, who was a member of the United States Senate for a number of years back in the 1960s, was—his best friend in the

United States Senate in those days, or one of his best friends in the United States Senate, was Richard Russell, Dick Russell of Georgia. And so the fact that his son is sitting in a courtroom named for Richard Russell in the state of Georgia holding a hearing this morning as Chairman of the Rules Committee is a very special honor and privilege. I am just truly honored to be in this great state.

So I thank all of you for coming out here this morning, and I particularly thank my good friend, Max Cleland, for sharing the dias with me. I asked Max to be here, this is at my request as a Chairman. Max has graciously agreed to assist me in chairing these hearings here this morning and I appreciate the considerable effort that Senator Cleland has made, along with members of his staff, to welcome us here to Georgia this morning.

This morning the Senate Rules Committee has come to Atlanta to conduct a hearing on the issue of election reform. To the Committee's knowledge, today's hearing is the first field hearing on this subject conducted by any Congressional committee in the 107th Congress—a field hearing. I might also add that this is the first time in the memory of the Committee, the staff, that the Rules Committee has conducted a hearing on a legislative issue outside of Washington, DC. So this hearing is unusual, if not unprecedented—and for good reason.

Last year's election was, in its own way, unprecedented as well. The evidence is piling up—Florida was not an aberration. What happened in that state happened everywhere, north and south, east and west in our country. American's were deprived of their sacred and solemn right to vote, not by the hundreds, the thousand or even the tens of thousands, but by the millions. Just last week, researchers at two of those highly respected universities in our country—MIT and the California Institute of Technology—released a study on the November 2000 election. Those studies or that study found that between four and six million Americans who would have or who tried to vote were unable to have their votes counted in that election. Millions of Americans trying to do their civic duty were turned away and denied.

The reasons for their disenfranchisement ran the gamut, ranging from inaccurate registration rolls to polling places that could not accommodate the blind, the disabled, the language minorities, to faulty equipment and confusing ballots. Think of the ripple effect, if you will, of that kind of massive denial, the millions more who may have been discouraged from even trying to vote, based on the stories that their loved ones, friends, fellow employees were bringing home or to their offices on election day.

Another analysis published last week in the New York Times showed that in Florida overseas absentee ballots, including from our men and women in uniform, were less likely to be counted if the voter was registered in a county with a Democratic majority than if he or she were registered in a county with a Republican majority. Instead of giving the benefit of the doubt to votes of overseas military and civilian voters, those votes were less likely to be counted if the voters were more likely to vote Democratic. That hardly seems fair to our men and women in uniform and others who cast their absentee ballots overseas.

And lastly, a third recent study has shown that across the country, the votes of the poor and minority voters were more than three times as likely to go uncounted as the votes of more affluent, non-minority voters.

So but for the closeness of the Presidential contest, what happened in Florida is not unlike what happened in Georgia. And what happened in Georgia is not unlike what happened in states throughout America. Let me emphasize as clearly and as unequivocally as I can that we are not here in Atlanta this morning to debate the outcome of the election of 2000. That contest has been decided and all of us respect the office of the presidency. We accept totally that the occupant of that office is George W. Bush and that his presidency is legitimate. Whether or not you voted for him or not, he is our President and our commander in chief, and that is not in debate.

This hearing is not about a president or the legitimacy of a presidency. It is really about a process, a process that we have come to learn is deeply flawed; a process, in my view, that has become scandalous in this country and in deep need of reform. In a sense, there is no better place that this Committee could have traveled than to Georgia. We can learn not only about what went wrong last November, but just as importantly, we can learn what the people of this fine state are doing to make things right when the next election comes around.

I am very well aware that Georgia is the first state in the nation to enact meaningful reform in the aftermath of the 2000 election. The Governor, the Secretary of State who is with us here this morning, the state legislature and all of the state's citizens, in my view, from this Connecticut yankee, are to be commended for the tremendous effort you have made in Georgia. And I look forward to learning more about Georgia's reforms and how we at the Federal level can assist in implementing them.

Senator Cleland is, in a sense, one of the Senate experts on this subject. As Georgia's former Secretary of State, he brings a unique understanding of election issues. For that reason, I am proud that he has co-sponsored legislation that I have introduced, along with John Conyers of the state of Michigan from the House of Representatives, Senate Bill 565, the Equal Protection of Voting Rights Act of 2001. Senator Miller, Zell Miller, the former Governor of this state and also our colleague in the Senate, has also co-sponsored that legislation.

Senator Cleland has also introduced his own bill, the Make Every Vote Count Act. It would make grants available to the states for the purposes of updating and improving the voting systems and strengthening voter participation. And it would do something else that I think is critically important and must be included in any legislation that is adopted by the Congress of the United States, it would strengthen the law so that every soldier is afforded every chance to vote and have his or her vote counted. That is the least that we can do for our men and women in uniform.

So I look forward this morning to working with Senator Cleland to hear the testimony of the witnesses who will appear before us, and then to go back to Washington and move forward on our legislation. It is critical that we do so soon, in my view, so the Federal

Government can step up and play its part in assisting states like Georgia, our men and women in uniform and citizens across this country who were disenfranchised last November 7. It is critical that we do so before another Federal election is held, and it is critical to do so in a bipartisan fashion.

I am pleased to announce this morning that the Equal Protection of Voting Rights Act has that kind of support. Republicans—John McCain in the Senate; Connie Morella in the House—have endorsed our bill's provisions. And just last Thursday, Independent Senator Jim Jeffords of Vermont joined us as a cosponsor.

Just as you have done here in Georgia, we in Washington are committed to enacting meaningful reform that has the support across party lines. We understand that the states need resources to implement their own reforms and we need some basic minimum standards, in my view, so that every polling place allows every voter an equal opportunity to cast a vote and then to have that vote counted.

Those are the kinds of standards that Georgia has already adopted. Hopefully, they are standards that the rest of the country will adopt as well. The first lesson we learn as children about being American citizens is that every vote counts. Last year showed that America has not yet put that lesson fully into practice. The time is long past due to guarantee to every eligible American an equal opportunity to vote and an equal opportunity to have that vote counted.

I welcome our witnesses here today and before inviting them to join us at the panel in front of us, I would ask my good friend and colleague, Max Cleland, for some opening comments.

**OPENING STATEMENT OF HON. MAX CLELAND, A U.S.  
SENATOR FROM THE STATE OF GEORGIA**

Senator CLELAND. Thank you very much, Mr. Chairman. We want to welcome all of our guests this morning, especially our panelists. Thank you very much for coming to Atlanta and coming to Georgia because all the problems that you have articulated, in Florida and around the nation.

We have our challenges and our problems, but Georgia has taken action and we look forward to hearing from Secretary of State Cathy Cox on some of the action that our state has taken. But the State still needs funding from the Federal level because basically when county commissions and city fathers get together, their first order of priority in terms of where they spend the property tax dollars is not better election equipment. There are so many other pressing needs—education, law enforcement and the like—that election equipment seems to become last.

But here, we want to put it first because basically, as Patrick Henry has so aptly put it—Thomas Paine actually—the right of voting for representatives is the primary right by which other rights are protected. If we let this voting rights issue slip, if we do not act now in terms of capturing the moment when people are focused on the need for improving our voting process, it might be years before we really devote the time, attention and money that it is really going to take to straighten it out.

I will say that the very first election I ever participated in as a voter was the presidential election of 1964 in my hometown of Lithonia in DeKalb County. Then, we had something called the brand new punch card voting system. Up until that point, we had used the old Thomas Edison voting machine invented around 1900, but the punch card system was new. And within a matter of months in the general election of 1966, it got DeKalb County and the Fourth Congressional District in deep trouble.

So initially, as the voting on the punch card system was introduced in my home county, there was a Congressional race that was very close. Congressman Jim Mackey ran against Ben Blackburn. Mr. Mackey received some 1,200 over-votes—not under-votes. Back in those days, you could vote straight party and then go down the ticket and there was the candidate. On the punch card system, you could, in effect, vote twice. On the old Thomas Edison voting machine, you could not vote for the same candidate twice. So there were 1,200 over-votes. Those votes were thrown out and Mr. Mackey was unseated by 300 votes.

So we had a Constitutional challenge right there as soon as the votomatic was introduced. I will say that later on when I became Secretary of State, we constantly had problems with the punch card system and now it gives me great concern that Georgia has some 18 counties still with the punch card system, including my home county of DeKalb. And we will hear from Vernon Jones, the CEO of DeKalb here in just a moment, but I think it is one of the reasons that Georgia had some 95,000 under-votes in the last Presidential election. So I have been dealing with this problem myself personally for quite awhile.

I was in the military and then I was in Vietnam and I had to struggle with that stylus and that punch card system on an absentee basis, and I guess now that I am in the Senate and involved with this legislation here that Senator Dodd is talking about, I want to finally provide a knockout punch to the punch card system.

As many of our witnesses will testify, the good news here in Georgia is that we are now headed down a different path because of the leadership of Governor Roy Barnes and Secretary of State Cathy Cox. Both of them have been truly, Mr. Chairman, national leaders who have actually risen to the challenge during the debate on election reform. Not only has Secretary of State Cox conducted exhaustive research on the shortcomings of the last election, she has also provided solutions with bipartisan support and a results-oriented approach.

While the choice of voting systems and the means for assuring the voting rights of service members and disabled citizens are primarily a matter for state and local decisionmaking, I do believe that an infusion of Federal funds can and will make a critical difference in helping states make the changes necessary. I think as a matter of fact, I have heard Secretary of State Cox and the Governor express the fact that if we do not get some Federal help, as well-intentioned as we are here in this state, we will not be able to make every vote count. That is why I am sponsoring legislation to provide a \$1 billion Federal fund block grant to modernize voting systems, promote uniformity in voting equipment within states and require greater standardization in assuring the voting rights of

military personnel abroad. It is designed to be complementary to other sweeping legislation, including your bill, Mr. Chairman, which I strongly support.

The tragedy I think of the punch card system is that about a third of all the citizens in America have to undergo and endure this system. You see this on the chart right here to my right. My bill would give the states and counties, which choose to do so, the financial assistance really necessary to acquire these systems before the next general election.

It is important to note that machines themselves are not the only problem. Because many voting errors are caused by inadequate training of election workers or education of voters in how to properly cast valid votes, my bill would allow up to one-third of the grant funds to be used for those purposes.

On the issue of making every vote count on election day, we cannot go forward without considering how our service personnel are treated in this system. Having again been one who was out of this state for almost four years and certainly a year in Vietnam having to deal with the system in those days and seeing the challenges now, it is ironic that the very people we call upon to defend the ballot are the very people who might not feel comfortable now that their own ballot in their own country is counted. Witness what happened in Florida. Again, the New York Times just pointed out that not only was there a problem statewide in Florida, but that it depended on what county you were from, whether that ballot was accepted or not. So there were differences among counties. We really should not put our service personnel through that.

So I have asked, along with Senator Warner, Levin and Hutchinson on the Armed Services Committee—I have asked the General Accounting Office to come back and give us a detailed study on how we might improve military voting. An interim report has concluded that there are problems in how the military has handled its voting program. I might say that in terms of Florida, the New York Times pointed out that these ballots were “judged by markedly different standards, depending on where they were counted.”

So in addition to our request to the GAO last November, Secretary of Defense William Cohen commissioned a report by DoD’s Inspector General on how the department oversees absentee ballot program functions. As a matter of fact, the DoD IG found that the Federal Voting Assistance Program and the Services Voting Assistance Program had problems. The IG recommended several things: (1) Improved oversight of the program; (2) improved consistency among the various services; and (3) continuing to work to standardize and simplify the absentee ballot process.

As a matter of fact, the IG report stated that several bills are being considered in Congress to improve the absentee voting process. The report indicated, “We fully endorse,” according to the report, “any Federal or State actions that would lead to more uniform and simple voting procedures and requirements, thus reducing the burden on DoD voting assistance.”

I have included some language in my proposal to improve ballot access for our military personnel. Section 3 of my bill is included in the Chairman’s bill. These provisions require that for purposes of voting, no military member be deemed to have had a change of



domicile or residence solely because he or she had to be absent due to military orders. Furthermore, that states and localities must permit absentee voting by uniformed service members in state and local elections as well as Federal elections.

I believe any election reform proposal must seek to ensure the voting rights of our service men and women to protect those very rights.

Finally, we have got to also recognize and respond to the difficulties in voting by people with disabilities. Based on figures compiled by the National Organization on Disability, no minority is more affected by the nation's inadequate voting system than those with disabilities. Example, an estimated eight million individuals of voting age with visual impairments have never been able to cast a secret ballot. In addition, polling place inaccessibility and machines that are difficult for voters with disabilities to operate are among the problems that must be solved as part of any Federal election reform effort.

The goal of making every vote count should be one of the highest priority of all levels of government.

Mr. Chairman, thank you for coming here to Georgia. Through your legislation and through this hearing, I think you are helping to move the ball forward and I thank you for your leadership on this issue and I look forward to hearing the testimony of our witnesses. Thank you very much.

The CHAIRMAN. Well, thank you, Max, very, very much. You have added tremendously to this debate already and I will just tell you right here this morning that your provisions dealing with our men and women in uniform, we are going to include in a modified version of our own bill, in addition to what you have written, so that one way or another, those provisions are going to be a part of any legislation that is adopted by Congress.

I should point out, by the way, that a good friend of yours and mine, the former Mayor of Atlanta, Mayor Maynard Jackson, has come into the room. Mayor, we enjoy seeing you here this morning, dear friend, welcome as always. Charles Lester, who is the co-chair of the Lawyers Committee for Civil Rights and the law, and a strong supporter of election reform is here as well, and we thank you for joining us this morning.

I want to thank Senator Cleland's staff as well, who have been tremendously helpful in putting this hearing together this morning. There are a number of them and we will put their names in the record to reflect their participation. I want to thank Kenny Gill of my office; Ronnie Gillespie and others who have come down for the Rules Committee.

Senator Mitch McConnell, the former chairman of this committee and my good friend from Kentucky is not here with us this morning. Senator McConnell has introduced legislation, along with Senator Schumer of New York and Senator Torricelli of New Jersey and others. There are a lot of similarities between our bills; there are differences that are included in the two pieces of legislation. But his staff are here with us this morning—Tam Somerville, Brian Lewis and Joel Whitley from the Republican staff of the Rules Committee, and I am very grateful to them for being here this morning to be a part of this hearing. Thank you for coming

down, and I know Senator McConnell and others will be interested in the testimony that we hear this morning.

And as Senator Cleland has pointed out, for those of you not familiar with all the provisions of these various bills, just to repeat, the bill that I have introduced along with 50 other co-sponsors in the Senate and that Congressman John Conyers of Michigan has introduced in the House includes a mandate for national standards, a mandate of provisional voting, a mandate that would require voters to be able to see their ballots after they voted, and a requirement that there be sample ballots. There are provisions in there for a commission and other points, but those are the major points in the legislation.

Again, these are not what I consider necessarily radical ideas at all, when you are talking about a Presidential election, election for the national assembly. Obviously, if in one jurisdiction, voters are denied the right to vote on a Presidential race, for whatever reason, that have a right to vote, then obviously voters all across the country are affected by that. These are not just decisions where we are talking about local decisionmaking. When there is a vote in the national assembly and those votes are denied, that affects the entire national assembly. And so the days when we talked about matters being totally local when it comes to election matters are long since behind us as the results of last fall and previously to last fall indicate.

So with that, Max, let me invite our first panel of witnesses, and Juanita, my timing is beautiful. I know you had a hard time getting in here this morning and so we are grateful to you for making it. I was sort of filibustering here until you got along. I do not know if you know a Senate filibuster when you see one, but you just were witnessing one here a little bit. [Laughter.]

But we are grateful to all of you. Let me introduce our first panel. These are people who are going to talk about what went on in terms of their own point of view as they saw it. I hope I pronounce this right, is it Anil Lewis; Ms. Diane Smith; Ms. Juanita Cribb. Mr. Lewis is the President of the Atlanta Metropolitan Chapter of the National Federation of the Blind, from Atlanta, Georgia; Ms. Smith joins us today from Rex, Georgia; and Ms. Cribb, who is a teacher, is from Stone Mountain, Georgia.

I thank all of you for being here. Max knows this, Mr. Lewis, but I have a sister who is blind from birth and she has been a teacher for more than 30 years. She is on the state board and she just attended the national convention in Philadelphia for a week. So when Max talks about what it is to be a blind American, to try and cast a vote or something, I have grown up with it. So this has a personal poignancy for me, watching the indignity my sister has had to go through throughout her entire adult life. And whatever else may motivate you about this legislation, as you are going to hear from Mr. Lewis, this should not go on any longer. If we do not do anything else but this, it would be a change in the proper direction.

So with that, I thank all of you for being here; very, very grateful to you. We will try and keep your testimony around 10 minutes if you can. I am not going to hold you to a clock, but in order that we get the questions and give other members of the panel an opportunity to be heard, but anything you want to add to this record,

we will include in the record. So even if you do not get a chance to provide or speak directly to the documentation, we will include it as part of the Senate Rules Committee record.

With that, Mr. Lewis, we will begin with you, and we thank you for joining us.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF THE HON. ANIL LEWIS, PRESIDENT OF THE ATLANTA METROPOLITAN CHAPTER OF NATIONAL FEDERATION OF THE BLIND, ATLANTA, GEORGIA; DIANE SMITH, VOTER, REX, GEORGIA; AND JUANITA SANDERS CRIBB, VOTER, STONE MOUNTAIN, GEORGIA**

**STATEMENT OF ANIL LEWIS, ATLANTA, GEORGIA**

Mr. LEWIS. You guys have already given my testimony in your opening statements and I appreciate the fact that this is going to be a lot easier process for me, although I probably will not be as good a presenter, because you took the fire out of my presentation.

The CHAIRMAN. Do not let that happen now.

[Laughter.]

Mr. LEWIS. But I want to—before I get into the meat of what I have here—go ahead and show my appreciation for you, Senator Dodd, and what you said earlier with respect to your statement revolving around disenfranchised voters. The population of people that I am here representing today are people that have been disenfranchised for quite some time, not just the 2000 election. And to you, Senator Cleland, I agree with you wholeheartedly, if we want to make every vote count, then we do need to act now. So I respect the fact that both of you are really committed to this process.

To the Chair, Honorable Senator Dodd from Connecticut, and to our host, the Honorable Senator Max Cleland from Georgia, and to other distinguished panel members and participants and attendees, I appreciate the opportunity to participate today in this legislative process and to have my voice heard.

My name is Anil Lewis, I am a counselor for the Georgia Client Assistance Program. I am the President of the local Atlanta Metropolitan Chapter of the National Federation of the Blind, I am the Chairman of the Board for the Disability Law and Policy Center, and I am also a board member of the Statewide Independent Living Council.

I do not think it is my responsibility here today to quote statistics or even give you demographic information related to the voting habits of people with disabilities, because in my professional and civic and personal life I come in contact with people with disabilities on a regular basis and we share stories of trials and triumphs and that is what I want to do today, share some personal stories that I have and relate some personal experiences around voting that may have some direct relevance to Senate Bill 565, the Equal Protection of the Voting Rights Act of 2001.

So with that, I will get into the meat of sharing a little. Before I lost my sight in 1989 due to retinitis pigmentosa, I was a citizen that actively participated and exercised my Constitutional right and civic responsibility to vote just like every other person. But

that changed once I lost my sight. As a blind citizen, my voting experience drastically changed. I will give you some examples.

My mother accompanied me on the first time I went to vote as a blind citizen and after being put aside for awhile while everyone went around trying to find out what exactly to do with this deviation, you know, how is this blind person supposed to vote, my mom finally asserted herself and said well, why do you not just let me help him in the booth, and of course, they conceded, but it was not out of their knowledge of the law that blind people have the right to have someone assist them in the booth; it was just out of frustration and actually relief that there was a remedy. So my mother and I, we successfully cast my vote that year. However, it was very humbling and, in retrospect, a very degrading experience for a 25-year-old man to need his mommy to go and help him vote. I do not want that to happen to anyone else.

On my next trip to the polls, I took a friend and I was informed of my rights this time. So I went in ready to be proactive for myself and tell those poll workers that I have the right to have someone here to assist me and on and on, you know, I was ready.

Unfortunately, I could not say the same for the poll volunteers. They did not have that knowledge. So we went through pretty much the same hassle again until we identified the proper person who knew the correct paperwork to sign and how to process everything for us to cast our vote. And once that was decided, they proceeded to hand my ballot to my friend. This spoke volumes to me. I mean, my ballot being given to someone else, it made me reflect and say well, is it my vote or is it his vote. And although I trust my friend dearly, it raised that question and continues to be raised today; is the vote that I cast mine?

I thought it would be easier in subsequent trips to the polls to take advantage of the poll volunteers because I didn't want to continue to burden my friends with the responsibility of coming to help me vote and trying to coordinate that time hassle. And I went in but this particular solution had its own set of problems. To speak very candidly, I went and advocated for myself, I got the poll volunteer to help me in the polls and we went in and aside from the uncertainty of whether he is going to cast the vote as I so directed, we set up and—specifically in the last election, there was a resolution pertaining to marine tax and the poll volunteer, whether he was fatigued or frustrated or whatever it was, could not seem to read that particular resolution correctly because in his first reading of it, I thought he was talking about taxing the military—Marines. And I insisted that he read it again and then I got a deeper understanding of what it was. Eventually I found out that it was just a resolution involving personal boats in the marina. So that, like I said, presented its own challenges.

I have had many other experiences that have tested my patience and have made it necessary for me to educate and advocate my way through this voting process, which to an able-bodied person is a time-consuming one but fairly simple.

To share with you some of the other stories from personal testimony of other blind people that I have talked with.

Jo Ann Weaver of Stone Mountain told me that she was unaware that she could have someone assist her at the polls, and although

the laws are in place, many people with disabilities are not aware of their rights related to the polls.

Melissa Imtiaz of Chamblee stated that the poll workers at the polling places were not very helpful because they did not know how to interact with people with disabilities. I mean, I am a frightening, intimidating person, as a blind person, to someone who does not know that I am just another individual. That speaks to the training of the poll people.

Just like Patrice Lewis of Atlanta, Georgia; she, much like me, went to the polls, knew she had a right to bring someone, but the poll people denied her that right to use the person she brought to assist her in the polling booth. Here again, poorly trained poll volunteers and what-not really took it to the point where her rights were denied.

Thelma Godwin of Atlanta, Georgia stated something very poignant. She stated that the person who assisted her actually tried to sway her vote. You know, this is common. You are sitting in the polls and you are saying such and such and such; no, I do not think you ought to do that. Well, here again, is it my vote or is it their vote. This speaks volumes. And this, you know, coupled with so many other problems go on to state why people with disabilities should be able to independently and privately cast their Constitutionally-guaranteed vote on their own.

Please understand that these scenarios, these experiences, they are not limited to just the people I am talking about. These are shared by people with disabilities all over.

To give you other examples, Patricia Puckett of Avondale, she uses a wheelchair. She informed me that when she went to the polls in her new district, she arrived and realized that they do not have any lower polling machines. So she could not cast her ballot independently. I really respect the ingenuity of the poll volunteers, they took the polling machine out of the booth and put it on a table so that she could have access to it. That is great, they allowed her to cast her vote independently, but they robbed her of her privacy. She is in the middle of a room casting a ballot there for everyone to see.

If I may embellish just a little. Imagine the next time you went to the polls, you were confronted with a 10-foot vertical leap in order to get to the polling booth. Once you got there, you had to squeeze through a five-inch narrow corridor just to reach the polling booth and when you arrive there and you look at the ballot, you realize it is written in Swahili. Okay?

The CHAIRMAN. Sometimes I think it is.

Mr. LEWIS. Marine tax. This may seem an exaggeration but for a person in a wheelchair, steps and narrow doorways, they may as well be a ten-foot vertical leap and a five-inch corridor. For a blind person to cast their ballot independently, without the assistance of someone else, the ballots today may as well be written in Swahili. Of course, the law does provide that you can have a person—you can bring your person that is proficient in Swahili to the polls with you or you can have that somewhat proficient Swahili person at the poll assist you, but it is still not right.

I do not want to make it seem like I am beating up on the poll volunteers because I really respect the fact that they are doing this

and they are working very ambitiously to make sure that people do have the right to exercise their right to vote. But what it does speak to is not so much their ability to assist us, it is our inability to vote independently for ourselves.

Just like anything else I have to do on a regular basis as a person with a disability, there is no substitute for me being able to cast my ballot independently and privately on my own with no assistance—there is no substitute for that. All individuals, able-bodied, disabled, need to have that same right.

Let us talk about what needs to come into place in order for this to happen. The notes that I made were very in line with the things that you have already stated. All of the polling booths must be accessible, this means properly constructed ramp access, widen doorways, lowered machines. Non-visual access—that is a term which I love, Senator Dodd, throughout your bill. I just read it, and like I said, it just took my fire out because I am like, well, I am preaching to the choir, I do not need to go in and put on my angry face. So I thank you for that.

Non-visual access, let me speak to that. It is allowing blind people, sure, access to that information. Most commonly, uniformly, it is audible access, meaning that you have spoken word access to the poll information. But this is accessibility for not just blind people, but people who do not speak English, people that are illiterate and also people with learning disabilities that cannot read printed material. I mean accessibility—people tend to think that accessibility means people with disabilities period. Accessibility-polling machines that are accessible to the disabled are accessible to the able-bodied, and it just seems like a no-brainer to implement something like that.

The other thing, Senator Cleland, that is stressed throughout your bill and also in Senator Dodd's bill, is just the training. And it is not just training, as you stated, of the poll volunteers in how to interact with people with disabilities, how to use the poll equipment, but also training of the voters themselves. Many of the disenfranchised, disabled voters do not have record of knowing that the polls are now accessible. Many of them, out of frustration, have refused to go to the polls to vote. They have not taken advantage of the absentee opportunity to vote as an absentee ballot, but by educating them that these accommodations are now in place, we are going to increase the vote turnout for people with disabilities. And this needs to be ongoing training.

Overall, national accessibility standards—you mentioned standards talking specifically about accessibility standards, because by forming those overall national accessibility standards, we make it easy for the accessibility to be implemented on a national level, we make it easier for individuals to be trained on how to use that equipment and we also make sure that in the future, as upgrades come into place and the voting becomes even more accessible, as was highlighted in that Cal Tech study that you referenced, Senator Dodd, that is a lot of forward-thinking, but as Senator Cleland says, we need to act now. That will be easier with the standardization.

But most of all, the most important thing to me, is what you both understand, the provision for the Federal granted funds to be con-

tingent upon compliance with these accessibility standards is mandatory. I know we are not supposed to use that term, but it is very important. It needs to be done because that is going to be the true incentive for compliance and accessibility. We have had volunteer compliance standards for some time now, but a little over 50 of the states have actually complied to some degree. And not every state has a forward-thinking, proactive, progressive Secretary of State like we have in Georgia's Cathy Cox. And we have to, you know, take credit for that, but we also have to have responsibility to make sure that those individuals who do not have that particular degree of representation also are not denied the right to vote in the future.

I have submitted written testimony and revised it a little and also submitted that and would like to have that added to the record.

The CHAIRMAN. It will be included.

Mr. LEWIS. But I also want to state that I am not here just in support. I want to highlight the needs of the people with disabilities, but I am not just here to support people with disabilities. I want to state that I encourage the passing of 565, I love the language in it. I was glad to hear that you will be encompassing the provisions in Senator Cleland's bill relating to the Federal grants and the requirements on that level. It will be beautiful. But I am also here to support the voting rights of all individuals. I want to make sure that the people who are non-English-speaking citizens have access, people who have whatever barriers that prohibit them from exercising their right to vote have that right and their right is ensured.

Finally, I want to state that I encourage and support the Voters Bill of Rights and the provisions set forth within it, with respect to the provisional ballots, the access to non-English-speaking individuals, the posting of the Voters Bill of Rights at every polling place, the distribution of that information to the voters, the submission of the information on the ballots in an accessible medium prior to the election. All those things are important if we are going to empower individuals to take advantage of that opportunity to effect this process.

I want to thank you both for the opportunity for me to participate in this legislative process. I want to appreciate you for letting my voice be heard, but I also want to stress to you that thousands upon thousands of other voters are echoing the same statements that I have made here this afternoon.

I also want to reflect and make sure you understand that I have not done this using any statistics because no doubt you have already been provided with all of those. And I have not made any reference to the Florida election, I think you would appreciate that, you have probably heard enough of that. But I do want to reiterate that I respect and appreciate the efforts that both of you have taken to ensure my rights and the rights of those people in my situation—the population of people with disabilities—that they can participate and actively have a voice and affect some systemic change in this wonderful country called America.

Thank you for your time and attention.

[The prepared statement of Mr. Lewis follows:]

July 17, 2001  
Testimonial of Mr. Anil Lewis  
[anillewis@bellsouth.net](mailto:anillewis@bellsouth.net)  
404-241-0079

To the honorable Senator Dodd of Connecticut, our host the honorable Senator Cleland of Georgia, and other distinguished Senators and attendees, I thank you for this opportunity to participate in the legislative process and have my voice heard.

My name is Anil Lewis. I am currently employed as a counselor for the Georgia Client Assistance Program. I am the President of the Atlanta Metropolitan Chapter of the National Federation of the Blind of Georgia. I am the Chairman of the Board of Directors for the Disability Law and Policy Center, and serve as a board member for the Statewide Independent Living Council. I am a graduate student at Georgia State University. And most importantly, I am the proud single father of an extraordinary three-year-old young man.

I don't feel my role here is to quote statistics, or cite demographic information related to the voting habits of people with disabilities. Throughout my professional, civic and personal life, I am in constant contact with people with disabilities. On a regular basis, we share personal stories of trials and triumphs. I would like to take advantage of this opportunity to tell my personal story and relay the personal voting experiences of others that may have some bearing on Senate Bill 565, the Equal Protection of Voting Rights Act of 2001.

Prior to my loss of vision in 1989 due to retinitis pigmentosa, I went to the polls and voted in the same manner as the majority of US citizens that choose to exercise their Constitutional right and fulfill their civic responsibility. As a blind citizen, my voting experience drastically changed.

My mother accompanied me on my first trip to the polls as a blind voter. After being put aside for sometime while the volunteers determined how to deal with this deviation, my mother was able to convince them to allow her to assist me in the voting booth. This was not a concession made due to their understanding of the laws related to blind individuals having the right to have someone assist them. It was more out of frustration and uncertainty, and eventually relief at identifying a remedy. We were successful in casting my ballot. Still it was quite a humbling, degrading experience for a 25-year-old man to need his mother to cast a ballot.

On my next trip to the polls, I was educated with respect to my rights to bring someone to assist me. Unfortunately, I could not say the same for the poll volunteers. Eventually, we found someone that knew what paperwork to fill out, and my friend was presented with my ballot. The act of the ballot being presented to my friend, rather than to me, made me aware that someone else actually had control of my vote. And although I trust my friend dearly, the question of whether it is my vote being cast remains a concern.



today.

I thought it would be easier to solicit the assistance of a poll volunteer, rather than continuing to burden my friends with this responsibility. However, this solution presented its own challenges. For example, in the most recent election, there was a resolution pertaining to a marine tax. It took several readings, at my insistence, for the fatigued or uncertain poll volunteer to read the resolution thoroughly enough for me to gain the understanding that the marine tax related to personally owned boats and not the military.

I have had other experiences that tested my patience and required me to educate and advocate my way through the voting process. A process, which is to the non-disabled, a time consuming, yet simple one. In fact, the voting process is so frustrating to some people with disabilities that they choose not to vote.

Here are some examples from other blind individuals describing the challenges they have faced at the polls:

Jo Ann Weaver, of Stone Mountain, was not aware that she is entitled to have someone to assist her.

Although the law is in place, many individuals are not aware they can bring someone or obtain assistance from a poll volunteer.

Melissa Imtiaz, of Chamblee, informed me that the poll volunteers did not know how to assist her.

Many of the poll volunteers are not properly trained in assisting voters with disabilities.

Patrice Lewis, of Atlanta, was not allowed to use the person she brought to assist her.

Even when individuals are aware of their rights, poll workers, again insufficiently trained, deny them.

Thelma Godwin, of Atlanta, stated that the person assisting her attempted to sway her decision.

This type of behavior enhances the uncertainty that the individual casting the ballot is indeed casting it as they have been directed. Adding to the list of reasons why people with disabilities, as all other voters, should have the ability to cast their constitutionally guaranteed, independent, private ballot.

Please understand, these are not isolated experiences; many other voters with disabilities have shared them.

Furthermore, Patricia Puckett, of Avondale, uses a wheelchair. She informed me that in her attempt to vote in her new district, there were no lowered polling machines. The poll workers accommodated her by removing a machine from the voting booth and placing it on a table. This accommodation provided her with the opportunity to vote independently,

but robbed her of her privacy.

If I may, what if on your next visit to the polls, you are confronted with an entrance that is only accessible by a ten-foot vertical leap. Once you clear that obstacle, you must squeeze through a five-inch partition to gain access to the booth. Once you arrive at the booth, you find the ballot is written in Swahili.

This may seem an exaggeration. But when considering the ability for a person using a wheelchair to cast an independent, private ballot, steps may as well be a ten-foot vertical leap. Narrow doorways may as well be a five-inch clearing. And for a blind person, printed ballots may as well be written in Swahili if he or she is expected to independently cast a vote. Of course, the law provides you with the right to bring your friend that reads and writes Swahili, or a poll volunteer somewhat proficient in Swahili can assist you.

Let me state that I respect and appreciate the poll volunteers for everything they do and the assistance they provide. However, as with many tasks I must perform on a daily basis, there is no substitute for my having the ability to independently and privately perform the task myself. The same is true for all people with disabilities.

In order for this to be accomplished, the following must happen.

All polling places must be accessible. This means safely constructed ramps, widened doorways, lowered voting machines, and non-visual access to the voting machines. Machines that are accessible to people with disabilities are accessible and useable by the non-disabled. Technology used to provide blind people with audible access to information, can be used to provide access to non-English speaking persons, illiterate individuals, and individuals with learning disabilities.

On-going education and training will need to be conducted. With the implementation of accessible voting machines, there needs to be specific outreach focused on informing people with disabilities of the availability of the accessible machines, and training on how to use them. In addition, polling center staff must receive disability awareness training and be trained in the proper use of the equipment.

Overall, national accessibility standards should be set for the polling places and equipment used. Standardization will provide greater assurance of accessibility, and ease in the development of training. The Access Board seems the natural entity to be included in this process.

Most importantly, the federal government must mandate this accessibility. Not every state has a forward thinking, concerned, and dedicated Secretary of State, as Georgia has in Cathy Cox. The voluntary adherence to this requirement has failed in the past, and has no reason to succeed in the future. Making the federal assistance contingent upon compliance to the accessibility requirement would be a tremendous incentive.

I would like to encourage the passing of S565. It is worth noting that this is the only legislation I am aware of that mandates minimum accessibility standards and provides for a specific deadline for implementation. I have already expressed my concerns with voluntary adherence. In my experience as an advocate for people with disabilities, Voluntary adherence without an established deadline, translates into prolonged delay and continued denial of rights and access.

Finally, although my presentation has stressed the provision of accessible polling places to allow the independent private vote of Americans with disabilities, I am really advocating for the equal protection of voting rights for all US citizens. Therefore, I support the voters bill of rights, including its requirement of provisional ballots, provisions for poll access by non-English speaking citizens, the condition for a copy of the ballot to be provided in an alternative accessible medium prior to the election, and the stipulation that the voters bill of rights be posted at every polling place and mailed to each voter.

I have made my appeal without the use of statistics you have no doubt already been provided. Moreover, I have made no reference to the recent election in Florida. It is my hope to have made this issue a little more real to you, and impress upon you that Thousands upon thousands of American citizens need your help to actively participate in the legislative process and have their voices heard.

Thank you for your time and attention.

The CHAIRMAN. Thank you, Mr. Lewis, that was excellent, excellent testimony. We will have some questions for you in a minute.

Let me turn to you, Ms. Smith. We thank you for being here and if you will pull that microphone up good and close so we can take your testimony. We thank you for joining us here this morning.

**STATEMENT OF DIANE SMITH, REX, GEORGIA**

Ms. SMITH. Good morning, Your Honor. Okay, I am ready, can you hear me?

The CHAIRMAN. Yes, thank you.

Ms. SMITH. I would like to thank everyone for being here today to hear my voice. I would like to speak on something that happened to me during election time and I hope that I do not cry.

I registered when changing my driver's license in August of 1999 and I received a voter registration card in the mail. I did not vote in the primaries. I went to the poll to vote on November 7 at the Norcross library. My name was not on the list. The poll worker called headquarters, she asked me where did I register to vote. I told her that I registered at Kroger grocery when I changed my driver's license. The poll worker said that when I got my driver's license, they probably did not check voter registration.

She asked me for the voter registration card, but I could not find it at the time. The poll worker said that I have to register again and vote the next time.

Later on, my husband called me and said that he could not vote at Norcross library, the poll where I had tried to vote earlier. However, I saw my husband's name and address on the list when I went to vote. They sent my husband to a Lutheran church and he was able to vote there. I went to the Lutheran church that my husband told me about and still I was not able to vote. I was not on the list at the Lutheran church, my husband's name was on both lists.

I went back to work. I was so upset that my manager told me just go on home.

I complained to the NAACP and I know that the NAACP received many complaints about voter problems on election day. Not all of these complaints involved voting equipment. And just for the record, I would like to submit a copy of the transcript from the public hearings regarding voting irregularities conducted by the NAACP in Georgia.

[The prepared statement of Ms. Smith follows:]

Diane Smith

- I registered when changing my driver license in August 1999 and received a voter registration card. I did not vote in the primaries. I was told that due to an error on the part of the Department of Motor Vehicles, I cannot vote. My husband registered at the same time and had no problem voting.

I complained to the NAACP and I know that the NAACP received many other complaints about voting problems on election day. Not all of these complaints involved voting equipment.

The CHAIRMAN. We will make sure that is a part of the record, and we thank you, Ms. Smith, for that testimony.

Ms. Cribb, thank you for joining us.

**STATEMENT OF JUANITA SANDERS CRIBB, STONE MOUNTAIN,  
GEORGIA**

Ms. CRIBB. Thank you.

Chairman Dodd, Senator Cleland and other distinguished members here. I would like to say good morning and to thank you for the opportunity to testify at this election reform hearing. Senator Dodd, do not be ashamed to stop me if I go over 10 minutes, because I can talk. [Laughter.]

I am not ashamed.

The CHAIRMAN. You have got a good strong voice too.

Ms. CRIBB. And I will try to respect your time frame.

I will not address the mechanics of voting because I am sure, as Mr. Lewis said, there are other people here who will address those statistics and the different mechanisms and possibilities for the remedies. As I see my Chairman here from DeKalb County, Mr. Vernon Jones, and our Secretary of State Cathy Cox, I am sure they have all that taken care of.

My comments are directly related to the inconvenience, the lack of consideration and the downright frustration faced at the last election. I have resided in Georgia for approximately 20 years. I lived in south Georgia most of that time. I was involved there as an elected official, I was an elected person as a county commissioner, and I served the county as well as the state. During that time, I felt so empowered because I thought I was one of those persons who was a part of the process of change and opening the doors and avenues of change.

But with this last election, I felt this experience caused me to feel vulnerable, I felt assaulted and I also felt downright insulted, because I knew that there is a process and I knew that there is an opportunity for the citizens of this great country to express their right to vote. It goes without saying that as a citizen of the United States of America, it is an honor and a privilege to protect our basic right to exercise the act of voting. America is a country that is built around the premise that it is for the people, by the people and of the people. These statements are the core foundation of why it is crucial that we maintain the privilege of fair elections. Had this happened in south Georgia and it certainly happened to me, it would have been business as usual. But this happening throughout the state and this nation to me intimates sabotage.

November 2000 was a nightmare in the history of this country and a travesty of justice to those who tried to express their choice by voting. We stood in the rain waiting for the polls to open. Of course, they opened late. We then were corralled up and down hallways, winding around corners and at times even having to go down a flight of stairs only to climb those same set of stairs to return to the opposite of the hallway. The voting precinct was Rock Chapel Elementary in Lithonia, Georgia. We also had to endure no heat or air. As we moved up and down hallways, sometimes we were in pitch black darkness because there were no lights on. We only had light that came from time to time from the doorways of the class-

rooms. We were told that there was a power failure and that Georgia Power had promised to have it on soon. Well, we were there from 7:00 a.m. to 2:00 p.m., and the power was never turned back on.

The actual voting area was approximately three feet from the entrance to the school. However, since they were unprepared for such a large turnout, we were sent like mice through a maze. This added insult to injury. Once we got to the table where our names and addresses were verified, there was only one person checking IDs. Can you believe that?

Once our IDs were checked, we were then sent to another table to fill out the form for a ballot. There were only two people at that table. After that, we were then put in another line, broken down by alphabet, and as you would suspect, only one person was assigned per group of alphabets, like A through D and E through H. Each one person checking for all of those thousands of people in line. I asked a question—is this sick, or what?

If I did not know better, I would suspect that there was a plan to discourage us, Senator Cleland. Those of us who are die-hard voters will endure anything. But just like the people in South Africa, we stood for days. Yet there is a segment of the population who I know would be easily discouraged. Young people, first time voters, the elderly and the physically challenged. They cannot take that long wait. We were pulling chairs out of classrooms and moving the chairs along in the line so that the older people could have some level of comfort and not have to stand.

There were also people that went through this long process only to be told, as Ms. Smith said, that they had to go to another precinct. They had tried to get a ballot and had been told that they were reassigned to another precinct. After six hours of being in line, they were being told to go to another place. I will guarantee you they did not vote.

There were people turned away because the polls closed exactly at 7:00, though they opened a little late—7:00 p.m., that is. These people had been in line since early afternoon, because my adult children were two of them. I could not believe it.

My questions then are these—not to belabor the time—if the schools are closed because of elections, then why are the schools not opened as a voting precinct? In my area, there were three other schools within an approximate mile or two—Stephenson Elementary, Stephenson Middle and Stephenson High School. If DeKalb County is allowing construction of subdivisions on every corner, then I think that it behooves the Registrar's office to do a check of the numbers that are being registered per precinct and to make every effort to keep this to a manageable number.

Well, I could go on and on, but I will allow others to express their experiences. Unlike November 2000, I would not deny the proper access to expression.

Hopefully this information will help those naysayers that are saying that this did not happen and they are denying the problem. It happened, it was real, it is a shame and a black eye for America.

I thank you for your patience and for this opportunity.

[The prepared statement of Ms. Cribb follows:]

CRIBB

Chairman Dodd, Senator Cleland and other distinguished members. Good morning and thank you for the opportunity to testify at this election reform hearing.

It goes without saying that as a citizen of the United States of America it is certainly an honor and a privilege to protect our basic right to exercise the act of voting.

America is a country built around the premise that it's "for" the people, "by" the people and "of" the people. These statements are the core foundation of why it's crucial that we maintain that privilege of fair elections.

November 2000 was a nightmare in the history of this country and a travesty of justice to those who tried to express their choice by voting. We stood in the rain waiting for the polls to open. Of course, they opened late. We then were corralled up and down hallways, winding around corners and at times even having to go down a flight of stairs only to have to climb that same set of stairs to return to the opposite side of the hallway.

The voting precinct was Rock Chapel Elementary School in Lithonia, Georgia. We also had to endure, no heat or air as we moved up and down these hallways sometimes in darkness, as there were no lights on. We were told that there was a power failure and that Georgia Power had promised to have it on soon. Well, we were there from 7:00a.m. to 2:00p.m. and the power was never turned back on.

The actual voting area was really only approximately 3 feet from the entrance to the school, however, since they were unprepared for the large turnout, we were set like mice through a maze. To add insult to injure, once we got to the table for name and address verifications, there was only one person checking thousands of ID's. Can you believe that?

Once our ID's were checked we were then sent to another table to fill out the form for a ballot and there were only two people at that table. After that we were then put in another line broken down by alphabet. And as you would suspect only one person per alphabet was assigned. Example, the A - D, E - H, etc. each only had one person checking for all those names. Is this sick or what?

If I didn't know better I would suspect that there was a plan to discourage us. Those of us, who are die-hard voters, will endure anything. Just like the people in South Africa, we will stand for days. Yet, there is another that would very much be discouraged. These are the younger people and many of the elderly couldn't take the long wait. We were pulling chairs out of classrooms and moving the chairs along in line to allow older people some level of comfort.

There were also people that went through this long process only to be told when they tried to get a ballot that they had been reassigned to another precinct. Are you kidding after 6 hours of being in line, they were being told to go to another place?

There were people turned away because the polls closed exactly at 7:00p.m. though they opened a little late. These people had been in line since the early afternoon. Can you believe it!



My questions are this, if the schools are closed for elections, why aren't every school opened as a voting precinct. In my area, there were 3 other schools within approximately a mile from this one (Stephenson Elementary, Stephenson Middle and Stephenson High School).

If DeKalb County is allowing construction of subdivisions on every corner, then the Registrars Office should do a check of the numbers registered per precinct and make every effort to keep this to a manageable number.

Well, I could go on and on but I will allow others to also express their experiences. Unlike November 2000, I will not deny the right to express.

Hopefully, this information will help those nay sayers that deny the problems. It happened, it was real and it's a shame and a black eye for America.

Thank you for your patience and this opportunity.

Respectfully submitted,

JUANITA SANDERS CRIBB

The CHAIRMAN. Thank you very much, Ms. Cribb. Very strong testimony. We thank you for being here.

Let me just go to some quick questions, if we can, for some of you—all of you, rather. And the questions, in part anyway, have been addressed by your testimony.

I should, first of all, tell you, Mr. Lewis, we have had testimony from I believe it was the National Federation of the Blind, or was it Disability Community—Association of Americans with Disabilities, excuse me. It was the national spokesperson, who mentioned the figure of 10 million people who are blind who did not vote. I am not talking now about people who showed up and sought to have their ballots cast by whatever means, but who actually did not show up at all to vote. The numbers we have cited from the Cal Tech/MIT study as well as the New York Times, the Civil Rights Commission and so forth, talk about people who actually showed up, were in line and then were denied the right to vote. We have not talked about the numbers, the hundred million in this country, who are eligible to vote who did not either register or who registered and did not show up that day. So when I hear the number of 10 million, it is a stunning number to me. Just if that block alone had cast their ballots, what a difference that would make in terms of participation.

But one of the criticisms of our proposal—let me be the devil's advocate, if I can, on my own bill that I have introduced—is they say look, Senator, we have got a lot of laws on the books, we have the Voting Rights Act of 1965 that has been adopted that has all sorts of restrictions and prohibitions in it, eliminated poll taxes and literacy tests. As I read the 1965 Act, there are about 16 or 18 provisions in that bill that go down and enumerate the things that must occur.

We have seen the Motor Voter legislation, the Americans with Disabilities Act—there is a whole slew of civil rights legislation as well as these other provisions that are on the books. So let me be the devil's advocate, Mr. Lewis.

Why is it—I will make you the Senator—why is it we need to have your bill if we have got all these laws on the books, why do we not just enforce the laws you have got on the books and then would not everything else be all right?

What is the answer to that if you were asked that?

Mr. LEWIS. First of all, that was the easiest election for Senator, I am sure, that has ever taken place, so I thank you for that. [Laughter.]

How many bubbles in a bar of soap, you know. You mentioned earlier they said they got those records and the law there saying that's okay, we have eliminated all of these things, but that is a fallacy.

Narrow doorways, steps, non-access to voting—that is just as Jim Crow as anything else. The only way that you are going to eliminate it is just through the legislation that is in this bill, and that is by allowing each and every individual to cast their ballot independently and privately, because there is no confirmation. And even more so now, there is even greater uncertainty from individuals who even have that right to cast their ballots independently as to whether it really is being counted.

So to say that it is already there, let us enforce it, is not true. It is not there. It is only there if the machines and the polls are accessible to the degree that allows the person to actually participate and actually cast that vote.

The CHAIRMAN. Let me ask you a further question. Some have suggested that this is really just a technology problem, that if you just improve the technology here, then you can satisfy the problem. Do you believe this is a technology problem or do you also think it is a civil rights issue?

Mr. LEWIS. Absolutely it is a civil rights issue, but everyone tries to over-simplify things. I mean it is simple to resolve if everyone gets on board, but it is not simple to state. Yeah, there is a technology problem because what is going to happen is if there are not national standards, one state is going to be doing things one way and another state is going to be doing it another way. Within the state different municipal districts are going to be doing it different ways and it is not going to allow that ability for individuals to vote properly.

Is it a civil rights issue? It is a Constitutional rights issue. One man-one vote. I am not one man that has one vote. I should be, but as I stated in my testimony, when I go even if I take a close personal friend, he may be so adamant about wanting someone to be elected, that he might usurp my right and use it as an opportunity for him to vote twice.

The CHAIRMAN. Let me tell you a side story. One of the witnesses we had who was blind talked about his wife that went in to vote for him and she said, you know—she said I have always known that you love me, but today, she said, I have learned that you completely trust me, because I am going to vote for this idiot you want me to vote for.

[Laughter.]

Mr. LEWIS. And I am sure the big question mark in his mind was did you really vote for that idiot.

[Laughter.]

The CHAIRMAN. That is I am sure a question he was asking by implicitly suggesting that in his comments.

You mentioned the training, and I want to underscore something you said, because too often we talk about this and I am sure we are going to hear from Cathy Cox and others. There are wonderful people across this country who volunteer, many of them volunteer or get basically minimum wage and it is not working for, you know, shifts of four hours, many of them are on duty for 12 hours, depending upon the state you are in, standing there in the cold of upper New England or Michigan or the heat of some other state, long hours under difficult circumstances, to make this work. And I want the record to reflect, and I am sure Max will comment on this as well, our deep appreciation for people every year who volunteer to go out and serve as poll workers across the country. This is not about them in a sense.

One of the things you raised which I think is very worthwhile, we are talking about volunteers in many cases and it is not—the ability for them to understand what the law is and to make things work is not always there. And so I wonder if you might just expound a bit and maybe, Ms. Cribbs, since you have been involved

on a local level as well, that you may want to comment on this as well—on what we might do to increase the skill levels, the education levels of poll workers, some suggestions you might have.

Mr. LEWIS. I threw that out as a red herring, you know, because people were looking for some other entity to put the blame on.

The CHAIRMAN. Yeah.

Mr. LEWIS. So that is why I made examples of the poll volunteers. But as I stated in my testimony, if you remove that responsibility from them, then it is no longer an issue. But specifically in answer to your question, there does need to be ongoing training for these volunteers just like any other volunteer entity. I mean when people go to usher at the Fox Theatre, they receive some degree of orientation. But that needs to be addressed in a way where, I would imagine—this is again another statement that reinforces the standardization, because when you have the same voting procedure nationwide, you can develop technical assistance that can be disseminated on a local level at a smaller cost and also able to address those specific issues from a pool of people that are addressing these problems.

So in answer to your question, to enforce the training, I think there does need to be national standards, compliance with those national standards, technical assistance developed around those national standards and then individuals within those local precincts can have the tools that they need to educate the individuals that are making those personal sacrifices to ensure the voting rights of individuals throughout the country.

The CHAIRMAN. Ms. Cribb, before I ask you to comment on this, one of the things—when I talk about a national standard, Mr. Lewis, I am not talking about trying to pick and choose the type of ballot that may exist, whether it is Connecticut or Georgia or any other state. When I talk about national standards, I understand there are differences, that people have different customs and so forth on how they vote. So I am interested in whether or not the basic standards of making that accessible and so forth will apply. The actual piece of machinery, I understand there may be a wide variation in the kinds of specific equipment that people are more comfortable with in one place or another around the country. So I am not talking about a one size fits all. That is one of the complaints that people have raised about a national standard. It is the standard, it is not the equipment we are talking about. I want to make that as clear as I possibly can when people look at this legislation. So in terms of that point, it is important.

Now Ms. Cribb, you have been at the local level and you understand this.

Ms. CRIBB. As I listen and hear the word standard, I guess what my concern is, is that in such a global society and the technology that we have now available to us, I do not know if we have a one size fits all solution. However, I do know you get what you pay for.

Now volunteers are invaluable when it comes to elections. I have used them, you and Senator Cleland have used them. We know you cannot put a value on the impact of people who volunteer. However, I think that we can broaden the scope of those that we pay to make sure that this process is done in a fair and equitable way. Poll volunteers could be made a department. I mean, you know, I

think that it is time for us to stop thinking that we can just get something for nothing. And then let those people who are paid staff people become a part of getting volunteers who show up for that day, let us say to run interference, but the actual operation should be handled by people who are paid. People have a loyalty—you know, when you get a house, the down-payment does nothing toward the value of the house, especially in programs with five, ten percent. When you buy a car, they want you to put something down.

If you put something in, then you value what you have. If I give it to you, you do not value it. You know, there is an old proverb all of us talk about, a parable, that says if you give a man a fish, he eats for a day; you teach a man to fish, he will eat forever. So it is teaching us to be independent in our strive to have freedom.

So I think that if we broaden some of the areas where we are not paying—I would love to see in each of the counties under the Registrar that there be a group of people who are paid and that these people would go and patrol each and every precinct. But it is going to take a total reorganization. It is very difficult to take a piece of chewing gum and once you chew it, it is so good, it is flavorful, but after awhile it loses its flavor and you throw it away. We cannot take this system and not be willing to add something fresh and new. We keep trying to reinvent the same thing. We might really need to have something fresh and different. And I am thinking that that is a problem.

And when you say why these thousands of people will not go to vote. Well, when I was in advertisement, one of my main selling points was always to say to my prospective client that people will only use your services or buy your products if they feel welcome. When you do not treat a person courteously, they will not keep coming back. I have had stray dogs and cats in my neighborhood, the best way to get rid of them is I throw some water on them or you keep going out there saying scat, or you take a broom and hit at them. Sooner or later that dog or that cat will go away or think I cannot go to Ms. Cribb's house because she is going to get me.

Well, when you do that to people who go to vote, when they have got to stand in these unusual circumstances and conditions, they are not going to come to vote but so many times. They will say well, it does not matter, they are going to get who they want to get, because they are not made to feel welcome.

So I think that if we would pay and enlarge—and Ms. Cox, I am not trying to give you any more work—but I think we really do have to increase what the registrars are doing in each locality. That is where I think a lot of it happens because when you start to do it on every, every, every, every level, it is like lighting a candle and then after awhile everything is lit. That is where we will get the uniformity, when it is implemented on the local level.

The CHAIRMAN. Very good. Max.

Senator CLELAND. Wow. The use of the word fire was used earlier. I think you all have lit a fire under us, no question about that.

And personally, as somebody who has been involved in these issues I guess for 30 years or more, I wrote the law when I was a state senator in terms of access to public places built with public funds. And when I was Secretary of State, we tried to implement

access to the polls for disabled and we implemented the motor voter law for Georgia and I am from Lithonia, but you all have really lit a fire under me here that tells me we do need a fresh look here, because it is obvious, it is painfully obvious, that this system is not as voter friendly as it should be.

In terms of disability, Mr. Lewis, I think you are right on track. It is a shame that the one Constitutional right that all of us share has to be a right that is so difficult to achieve on election day for some of us who happen to be disabled.

I have not particularly complained about my little polling place, but there is a ramp there that is about a 50 degree angle, you could launch a rocket—

[Laughter.]

Senator CLELAND [continuing]. If I ever tried to go up it, I would never make it to the polling place. In my little precinct in Lithonia, they do have one smaller accessible voting booth, but I do feel very much exposed and vulnerable in the sense that I do not feel like there is any barriers or guards around—not physical guards, but I do not feel that I am voting in a real, shall we say, secret way. And so I can certainly identify with your problem.

Ms. Smith, it pains me—as someone who implemented the motor voter law for Georgia and thought it was a great idea to be able to register when you revalidated your driver's license and set up a computer system in 159 counties and a central database so we would not have to have these problems on election day where you did register to vote but somehow you go to your polling place and they do not have your name and then you have got to go somewhere else and they do not have your name and yet your husband is there—you know, that kind of thing saddens me to hear that. That just tells me we have got a lot of work to do.

And Ms. Cribbs, in terms of the growth in my little hometown there, it does seem that that whole polling place, especially with the power going out, was just an awful disaster that day. So we have got a lot of work to do.

I would like to ask you, in terms of the system being voter-friendly, all of you; if you knew that the odds of going into a votomatic voting system, the odds were three to five percent of the time that your vote would not count, even though you had proper access, even though you exercised that Constitutional right of self-determination and secret ballot and even though you were registered properly, Ms. Smith, and even though the system was, Ms. Cribb, very voter-friendly—if you knew, using the votomatic system, that three to five percent of the time your vote that you actually exercised would not count, how would that make you feel, Mr. Lewis?

Mr. LEWIS. You are going to ask me the easy question. That would really upset me because it still introduces that degree of uncertainty. Would I not vote? That is not an issue. I would still vote, even if I thought that 70 percent of the time I went to the polls, my vote would not count. But I am not going to accept it. Three to five percent sounds minimal, but am I going to accept three to five? I am still going to try to work to ensure that every time anyone goes to the polls, that their vote counts, period.

Senator CLELAND. Right. Ms. Smith.

Ms. SMITH. I feel the exact same way. I would still vote even though I would have an inclination in the back of my mind saying I wonder if that vote was counted—I would still vote.

Senator CLELAND. Ms. Cribb.

Ms. CRIBB. I certainly would still vote, but I think I would feel almost like a victim. But I would still vote and I think we would then try to—I am an innovative person, I would try to come up with a solution as to how to make my vote count every time.

Senator CLELAND. Amen.

Well, my understanding is that the votomatic system has that error built in, three to five percent of the time, whether you are a Ph.D. or not, whether you are able-bodied or not, when you use or we use or I use or we altogether use that punch card system, three to five percent of the time it has a built in error rate regardless of what you do. That makes me very insecure, it makes me know that that system is not very voter-friendly and that we have got to do something about it, which is one of the reasons for this legislation, one of the reasons we have you here.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Max.

Just one other point. The provisional voting, we talked about it in the bill and I know that Max and the Secretary of State and others understand it, but a lot of people do not understand how provisional voting works. Just to lay it out and then ask you briefly if any of you have any comments to make on it.

Provisional voting would take a situation not unlike yours, Ms. Smith, where you showed up and there was this controversy over whether or not you were actually on the rolls or not. In that case, the poll workers, if there was some debate about it, you would cast a ballot, not unlike an absentee ballot, you would sign it—I guess you would do that—and set it aside in a separate box or someplace and then at the end of the election, if in fact, when you have a close election, they would then go to those ballots and then make an attempt to verify in fact whether or not you were registered, as you thought you were, or not. But you give the benefit of the doubt to the voter and so that actually a person who has been in line, stood there all day, can actually cast the ballot.

We had the estimates just on the provisional voting, somewhere between, depending on which study you are looking at, at the very least, two million and maybe as many as four million people who, had they been allowed to cast a provisional ballot in the country. Those are huge numbers and if you are talking about three million, you are talking about the entire population of the state I represent. Imagine every man, woman and child in the state of Connecticut being denied—or in the case, if you take the MIT study, you are talking about the population of this. Imagine every man, woman and child in Georgia on election day being denied the right to cast a ballot.

So the provisional voting, I find is drawing broad-based support, even people from the entire spectrum politically, for different reasons in some cases, are sort of rallying around the idea that provisional voting makes some sense. I wondered if you have any comments you would like to make about it. Are there any concerns you would have about provisional voting?

Ms. Cribb, we will begin with you.

Ms. CRIBB. I think my concern about it is because of the statement said in case of a tie or there was a problem.

If I registered and you gave me a ballot and just say when we go back we will check it to make sure you are registered, I think my vote should be counted whether you have a tie or not.

The CHAIRMAN. Okay.

Ms. CRIBB. I think that is what my concern is, just about that provision for it. I think it ought to be—well, I will let the rest of them say something. That is my concern.

The CHAIRMAN. Good point, excellent point. Diane.

Ms. SMITH. I was not even offered the provisional vote. So that was a concern right there, I was not offered that and then I was not allowed to vote and it was like come back next year, you know, next four years.

The CHAIRMAN. Mr. Lewis, you have already sort of commented on this. You agree with provisional voting, you made that point in testimony.

The last point I want to make is anecdotes are anecdotes and I do not want to suggest that this is scientific studies, but just to share with you. My wife and I have some friends in Arlington, Virginia who are Cambodian. They survived the Khmer Rouge and made it to the United States through all that terror, and became citizens. We know them through my wife's church. That is how we became friendly. And I sort of browbeat them—they did not know that as citizens, they also had the right to vote. It is interesting, they became citizens and did not know they also could register to vote. So I browbeat them last year into registering to vote, two sisters.

Last fall, they went to vote. Their English is not very good and they went to vote and were turned away at the polls. They had planned an evening with that small community of Cambodians, including their family, to celebrate the fact that beyond their wildest imagination that one day they would actually be allowed to cast a ballot for President of the United States, in their darkest days of terror in Cambodia, that one day, they would be citizens of the United States, allowed to choose who would be the President of the United States. And this was a huge deal to them.

And when they were denied the right to vote, they were intimidated, were scared. They did not know if their citizenship was in jeopardy or whatever else. They did not call a lawyer, they did not go to see somebody else. They canceled their dinner that evening for their family—just the ripple effect. You know, I hope I am wrong about this, but my fear is that others in that community the next time around, having heard the experience of those two, will be so discouraged themselves that they do not step forward. That is—those sort of things really worry me very deeply when they go on.

So in terms of you, Ms. Smith, you stayed with it and you are here today and you went back and your husband and you talked and you went back and you looked at other places and you went to that Lutheran church and you kept at it, but an awful lot of people quit and just give up on it. It is hard enough you have someone to take care of the children if you have got children, you get off for



the day and getting a ride there—it gets complicated. And it is intimidating. You know, look, I am a United States Senator, I have been on the ballot seven times in my state and when I go to my little town of East Haddam, Connecticut and close that curtain, I want to make sure I do this right. I get a little nervous. Here I am sitting in the national legislature and I sit there with that machine and that thought, I hope I am going to do this right. And I suspect I am not alone in that, that everybody has those feelings.

Well, imagine if you are somebody new or first time or unclear about this, what effect that has on you. And so your point I think one of you did, Ms. Cribb, about this being a place of user-friendly, of being welcome, in the sense that you belong here is extremely important.

Senator CLELAND. Just on that point, I go to my little ballot box and since we have the punch card, I take that little stylus and I just beat that hole to death. [Laughter.]

I don't want no hanging chad, no halfway—we thank you all very much for being here.

The CHAIRMAN. Thank you very, very much, very helpful testimony.

We are going to take just a couple of minutes break here while our second and final panel comes up. So we will stand in recess for a couple of minutes.

[Recess.]

The CHAIRMAN. We appreciate your patience in waiting a minute here for us while we got ourselves together.

I am very pleased to introduce our second and final panel here this morning and I thank all of you for being here. You are very, very gracious to take some time.

This is a very distinguished panel of state, local and community leaders in the state of Georgia. Mr. Vernon Jones is the Chief Executive Officer of De Kalb County in Georgia. Mr. Jones, we thank you for your presence here this morning.

Mr. Hans von Spakovsky—did I pronounce that correctly?

Mr. VON SPAKOVSKY. Spakovsky.

The CHAIRMAN. Is the Vice Chairman of the Fulton County, Georgia Board of Registration and Election. We thank you very much for your presence here.

Ms. Cathy Cox, well known through the state of Georgia and she has many fans beyond this state as well, is the current Secretary of State for the State of Georgia and a recognized leader in the country in election reform movements.

And the Reverend Dr. Joseph Lowery, who is a friend of mine, truth in advertising of longstanding. We have been involved in issues together for almost 20 years and I am deeply honored that you are here, Doctor, this morning to be a part of our discussion. Dr. Lowery is Chairman of the Georgia Coalition for the People's Agenda and the Black Leadership Forum. And we thank you immensely for your presence.

I would also add that, of course, Dr. Lowery, for those who are not from Georgia or familiar with the civil rights movement, has been a great leader throughout many decades in the civil rights efforts of this country, and a protector of the right to vote for Ameri-

cans of all races. It is truly an honor to have you here before us this morning.

So with that, again, all information, data, background—I have read all of your testimony last evening—and I want you to know anything you want to add to this record, as I have told other witnesses, we will supplement your testimony with any documentation you think would be helpful for the Committee to have.

I will just ask you to begin in the order I have introduced you and Mr. Jones, we will begin with you and again, thank you for joining us.

**TESTIMONY AND PREPARED STATEMENTS OF A PANEL CONSISTING OF VERNON JONES, CHIEF EXECUTIVE OFFICER, De KALB COUNTY, DECATUR GEORGIA; HON. A. VON SPAKOVSKY, VICE CHAIRMAN, FULTON COUNTY BOARD OF REGISTRATION AND ELECTIONS, ATLANTA, GEORGIA; HONORABLE CATHY COX, SECRETARY OF STATE, STATE OF GEORGIA, ATLANTA, GEORGIA; AND REVEREND DOCTOR JOSEPH E. LOWERY, CHAIRMAN, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, ATLANTA, GEORGIA**

**STATEMENT OF VERNON JONES, CHIEF EXECUTIVE OFFICER, De KALB COUNTY, GEORGIA**

Mr. JONES. Thank you, Senator Dodd from the state of Connecticut, we appreciate you coming down to our great state of Georgia. We recognize, as you, that there is certainly a great need for voter reform—election reform—in our great nation. And so again, I appreciate you taking out time to come and hear the concerns from the grassroots people.

Also to my Senator, Senator Max Cleland, I happen to represent the area where you grew up. I had opportunity also to serve with you when you were Secretary of State, I was in the Georgia General Assembly, in the House where all the action was. But to have you come back and certainly your leadership in this particular issue. As you know, De Kalb County is one of the growing counties—as a matter of fact, we are the second largest county in the state, your home county, you are very familiar with it and the growth that is taking place out there. So I appreciate again your leadership and you coming down and bringing this back home to Georgia to hear our concerns.

And also to the participants that are here, including the media. An interesting thing, when I was coming in this morning, I was canvassed with media. I was excited by the fact that the media wanted to take this issue to the public and educate them on what is happening with voter reform or election reform, but I was a little disappointed when they realized that I was not Patrick Ewing—

[Laughter.]

Mr. JONES [continuing]. And they went the other way. [Laughter.]

I do appreciate the press being here and recognizing how important this is and how much substance this case is as opposed to the other case.

The CHAIRMAN. Max and I are not going to touch that last comment.

Mr. JONES. I am Vernon Jones, the Chief Executive Officer of De Kalb County's government, and it is Georgia's most ethnically diverse and rapidly growing urban county. I was elected to the highest local office in De Kalb County in 2000 and I am proud to represent the 700,000-plus citizens of this premier suburb of Atlanta. Prior to my election as County Executive, I served in the Georgia House of Representatives for eight years.

I would like to thank the Committee for allowing me to provide testimony on behalf of voting reform. Local citizens have responded very favorably to the fact that this Committee chose to hold field hearings—versus Capitol Hill hearings—for the purpose of getting a true grassroots perspective of the concerns and recommended solutions for voting reform. I appreciate our distinguished U.S. Senator, again, Max Cleland, for his leadership in an area that impacts every voter in the state, in this region and, of course, the entire nation.

I am pleased that on both sides of the aisle in Congress, there is cooperative interest in correcting the many wrongs associated with the current voting process for citizens. I would like to take this opportunity to thank every citizen who exercised his or her right to vote in our 2000 elections.

De Kalb County has a proud and active voting constituency. Presently, De Kalb County has 167 precincts. The unprecedented growth in this county since 1998 has led our Voter Registration and Elections staff to conclude that the voting precincts are inadequate to serve an exploding population. Currently, our Elections Board and staff are working very closely with the State of Georgia's Reapportionment Department to secure additional facilities for voting.

My goal before you here today is to seek assistance in achieving an accurate count of each and every vote in future elections, especially in De Kalb County. It is important that every citizen feels that his or her vote is counted and not discounted. In this exciting age of information technology, it is appalling that our citizens are using 30-year-old equipment to vote. As a matter of fact, when I entered college in 1979, my major was information technology and I was handed not a computer, but I was handed punch cards and that was the first process of computer programming. And here I am, as each and every one of you, we have on our desk work stations, computers, not punch cards. So look where we have traveled with that and now look where we have traveled with our voting equipment.

This has resulted in many ballots being discarded. there have been too many variables in interpretations of subjective judgments about which ballots are valid and which were defective. On the day of November 2000 elections, my telephone and that of the Elections office were besieged with calls from voters who had concerns about long lines, names not being on the official rolls and a laundry list of other issues that caused them to be discouraged from voting. Most of our citizens did vote that day but only after enduring long lines and frustrations. The local problems included the various "Get out the Vote" campaigns in Georgia were hugely successful. In turn, it impacted De Kalb. As an example, more than 35,000 new registered voters in De Kalb County came on line in October; how-

ever, some of the voter registration campaigns, although well intended, did not connect to the official state and county election offices and newly registered voters were unable to cast their ballots.

There were many web sites encouraging citizens to register to vote through them, but these sites were not authorized by the Secretary of State. Thus, the Secretary of State never received registration information to forward this information to counties.

As permanent voter registration sites, the state Department of Motor Vehicles stalled. It did not provide the De Kalb voter registration department and others throughout the state with appropriate voter information.

Registration cards from unauthorized voter registration drives held at various venues such as sporting events, through fraternities and civic organizations were never forwarded to the Secretary of State's office. Again, citizens thought they were registered when, in fact, they were not.

We also encountered many delays due to our local balloting system. Some of the key problems were that first time voters in Georgia did not understand our voting system.

We had extremely long ballots and voters were unfamiliar with the issues, especially amendments and referendums. And we have all served in legislatures and we know how sometimes those referendums are in legal terms and not in lay persons' terms and so it is kind of confusing to a lot of voters. This slowed down the process and made for longer times in the voting booths.

Overworked poll officials contributed to voter frustrations. As a matter of fact, I would like also to call your attention to an area that I have not heard much debate about and that is the additional problem of most Americans are required to cast their votes within a 12-hour period, within that 12-hour period across this country. And with that, you look at the voter patterns, when you look at the lines and frustrations, when you look at people having to go from one location to another and all that has to be done within a 12-hour period. You do not get a second chance to go back tomorrow. I would encourage or would like for you to consider the fact of maybe expanding that from a 12-hour period to maybe a two to three days period. It is a funny thing, we learn a lot from other countries who are friends of ours. They have a longer voting process. When you look at our country, we have to do it all within 12 hours. And you cannot possibly accommodate or work on many of the problems and issues that we deal with. Not only the training for the poll workers but also when you look at those people who are coming in with special requirements and special needs and what causes more frustrations of lines backing up. There is certainly a need to look at expanding that process, I think that could help.

One of our problems during a recent election in my county was at certain precincts we had more people voting than resources and equipment that was available.

We should make the voting process more convenient. One of the ways to accomplish this, as I mentioned earlier, is to expand that voting period. I would encourage you and your colleagues not only to address disenfranchised voters, but also make the process more

convenient. Right now, it is more convenient for the government than for the voter.

In my closing remarks to both Senators, my county, as I mentioned earlier, is over 700,000 people. We have a huge, huge ethnic population, a mixture I should say. We brought in a lot of refugees from other countries—Bosnians, Croatians, a lot from the Caribbean community, Asians, Hispanics. When you look at how diverse our county is and the special needs that we need to accommodate or to work with our diverse population, certainly voter reform is important. From training to education to being able to reach out and make those who are not necessarily old to the voting process, to make them feel more comfortable on how our election process works, getting them into the ballot box—getting them into the balloting booth so they can really exercise their right to vote and understand what is on the ballot, who is on the ballot.

And if I can make one final plea, that is your financial assistance certainly is helpful. We know that it is expense, we are at the local level pulling together additional monies as well as looking forward to getting additional resources from the state and hopefully to get some more resources from the Federal Government. And we can, together—I do not want to say reduce this, but we can eliminate voter disenfranchisement and voter apathy.

Thank you very much.

[The prepared statement of Mr. Jones follows:]

## 1 U.S. SENATE COMMITTEE ON RULES AND ADMINISTRATION

Rules Committee Field Hearing

2 Richard B. Russell Building, Room 2300, Ceremonial Room

75 Spring Street

3 Atlanta, GA

July 23, 2001

4 9:30 a.m. - noon

5 Testimony of Vernon Jones

Chief Executive Officer

6 DeKalb County Government

7

8 Good morning Chairman Dodd and other distinguished members of the U.S. Senate

9 Committee on Rules and Administration.

10

11 I am Vernon Jones, Chief Executive Officer of DeKalb County government. It is Georgia's

12 most ethnically diverse and rapidly growing urban county. I was elected to the highest local

13 office in DeKalb County in 2000 and am proud to represent the 665,000-plus citizens of this

14 premier suburb of Atlanta. Prior to my election as CEO, I served for eight years in the Georgia

15 Legislature as a representative of DeKalb County.

16

17 I would like to thank the committee for allowing me to provide testimony on behalf of voting

18 reform. Local citizens have responded very favorably to the fact that this committee chose to

19 hold field hearings - versus Capitol Hill hearings - for purposes of getting a true, grassroots

20 perspective of the concerns and recommended solutions for voting reform. I appreciate our

21 distinguished U.S. Senator Max Cleland, for his leadership in an area that impacts every

22 voter in the state, the region and, of course, the nation.

23

24 I am pleased that, on both sides of the aisle in Congress, there is cooperative interest in

25 correcting the many wrongs associated with the current voting process for citizens. I would

1 like to take this opportunity to thank every citizen who exercised his or her right to vote in  
2 our 2000 elections.

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4 DeKalb County has a proud and active voting constituency. Presently, DeKalb County has  
5 167 precincts. The unprecedented growth in this county since 1998 has led our Voter  
6 Registration and Elections staff to conclude that the voting precincts are inadequate to  
7 serve an exploding population. Currently, our Elections Board and staff are working closely  
8 with the state of Georgia's Reapportionment Department to secure additional facilities for  
9 voting.

10  
11 My goal before you today is to seek assistance in achieving an accurate count of each and  
12 every vote in future elections, especially in DeKalb County. It is important that every citizen  
13 feels that his or her vote is counted and not discounted. In this exciting age of information  
14 technology, it is appalling that our citizens are using 30-year-old equipment to vote. This has  
15 resulted in many ballots being discarded. There have been too many variables and  
16 interpretations and subjective judgments about which ballots were valid and which were  
17 defective.

18  
19 On the day of the November 2000 elections, my telephone and that of the Elections Office,  
20 were besieged with calls from voters who had concerns about long lines, names not being  
21 on the official rolls, and a laundry list of other issues that caused them to be discouraged  
22 from voting. Most of our citizens did vote that day, but only after enduring long lines and  
23 frustrations. The local problems included:

24  
25 ❖ The various "Get out the vote" campaigns in Georgia were hugely successful. In turn, it  
impacted DeKalb. As an example, more than 35,000 new registered voters in DeKalb

1 County came on line in October. However, some of the voter registration campaigns –  
2 although well intended – did not connect to the official state and county election offices,  
3 and newly registered voters were unable to cast ballots.

4 ❖ There were many web sites encouraging citizens to register to vote through them, but  
5 these sites were not authorized by the Secretary of State. Thus, the Secretary of State  
6 never received registration information to forward to the counties.

7 ❖ As permanent voter registration sites, the state Department of Motor Vehicles stalled. It  
8 did not provide the DeKalb voter registration department and others throughout the  
9 state with appropriate voter information.

10 ❖ Registration cards from unauthorized voter registration drives held at bars, sporting  
11 events, through fraternities and civic organization were never forwarded to the Secretary  
12 of State. Again, citizens thought they were registered when, in fact, they were not.

13

14 We also encountered many delays due to our local balloting system. Some of the key  
15 problems were:

16

- 17 ♦ First-time voters in Georgia did not understand our voting system.
- 18 ♦ We had extremely long ballots and voters were unfamiliar with the issues, especially  
19 amendments and referendums. This slowed down the process and made for longer  
20 times in the voting booths.
- 21 ♦ Overworked poll officials contributed to voter frustrations.

22

23 Now, enough of the problems, DeKalb County is implementing solutions to educate voters  
24 and certainly hopes to provide state-of-the-art equipment and processes to allow every vote  
25 cast in an election, to count.



1 After the November election, the county conducted a major print and electronic information  
2 campaign in the communities, established a hotline with operators, and additional staff for a  
3 special election held in the first quarter of 2001.

4  
5 Thankfully, more help is on the way for DeKalb County citizens. DeKalb County Voter  
6 Registration and Elections Director Linda Latimore has been appointed by Secretary of State  
7 Cathy Cox to serve on the "Twenty-First Century Voting Commission." This is the group that  
8 will determine the new statewide voting equipment. Of the 13 test sites for new voting  
9 equipment throughout Georgia, two were DeKalb County municipalities - Decatur and  
10 Lithonia. The testing of this new equipment will take place during this year's municipal  
11 elections in November.

12 Mr. Chairman, I support your measure, Senate Bill 565, and also Senator Cleland's Senate  
13 Bill 479. These calls for voting reform will benefit the greatest constituency in the world -  
14 the American citizens. I welcome federal leadership in making every vote count, which  
15 grants equal protection of voting rights to every citizen who chooses to exercise his or her  
16 constitutional right.

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The CHAIRMAN. Thank you very, very much, Mr. Jones, we are very grateful to you for your testimony here this morning.

We will now turn to your colleague, Mr. Spakovsky, we welcome you again to the Committee.

**STATEMENT OF HANS A. VON SPAKOVSKY, VICE CHAIRMAN,  
FULTON COUNTY BOARD OF REGISTRATION AND ELEC-  
TIONS, ATLANTA, GEORGIA**

Mr. VON SPAKOVSKY. Thank you, Senator. I am Hans von Spakovsky, Vice Chairman of the Fulton County Board of Elections and Registration.

We are the largest county in the state, we represent about 10 percent of the vote. The Board is made up of citizens who are appointed to supervise the county department that is in charge of all voter registration and election.

One of the biggest threats to voter rights and election integrity today is the condition of our voter registration rolls. Many jurisdictions now have more registered names on their voter rolls than they have voting age population within their borders. That is an invitation to fraud and chaos since the many invalid and multiple registrations that exist can serve as a source pool for fraud. Additionally, in an effort intended to reverse our long-term decline in voter turnout that we have experienced in the last 30 years, some states have adopted no-fault absentee balloting statutes. Unfortunately, when absentee ballots are combined with some of the restrictions imposed by the National Voter Registration Act of 1993 or Motor Voter, absentee ballots make the job of voter thieves easier.

The U.S. has a long history of voter fraud and it is important that we understand that, starting with an election in New York City in 1844 in which 135 percent of the registered voters turned out to vote, to a 1993 state senatorial election in Philadelphia, a 1994 election in Greene County, Alabama, a 1996 commissioners race in Dodge County, Georgia and the 1997 mayor's race in Miami. There have been numerous other cases of voter fraud, many of them furthered by some of the unfortunate and unintended side effects of the Motor Voter. While allowing registration at government offices is a very good idea, some of the other provisions of Motor Voter have caused a security hole in our voting process. For example, Motor Voter made it illegal for a state to check someone's identification before allowing them to register to vote and it mandated mail-in registration. When you combine absentee voting with those provisions, it means that an individual can register and cast an absentee ballot without any election official ever seeing them. This makes multiple registrations and multiple votes very easy and the chances of being caught are negligible.

Absentee ballots also make vote buying and voter intimidation easier to commit and they make poll watching impossible. The secret ballot prevents coercion and helps prevent vote tampering. It was instituted in the U.S. in the late 1800s to prevent these very problems which were then prevalent in American elections. Absentee ballots are voted in unmonitored settings where there is no election official or independent election observer available to ensure there is no illegal coercion or intimidation. The ability of poll

watchers to monitor polling sites is also very important to the integrity and security of our election process. That kind of transparency has to be maintained. No fault absentee ballot laws make it easier for campaign organizations to engage in tactics such as requesting absentee ballots in the names of low-income housing residents and senior citizens and either intimidating them into voting a particular way or casting votes for them. Residents of nursing homes are especially vulnerable. Absentee ballots also make vote buying easier because buyers can make sure that their votes stay bought, something that is not possible in traditional polling locations. We do make a necessary exception for military personnel or the physically disabled who cannot go to a traditional polling place. A recent study has also shown that absentee ballot laws do not increase voter turnout and in fact may lead to greater declines in turnout. Because of the security risks of absentee ballots, the recent study that the Cal Tech/MIT voting project released specifically recommended against no-fault absentee ballot laws and said they should remain an exception.

Federal mandates are not the solution to the problems that we have. The mandates of the prior Federal intervention in elections, Motor Voter, have caused some of the problems we are experiencing today. However, Federal legislation such as the bipartisan McConnell-Schumer bill that would set up a new Election Administration Commission, I think is a good idea. Elections have always been handled locally on a very decentralized basis. That is because elections are local events, they are community events. Even when an election involves Federal offices, it is a communal act of the residents of the county or the city to choose their representatives or to decide issues. That is the way it was envisioned by our founding fathers and for good reason. America is a diverse and ever-changing nation. Solutions, such as the choice of what voting equipment to use that may be relevant for a small county in Georgia of 5,000 voters may not be the correct solution for the City of Los Angeles with four million voters, the largest county in the country. However, such a new agency could best help local counties such as mine through (a) a program of Federal matching grants such as Senator Cleland has discussed, for voting equipment and registration system upgrades; (b) by creating a central clearinghouse for information on election equipment and system performance; (c) by creating more stringent and uniform standards for the performance and testing of new equipment, including providing research funds for the field testing of new equipment and the analysis of election system performance; and finally by encouraging the developing of a uniform format for the storage of public records so that different jurisdictions can easily compare those records to provide accurate voter registration lists, and the development of an interoperable data language for disparate voting systems that would allow the automatic exchange of election information.

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

be deterred and prevented without diminishing voter turnout and our election system can be improved.

Thank you.

[The prepared statement of Mr. von Spakovsky follows:]

Hans A. von Spakovsky  
*Vice Chairman, Fulton County Board  
 of Registration and Elections*

6520 Burdett Drive  
 Atlanta, Georgia 30328  
 Telephone (404) 851-9834  
 Facsimile (425) 740-7987 or (404) 851-9834  
 Mobile (678) 296-7498  
 vspakovsky@aol.com

**Testimony for the Senate Rules Committee  
 July 23, 2001  
 (Prepared July 19, 2001)**

**Voter Fraud and Election Reform**

One of the biggest threats to voter rights and election integrity today is the condition of our voter registration rolls. Many jurisdictions now have more registered names on their voter rolls than they have voting age population within their borders. This is an invitation to fraud and chaos since the many invalid and multiple registrations that exist can serve as a source pool for fraud. Additionally, in an effort intended to reverse our long-term decline in voter turnout and to increase voting "convenience," some states have adopted no fault absentee balloting statutes. Unfortunately, when absentee ballots are combined with the restrictions imposed by the National Voter Registration Act of 1993 or Motor Voter, absentee ballots make the job of voter thieves easier. Motor Voter's attempt to make registration universal is instead a universal failure because it was so flawed as to actually undermine our registration system.

The United States has a long history of voter fraud, from an election in New York City in 1844 in which 135% of the eligible voters turned out, to cases in more recent years involving fraudulent absentee ballots in a 1993 state senatorial election in Philadelphia, a 1994 election in Greene County, Alabama, a county commission race in 1996 in Dodge County, Georgia, and the mayor's race in 1997 in Miami. There have been numerous other cases of voter fraud, many of them furthered by some of the unfortunate side effects of Motor Voter. While allowing registration at government offices is a good idea, some of Motor Voter's other provisions have opened security holes in our voting process. For example, Motor Voter made it illegal for election officials to check someone's identification before allowing them to register to vote and mandated mail-in registration. When combined with absentee voting, an individual can register and cast an absentee ballot without any election official ever seeing him. This makes multiple registrations and multiple votes very easy and the chances of being caught are negligible.

Absentee ballots make *vote buying* and *voter intimidation* easier to commit and make poll watching impossible. The secret ballot prevents coercion and helps prevent vote tampering. It was instituted in the U.S. in the late 1800's to prevent these very problems which were prevalent in American elections. Absentee ballots are voted in unmonitored settings where there is no election official or independent election observer available to insure that there is no illegal coercion or intimidation. The ability of poll watchers to monitor polling sites is also an important guarantee of the integrity and security of our election process. This transparency must be maintained. No fault absentee ballot laws make it easier for campaign

organizations to engage in tactics such as requesting absentee ballots in the names of low-income housing residents and senior citizens and either intimidating them into casting votes or completing their ballots for them. Residents of nursing homes are especially vulnerable and this is so common, it has even been in the Ann Landers column. Absentee ballots also make vote buying easier because buyers can make sure that the votes “stay bought,” something not possible in traditional voting locations. We make a necessary exception for military personnel or the physically disabled who cannot go to a traditional polling place. A recent study has also shown that absentee ballot laws do not increase voter turnout and may lead to greater declines in turnout. Because of the security risks, absentee ballots should remain an exception and not the rule, a conclusion also reached in a report just released by the CalTech/MIT Voting Project.

Federal mandates are not the solution; the mandates of the prior federal intervention in elections, Motor Voter, have caused many of the problems we are experiencing today with our voter registration system. However, federal legislation such as the bipartisan McConnell-Schumer bill (S.953, which has the support of 70 Senators) that would set up a new Election Administration Commission is a good idea. Elections have always been handled locally on a very decentralized basis. That is because elections are local events – they are community events. Even when an election involves federal offices, it is a communal act of the residents of a county or city to choose their representatives or to decide issues. That is how it was envisioned by our Founding Fathers and for good reason – America is a diverse and ever changing nation. Solutions, such as the choice of what kind of voting equipment to use, that may be relevant for a small county in Georgia with 5,000 voters, may not be the correct solution for the City of Los Angeles, which has 4 million voters, the largest number of registered voters of any county in the country. Such a new agency could best help local counties such as mine through:

- 1) a program of federal matching grants for voting equipment and registration system upgrades;
- 2) by creating a central clearinghouse for information on election equipment and system performance;
- 3) by creating more stringent and uniform standards for the performance and testing of new equipment, including providing research funds for the field testing of new equipment and the analysis of election system performance; and finally
- 4) by encouraging the development of a uniform format for the storage of public data records so different jurisdictions can easily compare records to provide accurate voter registration lists, and the development of an interoperable data language for disparate voting systems that would allow the automatic exchange of election information.

The right to cast our vote in a fair and secure election is our most precious right. Every American citizen who is eligible to vote should be able to do so with a minimum of administrative procedures and statutory requirements. None of the measures that can and should be taken to amend Motor Voter and tighten state election laws would infringe on the right of citizens to vote. Fraud can be deterred and prevented without diminishing voter turnout and our election system can be improved.

## FEDERAL AND STATE LEGISLATIVE RECOMMENDATIONS

### *Federal legislation should be passed that:*

1. **REQUIRES THE U.S. IMMIGRATION AND NATURALIZATION SERVICE AND THE SOCIAL SECURITY ADMINISTRATION TO COOPERATE WITH STATE ELECTION OFFICIALS IN CHECKING THE SOCIAL SECURITY NUMBERS OF INDIVIDUALS WHO REGISTER TO VOTE TO INSURE THEY ARE U.S. CITIZENS AND THAT THE NUMBERS ARE VALID AND NOT FRAUDULENT.** There have been numerous cases found of duplicate and fraudulent registrations under false names or by non-citizens because federal law prohibits states from checking someone's identification before registering to vote and because states are required to allow mail-in registration. The INS and the SSA refuse to cooperate with election officials in making routine checks of social security numbers of individuals who register. This is the only way to prevent fraudulent registrations unless election officials are allowed to check someone's identification or citizenship status when registering.
2. **AMENDS THE NATIONAL VOTER REGISTRATION ACT OR MOTOR VOTER TO PROHIBIT MAIL-IN REGISTRATION AND ALLOW STATES TO CHECK IDENTIFICATION PRIOR TO ALLOWING AN INDIVIDUAL TO REGISTER.** As previously outlined, this is necessary to prevent fraudulent registrations and registrations by noncitizens.
3. **AMENDS MOTOR VOTER'S RESTRICTIONS ON THE PURGE PROCEDURES THAT CAN BE USED BY STATE ELECTION OFFICIALS TO DELETE INELIGIBLE VOTERS FROM THE VOTER REGISTRATION.** States should be allowed to purge voters who do not vote at least once in a presidential election cycle after they have been sent notice by election officials and do not contact such officials after a reasonable amount of time or the notice is returned as undeliverable. The current restrictions imposed by Motor Voter result in large numbers of ineligible persons remaining on the voter registration list, increasing the possibility that fraudulent ballots will be cast in their names.
4. **REQUIRES THE DEPARTMENT OF JUSTICE TO PROVIDE FELONY CONVICTION RECORDS TO STATE ELECTION OFFICIALS.** States that suspend the voting rights of convicted felons need easy access to federal felony records. The Department of Justice should be required to routinely provide such felony records to election officials of states where a defendant was a resident and likely registered to vote.
5. **ESTABLISHES A NEW FEDERAL AGENCY FOR ELECTION ADMINISTRATION.** This new agency would administer a program of federal matching grants for voting equipment and registration system upgrades; create a central clearinghouse

for information on election equipment and system performance; create more stringent and uniform standards for the performance and testing of new election equipment, including providing research funds for the field testing of new equipment and the analysis of election system performance; and finally, sponsor the development of a uniform format for the storage of public data records so different jurisdictions can easily compare records to provide accurate voter registration lists, and sponsor the development of an interoperable data language for disparate voting systems that would allow the automatic exchange of election information.

**6. FEDERAL LEGISLATION SHOULD NOT BE PASSED THAT PROVIDES MANDATES FOR ELECTION OR ADMINISTRATION SYSTEMS.**

*States should pass legislation that:*

**1. REQUIRE ALL VOTERS TO PRESENT PHOTO IDENTIFICATION AT THEIR PRECINCT POLLING LOCATIONS.** A number of states already require identification to be shown by voters on election day, but all states should pass such legislation to prevent fraud at the polls. Currently, an impostor knowing the name and address of a registered voter can simply walk in and vote; requiring identification would prevent such fraud. Likewise, a dishonest poll worker could vote ballots at off-peak times, or after the polls close by simply checking of the names of persons on the voter registration list who did not cast a ballot, making it appear as if they had. Requiring poll workers to record the registration number of the identification presented by the registered voter would prevent the poll worker from engaging in such actions.

**2. REQUIRE AN INDIVIDUAL WHO REGISTERS MY MAIL TO VOTE IN PERSON THE FIRST TIME.** This is necessary to prevent individuals from registering numerous times under false names with mail-in registration forms and then requesting absentee ballots to vote. Any exception to this requirement for disabled individuals who cannot vote in person should require the absentee ballot request form to be notarized or signed by at least two witnesses. When an individual can register to vote and vote without any election official ever seeing that individual and checking their identification, voter fraud becomes very easy to commit.

**3. (A) REQUIRE THE ENVELOPE THAT AN ABSENTEE BALLOT IS PLACED IN TO BE SIGNED BY THE VOTER IN THE PRESENCE OF A NOTARY OR TWO WITNESSES WHOSE ADDRESSES AND TELEPHONE NUMBERS ARE PROVIDED;**

**(B) ALLOW ONLY VOTERS TO REQUEST AN ABSENTEE BALLOT, NOT THE VOTER'S FAMILY MEMBERS, SINCE SUCH A PROCEDURE MAKES IT IMPOSSIBLE TO COMPARE THE SIGNATURE ON A REQUEST FORM WITH THE VOTER'S SIGNATURE ON FILE; AND**

**(C) PROHIBIT ANY THIRD PARTIES SUCH AS CAMPAIGN WORKERS FROM DELIVERING ABSENTEE BALLOTS.** Absentee ballots represent the biggest source of potential voter fraud because of the way they are obtained and voted. Requiring notarization or witnesses and allowing only voters to request absentee ballots would make



such fraud more difficult to commit and improve the security of the absentee ballot process. Prohibiting third parties from delivering ballots would prevent alteration of ballots by campaign organizations and other parties.

**4. REQUIRE STATE ELECTION OFFICIALS TO RUN COMPUTER COMPARISONS ON A REGULAR BASIS (AT LEAST MONTHLY) OF THEIR VOTER REGISTRATION LIST WITH THE DEATH RECORDS OF THEIR STATE VITAL RECORDS AGENCY AND CORRECTIONS DEPARTMENT TO DELETE DECEASED INDIVIDUALS AND FELONS WHO ARE INELIGIBLE TO VOTE.**

The administrative procedures in most states for purging deceased voters and felons from the voter roles are inadequate and slow. Requiring monthly computer comparisons would provide election officials with the information they need to begin the administrative procedures required to investigate such records and promptly and routinely purge such persons upon confirmation of the information.

**5. GRANT INVESTIGATIVE SUBPOENA POWERS TO STATE AND COUNTY ELECTION AUTHORITIES AND THE ABILITY TO IMPOSE ADMINISTRATIVE FINES ON VIOLATORS OF ELECTION LAWS.**

Historically, election officials have relied too heavily on candidates themselves to identify election irregularities. Most election boards also do not have the authority to conduct vigorous investigations of voter fraud and must rely on local district attorneys and police forces that are usually heavily engaged in criminal cases and are not interested in investigating or prosecuting voter fraud cases. Election officials should have the investigative powers necessary to investigate such cases and to impose administrative fines for violations.

**6. AUTHORIZE STATE ATTORNEYS GENERAL TO USE STATEWIDE GRAND JURIES TO INVESTIGATE AND PROSECUTE ELECTION FRAUD OCCURRING ANYWHERE IN A STATE.**

Unfortunately, when local candidates or officials are involved in accusations of election fraud or irregularities, local district attorneys are often reluctant to investigate or to get involved for a variety of political and personal reasons. Giving state attorneys general the power to pursue such local cases helps insure that such cases will be investigated and prosecuted.

**7. REQUIRE REGISTRATION AND ELECTION BOARDS COMPOSED OF CITIZEN APPOINTEES IN ALL COUNTIES AND MUNICIPALITIES THAT ARE RESPONSIBLE FOR VOTER REGISTRATION AND ELECTIONS.**

Conflicts of interest can only be avoided if boards made up of citizens are responsible for overseeing voter registration and elections, not elected officials who have to run for office themselves or who have budgetary and supervisory powers over county personnel who run elections. All such boards should also have equal representation from both major political parties and at least one non-partisan member. Accountability can only be insured with a truly representative system and meaningful checks and balances.

**8. REQUIRE ALL COUNTY AND MUNICIPAL ELECTION AUTHORITIES TO HAVE INDEPENDENT AUDITS CONDUCTED OF THEIR VOTE TABULATION SYSTEMS, SOFTWARE, AND SECURITY PROCEDURES ON A REGULAR BASIS.**

In the business world, companies undergo outside audits by independent

organizations to confirm to their stockholders that the companies are truthfully reporting on their financial condition and status. Likewise, election authorities should regularly have outside audits to confirm to their stockholders, the voting public, that their security procedures for conducting elections are sufficient to guarantee free and fair elections.

**9. AUTHORIZE STATE ELECTION AUTHORITIES TO ESTABLISH A NATIONAL, CENTRAL DEATH REGISTRY THAT WOULD RECEIVE INFORMATION ON DEATHS FROM ALL STATE VITAL RECORDS AGENCIES AND PROVIDE EACH STATE WITH THE INFORMATION NECESSARY TO PURGE REGISTERED VOTERS WHO MAY HAVE DIED IN OTHER STATES.**

Even states that have good administrative systems in place to promptly purge deceased voters do not receive information on registered voters who died outside of the state. This problem could be addressed if states set up a central death registry. If such a registry was also sent voter registration information from all fifty states and the states adopted central computerized voter registration systems with the same formats, election authorities could check multiple registrations and prevent individuals from registering and voting in more than one state. Such a system, if properly instituted, could allow an individual to register once and then have his voter registration information follow him wherever he moved.

**10. AUTHORIZE INDEPENDENT, NON-PARTISAN GROUPS, AS WELL AS CANDIDATES AND POLITICAL PARTIES, TO APPOINT POLL WATCHERS TO OBSERVE THE ELECTION AND VOTE TABULATION PROCESS.**

Having an open election process is the key to secure and fair elections and poll watchers are essential for running elections that are free from fraud and manipulation. In addition to having poll watchers in specific precincts, political parties, candidates, and independent, non-partisan groups should be able to designate statewide poll watchers with authority to be observers in any precinct or vote tabulation center.

**11. REQUIRE ALL VENDORS WHO PROVIDE VOTING MACHINES, VOTING DEVICES, COMPUTER SOFTWARE PROGRAMS AND OTHER ELECTION EQUIPMENT FOR PUBLIC ELECTIONS TO UNDERGO INVESTIGATION BY STATE ELECTION AUTHORITIES OF THE FINANCIAL RESPONSIBILITY, SECURITY, AND INTEGRITY OF THE VENDOR.**

Most states have no such requirement for election vendors whose equipment and software is essential for choosing elected officials. Only by investigating the financial responsibility, security and integrity of such vendors can election officials help insure that no vendor will take advantage of their integral involvement in elections to manipulate voting results. This is the same type of investigation that lottery vendors must undergo in most states.

The CHAIRMAN. Thank you very, very much for your testimony and I know you included some other data, at least in the testimony that I saw last evening. And we will make that part of the record.

Mr. VON SPAKOVSKY. Yes, I included in my written testimony some recommendations for Federal and State legislation.

The CHAIRMAN. I saw that. We will see that that is part of the record.

Let me mention, by the way, my colleague from Kentucky is not here with us today, Senator McConnell, but this record will remain open for questions that may be submitted in writing. We will do that for a reasonable period of time so that questions may be asked of you and if you would submit some answers in writing to the Committee. That will be true of all members of the Committee, but I wanted to specifically mention my colleague from Kentucky.

Madam Secretary, thank you for being here today. You have got some great testimony and I really enjoyed reading it last night, very thorough. Thank you for coming.

**STATEMENT OF HON. CATHY COX, SECRETARY OF STATE,  
STATE OF GEORGIA**

Ms. COX. Thank you, Mr. Chairman, and to my good friend, Senator Cleland, thank you for the opportunity to offer testimony as you evaluate and consider this very critical issue of election reform. I am grateful to have the chance to report to you on the progress that we are making in Georgia. You have my written testimony and I will be briefer here in my oral remarks and, of course, I will answer any of your questions.

I am particularly grateful, Mr. Chairman, that you have taken the Rules Committee far outside the beltway to gather testimony and ideas for improvement from real Americans like the first panel that you heard here, to learn about their personal experiences with our inadequate voting system. Those you heard from on the first panel have shared their experience and have identified many of the critical issues that we face in improving election systems.

We do need to work to ensure that counties have the human and technological resources to make sure that the long lines and the delays and the equipment failures that many voters, like Ms. Cribb, experienced simply do not happen again. I know that in my home county now, De Kalb County, my CEO Vernon Jones is dedicated to making those changes happen on the county level.

Registering to vote when you get your driver's license is a wonderful convenience, but it has also added a new level of complexity and potential for error in the registration process. And the problems that Ms. Smith encountered are extremely troubling and the media reports suggest that these problems occurred in nearly every state during the 2000 election cycle. We are looking at ways here in Georgia to re-engineer the registration process at driver's license facilities. My staff recently created a new Internet-based poll locator service so that citizens can verify their registration on line and even get a map to their polling place. But we must also do a better job educating citizens on how they can check their status of registration and correct any problems before the actual election day.

I am particularly pleased that you were able to hear from Mr. Anil Lewis today because difficulties that members of the disabled

community encounter when casting their votes have been too often ignored. One of the real benefits of electronic or DRE voting machinery is that the interface can be readily designed to accommodate the visually impaired and those with other disabilities. You cannot do that on any of the other types of voting equipment available today. Making sure that every Georgian can cast a vote independently and privately and with the assurance that their choice has been properly registered is a goal that I know we can achieve.

We are extremely pleased that you have chosen Georgia as the site for your first field hearing because in this area of public policy, I am pleased to report and appreciate your mention that Georgia is a national leader. In the aftermath of last year's Presidential election, Georgia was the first state in the nation to enact legislation to dramatically reform our election systems. After a careful analysis of the shortcomings in our existing technologies and procedure, our Governor and General Assembly acted swiftly and with nearly unanimous support from both Republicans and Democrats to pass my legislation that makes sweeping changes in the way Georgians will cast and officials will count votes in future elections.

For the first time, this bill mandates a single, uniform system of voting throughout the state of Georgia. And while we are off to a good start, we recognize that there is a great deal of work ahead of us. Our journey has certainly only just begun.

Over the past several months, our new 21st Century Voting Commission has met and begun to help us sort through the thorny issues of voting systems and technology. This Commission recently selected 13 Georgia cities, including Senator Cleland's hometown of Lithonia, to participate in a pilot project to test electronic equipment or DREs in municipal elections this November. And Mr. Chairman, we actually have one of the types of equipment, DRE system, set up over in the corner that will be used in some of the elections in Georgia this November. These 13 cities and towns who will participate in our pilot project represent broad geographic and demographic diversity of our state. We expect no less than five and maybe as many as seven different vendors of equipment to participate in this test, which will provide us with invaluable real world experience with these emerging technologies. Our office will be conducting extensive voter education programs before the test and a comprehensive exit poll analysis after the voting is completed.

And while there is much more study to do, I happen to believe that this new electronic equipment, systems that are flexible, accurate, that accommodate the disabled, that prevent over-voting, that summarize a voter's choice at the end of the ballot and allow for corrections to be made, those that feature a paper audit trail to provide an additional level of accuracy in the case of a recount—these systems offer, by far, the best option for improving the reliability of our election systems. And because these systems which provide these features are readily available today from numerous manufacturers, four or five of which have already been certified in Georgia, it is a mystery to me why any state would not choose to use them.

If we want to modernize elections and election equipment, State and Federal Government simply must provide the resources. And yes, we believe that funding and support from the Federal Govern-

ment is critical. I can tell you from my conversations with state leaders and their review of the great demands placed already on our state budget, we will not reach our goal of modernized election systems by 2004 without significant Federal support.

Mr. Chairman, I was in Washington earlier this year with Senator Cleland when he introduced and made the kickoff announcement for his legislation which I certainly support, and I also want to briefly address your legislation, Senate Bill 565.

I know there are some election officials who resist the idea of any new Federal standards or mandates. They want the Federal dollars, but they do not want any strings attached. I take a slightly different view. I believe that if we are going to invest significant Federal and State dollars in new election systems and voting equipment, we absolutely must make sure that those dollars are wisely spent. And we must make sure that those acquisitions result in the kind of improvements in accuracy and convenience that is our goal in this process.

Indeed, the uniform and non-discriminatory requirements for each new voting system as set in our Senate Bill 565 are precisely the objectives that we have established for our new uniform system in Georgia.

I am happy today to express my support for your legislation, I believe it would be a huge step forward in building the kind of election systems throughout this nation that we can be proud of and in which the citizens we serve can have confidence.

Thank you for the opportunity to share my perspective this morning.

[The prepared statement of Ms. Cox follows:]



Secretary of State  
214 State Capitol  
Atlanta, Georgia 30334

**Cathy Cox**  
SECRETARY OF STATE

**TESTIMONY OF THE HONORABLE CATHY COX  
GEORGIA SECRETARY OF STATE**

SUBMITTED TO THE UNITED STATES SENATE COMMITTEE ON RULES AND  
ADMINISTRATION  
JULY 23, 2001  
ATLANTA, GEORGIA

Mr. Chairman and to my good friend Senator Max Cleland, thank you for the opportunity to present testimony as you address the critically important issue of election reform. I am grateful to be asked to offer some insight into our experience in Georgia as we search for new solutions to make elections more accurate and more convenient for all of our citizens.

I am particularly pleased, Mr. Chairman, that you have taken the Rules Committee far outside the Beltway to gather testimony and ideas for improvement from real Americans – to learn about their personal experiences with our inadequate voting systems. No doubt you and the Committee have, at previous sessions, heard from distinguished and knowledgeable witnesses who have shared their perspectives on the changes we should make to improve voting systems. But on a matter so important, indeed, a right that is so fundamental to each and every American, I believe it is very wise to reach out and listen to and learn from citizens in their own hometowns.

It is with a great deal of pride also that I note that Georgia is the site for your first field hearing. Because, in this area of public policy, I am pleased to report that Georgia is a leader.

In the aftermath of the confusion and chaos of the 2000 presidential election, Georgia was the first state in the nation to enact legislation to dramatically improve and reform our election systems. After a careful analysis of the flaws and shortcomings in our existing election systems, our General Assembly acted swiftly, and with near unanimity, to pass our legislation that makes dramatic changes in the way Georgians will cast and officials will count votes in future elections.

And while I am bragging on my native state, it is particularly important to note the wonderful spirit of bipartisan common purpose that has been the hallmark of this process so far.

Republican leaders in both the Georgia House and Senate supported our legislation. Nearly every Republican voted for it. Our new 21<sup>st</sup> Century Voting Commission, which is working as we speak to sort through the thorny issues of voting systems and technology, has on it an equal number of Democrats and Republicans.

Democratic leadership, including Governor Roy Barnes, Lieutenant Governor Mark Taylor, House Speaker Tom Murphy, House Rules Chairman Calvin Smyre and many others also played a critical role in securing passage of this legislation. Governor Barnes, who understands the potential and promise of technology perhaps as well as any governor in the nation, has made election reform a personal priority as well.

But while Georgia is ahead of most of the nation in coming to grips with these issues, and while our elected leadership is unified across party lines, we recognize there is a great deal of work ahead of us. Our journey has only just begun. And there are serious problems and shortcomings in the systems we still have in place today.

In the weeks following the November election, we prepared a report for the Governor and Members of the General Assembly entitled **The 2000 Election: A Wake-Up Call for Reform and Change**. Based on new data analysis and the views, suggestions and complaints of hundreds of Georgians, from average citizens to party leaders to local elected officials, we took a “warts and all” look at the weaknesses in the current system and proposed a number of improvements to address these concerns.

It is a lengthy report, and I will not today attempt to cover all the topics addressed in it. But let me spotlight just a few of the most critical issues we identified.

The first is the problem of outdated voting equipment. Like most other states, in Georgia we employ an assortment of different technologies, purchased and maintained at the county level.

Nearly half of our counties use lever machines, which were invented the century before last and have not even been manufactured for 30 to 40 years.

Seventeen counties, including several of our largest urban jurisdictions, use the infamous punch card. Nearly 1.2 million Georgians vote with this technology, with shortcomings that were so prominently featured in the news coverage of the 2000 Florida recount.

Two small rural counties still use the paper ballot, while 67 counties use opti-scan equipment. Opti-scan is of course the more modern of the four systems. But while its performance in some counties has been satisfactory, in many other counties we have found that the incidence of undervotes is disturbingly high.

The lack of investment in new voting equipment has significant consequences. We don't ask our police officers to drive patrol cars that are 30 years old. It would be crazy to tell our teachers to use textbooks printed in 1950. But in many Georgia counties we are operating voting equipment that dates from the era of the eight-track tape or even Thomas Edison's Victrola.

A second important problem we identified had to do with the content of the ballot itself. Ballot choices are sometimes redundant and too often confusing to voters. Our new legislation, SB 213, begins to address this issue by streamlining ballot choices and providing voters with clear summaries of constitutional amendment questions.

The 2000 general election had relatively high turnout, and hundreds of citizens we heard from complained about long lines at the polls. Contributing to this problem is the fact that counties struggle with a shortage of qualified, trained poll workers. There's no quick and easy solution for long lines and delays, but it has been proven in other states that implementing an Early Voting system can reduce election day overcrowding. Georgia has not yet implemented such a system, but we are continuing to push for its adoption. We are also looking for ways to assist counties in expanding recruitment efforts to bring teachers, students and community leaders into the pool of potential poll workers. We also hope to take a more active role in assuring that those poll workers receive more and better training.

Georgia has seen an enormous growth in the use of absentee ballots, and with those increases a greater burden falls on election staff that must complete several steps to verify and record those ballots. Some new procedural changes will help speed that process somewhat, but the issue of greater use of absentee ballots is a challenge that counties will continue to face.

Once a relatively homogenous state, Georgia is now home to many thousands of citizens for whom English is a second language. A more diverse, multilingual and multicultural population brings with it special considerations for the conduct of elections. Some counties may soon be faced with the choice of printing ballots and ballot materials in two or more languages or acquiring electronic equipment that readily accommodates the needs of language minorities.

Last year nearly 4.7 million Georgians (including both active and inactive voters) were eligible to take part in the 2000 General Election. Managing such a huge database and assuring its accuracy is a massive undertaking, involving the efforts of not only my office but of voter registrars in all 159 counties. Registrations are collected from six primary sources, with the largest by far being citizens who visit state drivers license facilities.

Such a system is fraught with complexity. As much as we must seek to minimize it, some level of error is inevitable. Georgia is in fact ahead of most states in that we have had a consolidated statewide voter database since the implementation of Motor Voter in 1994. Nevertheless in the 2000 General Election there were too many Georgians who had registered, or at least believed they had registered, at drivers license facilities but who showed up on November 7<sup>th</sup> to find that their name had never been added to the rolls. News reports suggest that similar problems occurred in nearly every state.

Again, there is no magic bullet to insure that every qualified citizen who applies is added to the voters list. But we need to look for new ways to reengineer the process at the drivers license facility and, perhaps most importantly, to educate voters on how to verify their registration before election day.

Finally we looked at the old question of who should run local elections. In 106 counties in Georgia, elections are conducted not by an appointed board of elections and staff trained specifically for those tasks, but rather by elected probate judges. For these officials, conducting elections is but one of 17 statutory duties they are charged by law to perform. As the need for modernization of systems and technology grows, each jurisdiction will have to grapple with the tough operational and political question of who is best equipped to manage elections.



Of all of these areas of concern, some unique to Georgia but others that are common to every state, we have focused our greatest attention on the issue of voting equipment and, more specifically, the incidence of undervotes in the 2000 presidential election.

Like Florida, we had thousands and thousands of ballots that registered no vote in the presidential race. Nearly 94,000 voters that went to the polls in November either did not vote for president, made a mistake that voided their ballot, or did not have their vote counted by a machine.

That is an undervote percentage of 3.5 percent – a number that compares unfavorably with Florida, which had an undervote rate of 2.9 percent – and the overall national rate that has been reported at 1.9 percent.

We had wide variations in undervote rates from county to county. Some counties showed very low undervote totals – one half of one percent or below. Others showed high – very disturbingly high – undervote rates of 15 percent. When more than one in ten ballots register no choice in the most important race, it doesn't take an election expert to know that something is seriously wrong with the system.

Since November we have spent a great deal of time analyzing Georgia's undervote, especially the variations that occur from county to county and from precinct to precinct. Allow me to share with you some of our most important findings:

- There are exceedingly large variations in undervote rates between counties, and even among counties that employ the same voting technology. Punch card counties in general have the highest undervote rates, followed by lever machines and then optical scan systems.
- Although optical scan systems, the “newest” technology used in Georgia, offer satisfactory performance in some counties, in many other locations optical scan undervote rates are extremely high – well above the averages for more antiquated systems. In fact, 21 counties that use optical scan technology had undervote rates of five percent or higher, including three counties that recorded rates of 9, 10 and 15 percent respectively. And the mean average (the average of all the county percentages) of optical scan county undervotes is nearly identical to the now disparaged punch card systems.
- Complete county data is not compiled, but the numbers we have suggest that overvotes, or duplicate votes (where the voter accidentally makes more than one choice in a single contest, or perhaps where the machine improperly reads a duplicate vote that was not in fact made) may represent a very substantial majority of the variance between ballots cast and votes recorded. In the 13 Georgia counties that compute duplicate votes (or overvotes) as a separate category, these inadvertent duplicate selections constituted 61.5 percent of the total undervote.

In addition to our overall analysis of Georgia counties, we were interested in the differences in undervoting that exist by race. So we studied presidential undervote percentages in 92 precincts with 80 percent or higher black registration and compared those to predominately white precincts in the same county.

We found that, across the board, undervotes are higher in predominately black precincts than in white precincts in the same county. We have called this the “undervote gap.”

But the biggest surprise is that this undervote gap was higher in counties that utilized opti-scan systems than in counties that use the punch card.

In punch card counties, the undervote gap was 3.7 percent.

In counties that employ opti-scan, the undervote was 5.4 percent.

So the undervote gap between blacks and whites is nearly two percentage points higher in opti-scan counties.

The reasonable question one would ask when presented with these findings is “Why?” Why are voters in predominately African-American precincts more likely to cast an undervoted ballot, and why is this variation even greater in opti-scan precincts than in punch card precincts?

We simply do not know the answer. But we believe it is clear that these data should give all policymakers pause before advocating universal adoption of opti-scan voting systems. These findings reconfirm our belief that old systems – whether punch card, lever machine or opti-scan – should be replaced with current generation electronic equipment that minimizes the opportunity for the voter to make a mistake – and that has other clear advantages as well.

With this extensive analysis of our election and registration systems in hand, in January we set about crafting new legislation to move Georgia forward in modernizing our systems, reducing voter confusion and assuring greater accuracy in election outcomes. Senate Bill 213 was the result of that effort.

Our legislation establishes a mandate that all 159 counties have in place a new uniform system of voting equipment by July 2004, subject to future appropriations. It also establishes that the state, rather than county governments, will provide the necessary funding to acquire new uniform electronic equipment. The acquisition and maintenance of election equipment, both in Georgia and throughout the nation, has traditionally been the responsibility of local government. We want uniformity – we think it is critical both for public policy and legal reasons. And yet it is simply not feasible or advisable for the state to mandate the purchase of equipment but play no role in its acquisition. Many counties in Georgia have not invested in election equipment in 40 years or more. They lack the budgetary wherewithal to make major new technology investments.

If we want to modernize elections and election equipment, state and federal government is going to have to provide the resources. And yes, we believe funding and support from the federal government is critical. I can tell you from my conversations with state leaders and their review of the great demands already placed on our state budget, we will not reach our goal of modernized election systems by 2004 without significant federal grant support.

Our statutory road map for election reform calls for careful and systematic study of voting equipment alternatives before we proceed with widespread deployment. A new 21<sup>st</sup> Century Voting Commission, which is composed of election officials, legislators and interested citizens, is helping us sort through these issues and will make its recommendation to the Governor and General Assembly by the end of the year.

The Commission has recently chosen 13 Georgia cities to participate in a pilot project to test electronic voting equipment, or DREs, in municipal elections this fall.

These cities and towns represent the broad geographic, demographic and partisan diversity of our state. We expect no less than five, and as many as seven, vendors to participate in this test, which will provide us with invaluable real world experience with these emerging technologies. Our office will be conducting extensive voter education programs before the test and a comprehensive exit poll analysis after voting is completed.

Mr. Chairman, while pundits and pollsters are claiming that public interest in election reform is declining, I can tell you that the political and civic leadership of these 13 test cities are enthusiastic about the opportunity to help evaluate new voting technology.

It seems to me that most citizens simply wonder why casting a ballot remains so difficult and so antiquated when every day they see technology improving their lives in a thousand different many ways.

Allow me to quote from a speech this May to the American Enterprise Institute in Washington:

*“How many of you get cash out of an automatic teller machine? Just raise your hand. Virtually every person in this room gets cash out of an automatic teller machine.*

*How many of you pump your own gas? Almost all of you.*

*How many of you now use a credit card to pump the gas rather than talk to the gas attendant? Almost all of you.*

*How many of you no longer get a receipt? About half of you.*

*Now, I want you to think about that. You're now asserting that the gas pump is smart enough that you don't need a receipt.*

*Now, remember the guy holding up the ballot with the chad in Florida?*

*[Laughter.]*

*I mean, that's the right symbol. The average error rate in voting in America is 1.6 percent. The average error rate for an automatic teller machine is better is better than 6-sigma, which is 99.9999. It's better than that. Now, is there a hint here?*

*We're talking in phase one about bringing government into the 21st century. That's all we're talking about. Just catch up with all the things that occur in the consumer world and occur in the business world today. \*\**

That is from a speech a few weeks ago by the former Speaker of the House, Newt Gingrich. And in this case I believe Newt is right on target.

While there is much more study to do, we believe that electronic equipment – systems that are flexible, accurate, that prevent overvoting and that feature a paper audit trail to provide an additional level of accuracy in case of a recount – offers by far the best option for improving the reliability of our election systems. We are hopeful that the Congress will help provide the resources to assist us in achieving our goal.

Mr. Chairman, let me finally briefly address your legislation, S. 565. I recently returned from the annual meeting of the National Association of Secretaries of State, where, you can be assured, there was plenty of discussion of your bill and other pending election reform legislation.

I can tell you that there are some Secretaries of State who resist the idea of any new federal standards or mandates. They want federal dollars, but they don't want any strings attached.

I take a different view. I believe that if we are to make significant new investments in election systems and voting equipment, we absolutely must make sure that those dollars are wisely spent. And we must make sure that those acquisitions result in the kind of improvements in accuracy and convenience and fairness to all that is our goal in this process. Indeed, the uniform and nondiscriminatory requirements for each new voting system, as set forth in S. 565, are precisely the objectives we have established for our new uniform system in Georgia.

And so I am happy today to express my strong support for your legislation. I believe it would be a huge step forward in building the kind of election systems we can be proud of and that the citizens we serve can have confidence in.

Thank you for the opportunity to share my perspective on this important issue.

**\*\* Creating A Dramatically Better, More Prosperous, Healthier And Safer America: The Case For TRANSFORMATIONAL Government, Politics And News Media Coverage**  
Newt Gingrich at The American Enterprise Institute May 14, 2001.

The CHAIRMAN. That is great. Cathy, thank you immensely, it is excellent testimony and I know Max and I both will have some questions for you in more detail. But thank you very much for being here.

Reverend Lowery, again, it is an honor to be in your presence this morning. We thank you. I want to be careful not to offend anybody, but we saved the best for last in many ways here. There is that Biblical the last shall be first and the first last—

Rev. LOWERY. When I am last, I always include in my presentation opportunity for you to make a contribution in the offering. [Laughter.]

The CHAIRMAN. I think the Secretary just asked us for that as well.

**STATEMENT OF REVEREND DR. JOSEPH E. LOWERY, CHAIRMAN, GEORGIA COALITION FOR THE PEOPLE'S AGENDA, ATLANTA, GEORGIA**

Rev. LOWERY. Chairman Dodd, Senator Cleland, I mentioned to you earlier—I do not think I have had a chance to talk with you much since we were both interested in furthering democracy in Central America and a citizen from Wisconsin was held down there and I went down and prayed for him and met with him and congratulated that government for not having an electric chair hanging over his head, and they invited me to bring him back to the United States, but you went down and got him before I could get there. [Laughter.]

By the time I got to Managua, you were in Washington with the prisoner. It is good to see you again.

Senator Cleland, we think a sense of urgency for this reform is important, because we want it done by 2002 so there will not be any problem sending you back to where you belong.

Good morning, and thank you for the opportunity to add my voice to the millions in this nation who cherish the ideas of democracy and eagerly support election reform. I will not read this testimony, I would like to suggest that the amended version would become a part of the record.

The CHAIRMAN. So ordered.

Rev. LOWERY. The Washington style is to invite you to testify a week later but you have to have your testimony in within 10 hours. And so what I sent in is not—it needed to be amended and I thank you for that.

No aspect of democracy is more sacred than the right to vote and to have those votes counted. In 1965, thousands of us marched from Selma to Montgomery to urge this nation to remove any and all barriers based on race and color and ethnicity related to the right to vote. The denial of the right to vote at that time cast a dark and ominous shadow across the body politic and threatened the viability, indeed the survivability, of our nationhood. It was my privilege to be assigned by Martin Luther King, Jr., with whom I co-founded the SCLC, to chair the delegation that delivered the demands of that march to Governor George Wallace. Among those demands was a call to cease and desist from policies and practices that prevented a goodly portion of citizens from registering to vote, from casting a vote, and even after casting a vote, being certain

that that vote was counted. Martin set the stage for our demands when he said earlier: Give us the ballot and we will no longer worry about basic rights; give us the ballot and we will elect judges who do justly and love mercy; give us the ballot and we will place at the head of southern states governors and senators who not only felt the fang of the human but the glow of the Divine. The nation responded in glorious manner to our march and to our campaign for the right to vote with the 1965 Voting Rights Act. Courageous persons gave their lives in pursuit of that element of justice.

Dr. King could not have anticipated that once we secured the ballot in 1965, that we would be back here in 2001 demanding that our government now assure us that our votes are fairly and accurately counted. What we face today is a Constitutional and spiritual crisis in this country.

At the beginning of this century, indeed millennium, the nation is called upon to respond again to the cries of its people for securing the right to vote by instituting essential reforms, reforms that not only protect the right to vote but assure the American people that our government has done all it can do to see that their votes are counted.

The tragic experience in Florida must be a catalyst for substantive change and reform. Those who are continually calling for us to move on will not cause us to move away from vigilance, and the truth that we cannot ever take the right to vote for granted. The debacle in Florida might have happened in any state, including our own. We could have felt the same frustration and the integrity of our election process would have been subjected to scrutiny and scorn—94,000 voters or more in Georgia did not have their vote counted.

And we must not overlook the fact that there are discrepancies in the rate of undercount among black and white voters. The Southern Regional Council study indicates appalling results which confirm that variations in the reliability of voting systems translated into substantial racial and partisan disparities in the uncounted votes. Nearly half of all the black voters in Georgia voted on the least reliable equipment, punch cards. Less than 25 percent of white voters had to use this inferior equipment. On the partisan side, 61 percent of Georgians who voted for Bush used the more reliable equipment, while only 37 percent of those who voted for Gore were able to cast their votes on that up-to-date equipment.

It is not a southern issue, it is a national issue. And while states must assume responsibility for doing their fair share, the Congress must provide the legislative, moral and fiscal mandates to ensure confidence in an electoral system which is the heart of representative government. It must not be optional, it must be mandatory.

As the world's greatest democracy, we cannot afford to allow the devaluation of the electoral process. It must forever remain a sacred priority. Our advances in space technology must not supersede our determination to assure the efficiency and integrity of our electoral system. Secure ballots are much more essential than smart bombs. Our expenditures in military and space technology must not leave the cupboard bare in the moral imperative to provide the necessary resources to strengthen our basic democratic institutions and give reverence to the right to vote. If we fail to understand

that and to provide the resources, then we blaspheme our devotion to rights guaranteed in the Constitution of the United States.

And so I thank you for the opportunity on behalf of the Georgia Coalition for the People's Agenda, a coalition of major advocacy movements in this state; the Black Leadership Forum, a consortium of major advocacy groups in the nation; and the National Coalition for Black Civic Participation, a common venture in maximizing political participation, to urge the Congress to move with bipartisan forcefulness and a great sense of urgency to hear the cries of the people from sea to shining sea for meaningful election reform.

We support legislation sponsored by Senator Dodd and that by Senator Cleland and Conyers in the House, which includes the creation of national standards for election administration, voter education and for voting machines that represent the state of the art; and upgraded technology that enables voters to check choices and correct errors; that provide for casting of provisional ballots where eligibility is a question; that enhances the integrity of absentee ballots overseas and at home; and that introduces early voting across this nation. As the Executive Officer of De Kalb County said, there is no reason that we should limit our voting opportunity to 7:00 in the morning to 7:00 at night. Why not the whole weekend? Why Tuesday? Why not the weekend when more people are off from work and able to vote? What are we afraid of, that we do not make it so easy as we possibly can for people to enrich this democracy by a higher level of participation?

We must ensure that every jurisdiction is in compliance with the Voting Rights Act of 1965, the National Voter Registration Act of 1993, Voting Accessibility for the Elderly and Handicapped Act and language considerations.

We must provide for intensive training for poll workers and election officials to ensure fairness and competence. We do not know enough about our election officials. I doubt one person out of 1,000 could name a single election official in any county and yet these people are responsible for the sacred right to vote. We must train our officials to expect full turnouts. One of the problems in the last election was they did not expect so many folks to come out. Well we are coming out even more, we are not going to be discouraged by what happened in November 2000, we are going to be invigorated by it so election officials must be trained to prepare for a full turnout. Any preacher who does not expect his church to be full on Sunday morning has not prepared a good sermon. [Laughter.]

We must expect the place to be full. We must provide standardization and enforcement of re-enfranchisement policies and procedures to prevent the denial of voting rights from ex-offenders.

We must provide standards and policies for updated voter rolls and prevent illegal purging.

And we must provide resources that enable states to upgrade their systems that will empower citizens to exercise their rights and fulfill their dreams for a nation that lets justice roll down as waters and righteousness as a mighty stream.

It is not just a matter of technology, it is also a matter of technology. This must remain a government of, for and by the people. There must be levels of accountability.

I am shaken because we worked so hard to turn out the vote and to reach young people who lack interest in the democratic process. I cut a rap CD during November. I do not know whether you had the privilege of hearing it or not—

[Laughter.]

Rev. LOWERY. I think it made the top 10—in my family anyway.  
[Laughter.]

But I worked with some rappers and we played that rap song and young people turned out in numbers, and I almost wept when they came back and said you asked us to lift every voice and vote. They did not hear our voices, they would not even accept our vote. They have turned away in disgust and they say they will not be back again. Well, we must work with them and you must help assure them, in the Congress, that their votes are important and that you are going to institute those reforms that will let justice roll down as waters and righteousness as a mighty stream.

And this nation under God will embrace a theology that guarantees the right to vote and the right to have those votes counted as we introduce a technology that facilitates that process.

Thank you very much.

[The prepared statement of Rev. Lowery follows:]



Testimony of the Rev. Dr. Joseph E. Lowery  
Chairman: Ga. Coalition for The Peoples Agenda &  
The Black Leadership Forum

U.S. Senate Committee on Rules and Administration  
In Support of Election Reform  
Monday, July 23, 2001

Chairman Dodd, Senator Cleland, and other distinguished members of the committee, good morning, and thank you for the opportunity to add my voice to the millions in this nation who cherish the ideals of democracy and eagerly support election reform.

**No aspect of democracy is more sacred than the right to vote and to have those votes counted!**

In 1965, thousands of us marched from Selma to Montgomery (Alabama) to urge this nation to remove any and all barriers to the exercise of these rights based on race or color, or ethnicity. The denial of the right to vote cast a dark and ominous shadow across the body politic and threatened the viability, indeed the survivability of our nationhood. It was my privilege to be assigned by Martin Luther King, jr. to chair the delegation that delivered the demands of that "march" to Governor George Wallace. Among those demands was a call to the state of Alabama to cease and desist from policies and practices that prevented a goodly portion of the citizens of that state **from registering to vote, casting a vote, and even after casting a vote being certain that the vote was counted.** Martin Luther King, jr. set the stage for our demands when he said: "*Give us the ballot and we will no longer worry..about our basic rights; give us the ballot and we will elect judges who will do justly and love mercy; give us the ballot and we will place at the head of southern states governors who....have felt not only the fang of the human but the glow of the Divine.*" The nation responded in glorious manner with the 1965 Voting Rights Act. Dr. King could not have anticipated that once we secured the ballot in 1965, that here in 2001, we would be demanding that our government assure us that our votes are fairly and accurately counted.

At the beginning of this new century, indeed millennium, our nation must respond again to the cries of its people for securing the right to vote by instituting essential reforms- reforms that not only protect the right to vote but assure the American people that our government has done all it can to see to it that their votes are counted!

The tragic experience in Florida in the November, 2000 election must be a catalyst for substantive change and reform. Continuous calls for the nation to *move on*, will not cause us to *move away* from vigilance, and the truth that we can never take the right to vote for granted. The debacle in Florida might have happened in other states including our own state of Georgia. If the vote had been closer in Georgia between Bush and Gore, we could have felt the same frustration, and the integrity of our election process subjected to scrutiny and shame. Nearly 94,000 voters in Georgia did not have their votes counted.

There are discrepancies in the rate of undercount among black and white voters. In fact, the Southern Regional Council's (SRC) study indicates appalling results which confirm that variations in the reliability of voting systems translated into substantial racial and partisan disparities in uncounted votes. Nearly half of all black voters in Georgia (46.23 %) voted on the least reliable equipment, punch cards. Less than 25% of white voters had to use this inferior equipment. On the partisan issue, 61% of Georgians who voted for Bush used the more reliable equipment, while only 37% of Gore voters were able to cast their votes using these machines.

While states must assume responsibility for doing their fair share, the Congress must provide the legislative, moral and fiscal mandates to insure confidence in an electoral system, which is the heart of representative government.

As the world's greatest democracy, we cannot afford to allow devaluation of the electoral process- it must forever remain a sacred priority. Our advances in space technology must not supercede our determination to assure the efficiency and integrity of our electoral system. Our investment in **smart bombs** must not diminish our commitment to **secure ballots**. Our expenditures in military and space technology must not leave "the cupboard bare" in the moral imperative to provide the necessary resources to strengthen our basic democratic institutions and give **reverence to the right to vote**. We must understand that failure to provide those resources is to blaspheme our devotion to rights guaranteed in the Constitution of these United States.

On behalf of the **Georgia Coalition for the Peoples Agenda**, a coalition of major advocacy movements for justice in the state; the **Black Leadership Forum**, a consortium of major advocacy groups in the nation; and the **National Coalition for Civic Participation**, a common venture in maximizing political participation....we urge the Congress to move with bi-partisan forcefulness and a great sense of urgency to hear the cries of the people from sea to shining sea for meaningful electoral reform:

**Creation of National Standards for Election Administration, Voter Education, and Voting Machines (state of the art, DRE, precinct based optical scan,etc)**

**Upgraded technology that enables voters to check choices and correct errors**

**Provide for casting of Provisional Ballots where eligibility is a question**

**Enhance integrity of absentee ballots**

**Ensure that every jurisdiction is in compliance with Voting Rights Act of 1965,**

**National Voter Registration Act, 1993, Voting Accessibility for Elderly,  
Handicapped Act**

**Provide for intensive training for Poll Workers and election officials to insure fairness and competence**

**Provide standardization and enforcement of re-enfranchisement policies and procedures to prevent denial of voting rights for ex-offenders**

**Provide standards and policies for up-dated voter rolls, and prevent illegal purging**

**Provide Resources that enable states to upgrade systems that will empower citizens to exercise their rights and fulfill their dreams for a nation that lets "justice roll down as waters and righteousness as a mighty stream".**

(Attached: VOICES OF THE ELECTORATES GUIDING PRINCIPLES  
NATIONAL COALITION on BLACK CIVIC PARTICIPATION, Ph 202 659 4929)

Rev. Joseph E. Lowery  
Ga. Coalition for The Peoples Agenda  
Atlanta Life Bldg  
100 Auburn Ave. NE Suite 102  
Atlanta, Ga. 30303

Phone 404 653 1199  
699 0261  
Fax 404 653 0086; 404 691 6296



### ELECTION REFORM GUIDING PRINCIPLES

I, \_\_\_\_\_ at \_\_\_\_\_ hereby pledge to:  
(name) (title)

#### Value the Voice of the People

- Publicize Voter's Bill of Rights to empower voters with knowledge of their rights at the polls.
- Ensure that every voter has equal, fair and uninhibited access to a polling place regardless of the voter's race, ethnicity, sex or physical handicap.
- Provide adequate training for all poll workers and election administrators to ensure fair, equal and uniform treatment of all voters.
- Guarantee bilingual ballots for language minorities and accessible voting machines for the disabled.

#### Ensure Fairness by Enforcing the Law

- Ensure every jurisdiction is in full compliance with the Voting Accessibility for the Elderly and Handicapped Act, the Voting Rights Act of 1965, the National Voter Registration Act of 1993, and the Civil Rights Act.
- Identify and eliminate practices that are intimidating to voters.
- Ensure a mechanism is in place for citizens to assist in the review and oversight of all aspects of the election process.

#### Promote Equality by Increasing Access to Democracy

- Ensure that no registered voter is turned away because of list maintenance procedures or because of a dispute over the registration rolls.
- Prevent the wrongful purging of voters from the rolls.
- Enhance the integrity and timeliness of absentee ballots for all citizens, at home or abroad.
- Reform voter re-enfranchisement laws so Americans disenfranchised by state action can regain the right to vote.

#### Guarantee Equity by Upgrading Technology

- Replace punch cards and other obsolete voting equipment with state-of-the-art precinct-based optical scan or Direct Recording Electronic (DRE) voting systems.
- Put in place a statewide database of registered voters that is accurate and easily accessible to election officials and the public.

\_\_\_\_\_  
 Signature

*\*Guiding Principles adopted from Voices Task Force Member organizations, including, Center for Policy Alternatives, NAACP and People for the American Way Foundation.*

The CHAIRMAN. Here, here. Reverend, thank you very much. You know, I was going to ask some questions, but I am not going to follow that. I will ask Max, my good friend, to pick up on that.

Rev. LOWERY. Well, we could just pick up the offering.

[Laughter.]

The CHAIRMAN. My good friend, Max.

Senator CLELAND. Thank you very much, Mr. Chairman.

Mr. Jones, let me just start with you. Can you tell us a little bit here how important Federal funding is to what you have got going in De Kalb in your pursuit of reforms there. And then tell us a little bit about what you have got going with your Board of Elections or with your supervisors in terms of training or more precincts or things like that or improved technology.

Mr. JONES. Thank you, Senator Cleland.

I do have with me Linda Lattimore, who is our Elections Supervisor in De Kalb County.

When I got elected back in 2000, I campaigned on a fresh start and that is exactly what we brought to county government, challenging our employees to think outside of the box. And one thing I mandated too, Senator, was customer service training for every single employee in De Kalb County's government because that is important. Because as we deliver services, we have to be mindful that those services that we deliver are paid for by the citizens, or the taxpayers.

Senator, when you look at all our challenges, whether it is transportation, dealing with this heavily populated urban county—as a matter of fact, there are more people in my county than many states in this country. So we are dealing with transportation issues, we are dealing with providing those basic services, parks and recreation. We have just had to do a bond referendum to get money to preserve and acquire green space because that is a quality of life.

Our monies are limited, just like the monies on the State level and the Federal level. Our economy, of course as you know, there are some challenges. Our revenues this year are not where they were last year. So certainly any funding or additional resources that we can get from the State and Federal Government, that will be helpful.

One of the things that we are going to focus on, clearly, is training those poll workers that we get. First of all, train our employees and then train the poll workers with customer service; also, how to deal with those special situations. We are going to use our public access television station to educate more of our voters or our taxpayers or our citizens on the voting process, where to call to get information ahead of time, who can you talk to if you are in a situation where you are physically challenged or impaired in some sort, where we can know exactly who you are, how many there are out there, where you need to be, to make sure we have people in those precincts that can accommodate you.

All of that is a part of thinking outside of the box. We were caught asleep, like many of us were across the country in terms of the turnout. We all talked about we wanted a drive, our voters to come out and we criticize our voters sometimes for not voting. Well, Senator, as you know, as many of us, this past election, we got

slapped back in our faces because we were told, you know, you want us to come out but our vote cannot be counted.

We want to make sure that every voter is treated with top quality customer service. We want to do things that can reduce that line. One of the issues we saw, Senator, there were a lot of uncontested races on the ballot, which made the ballot even longer—they were uncontested and they had already surpassed a deadline where there could not be a write-in candidate. Just that alone could have reduced the ballot.

We want to be able to educate our voters on those referendums that appear on the ballot in lay person's terms so they can understand that and they can have a better feel for it. We want to disseminate more information. We want to be user-friendly and we want to use every available resource that our county has and certainly it makes a difference by having additional resources.

You know, Senator, my dad, when he returned from World War II, he was not able to vote, he could not go down and vote. When I was born in 1960 and the Voters Rights Act of 1964 and 1965 and then when I went to the polls to vote at 18, I was welcomed by a smile and I was welcomed, look, you have a Constitutional right. But imagine coming that far, but getting to the polls, casting that vote and that vote not being counted. We want to make sure that every citizen understands the voting process, the equipment and we have good people in place.

Senator CLELAND. Where are you now in terms of moving beyond the votomatic? De Kalb is the second largest county in the state that uses it, right behind Fulton. What is your time line in terms of replacing the votomatic with some other form of technology? Is it basically a question of financial support now for you, before you replace that?

Mr. JONES. Well certainly that is one of them. But one of the crucial questions, Senator, is what equipment we are going to use. I mean there is so much out there. That is why we are—in De Kalb County, we have two pilot sites, your hometown of Lithonia and Decatur. And we will be looking at equipment. That will give us an opportunity to see what equipment will best serve our citizens.

The next step is the financial cost of that to cover our entire 167 precincts. And certainly that is when the financial responsibility has to be met. And we are closely working with our Secretary of State Cathy Cox, our Governor and the legislature, but certainly our delegation in Congress too.

We will know fairly quickly right after that election, come November, which equipment would be better for us and the financial cost, so we can submit that information to the appropriate government agencies.

Senator CLELAND. Thank you very much.

Mr. Spakovsky, you are on the Election Board with Fulton County, is that correct?

Mr. VON SPAKOVSKY. That is correct.

Senator CLELAND. And you have got the largest county in the state, the largest county with the votomatic system.

Mr. VON SPAKOVSKY. Right.

Senator CLELAND. Where are you in terms of moving beyond the votomatic system and investing in new technology?

Mr. VON SPAKOVSKY. Senator, I am proud to say that last July—so I am talking about July of 2000—at a time when neither Congress, nor anyone in our state legislature was paying any attention to this issue, we realized on our Board that we needed new equipment. And we took a look at the kind of equipment that was available and in October of last year, prior to the November election, my Board sent a request to our Board of Commissioners asking them to give us the money to purchase new equipment. And what we asked for at the time was precinct count optiscan equipment.

As you know, there are several studies that have come out recently, including the Cal Tech study, which have recommended that because it has the lowest under-vote rate of any equipment used, including in comparison to electronic voting equipment.

I, fortunately—I and the other members of our Board—did not have to do any work convincing our Board of Commissioners they should purchase new equipment after the November election. But I have to tell you that in December, they would have vote on this, on our request in the beginning of January in order to give us the money for this year to purchase new equipment, and unfortunately what happened is in December, the air waves began to be filled with all the news about all these bills being introduced in Congress that would provide Federal grants. Our Secretary of State Cathy Cox went forward with a great idea to the State General Assembly, to try to convince them also to come up with the money and our Board of Commissioners did what county commissioners usually do when they suddenly see that there might be Federal or State money coming down the pike. They decided not to approve our request because they wanted to see if they were going to get any money from the State legislature or from the Federal Government.

I was in Washington in May, I testified before one of the other Committees there, and when I mentioned this to Senator Joe Liebermann, he kind of rolled his eyes at me and said, the chances of getting any Federal money this year are pretty slim and there is no telling when these bills may get through.

So I have to tell you that last week, my Board of Elections went back to the county commissioners and asked them to reconsider and to approve our budget request to lease precinct count optiscan equipment so that we can have it in place by the July 2002 primaries, because even if the State of Georgia is successful, Secretary Cox is successful, we are not getting new electronic equipment until 2004 and frankly, we do not want to go through another major election with punch card equipment. So I am hoping that they will approve our request so that we can have precinct optiscan equipment leased by the next election.

Senator CLELAND. Thank you for continuing to press forward in that cause.

How important is it for you and your county to have some Federal funds to, in effect I guess, accelerate what you have already committed to do?

Mr. VON SPAKOVSKY. Well, I think it is very important. As Commissioner Jones has said, county commissions have a lot of priorities and needs when they are deciding on their county budget, and any help from the Federal Government will accelerate the process,

particularly if counties decide that they want to go to electronic equipment instead of optiscan equipment.

When we went out and looked at the market, we discovered that that was about five times as expensive as precinct count optiscan equipment. So that takes a lot more money. Also, if you want to go to a system like what the Cal Tech/MIT project recommended. One of the things they said in their report—and I think it is a very good idea—is that in order to solve some of the problems at precincts with voter registration, they recommended that each precinct have not just a telephone so they can call in and check on a problem, but that they have a PC, a computer that is hooked up by modem so that they can check directly the voter registration list if there is a problem. Again, that is a lot of equipment that costs a lot of money, not just buying the PC, but making sure that you've got a network at every single precinct where you can hook into that and do it. Again, all of that takes money and with the kind of priorities the county governments have, any money from the Federal Government will help speed that up.

Senator CLELAND. Thank you very much.

Madam Secretary, could you tell us a little bit about the test that you are going to conduct this November, this fall, and what you expect out of that and maybe some recommendations you might put forward to the Georgia legislature in January?

Ms. COX. The pilot project we will be doing in Georgia this November will involve 13 cities scattered all over the state and we hope to use as many as seven different manufacturers' types of equipment. The one in the corner is one of the seven that are currently going through certification in Georgia. We want to use as many as we can, so that we get as varied an experience and exposure to the systems, to the companies, to the educational efforts, to the voter response—the whole process. But we will actually—the State legislature funded this pilot project, so the state will actually pay to lease this equipment and put it in these 13 cities and have the voters actually vote in a binding form to elect their municipal officials this November in those 13 cities.

Our legislation that calls for the pilot project also authorizes us to put together what we have labeled the 21st Century Voting Commission, which is a bipartisan commission composed of legislators and election officials and myself, to oversee the pilot project and to work on the voter education efforts, to work on the evaluation efforts. We are contracting with the University System in Georgia to do comprehensive exit polling so that we get good data on the backside of how voters really like this equipment, what worked, what did not, what was difficult, what was easy, from both a voter standpoint and the election official standpoint and we get some good hands-on experience with the various companies who make this equipment to find out who does a good job, who has the resources to put out a first rate product and service.

After that pilot project, this voting commission will help us evaluate the good and the bad and make a recommendation to the Governor and General Assembly on which type of equipment we would like to put in place for all Georgia counties. As you well know, Georgia has 159 counties and we purposely wrote this legislation to say that all of those 159 would be on the same system,



because we cannot have any effective voter education in this state until people are voting on the same system. Not to mention that we are also currently under a lawsuit which holds up the equal protection standards of the Bush v. Gore lawsuit that says we must have equal standards for counting those votes.

We will move toward putting that equipment in place in all those 159 counties and we wrote into the legislation that the State would pay for it rather than the county, because number one, as you know, being a former Georgia legislator, the legislature was not likely to pass on an unfunded mandate to the counties. Many of our 159 counties can barely afford to pay the light bill at the courthouse, much less invest in new equipment. And even those that can afford it, have other priorities. So we felt like the only way we could ever achieve uniformity was to have the State pay for it. It is very important for the State to get assistance from the Federal Government, but we also did not want 159 De Kalb Counties to have to apply for Federal grants when we were all doing the same thing.

But we fully intend in 2002 to get one portion of the counties, preferably the punch card counties, first, to replace them with new equipment, get more of the equipment in 2003 and get the remainder in 2004, so that by the Presidential election next, we have every county in Georgia on the same system.

Senator CLELAND. That would be an awesome accomplishment. I am going to work with you and members of this Committee and members of the Senate to do everything I can to make sure that happens.

Mr. Jones mentioned something that was kind of disturbing, that De Kalb did not get notified about a lot of information that was—registration information—that should have been coming their way. You mentioned the State Department of Motor Vehicle stalled. Where are we on that? I mean it is obvious—it was painfully obvious when we went through the whole Motor Voter exercise that those of us who were very concerned about the theology and the concept and were all worked up about that, of one man-one vote, and making every vote count, that you take that to another agency, Motor Vehicles, and they are excited about the theology of motor vehicles, they are not excited about the theology of voting. And we understood that.

Is there something there in the Motor Voter, administratively, legislatively, whatever, that—where there is all of a sudden bottleneck in an agency that is not excited about the theology that we are all excited about, that somehow is a cog in the system that is not working? Did the Motor Vehicle Department stall out and therefore end up with egg on the face of our registrars out there?

Ms. COX. Part of the problem is the actual design of the system. As you know, because when you were Secretary of State, you started this system and started the process, and Georgia was one of the first states in the nation to get Motor Voter up and running and to centralize our voter registration system. But part of the problem is that the then Public Safety Department called up the Secretary of State's office and said we are going on line with this system next week, and your staff had no opportunity to help design that system and we have had no opportunity since then. And the problem, with-

out getting into too much detail, is currently when you go into a Georgia driver's license office, you tell them you want to register to vote, but you never sign anything, you never touch anything, you get no feedback at the driver's license office. You just hope that that license examiner entered a yes when they may have accidentally hit no or something like that. You do not get any kind of information or feedback there. You remember that you told them you wanted to register to vote and then a few weeks pass and you do not get anything in the mail, but you do not even know to look for anything in the mail. You show up at your neighborhood precinct and find out you are not registered to vote.

The good opportunity we have in Georgia right now is that this July 1, the driver's license apparatus was moved into a new state agency, a new Department of Motor Vehicles, with all of the tag and title—everything related to motor vehicles as of July 1 is now in a new state department. And so we have already begun to work with the new commissioner and the new staff there and we very strongly informed them that the whole system needs to be overhauled so that perhaps a voter signs an electronic keypad at a driver's license office so, number one, we could get all their signatures in an electronic format, to better use, but that they also get some kind of printout on site, "you have applied for voter registration, if you do not get a voter card in the next two weeks, call this number," or something, so the voter knows what is going on here and does not just rely on their memory.

So there are a lot of kinks and there were some actual computer malfunctions prior to the November election where a number of people registered to vote and got a voter card in the mail, but then showed up at a polling place and their name was not on the list. So a lot of problems need to be addressed.

Senator CLELAND. Thank you very much.

Mr. VON SPAKOVSKY. Senator, could I address that issue?

Senator CLELAND. Yes, sir.

Mr. VON SPAKOVSKY. This is a related problem and it is caused by Motor Voter but it is unintentional. As Commissioner Jones mentioned, I think De Kalb County had problems with third party organizations like fraternities, who conducted voter registration drives and did not turn in the materials. We had a similar problem in Fulton County and we did not have that problem really before Motor Voter, and let me tell you why.

Before Motor Voter, when a third party organization, whether it was the NAACP or the NRA, if they were going to conduct a voter drive, they had to do two things—one, they had to come to the local county department and whatever individuals at the group who were going to conduct the voter registration drive, they had to undergo training. We had a two-hour seminar, very easy to get to, in which we would train them on how to do the registration, what to look for, so that they knew what they were doing. The second thing was then they would tell us how many voter registration forms they needed and we would give it to them, whether it was 100 or 1,000. At the end of the voter registration drive, that organization had to bring back to us the same number of forms we had given to them. If it was 1,000 forms and they had gotten 500 filled out and 500 not, they had to bring us back 1,000 forms. And if they

did not bring it back, then we knew that there was some kind of problem and we could follow up with the organization.

Because of Motor Voter, we cannot require that any more. Any group can come in, pick up as many voter registration forms as they want to, go out, conduct a voter registration drive and if they do not turn them in, if all of the forms end up sitting in a box in somebody's trunk because they forgot to mail them in, we are not going to know about it until election day when people start showing up at the polls saying well, I registered to vote, why can I not vote. And I do not think that third party organizations like that ought to be able to conduct voter registration drives unless they have had minimal training and there is some way of supervising to make sure that they get those forms back to us. And that is, I think, a problem that we have encountered also.

Senator CLELAND. That is a good point.

Reverend Lowery, we are just delighted to be with you. I was a young intern in the summer of 1965 on Capitol Hill when I went over and watched President Johnson in the rotunda of the Capitol in front of Lincoln's statue sign the Voting Rights Act of 1965. The enthusiasm of that moment still rings in my memory as we speak. There was an excitement about the reverence, as you put it, for the right to vote and that we had come a long way.

I am just as frustrated as you are here in 2001 that in many ways we are going back over some of the same ground. But I am encouraged by some of the testimony today.

Can we talk a little bit about election day itself? I know it would cost a little more money if the polling hours were extended, but is there any merit, in your mind for the average Georgian out there, for the polls to be extended from say 7:00 in the morning to 9:00 at night, or 6:00 a.m. to 9:00 or something like that? Is that something that is going in the right direction? Do you have any reaction to that?

Rev. LOWERY. I think, as I said in the testimony, I think we ought to consider weekends, we ought to consider two or three days leading up to the last day. I think there is something theologically deficient in our unwillingness to facilitate the voting process. I do not know why we are reluctant—well, I do know why, but we really ought to deal with that. I remember when we were trying to register to vote, it was not as much racial as it was—well, it was racial too, but there were politicians who did not want a whole lot of voters and the smaller the electorate, the better chance they had of getting elected, re-elected, re-elected. The seniority system—of course, I have changed my mind a little bit on the seniority system—

[Laughter.]

Rev. LOWERY [continuing]. Now that we have got some African-Americans in the Congress. If the election had gone the other way, Charlie Rangel would have been Chairman of this Rules Committee over in the House. But nevertheless, we ought to facilitate the process of voting and I think everything we can do to do that enriches or democracy.

When a small percentage of people vote, you get back to oligarchy and aristocracy, not democracy. I think the participatory element ought to be pushed at every level of government and we

ought to make it easy to vote. And we ought to spend the money, I think it is worth—it is more important to spend the money on that than it is to play golf on the moon. I like to play golf, but I really do not see the multi-billion dollar expenditure so somebody can swing a pitching wedge on the moon to no avail.

We need to reorder our priorities, I think, to make the expenditures for enriching the democratic process a top priority. And I think the American people are prepared for that and if there is any positive thing out of what happened in November 2000, it is that we cannot take this right for granted, that we have to make it a top priority, that it is at the core of our value system in terms of democracy. And I would urge Senators like the two of you and your committee and so forth to be aggressive, be bold, be adventurous, take chances, give us the leadership that we need to wake this country up. This was a wake-up call and if we do not wake up now—I said in Tallahassee on inauguration day, we had a service in Tallahassee on inauguration day and I am not—we have moved on in terms of the presidency, but we have not moved on in terms of truth and progress and enriching our democracy.

The bridge that is going to take us over the troubled waters of the new millennium are in peril, threatened and weakened by corruption in government. And I think that flawed systems are a form of corruption. I think a failure to get the most efficient equipment, I think that is a form of corruption in government. And African-Americans have been the chief victims of corrupt government through slavery, segregation. Slavery was a public policy, you know. Say amen. So we have been the chief victims of public corruption and now I think we can address it because in this last election, we were not alone, a lot of white folks' votes were stolen and corrupted, and now maybe we can get down to the business of correcting the flaws.

I think we have got to put—unless we are willing to put our money, you know, our love is flawed. My wife taught me that a long time ago. [Laughter.]

If you are not willing to put the money where your love is, there is something flawed about your love. And I think this country needs to look at its priorities from a spiritual perspective, a theological perspective, and seek first the enrichment of our democratic process and then the technology can follow.

Senator CLELAND. Thank you very much for those eloquent words.

Mr. Chairman.

The CHAIRMAN. Thank you very much. Yes, Mr. Jones.

Mr. JONES. I did want to do a footnote to the Senator's question to Reverend Lowery.

As I mentioned in my testimony, I talked about expanding that window, between now and 2002, Senator, we are going to add another 15 to 20 polling places in our efforts to reduce the line, but the thing about voting, you cannot always anticipate the amount of turnout. And when you look at a person's voting pattern or the traffic pattern that particular day, again, that 12-hour window, we can change or update the voting apparatus, but still there is a human interface with that voting apparatus, still we are going to have to educate and train voters and the election team, employees

if you will. But with all that being said, we still have to look at making it convenient because when it is not convenient, that deters people from voting or their experience, their initial experience, if it is an inconvenience, they will not come back.

And so again, I did want to re-stress if you could look at that or have more debate about that—I know in our own legislature, and our Secretary of State can talk about it more, but there have been many attempts to expand the window and to expand the time frame to vote. And it has all been all but bottled up in committee or never got out of committee, as you know. So that is something that we certainly think could really help in a number of ways, and that is expanding that window.

Senator CLELAND. Thank you very much.

The CHAIRMAN. Well, let me thank you, Max. A lot of good questions have been asked.

First of all, I should have noted, I just wanted to also express my gratitude to Governor Barnes, with whom I had a nice breakfast this morning, and his leadership. And Madam Secretary, you pointed that out as well, and I saw Attorney General Baker as well, who I know has also been interested in this subject matter.

But I mention Zell Miller, our colleague in the Senate, who is not with us today but we talked about being down here and was a co-sponsor of the Dodd bill, Dodd-Conyers bill. I am very grateful to Zell for his leadership and obviously the former Governor of this state is very much aware of events here.

I spoke a couple of weeks ago at the National Convention of the NAACP on this issue and there was a strong delegation from Atlanta at that convention and my old colleague in the House, Andy Young, who I see from time to time, and Julian Bond—I mentioned Maynard Jackson was here earlier—this state has had such a rich political tradition. I mentioned Richard Russell, for whom this building is named, but also Sam Nunn, with whom I served in the Senate for a number of years.

President Carter, we talked about elections overseas and how you can have a conversation about elections and not mention President Jimmy Carter and his strong interest in—I think, Max, you mentioned last night some 30 different elections that he has observed and monitored around the world. That may be a low number. In fact, Reverend Lowery, I was with President Carter in Nicaragua to monitor the elections there more than a decade ago, and he is working on a commission now with President Ford, going to make some recommendations, through the Carter Center and others. So I should have mentioned his name right at the very outset for his longstanding commitment to this process of better elections.

I note with some interest that there are many so-called third world countries that are ahead of us. I read recently a report on the election process in Brazil, which had serious problems, Max, and has now come up with a system of voting in that country which is virtually fraud free, gets immediate results and there, they have a significant percentage of their population which are illiterate and yet they have a system that allows people to vote based on the colors associated with parties, even some animal figures associated with political parties and nations, and where screens actually have the faces, pictures of candidates themselves,

so after they have voted, they can verify that that is the picture of the person for whom they wanted to vote.

It is sad commentary in a way that countries that are nowhere near as advanced as we are technologically are doing a better job than we are. I read, I think it was your testimony, Madam Secretary, that talked—or one of your testimonies—that talked about how we go to a gasoline station today and put in credit cards and get receipts to verify what we have done. ATM machines, I mean this goes on and on, of our ability today to conduct activities that only a few years ago we could not have dreamed of and yet we still are confronting a process by which we elect local, state and national figures that is in some cases as old as the republic. When you look at the map of how people vote on paper ballots in some counties around the country.

I want to just make a couple of points, if I could. First of all, on the issue of voter fraud, which is obviously an issue we need to address, but too often voter fraud is equated with voter error. And there is voter error, someone showing up at the wrong polling place, someone that has an improper address and so forth is quoted as voter fraud. And that is not voter fraud, that is voter error, and a lot of it gets anecdotal and we certainly need to address it, but it becomes a red herring, in my view, when we focus attention on that at the expense of creating a system that allows for people to vote or to register to vote in a more accessible way.

I noted, Max, last night you and I over dinner with your mother and father that I think you mentioned to me in passing that as a result of the Motor Voter legislation here in Georgia, there are well over a million additional people who were put on the registration rolls. And I noted, just as a result of studies done by the Federal Elections Commission, in June of this year, the report shows that the statute is actually pushing many jurisdictions to confront problems and there are lists of maintenance procedures.

In the last two years, over 13 million names were removed from voter registration lists and another 18 million names are deemed inactive and subject to removal in 2002 if those persons do not vote. This is all as a result of the Motor Voter legislation. And you, Madam Secretary, pointed out some of the problems with this, it is not a perfect system and needs to be worked on, but I hope we do not digress from what needs to be done in making the voting equipment accessible to people user-friendly by trying to divert into an area that needs some attention, but is not as dominant, in my view, as the others.

Let me ask in that regard, because I come back to this point, and there is the difference between the bill that Senator McConnell has introduced and the one that I have introduced in one major way—there are a lot of similarities. We both have commissions in the bill, we talk about provisional voting and these other matters. And there is the mandated issue. And I am not enthusiastic about mandates, I do not think it is something we ought to jump to, but Mr. Spakovsky, you mentioned in your testimony, and I quote you, you say that “Elections are local events, they are community events. When an election involves federal officers, it is a communal act of residents of a county or city to choose their representatives. That is how it was envisioned by the founding fathers, for good reason.”

How do you address the question—work on an assumption for a second that the people in my state of Connecticut go out and vote on the Presidential race and do so in a system that is fraud-free and accessible to all, and vote their electorates for the President. And in some other jurisdiction, there is a system which is either fraudulent or is so user-unfriendly in a way that the votes in that community are undercounted or people are not allowed to vote when they should have the right to vote. It is a local event in that jurisdiction where those problems have persisted, but can you honestly make the case that the people in my state have not been adversely affected by a decision made in another jurisdiction that diminishes the value of that voter's vote in Connecticut? How do you make that case that it is purely a local event, without having national implications when it comes to a Presidential race or election to the national assembly, the Congress of the United States?

Mr. VON SPAKOVSKY. Well, Senator, with due respect, I think you are mischaracterizing my testimony. What I have said is that I do believe there is room for the Federal Government in this, in particular I think there is a need for establishment of national and very uniform standards for the kind of equipment that is used, for upgrades to voter registration systems.

The CHAIRMAN. We agree on that.

Mr. VON SPAKOVSKY. We agree on that, but I do not believe that the Federal Government should be passing statutes that say, for instance, that every state in the country will use this particular type of equipment.

The CHAIRMAN. Oh, you and I have no disagreement on that—none whatsoever.

Mr. VON SPAKOVSKY. And ask to—it is already a violation of law for someone who has a right to vote not be allowed to vote. I mean that is against the law, not just federally under the Voting Rights Act, but that is certainly against the law in this state. And actions like that can be prosecuted and I can tell you that when my county election board is made aware of violations of the law like that, we refer and have referred actions like that to our county prosecutor for prosecution.

The CHAIRMAN. Let me come back to it, I hope I made that clear, when I talk about a national standard, I do not mean a national machine. I am not talking about a national—this particular piece of equipment over here may be a very fine piece of equipment and work very well in Georgia. I have not looked at the equipment, but people in my state may find that unattractive to them, for whatever reason. I do not want to force voters in Connecticut to have to use that particular piece of equipment. I would look them to make sure the standards which are applied to that piece of equipment, that my voters would have the same standards apply to them. So there is a distinction, very clear in my mind, between a one piece of equipment or one type of voting machinery as opposed to national standards that allow that person who is in a wheelchair or who is blind to have access to that ballot. I hope there is no distinction on that.

Here is the problem that I come down to, the difference between a mandate or just a carrot. In 1965, and we have talked about the Voting Rights Act of 1965, there were various local decisions that

were made on poll taxes, on literacy tests. We did not leave that—we did not say if you get a Federal dollar, you have got to eliminate the poll tax or eliminate the literacy test. We said that you have got to change that. I do not care what county you are in, what precinct you are in, literacy tests and poll taxes are just flat out wrong and it is not a question of local choice on that matter, or whether or not you got a Federal dollar. That is just wrong.

How do you distinguish between that and a process today where we have heard where thousands of people—millions—are denied de facto, if not de juri, the right to vote, and leaving that up to some sort of voluntary carrot approach, rather than saying there is a national mandate that says that that ballot has to be accessible to all Americans regardless of their physical condition?

Mr. VON SPAKOVSKY. The situation in 1965 was greatly different in degree and I agree with you that there were basic constitutional issues at stake there and we had to do everything we could from the Federal Government to guarantee the right to vote. I understand that very well, Senator, because I have a very unusual name for somebody who was born and raised in the south. That is because I am a first generation American and my mother grew up in Nazi Germany and my father had to flee communists twice in order to avoid being killed. So I grew up with lots of stories about why it was important to vote.

The CHAIRMAN. Right.

Mr. VON SPAKOVSKY. And I take that very seriously.

The CHAIRMAN. Oh, I do not question that.

Mr. VON SPAKOVSKY. But what has happened today is that we have—we are looking, for instance, at different kinds of election equipment and, you know, I have not seen any evidence anywhere that there was, for instance, an intentional—that it was intended that people not be able to vote and that is why certain kinds of equipment was used. What we have got is that large numbers of counties are continuing to use equipment which, at the time it was first introduced in 1964—and in fact, Fulton County was the first county in the entire country to install punch card equipment back then—it was considered an innovation. And unfortunately it has continued to be used and as newer innovations have come on the market, they did not replace it.

But even today, there is fundamental disagreement around the country about what is the best kind of equipment that we should replace this with. You know, Florida put together a task force and they looked at this issue and they came out and recommended optiscan equipment. Georgia is leaning towards electronic voting equipment and there is no perfect voting technology, and it is clear that people are going to have a difference of opinion there.

I think that uniform standards are the best way to address the issue and you can use the carrot approach if you want to get Federal grants, you are going to have to meet these standards, and that will change the situation all over.

The CHAIRMAN. I appreciate that. That brings up a second question. Maybe I can ask the Secretary this, and you, Mr. Jones, being at state and local.

I just know in Connecticut—I do not think our jurisdictions—we all talk about great differences, there are also tremendous similar-



ities around the country. And I just know in my own little town where I live, they are sitting on that local finance board and those issues are coming up in Connecticut, buying that new plow for the winter or whatever else or the Little League field and so forth, or the new voting equipment; I do not need to tell you how the finance committee comes out with these decisions. I mean the politics locally are it is always better to get the plow or the new fire engine or the new Little League field than it is to get the new piece of equipment. That is just human nature. I do not think Connecticut is any different than any other jurisdiction when it comes down to this.

My concern is if we end up with sort of matching dollars, even if it is matching, that you still have to have that commitment, even for 50 percent or 20 percent. My view, when the Federal Government mandates something, if we are going to mandate national standards, if we are going to mandate provisional voting, then I think the Federal Government bears the responsibility to local and state government to general finance its mandates. And this idea of having sort of unequal access is dangerous to me. Again, I am not going to argue racism here, but in poorer communities, rural and urban, that cannot afford the better equipment, there is less than an equal opportunity to cast a ballot. And I want to eliminate the economic reason for people having disparate opportunities to vote. It seems to me that where Presidential elections or national assembly elections are involved, that the Federal Government then bears the responsibility to level that playing field, so that people have that equal opportunity to vote.

And I do not know if you want to comment on this or not, but I was just curious, just in your own personal observations whether or not Connecticut is any different than Georgia or any other state, based on your own experience and background. Madam Secretary, do you want comment?

Ms. COX. I would agree completely with you, Senator Dodd. I think your individual voter is almost no—there is almost no difference than the individual Georgia voter. And I think it is in the national interest that we have every state using upgraded equipment that we know is accurate and we know can accommodate all of these various features that we all agree need to be included. And the only way we can guarantee that it will get there on a uniform basis is with full Federal funding.

Just last week, the National Association of Secretaries of State met and we included that sentence in a resolution which we adopted unanimously, that Federal mandates should include Federal funding. But I think without full Federal funding, you may have 48 states that get around to it and another two that do not and you are in the same situation you were in in 2000 with Florida.

The CHAIRMAN. Yes.

Ms. COX. That is what we set up for.

The CHAIRMAN. Mr. Jones.

Mr. JONES. Thank you, Senator.

First of all, it is a U.S. Constitutional right to vote, every citizen should have that right.

When you talk about the Federal Government is involved, certainly having served in the state legislature, I thought statewide

and so certainly we would want to make sure that everybody across our state are given the same opportunity, a level playing field. You, as a United States Senator, you really draft and set policy for the entire country, which means you set standards. And when we elect our United States Senator, when we elect our Congress persons and when we elect our President, then that puts the Federal Government in it whether they want to be in it or not. And I think that you have the responsibility to set the least basic standards, and serving in state legislature, we do not like unfunded mandates and this is the one time we certainly appreciate that mandate that is being accompanied by resources.

And finally—I thought about something when the Senator was talking about earlier, the price tag, what it would cost. There is no price tag for someone's Constitutional right. It is not about money, it is about ensuring that person their Constitutional right that they have an opportunity to vote and that that vote be counted. And money—you can put a price tag. As far as equipment, I hope that that equipment over there will be outdated in 10 years, because as technology increases and improves and as the market drives, certainly there is a need now for accurate, vast and easy to use technology. We hope that that is outdated in 10 years, which drives the cost down on the equipment. So at least we should have a system in place that is as accurate as possible but at least also strives toward making sure that that equipment, through information technology, is constantly improved upon, will we eventually again assure the rights and maintain the rights of every citizen.

The CHAIRMAN. Let me just—Madam Secretary, you pointed out that there was a greater undervote gap in counties that use the optical scanning voting systems than using the punch card machines. That sort of runs contrary to what the national impression is. In fact, when I talked to the Governor this morning, he was pointing out some of the real problems with the optical scanning. You really have to fill in the entire box or it can—you can end up with an undercount there.

In wonder if you could share some thoughts just quickly on that. Based on your findings, I mean this is—what are your concerns about that?

Ms. COX. Well, I think the bottom line is that Georgia is one of the few states that has actually done a precinct-level analysis of what was happening in individual precincts. When you look at a state's overall undervote rate, Georgia was bad enough, we were at 3.5 percent compared to Florida at 2.9 percent, but then when you start looking at individual counties, it is really deceiving until you get down to the precinct level and find out what is going on. And what we found out in Georgia, much to our surprise, was that in a punch card county, for example, between majority black and majority white precincts—and we looked at almost 200 precincts in the state that were 80 percent or greater black and 80 percent or greater white within the same county, using the same equipment. And in those punch card counties, the difference between black and white precincts was, in most cases, maybe a half percent—it was bad and the overall rate was, you know, five to seven percent in most punch card counties, an error rate. But in a white precinct,

it might be 4.5 and in a black precinct, it might be 5.8 and so the gap between black and white precincts was fairly marginal.

But when you went to optiscan systems, you would find majority white precincts that had 0.5 percent or 1.2 percent error rate and black precincts in the same county that had eight percent, 12 percent, 15 percent. One down in middle Georgia, in Columbus, 21 percent error rate with optiscan. And we don't know the reasons why, but it screams out at us for the need for some better system that voters can understand easier how to use and that they can get some feedback to know when they have made a mistake and be given an opportunity to correct that.

That is what I like so much about the new electronic equipment. You do not have to get another ballot and go back and revote a whole ballot like you have to do with optiscan. Even when it rejects the ballot, you are told right there in the voting booth, you skipped a race, you get a chance to go back right then and correct it. You get a summary before you leave that voting booth of everybody you chose to vote for, to make certain that your vote gets counted.

And that is a major problem right now with Georgia having almost 94,000 votes that were not counted for President.

The CHAIRMAN. You know, I hope you will keep us posted on your—this is I think a terrific thing you are doing with the 13 I think you mentioned counties or communities where you are going to run this. This is going to be a tremendous help to us as we—even if we pass legislation, it is going to be very important this issue not be seen as a pass a bill in this Congress and then move on. I think we have got to pay a lot more attention to this over a period of time. And we are not going to solve it all or learn everything just in this one window. I think the learning curve has to move and we have got to stay on top of this.

I mean Connecticut has not bought a new voting machine I think in 23 years. In fact, they do not even make them any more, the kinds of equipment we use in our state. I think we just found a company that can marginally fix them if they break.

So we should never allow this kind of thing to happen again. As Reverend Lowery and others pointed out, I mean there is always a silver lining in every dark cloud, my mother taught me and what happened last fall, the silver lining is we are here. And we would not have been here—we would not—I would not be here as the Rules Committee, in Atlanta, Georgia, we would not have held hearings, Mitch McConnell would not have held hearings had there not been this event of last fall. So we have been given an opportunity now to try and do something about it and more than just one time to try to stick with it.

So I hope that we can learn from the kinds of examples you are setting here in Georgia on this particular—

Ms. COX. Mr. Chairman—

The CHAIRMAN. Yes.

Ms. COX [continuing]. I might add also what we are doing with our pilot project is exactly what the Cal Tech/MIT study recommended. Contrary to a lot of the media reports, they did not just recommend that everyone go to optical scan, they said they recommended optical scan or electronic equipment that was field tested. And so that is exactly where we are going.

The CHAIRMAN. No, I know. You know, there is a young Congressman that Max knows well, from Rhode Island, Congressman Langevin, who is a quadriplegic. He was Secretary of State in Rhode Island. I had a long conversation the other day, Rhode Island is one of the most progressive states in the country now on voting, simply because Jim was sitting there as Secretary of State and in a very personal way learned about accessibility. We were talking, there is not a single ballot I can find in America, for instance, that is in Braille—not one, not in a single place in America. And you go into any elevator in a building built in the last few years and you can find what floor you belong on by Braille. But it is stunning to me that as we begin the 21st century, that a person cannot walk into a voting booth and read my name or Max's name or our opponent's name in Braille. I do not know how hard that is to achieve, but just in terms of accessibility.

So there are a lot of good ideas out there of things that we need to do.

One last question—there are so many things and I will submit some more in writing—provisional voting very quickly, Mr. Jones—in favor of provisional voting? I would just like to get some quick assessment.

Our bill has four points—provisional voting, national standards, the sample ballots and allowing people to be able to review their ballot. Those are the four questions. Put aside mandates or not, just for a second, whether or not you think these things ought to be adopted, either by carrot or by stick, if you will.

Mr. JONES. I think it should be.

Mr. VON SPAKOVSKY. I would add two provisos.

The CHAIRMAN. Yeah.

Mr. VON SPAKOVSKY. The first is that you need to understand, Senator, that within an hour of the polls closing, we start getting calls from people wanting to know the results. And if we have a large number of provisional ballots that are cast, it may delay the results of an election for weeks and if the number of provisional ballots is enough to affect the election, then they are going to be examined under the same kind of political nightmare circumstances as they were in Florida, potentially.

The other point I would make is that if you are going to have provisional ballots, you need to amend Motor Voter to allow election officials to check the identification of the individual who is registering at the poll and voting, because provisional balloting is basically the same as same day registration, which a number of states have. And if you do not change it to allow them to do that, then what you are inviting is the kind of situation you had in Wisconsin during the last election where, as you know, about 150 University of Wisconsin students admitted that they had voted numerous times, some of them as many as four or five times, by using that technique. And so you have got to allow election officials the ability to check someone's ID and then let them register and vote.

The CHAIRMAN. Did you have something?

Ms. COX. We very much are in favor of provisional voting. In fact, Mr. Charlie Lester and the ABA Bar Committee is helping us look at various versions of provisional voting laws around the coun-

try, so that we can decide what might best work in Georgia. We will be presenting something to the legislature in January.

I think your idea about producing and disseminating a sample ballot is an excellent idea, one that we have been looking at with sort of a voter's guide that a number of states do right now. It is a great expense for Georgia with almost four million active voters, that is at least a several million dollar enterprise, in and of itself, but I think it would be extremely useful to the voters.

The CHAIRMAN. Reverend Lowery.

Rev. LOWERY. No question about it, I think it is absolutely essential that we include provisional voting and not shy away from it because it has some challenges in its administration.

And while I have got the floor, Mr. Chairman, let me—I would not want to go through this without commending our Secretary of State. I am very proud of her stewardship. She is bold and innovative and creative and she listens. That is a very interesting characteristic that you do not find too often.

But do not yield on the minimum standards. God knows we do not want to go through—I would hate to see—of course, the Supreme Court kind of wiped out states' rights in its ruling in the last election and maybe that will influence some people to think about the efficacy of states' rights. They wiped out what the Florida Supreme Court said as though it did not make any difference, but I do not want—we cannot depend on the various states. Just like in the state, you cannot depend on all these counties. We might still be in slavery if we had to depend on some of the states. Mississippi has just refused—you know, they just voted to keep the flag and I am not sure we would have got rid of it in Georgia if it had not been a legislative mandate that we had to put in a referendum. I think the minimum standards from the Federal Government's perspective is absolutely essential.

And the last thing I want to say is that I went with President Carter to Jamaica in the last election they had down there. They had several shootings and fatalities before we went down to observe the election, and our presence—I did not go with Jimmy Carter, I went with Evander Holifield to the precincts where they were voting, where there might be violence.

The CHAIRMAN. You went with good company.

Rev. LOWERY. Yeah, I thought he needed my chaplaincy. [Laughter.]

But they had, in spite of the threats, an 82 percent turnout. And they were disappointed that they did not have a higher rate.

It just seems to me that we ought to look south a little bit for some inspiration and guidance about the electoral process. I was a little embarrassed that at the election before that in the City of Atlanta, I think it was 39 percent and they were 82 percent and disappointed.

So that ought to be a challenge, it seems to me, to political leadership and other leadership in this country to inspire our people and make it accessible and facilitated for our people, so that we can have a much higher percentage of turnout in the great democracy that we are in this country.

The CHAIRMAN. Thank you very much, Reverend.

Max, anything else?

Senator CLELAND. Thank you, Mr. Chairman, for coming here and I thank our panelists. It has been a marvelous hearing, the first field hearing I have ever been part of but what a wonderful subject to pursue. And we thank you very much, Mr. Chairman, you and your staff.

The CHAIRMAN. Well, Max, I thank you. I am very fortunate—I said at the outset, but I will say it at the conclusion as well, I think Georgia is lucky to have Max Cleland in the Senate, but Connecticut is lucky to have you in the Senate. This is a national Senator, he keeps an eye on Georgia, but he also keeps a good eye on the country and we are blessed to have you as a member of our body.

I thank all of you as witnesses. You have been very, very helpful. We may submit some additional questions to you, but I thank you for your presence here today.

This Committee will stand adjourned.

[Whereupon, at 12:41 p.m., the Committee was adjourned.]

[Submissions for the record appear in Appendixes 48–52 submitted for the record.]