HELP AMERICA VOTE ACT OF 2001

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 3295

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HELP AMERICA VOTE ACT OF 2001

WEDNESDAY, DECEMBER 5, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to call, at 1:30 p.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. Without objection, the Chair will be given the authority to declare recesses at any time today, and the audience will be in order, too.

The Committee meets today for a legislative hearing on H.R. 3295, the "Help America Vote Act of 2001." This bill was introduced on November 14 by the Chairman and Ranking Member of the House Administration Committee, Congressmen Ney and Hoyer. A markup was held by that Committee on November 15, and the bill was reported favorably by a unanimous vote.

Several provisions of this bill invoke the jurisdiction of this Committee. The purpose of this hearing is to examine these provisions and discuss some of the alleged voting process problems in the United States to determine if H.R. 3295 will properly solve those problems.

The basic principle of one person, one vote is one that crosses party lines, for voting is not a partisan issue, but an American issue. All Americans want to know that the vote they cast, for the candidate of their choice, will be counted fairly and accurately. But it is also the concern of a great many Americans that widespread voter fraud is discounting or cancelling out the value of their legally cast votes.

Part of this problem can be attributed to significant inaccuracies which exist with the voting rolls. For instance, in Michigan it was discovered that 1 million duplicate registrations were on the rolls when they were audited. It has been reported that Philadelphia has the same number of registered voters as there are voting-age people living in the city, and in Los Angeles County it is estimated that 25 percent of all voter registrations have problems or incorrect information.

Throughout the debate on election reform, there has been a call for provisional balloting to prevent disenfranchisement of eligible voters. However, the real problem is not provisional balloting, which we have had in Wisconsin for a number of years, but rather inaccurate voter registration lists. Election officials need to clean up their registration rolls so that they are accurate. Section 502 of the bill goes right to the heart of this issue by establishing that one

of the mandatory minimum standards with which the States must comply is the implementation of statewide voter registration lists, which are connected with every local jurisdiction. If this bill is enacted, I believe we must make sure that these systems are fully auditable so that States can and will be held accountable if they fail to adhere to this statutory provision.

I believe we must seriously examine allegations of voter fraud in the country. If evidence exists of vote fraud, then the perpetrators must be prosecuted to the fullest extent of the law, for vote fraud is not a victimless crime. It is a crime that erodes the integrity of the very system our forefathers put into place to ensure the freedoms which we hold dear.

It is also time we get serious about ensuring the integrity of the election process and protecting the public trust in the election system of the United States. The end result of greater integrity will be greater participation in the electoral process.

The individual States across the country have been hard at work in 2001 reviewing their election laws with a fine-tooth comb, identifying the weak spots and potential causes of concern, and, most importantly, developing solutions. Reforming election laws is a complex job, and it is one that is best left to the States. This hard work will certainly continue into next year, but look at what has happened so far at the State level. More than 1,770 bills have been introduced, 249 have been passed, and 487 are still pending. For example, Florida has enacted sweeping reforms which address issues such as voting machine and ballot design, establishing an improved centralized database, voter education, and poll worker recruitment, and new and presumably constitutional recount procedures. The States are proving that they are best able to determine what solutions will work effectively for their unique needs, and the primary focus of election reform should be left to them.

Ensuring fair and honest elections by eliminating voter fraud, improving voting techniques, eliminating disenfranchisement, and respecting the constitutional role of the States and localities should not be partisan issues. Our fundamental system of elections is sound, but just as with all things, there is always room for improvement, and that can and should occur.

Finally, I want to personally thank all of the witnesses for their willingness to appear before the Committee on very short notice. I very much appreciate your flexibility for taking the time to come before Congress to discuss this very important issue and now yield to Mr. Conyers for his opening statement.

[The prepared statement of Mr. Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

The Committee meets today for a legislative hearing on H.R. 3295, the "Help America Vote Act of 2001." H.R. 3295 was introduced on November 14, 2001 by the Chairman and the Ranking Member of the House Administration Committee, Congressmen Ney and Hoyer. A markup was held by the House Administration Committee on November 15 and the bill was reported favorably by a unanimous vote. Several provisions of H.R. 3295 invoke the jurisdiction of the Judiciary Committee. The purpose of this hearing is to examine these provisions and discuss some of the alleged voting process problems in the United States and determine if H.R. 3295 would properly solve these problems.

The basic principle of "one person, one vote" is one that crosses party lines, for voting is not a *partisan* issue, it is an *American* issue. *All* Americans want to know that the vote they cast, for the candidate of their choice, will be counted fairly and accurately.

But, it is also the concern of a great many Americans that widespread voter fraud is discounting or "cancelling" out the value of *their* legally cast vote. Part of this problem can be attributed to the significant inaccuracies which exist with the voting roles. For instance, in Michigan, they discovered one million duplicate registrations when they audited their voter rolls. It has been reported that Philadelphia has the same number of registered voters as there are voting age people living in the city. And in Los Angeles County, it is estimated that 25% of all voter registrations have problems or incorrect information.

Throughout this debate on election reform, there has been a call for provisional balloting to prevent disenfranchisement of eligible voters. However, the real problem is not provisional balloting, but rather inaccurate voter registration lists. Election officials need to clean up their registration rolls so they are accurate. Section 502 of H.R. 3295 goes right to the heart of this issue by establishing that one of the mandatory minimum standards with which states must comply is the implementation of statewide voter registration lists which are connected with every local jurisdiction. If this bill is enacted, I believe we must make sure that these systems are fully auditable so that states can and will be held accountable if they fail to adhere to this statutory provision.

I believe we must seriously examine allegations of voter fraud in this country. If evidence exists of vote fraud, then perpetrators must be prosecuted to the fullest extent of the law. For vote fraud is not a victimless crime. It is crime which erodes the integrity of the very system our forefathers put into place to insure the freedoms we hold dear.

It is time we get serious about insuring the integrity of the election process, and protecting the public trust in the election system of the United States. The end result of greater integrity will be greater participation in the electoral process.

The individual states across the country have been hard at work in 2001 reviewing their election laws with a fine-tooth comb, identifying the weak spots and potential causes for concern, *and* most importantly . . . developing solutions. Reforming election laws is a complex job but it is one that is *best* left to the states. This hard work will certainly continue into 2002, but look at what has happened so far at the state level: more that 1,770 bills have been introduced, 249 have been passed and 487 bills are still pending. For example, Florida has enacted sweeping reforms which address issues such as voting machine and ballot design; establishing an improved centralized voter database; voter education and poll worker recruitment; and new and, presumably constitutional, recount procedures.

The states are proving that they are best able to determine what solutions will work effectively for their unique needs and the primary focus of election reform should be left to them.

Ensuring fair and honest elections by eliminating voter fraud, improving voting techniques, eliminating disenfranchisement, and respecting the constitutional role of the states and localities should not be partisan issues. Our fundamental system of elections is sound, but just as with all things, there is always room for improvement that can and should occur.

Finally, I want to personally thank all of the witnesses for their willingness to appear before this Committee on such short notice. I very much appreciate your flexibility and for taking the time to come before Congress to discuss this very important issue.

Mr. CONYERS. Thank you, Mr. Chairman.

Members of the Committee, I begin by expressing my gratitude to the Chairman of our Committee for acquiring sequential referral so that this matter would end up in the appropriate Committee for its additional disposition. This is a very important matter. As we know, election reform has been a single focus for me for a number of years, and I think it still remains one of the most important civil rights issues that we in the Congress have to deal with.

Now, it is true that the electoral problems of today and of the last number of years lacks the stark drama of the civil rights era where there were police dogs, and marches, and violence, and murders, and church bombings, and court processes that were less than

adequate, and literacy tests and poll taxes. We still have some of the same aura lingering over the electoral process today. African Americans across the country and in one State in particular were sometimes as much as 10 times more likely to have their ballot discarded. The California Tech and MIT studies showed that while over 100 million Americans went to the polls on Election Day last year, as many as 6 million might just have well spent the day fishing because their ballots were discarded by faulty machines, improper process, violation of the law, sloppiness.

Because this Committee and not the other Committee, the House Administration Committee, as much as I like it, has jurisdiction over constitutional questions and matters relating to civil rights, it is obviously logical that this measure has to end up in room 2141, and so along with a number of Members in the House and the number of Members in the Senate, I have introduced the bill, the "Equal Protection of Voting Rights Act," H.R. 1170, which has 218 cosponsors in the House and the Senate, more than any other bill in the Congress. And when the bill was introduced, it got the conventional treatment by the wise men of the media. My friend David Broder, Washington Post, echoed the conventional wisdom that a bill that imposed, "minimum standards," on the States could not pass the House of Representatives. Months later there are two bills that have, "minimum standards," that are now projected to affect all of the several States, and they are called the Ney-Hoyer bill and the Conyers-Dodd bill.

Now, those same wise men have raised a question. It goes like this: Can't we get along? I mean, why should these two bills find themselves at different ends of the spectrum when they should be working together? Why don't we—since most assume that the bill my name is on is a more perfect bill, why don't we just take a half a loaf instead of possibly none?

Well, I want my colleagues to arrive at these conclusions, and some perhaps have. The measure that we are listening to today turns out not to be a half loaf. It actually takes away some of the crumbs that we have been able to accumulate over the last few decades because the bill weakens current law. It weakens Motor Voter law. It weakens Americans with disabilities law.

And check the civil rights groups and their leaders, the disability rights and their leaders, check organized labor and their leaders, check the League of Women Voters and other civic groups, and check it yourself. The measure that we are hearing today leaves language minorities and individuals with disabilities at the back of the bus. There are no standards that would ensure access for language minorities, and the standards for individuals with disabilities are loophole-ridden, ridden with loopholes.

The standards in the bill, I regret to say this, are literally unenforceable because the bill allows States to grade themselves on whether they have met the standards. I have got a few secretaries of state in the United States that I wouldn't want to ask them what they thought of their performance.

There is no requirement in the bill, regrettably, that every voter has the right to vote on a machine that warns the voter of mistakes before they leave the polls, the polling place. Nothing would stop a State from getting brand new machines for precincts in one area

and continuing what appears to be a tradition of reserving the oldest, most likely to be defective machines for the low-income neighborhoods, minority neighborhoods, poor neighborhoods, Latino neighborhoods. The bill does not fix the problems that were revealed across the Nation nor in Florida, but indeed it codifies it, and this bill does not enhance existing civil rights laws. It weakens them. This bill does not do away with punch cards and dimpled chads in the poor and minority neighborhoods.

But there is hope. If you read the daily Hill papers, the distinguished gentleman from Connecticut Chris Dodd, from Missouri Chris Bond, and others from Kentucky are very close in agreement on a measure that I'm sure that we can support so it's my sincerest hope that the Members of the Committee can rally around our Chairman to protect our historically important jurisdiction over voter rights and see what we can do on our side of the dome before we leave the halls for this year, and I thank the Chairman.

Chairman SENSENBRENNER. I thank the gentleman from Michigan.

Chairman SENSENBRENNER. Without objection, all Members' opening statements will appear in the record at this point.

Chairman SENSENBRENNER. Today our witnesses are Cleta Mitchell, a partner at Foley & Lardner, Attorneys at Law; John R. Lott, Jr., resident scholar at the American Enterprise Institute; Philip D. Zelikow, the executive director, National Commission on Federal Election Reform; Lloyd J. Leonard, legislative director of the League of Women Voters of the United States; and James Dickson, vice president of American Association of People With Disabilities.

All of your written statements will be included in the record as a part of your testimony without objection, and I would now like to ask the witnesses to stand and raise their right hand and take the oath.

[Witnesses sworn.]

Chairman SENSENBRENNER. Let the record indicate that each of the witnesses answered in the affirmative.

I would like to ask each of them to confine their verbal remarks to approximately 5 minutes. There is a timer in front of you, and the red light means your 5 minutes are up.

Ladies first. Ms. Mitchell, you are recognized.

TESTIMONY OF CLETA MITCHELL, ATTORNEY, FOLEY & LARDNER ATTORNEYS AT LAW

Ms. MITCHELL. Thank you, Mr. Chairman.

Representative Conyers, Members of the Committee, it's an honor for me to be appearing before you today, and I want to thank you—I want to thank you for holding this hearing.

Now can you hear me? Okay. Thank you, sir.

My background is that I am an attorney. I spent my entire career in either law or politics or the combination thereof. I served as a member of the State legislature in Oklahoma for a number years, as well as serving as Chairman of the Appropriations and Budget Committee of the State House. I know from firsthand experience the difficulties of getting elected officials to decide to appro-

priate money for election machines and equipment when there are so many other unmet needs.

There are four areas that I'd like to confine my remarks to today. The first point is that election administration is historically and constitutionally a State and local province primarily. There is a role for Federal Government and a role for Congress, but I would urge the Committee and the Congress to be very careful about blurring the lines and stepping too far into an area which has historically been in this country a State and local responsibility.

Secondly, I would submit that it is not necessary to create an entirely new Federal agency. The Office of Election Administration at the Federal Election Commission has done quite a lot with quite a little for a number of years, and I'd be happy to respond to questions about some of the things that they are doing and have done. But I would just point out that tomorrow the Federal Election Commission will be reviewing and putting for comment for a second time new proposed national voting standards, and I would submit that it would be important for this Committee and perhaps the entire Congress to pay attention to what some of the things are that this agency is already doing and not step out and create a whole new set of Federal bureaucrats and advisory people and administrative costs that are really unnecessary.

But the third and, I think, the most important point I would like to make is that I believe that the gravest danger to our democratic process, our freedom—our free elections, is the notion of election fraud and failure to take the proper steps to guard against any kind of concerted effort that would allow ineligible voters to vote, because it dilutes the votes of those people who are, in fact, legally eligible to vote, and I have attached to my testimony and incorporated as part of the testimony, a report from the State of Missouri on this very subject, and I will come back to that in just a moment.

The final point that I want to address today is that of the overseas and military voting rights—particularly of our armed services personnel. I think there is much more that could be done in the proposed legislation. I know that H.R. 3295 has taken steps to address the issues of ensuring the right to vote of all of our military personnel, but I would urge that there are a couple of other things that could be done. So those are the four points I would want to make.

I want to turn quickly to the particular case of Missouri. Earlier this year the Secretary of State for the State of Missouri, Matt Blunt, chaired a bipartisan commission which reviewed some of the problems that went on in St. Louis County and St. Louis city on November 7, 2000. I happened to be taking my tour of duty on the phones at the Republican National Committee late in the day. They asked election law attorneys to come in and answer phones and questions. Late in the day I received a call that essentially said, they're taking us to court to keep the polls open another several hours, and, in fact, when the bipartisan commission from the State of Missouri looked at what had happened, it's clear that some law officials need to take steps to investigate what happened on that day.

It is clear that over 1,000 people who were not legally eligible to vote cast ballots. It is documented that illegal ballots were cast by convicted felons. There are people who voted at least twice, others who may have voted more than twice, votes cast by people who are deceased, which is hard to do. People who were registered at vacant lots cast votes. There were votes cast by people who—where there were multiple names registered at the same address, and those addresses are single-family homes, they are not group homes, they are not hospitals, et cetera.

The primary lawsuit that was brought to force the polls to be kept open longer than the statute provided was brought by a person, a lead plaintiff who was deceased. When the attorney was asked about that in open court, he said, "Oh, well, it's a different person of the same name, but a different middle initial." And, in fact, when they checked, they found out that that person had, in fact, voted.

The point is that there is evidence of voter fraud that no one is paying attention to, and I use this as an example because I think that it is crucial that any effort to reform our election process cannot be successful if we don't take proper steps to ensure that the penalties are severe and that those who engage in this kind of activity will be punished.

Chairman SENSENBRENNER. Thank you, Ms. Mitchell.

[The prepared statement of Ms. Mitchell follows:]

PREPARED STATEMENT OF CLETA MITCHELL

Mr. Chairman, Rep. Conyers, Members of the Committee.

Thank you for the opportunity to appear here today and thank you for holding this hearing to discuss the important issue of election administration and procedures in America.

My background is that I am an attorney, specializing in campaign finance and election law, and in that capacity was very involved in studying and commenting upon the post-election activities in Florida last year.

I am also someone who has run for office, been elected, served as a member of a state legislature and as Chairman of the Appropriations and Budget Committee. I know first hand the challenges of being asked to appropriate funds for election machinery when so many other needs exist.

There are four areas on which I would focus my testimony today.

1. Election Administration is a state and local responsibility, *not* a federal one and Congress should *not* do anything that replaces that historic responsibility with a federally mandated system.
2. There is *no* need—NONE—for a new federal agency in this arena. The Federal Election Commission does an excellent job insofar as the limited role of the federal government in election administration and any expanded funding should be appropriated to the FEC for a *limited* increase in the federal role.
3. The gravest danger to the election process is NOT faulty equipment that fails to protect voters from making mistakes—the real threat to the American election process is the potential for deliberate fraud and systems that fail to protect the integrity of the voting process. There is evidence that such fraud was committed in the 2000 election under the guise of 'inclusion'. But including votes from ineligible or non-existent voters is *not* benign—it is a serious cause for concern and undermines the very system of democracy our nation is defending even as we sit here today.
4. And, finally, in that regard, it is vital that those men and women and their families who are stationed and serve around the world defending America, serving our nation in various ways overseas, or are American citizens, eligible voters, who live and work in other countries for whatever reason—we can *never* allow another election cycle to go by in which the Americans overseas, particularly those in the armed forces, are deprived of their right to vote.

I. ELECTION ADMINISTRATION IS A STATE AND LOCAL RESPONSIBILITY.

The morning after the November 7, 2000 General Election, I received a phone call from a *Washington Post* reporter asking for some guidance on 'basic principles of election law' for a background piece he was working on as a result of the Florida situation. What I said then is what I will tell you here today: We do not have national elections in this country. That is how the system was envisioned in the Constitution and that is the fundamental principle on which the decisions of Congress should be made on this subject.

There should *not* be a stampede to create a one-size fits all system of election administration or a federal mandate for election day operations.

The role of the federal government—and Congress—should be circumscribed and well-defined. Funding the acquisition of new machinery to assist states and localities which have not been able to afford new or updated or modern equipment is something Congress can and should do.

But Congress should resist the temptation to attach strings on such funds, seeking to impose its judgment on that of the states and local jurisdictions in this area. As I will discuss below, there is a good case to be made that some of the things Congress has done in the past decade have actually made election administration much more difficult than it needs to be, than it used to be or than it should be.

This is an area that is *not* the primary responsibility of Congress. In fact, the only reason the framers included the provision in the Constitution which allows Congress to alter the time, place and manner of selecting members of Congress was the concern at the Constitutional Convention that some states might not hold elections for members of Congress at all—and there needed to be some mechanism for Congress to establish the election machinery for members of Congress if the states did not choose to do so.

II. THERE IS NO NEED FOR A NEW FEDERAL AGENCY IN THE ELECTION ADMINISTRATION ARENA.

My practice is largely in and before the Federal Election Commission and various similar state agencies.

While the Federal Election Commission can be justly criticized for many shortcomings, flawed procedures, and other faults—the Office of Election Administration has done a very good job over the years with limited resources, low visibility and virtually no mandate.

The OEA has been doing—quietly—exactly what the various 'reform' bills moving through Congress now say they want: reviewing election machinery and mechanisms, developing national standards for not only the voting equipment but tabulation systems, working with and training local and state officials and keeping track of / publishing data on all of these issues as well as voter registration and voting statistical data.

To guard against an excessive federal role in this state and local province of law, I would urge the Committee—and the Congress—not to create a new federal agency but to work with the Office of Election Administration in terms of providing greater funding and specific guidelines as to a more visible role for the office. There is no responsibility identified in any of the pending bills that could not be performed by the Office of Election Administration.

III. NO ELECTION REFORM CAN BE COMPLETE WITHOUT A COMPREHENSIVE PLAN TO COMBAT ELECTION AND VOTE FRAUD

There are some who are pressuring Congress to cast the federal government in the role of protecting voters from anything that might keep them from voting, including themselves.

Prior to November 7, 2000, the Florida law provided that machine error was the only grounds for overturning an election; after November 7, 2000 the argument turned to one that seems to say 'voter error' is grounds for overturning an election.

My personal favorite in this regard is James Carville's oft-repeated statement this past year that "Al Gore won the *intended* vote. . . ." Anyone who has ever been involved in many political campaigns and *any* close elections or recounts—where you get to look at the lists to see who actually voted—only to discover the countless donors, volunteers and close friends of the candidate who didn't vote—I've got some elections over the past thirty years where I'd like to go back and count the *intended* votes.

The threat to our system of open, free and fair elections is *not* that voters make mistakes, spoil their ballots, don't cast votes for candidates for every office or vote for more than one candidate for the same office. Frankly, voters have a constitu-

tional right to screw up their ballots and it deeply concerns me as a citizen that Congress would even *consider* legislation to correct or prevent these types of voter mistakes.

What Congress *should* be concerned about is organized efforts by political operatives to dilute the duly cast votes of registered voters by allowing fraudulently cast ballots by individuals who are not legally eligible to vote.

This is *not* hypothetical. Attached as an addendum to my testimony and made part of the official record of this proceeding is the July 24, 2001 Report of the Secretary of the State of Missouri, The Honorable Matt Blunt entitled, "Mandate for Reform: Election Turmoil in St. Louis, November 7, 2000."

The state of Missouri established a bi-partisan commission to review the events of November 7, 2000 in which 1,233 persons who were not legally qualified to vote in the State of Missouri nonetheless cast ballots upon obtaining court orders, falsely claiming to be eligible. The evidence demonstrates that a concerted effort was planned in *advance* of election day to not only illegally extend the hours for voting beyond the statutory period but also to obtain court orders authorizing votes to be cast by persons not legally eligible to vote.

The report of this Commission and Secretary Blunt deserves national attention. Clearly, this was a plan to violate the integrity of the voting system in the state of Missouri—which succeeded.

Key findings include votes cast by:

- convicted felons
- people who voted at least twice, possibly more than twice
- deceased persons
- persons registered at vacant lots
- multiple names registered at the same address—which addresses are not multiple family dwellings, nursing homes, dorms, hospitals or group homes

The primary lawsuit brought by the Gore-Lieberman campaign to keep the polls open beyond the statutory poll closing time had a lead plaintiff who was deceased. When the fact was brought to the attention of the attorney, he responded that it was another person by the same name who had not been allowed to vote—a review of the records revealed that the individual had voted earlier in the day without difficulty.

If Congress is interested in doing 'something' about election reform, enact severe penalties for vote fraud schemes—and publicize the penalties. Take steps to make certain that people know that vote fraud is a severe blow to our nation and such actions undermine the freedom of all Americans—and that it will not be tolerated.

How can Congress address this in the election administration area? One important step which *must* be done is to assist the states in creating a statewide voter registration database which is accessible to all polling places on election day. And to be certain that the database is current and accurate, Congress *must* revise the provisions of the National Voter Registration Act of 1993 which prevents states from properly purging its voter registration rolls.

Congress can assist the states by providing money for electronic accessibility to the database on election day as well as providing that the database be publicly accessible and capable of audit by the public.

To balance the interests of protecting privacy of the voters while establishing a voter tracking system capable of ongoing updating, every voter should have his or her own voter identification number. This number should be one that the voter can remember—the Office of Election Administration has suggested the last four digits of the social security number and the birthdate, but whatever the number is, it should be issued *only* upon or after presentation of a photo identification.

The database MUST be capable of being purged on a regular basis: People who fail to vote in the number of elections determined by state law should be purged from the database; states should make use of various agency databases to comply with purging requirements of state law such as felony convictions, mental incompetence, etc.

Likewise, persons whose probation or parole is terminated should be advised and encouraged to re-register to vote as allowed by law.

Nothing is more important to the protection of the election system in America than one which is operated honestly.

There should be a complete investigation by the proper law enforcement authorities to bring to justice those who committed the voter fraud in the state of Missouri in 2000 as a deterrent to its recurrence in 2002 and beyond.

And there must be a national commitment by all in positions of authority that such plans and activities have no place in American political campaigns of the 21st century.

That is something Congress can and should do.

IV. MILITARY AND OVERSEAS VOTING RIGHTS MUST BE PROTECTED IN FUTURE ELECTIONS.

Congress has enacted the Overseas and Military Voting Assistance Act. It is routinely violated without consequence.

The enforcement of that law rests with the federal government, in the Department of Justice.

Who knows how many American servicemen and women were denied the right to vote in the 2000 general election?

I would submit that the proposals for correcting the problem still fall short. Because of the difficulty of mail delivery to and from the armed services personnel in remote parts of the world, Congress should appropriate funds for the Department of Defense and Department of State to establish electronic voter registration and absentee ballot processing through military and federal installations directly to the chief state elections office of every state. Providing a system for receiving the registrations on-line, the absentee ballot requests on-line will eliminate much of the delay experienced by overseas and military voters. Congress should require the Department of Defense to develop and implement a system of expedited absentee ballot delivery and return through military channels before the next presidential election, in order that every person in our armed forces who desires to vote will have instant access to that system—and it should be one which *insures* that all armed services personnel receive their ballots on a timely basis and have a system for getting them returned in time to be counted.

There can be no higher priority than making certain that the men and women who are defending all of us have their voting rights not only protected in theory—but that systems are put in place by the Congress and the Department of Defense to make that theory reality by 2004.

CONCLUSION

Thank you for the opportunity to testify here today. Congress has a role to play in the election reform debate. But please, be sure the one you choose is the right one, not the wrong one.

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Mandate for Reform

Election Turmoil in St. Louis - November 7, 2000

July 24, 2000

Dear Citizens of Missouri:

Fair and accurate elections are the foundation of our democratic form of government. As American citizens, each of us is entitled to a voting system that meets the highest standards of integrity. In November 2000, the nation witnessed one of the closest elections in history. The aftermath of the presidential election is still being felt here and throughout our nation. In Missouri, controversy surrounding the vote in St. Louis thrust our state into the national spotlight, undermined public trust throughout the state, and presented troubling questions about the soundness of Missouri's voting system.

Immediately after the election, I formed a bipartisan commission to recommend comprehensive changes in Missouri's election laws and procedures. The changes recommended to the Legislature included early voting, better training for election judges, modernization of voting equipment, and other administrative changes. The Missouri Senate and House of Representatives did not reach final agreement on legislation to send to the Governor. We must renew in 2002 these efforts to assure that every vote will count.

Equally important to the restoration of public trust are the allegations of wrongdoing concerning the November 7, 2000 election in the City of St. Louis. After a detailed examination by my office, I am today presenting findings on certain issues with recommendations for local and state action. Our principal recommendations include:

First, those who broke state or federal election statutes must be punished. Even under present conditions, there is no reasonable defense for the numbers of fraudulent ballots cast by, or in the names of convicted felons, deceased voters, and others not legally qualified to vote.

Second, the circuit courts in St. Louis City and St. Louis County must conform their decisions to the law when ruling on affidavits presented by individuals seeking to vote under court order. Few of the court-approved affidavits in November met the standards of state law. In this area alone, well over 1,000 improper ballots were cast in the City and County. Moreover, the use of affidavits in the City and County was grossly out of line with other jurisdictions, a fact that compels the conclusion that there was in St. Louis an

organized and successful effort to generate improper votes in large numbers. Third, the courts in the City of St. Louis must apply the established rule of law to the question of when to close the polling places. The law in Missouri is clear and firm: every qualified voter who arrives at the polls by 7 p.m. shall vote, no matter how long it takes, but there is absolutely no provision allowing a judge to extend the hours of voting. Only in St. Louis City was voting extended late into the evening, in clear violation of state law.

Finally, I am recommending that the elections authorities of St. Louis City and St. Louis County act immediately, on a cooperative basis, to remove tens of thousands of inaccurate voter registrations. The huge number of duplicate registrations creates a high and ongoing risk of fraud. It is well past time for the City and County to address this issue.

It is my duty as Missouri's chief elections official to administer all statewide elections. This report, "Mandate for Reform", details massive problems with our election system. We cannot repeat the chaos that erupted in the City of St. Louis on Election Day 2000. My January 29, 2001 report to the people, "Making Every Vote Count," outlines comprehensive reforms to enhance the viability of Missouri's election process. The time to restore the people's trust in the system is now, in advance of the 2002 and 2004 general elections.

Sincerely,

Matt Blunt
Secretary of State

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Chairman SENSENBRENNER. Mr. Dickson.

TESTIMONY OF JAMES C. DICKSON, VICE PRESIDENT, AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES

Mr. DICKSON. Thank you, Mr. Chairman and Members of the Committee. It's an honor to be before you.

A couple of years ago my wife and I made history when we became the first married couple to differ on who should be elected. I am blind, and we were in the voting booth, and Renee was helping me with my ballot. She turned to me and she said, "Jim, I know you love me. Now I know you trust me because you think I'm marking this ballot for that idiot." I hasten to add that we—I did not have the opportunity to vote for any of the distinguished Members of this Committee.

I am blind, and I have never cast a secret ballot. There are 15 million people like me who every time we vote, we wonder was our ballot marked correctly. The Carter-Ford Commission, President Carter and President Ford, said in the Washington Post last week that this piece of legislation is a Christmas present to the Nation. It gives me a great deal of pain to have to say for Americans with disabilities, this is not only an empty box, it has coal in it for us.

We—17 years ago the Congress passed legislation essentially saying, as this does, it's up to the States to make polling places accessible. The States and local counties have not done that. They have used excuse after excuse. A GAO report reported that last November over 80 percent of the Nation's polling places were inaccessible to voters in wheelchairs. This piece of legislation would perpetuate that irresponsible behavior of local and State election officials.

We have national standards in this Nation for everything that matters, for our money, for our time. We have national standards that define what an accessible moral will be. This legislation says we will have 50 different standards to decide what accessible voting will be. That is just not acceptable, and this is why every national disability organization that has taken a position on election reform is opposing this legislation.

I want to speak for a minute about the whole notion of minimum standards and speak as an American and as a person who has worked in elections for years. The morning prayer of election officials on the day of election is, Dear God, please let it not be close. That is a terrible admission. That is an admission that we have a voting system that cannot accurately count the votes of Americans.

We can and must do better, and the only way to do that is to have minimum national standards. Fraud in elections ought to be punished. Voting should also be easy. A centralized statewide list will prevent voter fraud. The provisional ballot will prevent voter fraud. Accessible voting with national standards will make it possible for the 14 million Americans with disabilities who did not vote in the last election to go to the polls and vote in secrecy and in pride.

The broader civil rights community has submitted a short list of proposed amendments that would fix the disability problems and the concerns of the civil rights community, and I would hope that they could be addressed. Thank you very much for your time.

[The prepared statement of Mr. Dickson follows:]

PREPARED STATEMENT OF JAMES C. DICKSON

I am Jim Dickson. I am Vice President for Governmental Affairs at the American Association of People with Disabilities. 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.

The American Association of People with Disabilities is a national membership organization dedicated to promoting the economic and political empowerment of all people with disabilities; educating business and the general public about disability issues; and providing membership benefits, such as financial services and product discounts. AAPD was founded in 1995 by a group of cross-disability leaders to help unite the diverse community of people with disabilities—including their family, friends and supporters—and be a national voice for change in implementing the goals of the Americans with Disabilities Act—equality of opportunity, full participation, independent living, and economic self-sufficiency.

Twenty-five national disability organizations are opposed to the passage of HR 3295, The Help America Vote Act (unless you happen to be an American with a disability), as currently drafted. Attached is a letter from the Consortium of Citizens with Disabilities Rights Task Force explaining our opposition to this legislation.

We already have, in federal law, national standards defining access to everything from shopping malls to telephones to buildings. HR 3295 would have fifty different standards defining access to voting systems and polling places. Such a confusion of standards would send the wrong message to industry. The manufacturers of voting systems need one clear set of standard to design and build to. HR 3295 defines people with disabilities as those "having physical disabilities." This would allow state and local election officials to claim that blindness is a sensory disability, as many already do, thereby being exempt from the legislation. Furthermore, the bill fails to protect people with mental disabilities. The American with Disabilities Act and other federal legislation deal with people with disabilities as a group. Defining disability purely as physical would be a major set back in our nation's public policy.

In addition, this bill ties the right of persons with disabilities to vote to the ADA and we believe voting should have a higher standard. The ADA allows for local communities to offer "equivalent facilitation." This is a loophole through which a blind man like me could drive a truck. For seventeen years elections boards have told us to vote by absentee ballot or at the curbside. Americans with disabilities should have the same right to privacy and to vote at the polling place with their fellow citizens. There are federal courts in Michigan and Texas which have ruled that the ADA does not offer blind individuals a right to a secret ballot. As a nation we cannot allow a secret ballot for some but not for all. Again, we have national standards for time, for money, to measure distance and for hundreds of other federal programs. The notion that we should have local standards for voting diminishes the importance of voting and will allow continued discrimination against thirty-five million voters with disabilities.

The Architectural and Transportation Barriers Compliance Board ("The Access Board") has been charged with defining access for the Rehabilitation Act, The Telecommunication Act and the American with Disabilities Act. We believe that the Access Board should be charged with defining access for voters with disabilities.

The nation's entire disability community wishes to thank Representative Conyers 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 able 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 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)

Eighty-four percent of surveyed polling places across the country were found to have a barrier that prevents a person with a disability from voting, and at sixty-seven percent of those same polling places, the barriers completely prevent voters who use wheelchairs from even entering, according to last year's General Accounting Office (GAO) report.

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. As the Congress deliberates communities all around the country are rushing to buy inaccessible voting systems. To date, Jacksonville, Florida, Washington, DC, and Philadelphia, PA have all decided to buy inaccessible voting systems ignoring the right of voters with disabilities to cast a secret ballot. All across the nation counties and cities are knowingly denying disabled voters the right to a secret ballot.

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.

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.

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.

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 un-

employed. 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.

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.

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 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.

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).

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 thank you for the opportunity to testify before the House Judiciary Committee.

Chairman SENSENBRENNER. Thank you, Mr. Dickson, and let me invite on behalf of all of the Members of this Committee to move into any of our districts, but it might be advisable for you to wait until the redistricting process is finished lest you end up in the district of someone you did not plan on ending up in.

Dr. Lott.

Mr. DICKSON. Mr. Chairman, I forgot to mention that two of the very accessible machines are here today. There are eight manufacturers who have machines that would allow people like myself to cast a secret ballot, and I would encourage the Members of the Committee and those in the audience to look at these exciting devices.

Chairman SENSENBRENNER. Good. Thank you.

Dr. Lott.

TESTIMONY OF JOHN R. LOTT, JR., RESIDENT SCHOLAR, AMERICAN ENTERPRISE INSTITUTE, EXECUTIVE DIRECTOR, NATIONAL COMMISSION ON FEDERAL ELECTION REFORM

Mr. LOTT. Thanks very much, Chairman Sensenbrenner and Congressman Conyers.

Chairman SENSENBRENNER. Could you please turn the mike on? I don't think it's on.

Mr. LOTT. Thank you very much, Chairman Sensenbrenner and Congressman Conyers, for allowing me to speak here today. It's an honor.

What explains spoiled ballots where ballots show either no vote for candidate or votes for multiple candidates in the same race? To what extent were different groups, the poor, minorities, discriminated against? The Ney-Hoyer and Conyers bill both aim to reduce

the number of spoiled ballots. They differ in terms of the flexibility that they give States. They also differ in terms of the standards that they set and the motivations that they give for observed differences in spoiled ballot rates.

Ideally, any analysis of spoiled ballots would go and look to see what voters had spoiled ballots. Unfortunately that data is not directly available. What's been done by the U.S. Civil Rights Commission and others has essentially been to go and look across precincts or across counties and to see whether or not those counties or precincts that have more of a specific group of voters tended to have relatively higher spoiled ballot rates. Other factors such as the type of voting machine used are dealt with simultaneously and are also explained for whether they are correlated with the higher spoiled ballot rate. People have then interpreted evidence linking these percentages as some examples of discrimination or other problems that are going on.

There are two general types of data that have been looked at: either looking across counties or precincts in a particular year, or looking at what we call panel data, which is looking across counties in Florida over many years or across the entire country. I'm going to try to concentrate primarily on Florida because of—because of the obvious emphasis that's received.

There is some recent data that's been put together by USA Today. It's by far the most extensive data that's available, and they collected precinct-level data for the entire State. The Secretary of State's office for each precinct can tell you because when people register, you register not only your party affiliation, but also by race; the number of not only blacks, but also by black Republicans or black Democrats that voted in each precinct. They also did an extensive job using U.S. Census data as well as information from individual county election supervisors to get extremely detailed data on educational attainment, income, age, gender, number of voters who were new in a State, absentee voting, voting machine type, ballot type, information on things like where the votes were counted. There's many other types of information there, on political affiliation, for example, and race of county election supervisors. This is much more extensive than the Cal Tech/MIT study that was noted earlier, for example, which doesn't even have information on the type of ballot design that's used in different counties.

As a group, voting machines, ballot design, and where votes are counted are important, though I think the emphasis on it's probably been greatly exaggerated. If you look at the data for Florida, about 11 percent of the differences in spoiled ballots across precincts can be explained by the combination of those three factors. For a breakdown of that 11 percent, about half of it or about 5.5 percent is due to ballot design, about a third or about 3.6 percent is due to machine type, and only about a 6th is due to where the votes are counted.

I could go through the different type of results here. Basically central processing has a higher rate or is more likely to result in spoiled ballots, things like the infamous butterfly or 8–2 ballots also result in higher spoiled ballot rates. Even among voting machines, though, the results are not particularly simple. You have different types of punch card machines, and it was one particular

type of punch card machine, punch cards without chads or the Votomatic machines, which were consistently associated with much higher spoiled ballot rates.

There are lots of other different factors that seem to explain variations in—in spoiled ballots. Things like education and income are important, though they don't meet the simple type of explanations that one would think. One would normally think that people with relatively lower educational attainments, lower incomes would, in fact, have higher spoiled ballot rates, but when you look at the data, it's—nothing like that occurs. For education it's actually more of an M shape, where people with the very lowest educational attainments, less than 9th grade of education, had a very low spoiled ballot rate. People with some high school had a very high spoiled ballot rate. It was very low for people who had completed high school, high again for people who had some college, and then very low again for college.

For education—for income it was also something that didn't exactly fit the type of story you would have with people making mistakes. The group with by far the spoiled—high spoiled ballot rate were people who lived in households with over $500,000 a year income. Their spoiled ballot rate was 4.6 times higher than for the next wealthiest group, the next highest group, which was people from $150,000 to $250,000 in income, and, in fact, was 15 times higher than for people who were in the lowest income group making less than $15,000 a year.

Chairman SENSENBRENNER. Dr. Lott, do you think you could wrap up in about 10 seconds?

Mr. LOTT. Sure.

There are lots of numbers here. I think when you break it down, things like race are not simple homogeneous factors. It's basically going to be—basically is Republicans which are much more likely to be affected by spoiled ballots, and I think the bottom line when you look at this, I think it's very hard to go and explain this on result of errors. I think it's much more likely due to differences in taste where certain voters felt conflicted in terms of who they wanted to vote for.

Chairman SENSENBRENNER. Thank you, Dr. Lott.

[The prepared statement of Mr. Lott follows:]

PREPARED STATEMENT OF JOHN R. LOTT, JR.

Part of this paper was originally written at the request of the minority members of the U.S. Commission on Civil Rights. I also served as an expert for *USA Today* in evaluating the precinct level data that they had put together. I received no compensation for any of this work.

I) INTRODUCTION

Over and undervotes should not necessarily be presumed to be errors on the part of voters. What everyone wants to accomplish is minimize true errors without unintentionally creating other new problems. Worse, some attempts to reduce errors can even actually increase them.

For the 2000 Presidential election in Florida only a relatively small percentage of over—or under-votes can be explained by ballot design, voting machine type, or where ballots are counted. Changes in ballot designs and machine types can lower "spoiled" ballot rates—that is, not counted because they showed either no vote for president or multiple votes—, though restricting local options too rigidly can actually produce the opposite result. Even voting methods that do not work well on average nationally still produce remarkably low spoiled ballot rates in some jurisdic-

tions. For these unusual jurisdictions simply requiring new voting methods could raise spoiled ballot rates if only during a transition period. There are other possible unintended consequences. If taken literally, standards that seek to reduce a "voting system's error rate . . . as close to zero as practicable" might actually require the adoption of paper ballots that are counted by hand. Yet, hand counting paper ballots even if technically "practicable" is presumably unacceptable in heavily populated areas.

Disturbing claims of discrimination have also been raised after the 2000 Presidential Election. African American ballots were said to be spoiled at higher rates than the ballots of other groups. Representative Conyers bill notes that there is "overwhelming evidence that disparate procedures and antiquated machinery have a disproportionate racial impact." The chair of the U.S. Civil Rights Commission called for a criminal investigation.[1] The Rev. Jesse Jackson also charged that there was "a clear pattern of suppressing the votes of African Americans."[2]

The U.S. Commission on Civil Rights' Majority Report on the 2000 Presidential vote in Florida served as a main focus of these claims and presented two types of empirical evidence that African-Americans were denied the right to vote.[3] The report concluded that, "The Voting Rights Act prohibits both intentional discrimination and 'results' discrimination. It is within the jurisdictional province of the Justice Department to pursue and a court of competent jurisdiction to decide whether the facts prove or disprove illegal discrimination under either standard."[4] To reach their conclusion that discrimination had occurred, the majority examined the impact of race on spoiled (or non-voted) ballot rates as well as the impact of race on the exclusion from voter eligibility lists because of past felony criminal records. They relied on empirical work regarding non-voted ballots relies solely from cross county regressions or correlations using data from 2000 alone. The evidence that African-Americans are erroneously placed on the ineligible list at higher rates than other racial groups is based upon a simple comparison of means.

My examination of the data here demonstrates three things:

1. Cross-sectional precinct level data that was compiled by a group of newspapers lead by USA Today allows for a much more detailed examination and indeed implies that precincts with more African-American voters have higher rates of non-voted ballots.[5] But if spoiled ballots do indicate disenfranchisement, then the new data show that it is mistake to view racial groups as homogenous. By a dramatic margin, the group most victimized in the Florida voting was African American Republicans. The new findings are stunning: African American Republicans who voted in Florida were in excess of 50 times more likely than the average African American to have had a ballot declared invalid because it was spoiled. Spoiled ballot rates also much higher for white Republicans than either white Democrats or African-American Democrats. (The Appendix uses the Majority Report's method and data for determining whether there is "a direct correlation between race and having one's vote discounted as a spoiled ballot" is quite sensitive to the specification used. Using their method, it is simply not possible to distinguish whether the higher spoilage rate among African-Americans is a result of them being African-American, being in counties with Democratic Election supervisors, or being in counties with African-American Election supervisors.)
2. Discussions of the non-voted ballot rates by the Commission Majority and others fail to account for which counties had high rates of non-voted ballots in the past. Once these past rates are accounted for, additional increases in the percent of voters in a county who are African-American are not related to changes in the rate that ballots are not voted. While the difference is not statistically significant, the ballot non-voting rate is slightly more positively related to the share of white voters than African-American voters.
3. The Majority Report's own evidence that African-Americans are erroneously included on the ineligible list at higher rates than other racial groups actu-

[1] Brit Hume, "Special Report with Brit Hume," Fox News Network, Wednesday, June 27, 2001.

[2] Zev Chafets, "Florida Got Bad Rap in Vote Mess," New York Daily News, Sunday, June 10, 2001, p. 39.

[3] U.S. Commission on Civil Rights, Voting Irregularities in Florida During the 2000 Presidential Election, June 8, 2001 (http://www.usccr.gov/vote2000/stdraft1/main.htm).

[4] Ibid.

[5] Unlike previous examinations such as those by the Caltech/MIT Voting Technology Project, this data contains detailed information not only on voting machine type but also on ballot design and where votes were counted. Their other control variables such as income and education were much more limited.

ally shows the opposite of what they think that it does. The evidence that African-Americans win a greater share of successful appeals does not account for the fact that African-Americans make up an even much greater share of the list of ineligible voters to begin with. In fact, the rate that whites are removed from the list because they were incorrectly included to begin with is almost twice the rate of African-Americans.

The evidence thus indicates that even if the commission is correct on the law (and there is some debate on that),[6] it is difficult to accept the commission's conclusion that discrimination was unintentional and surely not intentional, unless one believes that black democratic county election supervisors were responsible for higher non-voted ballot rates by African-American voters. The following sections will first evaluate the data on non-voted ballots and then turn to the data on African-Americans being erroneously excluded from voting due to felony criminal records.

II) RE-EXAMINING THE SIMPLE CORRELATIONS AND MEANS

Ideally any analysis of non-voted ballots and race would directly link whether individuals in a particular group actually had non-voted ballots. Lacking that direct link, the Majority Report attempts to see whether counties or precincts with a higher percentage of African-Americans have a higher percentage of non-voted ballots. The Majority Report interprets evidence linking a higher percentage of African-Americans with a higher percentage of non-voted ballots as showing that whatever is causing ballots to be non-voted affects some fixed percentage of African-Americans who go to the polls.

The Majority Report provides many scatter plots to illustrate this correlation across precincts and counties. The problem is that all the evidence provided by the Majority Report is based on purely cross-sectional evidence. Yet, purely cross-sectional evidence suffers from well-known weaknesses in not being able to account for other factors that may explain the relationship between race and non-voted ballots.

The simplest way to account for these other factors is to examine whether certain counties had high levels of non-voted ballots even before they had high levels of African-Americans. Thus, we examine counties over time and compare the change in the racial composition of voters with the change in non-voted ballots. If African-Americans disproportionately account for non-voted ballots, the percent of African-Americans and non-voted ballots should continue to hold across elections: counties with the largest increase in the percentage of voters who are African-American should also have the largest percentage increase in non-voted ballots.

To examine this, we compared the change in county ballot spoilage rates and racial composition in the Presidential election in the 1996 and 2000 and the change in the share of voters in those elections who were in different races. The results are shown in Figures 1 through 4. Generally it is difficult to see much of any relationship. If indeed there is one, it turns out to be the opposite of what is implied by the Majority Report: there is a very small negative correlation between increases in the percent of voters who are African-American and spoilage rates (a correlation of —4 percent). And an increase in the share of white voters is associated with an increase in the non-voted ballot rate, though none of these very simple relationships are statistically significant.[7] Using data from the Election Data Services on the type of voting equipment used in different counties it is also possible to breakdown these figures on the basis of those counties that used the same voting machines in both the 1996 and 2000 elections. Doing so produces a set a graphs that is very similar to Figures 1 through 4 (see the Appendix).

III) ANALYZING THE PURELY CROSS-SECTIONAL PRECINCT LEVEL DATA

USA Today, The Miami Herald, Florida Today and five other newspapers undertook a massive operation to identify non-voted ballots in each precinct in Florida for the 2000 presidential election.[8] They put together a very rich cross-sectional data set. Besides the number of African-Americans, whites, Hispanics, and others who voted in each precincts, the paper further broke this relationship down by political affiliation so that it is possible to know, for example, the number of African-Amer-

[6] Abigail Thernstrom and Commissioner Russell G. Redenbaugh, The Florida Election Report: Dissenting Statement, June 26, 2001 (http://www.manhattan-institute.org/html/final—dissent.htm).

[7] The correlation between the change in non-voted ballots and the share of voters who are white is .09; the same correlation for Hispanics is .03; and the correlation for "other" (neither white nor African American) is—.17.

[8] The Majority claimed to have examined precinct level data for Miami-Dade, Duval, and Palm Beach, but no regressions were reported (http://www.usccr.gov/vote2000/stdraft1/ltrpt.htm).

ican Republicans and Democrats who voted by precinct. They also collected information on ballot and machine type, whether the ballots were counted centrally or at the precinct, as well as detailed census data on educational obtainment, household income, and age.

The regression estimates presented here are Poisson regressions because of the obvious count nature of this data. (Appendix Figure 1 illustrates how the distribution of non-voted ballots (both for under and over votes as well as the total) exhibits the classic shape seen for Poisson distributions.) The coefficients are reported as incident rate ratios, so coefficient values greater than one indicate the percent increase in uncounted votes from a one unit increase in exogenous variable, while values less than one indicate the opposite. For example, the coefficient for Democratic County Election Supervisors in Table 1, column 1 is 1.129 and it implies that even after accounting for all the other factors from voting methods and machines to demographics having a Democratic supervisor is associated with about a 13 percent higher non-voted ballot rate.

The regressions use all the data supplied to me on whether votes were counted centrally or at the precinct; the different types of voting machines and ballots used; income categories from $15,000 to $25,000 and up through over $500,000; and the level of schooling by residents from high school not completed through college graduate. Additional variables were the number of males, number of females, number of absentee ballots, number of new voters, mean age, and number of people over 65. I have also combined this data with information that I had previous put together on the political affiliation and race of county election supervisors.

Even to the extent that a relationship exists between race and non-voted ballot rates, the effect is small. Column 2 in Table 1, which uses only one race related variable (the number of African-Americans in a precinct), implies that adding a thousand more African-Americans in a precinct would only increase the number of non-voted ballots by .25 percent. However, columns 3 and 4 provide some insight into what is being hidden by lumping all African-Americans together. Simply disaggregating by political registration between Republicans and Democrats produces one coefficient that is much larger and one much smaller than previously seen with the aggregate number. The estimate for African-American Republicans is so large that using columns 1 and 3 imply that 18 African-American Republicans will produce as many non-voted ballots as a 1000 randomly selected African-Americans. For columns 2 and 4, every 15 African-American Republicans produces as many non-voted ballots as a 1000 randomly selected African-Americans. While African-American are registered as Republicans at only about 1/18th the rate that they register as Democrats,[9] the results in the first four columns imply that African-American Republicans are 54 to 66 times more likely than the average African-American to produce non-voted ballots.

Another way of saying this last result is that, for every two additional black Republicans in the average precinct, there was one additional spoiled ballot. By comparison, it took an additional 125 African-Americans (of any party affiliation) in the average precinct to produce the same result.

While illustrative, selectively including only some of the possible racial and ethnic as well as political affiliations of voters creates a problem because the presence of different groupings are likely to be correlated (either positively or negatively) across precincts and using only select groupings might falsely attribute some of the variation that is in fact associated with other groupings to only those that are included. To deal with this the rest of the regressions reported in Tables 1 and 2, as well as the file where I have tried in the brief time available to see whether the results are sensitive to inclusions of varying subsets of control variables, use all the remaining information of race, ethnic grouping, and political registration that was provided to me. In order to avoid perfect collinearity with the variable measuring the number of voters in each precinct, the variable for voters of "other races registered to other parties (neither Republican or Democratic)."

Including these other groupings does reduce the size of the coefficient for African-American Republicans, but the coefficients in columns 5 and 6 of Table 1 are still substantial compared to the average effect for African-Americans, with a difference of around 50 to 55 times. The bottom third of Table 1 tests to see if the different voter groups have statistically different effects on the number of non-voted ballots. What the results show is that African-American Republicans, White Republicans, and Hispanic Republicans have much higher non-voted ballot rates than African-American Democrats and that all the differences are quite statistically significant.

[9] The data indicates that .5 percent of voters in the average precinct are African-Americans registered as Republicans versus 9 percent of voters being African-American Democrats.

Only for "other races" is the reverse true, and that difference is very large and also quite statistically significant.

The regressions also allow us to examine whether Bush and Gore voters were different, and here the results are mixed, with the more complete regressions showing that Bush voters had the higher non-voted ballot rate and the other two significant results showing the same for Gore. Generally, females have a higher non-voted ballot rate than males. Higher rates were also observed for older people as well as those living in counties with Democratic and/or African-American County Election Supervisors. This last effect is quite large. Column 5 in Table 1 indicates that a county with a Democratic supervisor experiences a fourteen percent higher non-voted ballot rate and a county with African-American Democratic supervisor has a 31 percent higher rate.[10]

The voting methods and mechanisms are extremely important in explaining the non-voted ballot rate. Punch cards without chads are associated with higher non-voted ballots in both specifications 5 and 6, though whether paper or optical with arrows has the next highest rate depends upon the specification. Central processing has a higher rate than processing at the precinct, and either the infamous "butterfly" or the "8–2" ballots tend to be associated with more non-voted ballots. As shown in Table 3 and the raw regressions file, removing information on whether ballots are counted centrally or at precinct, the ballot type, and the machine type reduces the amount of variation in non-voted ballots explained by these regressions by 11 percentage points.[11] By contrast, removing measures of race and political affiliation reduce the amount of variation explained by a little over two percentage points.

While information on educational attainment of residents and household income is important in explaining variations in non-voted ballot rates, the patterns are not easily explained by simply relying on "voter stupidity." The results for Figure 2 vary with whether a separate variable is used to pick up average differences in non-voted ballots across counties (so-called "county fixed effects") are included, but in both cases those who have attended some high school have higher non-voted ballot rates than those with less than a 9th grade education. Without county fixed effects, those with some college have a significantly higher non-voted ballot rate than all but those with some high school.

The relationship between household income and non-voted ballots in Figure 3 is even more puzzling. No matter what specification is used there are wide swings in the non-voted ballot rate for people at the higher income levels, with incomes from $250,000 to $499,000 showing unusually lower rates of non-voted ballots and those above $500,000 showing the reverse. Indeed the non-voted ballot rate for this top income group is at least 4.6 times higher than observed for the next highest category (those between $150,000 to $249,999, another extremely wealthy group of households) and 15 times higher than those in households earning less than $15,000 a year. Even over lower ranges of income it is difficult to detect any obvious pattern.

The education and household income results make it difficult to argue that non-voted ballots arise from a lack of intelligence. One possibility is that these results arise simply from differences in "tastes." For example, the high non-voted ballot rate for African-American Republicans could simply arise because they were more conflicted than other voters in deciding whom to vote for. Similar types of conflicted views might be arising for other groups like those in households making over $500,000 or those with some high school education.

As to ballot types and voting machines, having the candidate names listed in one column, optical machines or paper ballots that are counted by hand, as well as counting ballots at the precinct level are associated with relatively fewer non-voted ballots. Both measures of older people (the mean adult age and number of people over age 65) are strongly related to more non-voted ballots.

While a strong case can be made for the inclusion of all the variables included in the data set, there is still the issue of whether the results are dependent on any single variable or set of variables. If one is sure that all the control variables should be included in the regressions, little work is needed beyond Tables 1 and 2. However, on the chance that some might object to the inclusion of certain variables, I have tried to briefly run specifications that first drop out one of the control variables (or closely related set of control variables) and then a second one. A closely related set of variables involves something such as the education, voting machine, ballot type variables, or gender of voters. I also tried including only one of the control vari-

[10] There is only one African-American supervisor and that person is a Democrat.

[11] Cutting out these variables when fixed county effects are included has no discernable impact on the ability to explain the variation across precincts in non-voted ballots.

ables (or closely related set of control variables) at a time. A total of 175 regressions are presented and they provide fairly consistent estimates.

While about 17 percent of the results in the accompanying file that examines the sensitivity of the results implies that African-American Democrats may be associated with more non-voted ballots, even in those relatively rare cases where the relationship is positive, the coefficient is at most about 1/10th as large as the coefficient for African-American Republicans. In every single case White Republicans have a higher non-voted ballot rate than African-American Democrats, and the difference is always statistically significant at better than the .0004 level (which means that we can reject these differences as being due to randomness at least at 4 per 10,000 level).

Finally, Table 4 shows that the non-voted ballot rate for African-American Republicans relative to Democrats is actually a couple of times larger for these heavily African-American precincts than it is for all precincts as a whole. Examining only those precincts where over 90 percent of voters are African-American and using the regressions in Table 2 shows that the difference is statistically significant at the 10 percent level for five of the six specifications. If there is something unusual that is occurring to African-American ballots in the most heavily African-American precincts, it is precisely in those precincts that the relative impact on African-American Republicans is the largest.

V) ANALYZING THE COUNTY LEVEL DATA FOR THE 1992, 1996, AND 2000 PRESIDENTIAL ELECTIONS

As noted earlier, using purely cross-sectional data faces severe limitations in accounting for differences across counties. Unfortunately, though, the panel level data limits us to using county level data. It is also unfortunate that the data for previous years does not allow us to breakdown voter data by both race and political affiliation. There are many reasons why spoilage rates differ and accounting for the 46 variables used in our analysis (or the smaller number available in the Majority Report, see appendix) leaves out many possible factors that are necessary to explain the difference in ballot spoilage rates in different counties. Using information on non-voted ballot rates during previous presidential elections allows us to examine whether changes in the racial composition of voters can explain changes in these rates. None of our results imply increasing the share of voters in any racial or ethnic group significantly increases non-voted ballot rates.

While neither the Florida Secretary of State's Office nor individual county election offices have detailed records on current county level voting operations, past information was not readily available on some variables, such as the method of voting, where the votes are tabulated, and the race of the county election supervisor.[12] Fortunately, Election Data Services provides data on the type of voting machine by county for the last three presidential elections.[13] During 1996 and 2000, fourteen counties switched from lever machines and eleven counties switched from DataVote machines. Most the changes for the 1996 election and all of those for 2000 were towards the adoption of optical scan machines.

In the regressions shown in Table 5, I use only the percent of the voters by race and not the demographic breakdown of the general population. In place of the median income and poverty rate, I use data that I had readily available on per capita income, per capita unemployment insurance payments, and per capita income maintenance payments (welfare).[14] These last three variables were only available up through 1998, so I use those values as proxies for the year 2000.[15] County fixed effects are used to account for other factors that explain differences in non-voted ballot rates across counties and fixed year effects are used to pick up differences over time. (The literacy rate data could not be included as it was only available for one year, and the fixed county effects would be perfectly collinear with this variable.)[16]

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[12] Telephone calls were made to all the individual county election supervisor's offices in an attempt to obtain this data.

[13] Election Data Services is located at 1401 K Street, NW, Suite 500, Washington, DC 20005–3417.

[14] The data on these income and payment values were obtained from the Regional Economic Information System (REIS). Income maintenance includes Supplemental Security Insurance (SSI), Aid to Families with Dependent Children (AFDC), and food stamps.

[15] Lichtman uses a similar approach.

[16] As a proxy for new voters who may have made mistakes because they had no previously voted, I used a variable for the change in the number of voters by race from previous elections. This proxy has definite problems since an increase in the number of voters in a particular racial category can arise because of people who are experienced voters moving from one place to an-

Continued

The results indicate that the percent of voters in different race or ethnic categories are rarely statistically related to ballot spoilage. In these specifications, less than 2 percent of the variation in non-voted ballots is explained by including African-American voters. The only specification that implies a statistically significant relationship between the rate of non-voted ballots and the percent of voters who are African-American is the third column, but even this result provides little support for the notion that discrimination was occurring. Because the percent of voters who are African-American in the third column is not only included by itself but also by interacting the African-American variable with whether the county election supervisor is a Republican or a Democrat, the interactions must be added together with the direct effect to determine the net effect of more African-American voters on the non-voted ballot rate in counties with Republican or Democratic supervisors. Doing this indicates that more African-American voters increases non-voted ballot rate when the election supervisors are either non-partisan or Democrats and decreases the non-voted ballot rate when they are Republicans. Each one percentage point increase in the percent of voters who are African-American results in the non-voted ballot rate rising by .43 percentage points when the election supervisor is a Democrat and falling by .15 percentage points with a Republican. The net effects for Democratic or Republican supervisors are not statistically significantly different from zero nor from each other. The F-test for the difference between these the net impact on African-American voters in counties with Republican or Democratic supervisors is significant at only the 20 percent level. Only the direct effect of the percent of voters who are African-Americans is really statistically significant and that is picking up what is happening in counties run by non-partisan election supervisors.

The last specification replaces the simple variable for the percent of voters who are African-American with that variable being interacted with the dummy variables for the type of voting machines used. Interestingly, the coefficient on the interaction for punch card machines is almost identical to the interaction for optical scan machines, and F-tests indicate that none of the different voting methods imply a different rate of non-voted ballots as the percent of voters who are African-American increases.

As for the other variables, non-partisan and Republican county election supervisors are associated with more non-voted ballots. A county that switches from a Democratic to a non-partisan election supervisor sees its non-voted ballot rate more than double. Yet, while the average rates are higher for Republicans than Democrats, the non-voted ballot rate that does exist is more likely to be positively related to the share of voters who are African-American in Democratically controlled counties. The average non-voted ballot rate declined significantly from 1992 to 1996 and then rose very slightly in 2000. While the coefficients for optical scanners always imply a statistically significant lower rate of non-voted ballots, and three of the five coefficients are statistically significant. None of the other variables produce consistent results.

Table 6 replaces the voting share data in the first column of Table 5 with census demographic data to measure the differential impact that age, sex, and race might have on non-voted ballots.[17] This breakdown was not readily available in terms of those who voted in the elections, so we use the census data as a substitute. One reason for relying on this census data is that when the percent African-American in the general population are used in place of African-Americans as a share of voters the previous regressions, we obtain results that are roughly similar in size and statistical significance.

The results in Table 6 paint a much more complicated story on the relationship between race and non-voted ballots than is discussed by the Majority Report. For five age and sex categories, an increase in the share of voters who are African-American implies more non-voted ballots. Yet, for the other five age and sex categories, the reverse is true. It is not clear what form of discrimination would imply that more African-American males between 30 and 39 increases non-voted ballots, but the reverse is true for African-American females in that age range.

While the panel data here implies that increasing the number of African-Americans in a county does not increase the non-voted ballot rate, it is still possible that African-American Republicans had non-voted ballots at much higher rates than African-American Democrats. Yet, the inability to breakdown voter data by both race

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other. I found no significant impact from this variable. However, I was unable to determine whether this lack of statistical significance was due to there really not being a problem arising from new voters or from problems with the measure itself. Including these variables did not alter the other findings.

[17] This data was obtained from the U.S. Bureau of the Census.

and political affiliation across these different elections makes it impossible to test this hypothesis with the panel data.

V) THE EVIDENCE ON EXCLUDING CONVICTED FELONS

The evidence on convicted felons proves the opposite of what the Majority Report claims. In their conclusion on page 37, the Majority Report states that "the chance of being placed on this list [the exclusion list] in error is greater if the voter is African-American." The evidence they provide indicates that African-Americans had a greater share of successful appeals. However, since African-Americans also constituted an even greater share of the list to begin with, whites were actually the most likely to be erroneously on the list (a 9.9 percent error rate for whites [125/1264] versus only a 5.1 percent error rate for blacks [239/4678]). The rate for Hispanics (8.7 percent [105/1208]) is also higher than for blacks. Their own table thus proves the opposite of what they claim that it shows. A greater percentage of Whites and Hispanics who were placed on the disqualifying list were originally placed there in error.

In any case, this evidence has nothing to do with whether people were in the end improperly prevented from voting, and there is no evidence presented on that point. The Majority Report's evidence only examines those who successfully appealed and says nothing about how many people of those who didn't appeal could have successfully done so.

VI) CONCLUSION

It is difficult to see any evidence that African-American Democrats in Florida were systematically discriminated against in terms of voting. The results clearly indicate that with respect to non-voted ballot rates the differences within races are as large as the differences between races. If one believes that African-Americans were systematically prevented from voting, it is African-American Republicans who were the most harmed. If one believes that the actions of county election supervisors played an important role in creating this problem (either by intent or carelessness), non-voted ballot rates were clearly the highest in counties with Democratic and/or African-American supervisors. As to concerns that the poor were likely to have their ballots not counted, the results decisively reject this conclusion. Not only do voters whose household incomes fall between $15,000 and $24,999 have a lower non-voted ballot rate than any income range below $150,000 (with the exception of one estimate for the $75,000 to $99,9999 range), but the group with by far the highest non-voted ballot rate are the very richest with annual household incomes over $500,000. The panel data makes it very difficult to ascertain any systematic bias either intentional or unintentional against African-American voters.

APPENDIX: USING THE MAJORITY REPORT'S COUNTY LEVEL DATA

Appendix 1 of the Commission's Majority Report lists the factors that they presumably tried to account for in their analysis of non-voted ballots. Besides the percent of registered voters who are African-American, they include information on the percent of the general population who are white, African-American, Hispanic, and minority; median income; the poverty rate; the type of voting system (optical, punch card, paper/hand, lever machine); and whether voting was tabulated at the precinct, centrally, or otherwise. While these factors are listed, there is surprisingly little discussion on why these factors rather than other variables are included. Despite repeated requests by commission member Abigail Thernstrom, no information has been provided on how exactly these different variables were included in their regression estimates.[18]

The statistical appendix for the Majority Report provided by Allan Lichtman also mentions that the results are unaffected by including a variable measuring "the percentage of adults in the lowest literacy category failed to diminish the relationship between race and ballot rejection or to reduce the statistical significance of the relationship" from 1992.[19] While this "lowest literacy category" is not defined in the report, we assume that it is from the U.S. Department of Education's Adult Literacy Survey which defines it as those being unable to "make low-level inferences based

[18] Two measures of education (the percentage of high school graduates and a measure of literacy) are briefly mentioned in the text of Professor Lichtman's draft report to the commission, but the data is not provided in the data appendix and the results are never reported in his own draft.

[19] Allan J. Lichtman, "Report on the Racial Impact of the Rejection of Ballots Cast in the 2000 Presidential Election in the State of Florida," U.S. Commission on Civil Rights, June 2001 (http://www.usccr.gov/vote2000/stdraft1/ltrpt.htm).

on what they read and to compare or contrast information that can easily be found in [a] text."[20]

Why some of these factors are important is easy to explain. For example, measures of income and poverty are roughly associated with education and therefore with the ability to read and follow voting instructions. Literacy rates, as used by Lichtman, are a more direct measure of this, though even this is not perfect because the county data does not breakdown the rates by race. The national data indicates that 38 percent of African Americans—but only 14 percent of whites—ranked in the lowest category, so it does raise the issue of whether any race variables will be proxying for left out literacy measures. Errors in voting will also vary with the type of voting equipment and possibly where the votes are tabulated. For example, if optical readers are used and the votes are fed into a vote counter directly by the voter, it is possible for a ballot with an error to be immediately returned to and corrected by the voter.

Other factors mentioned by the Commission in its appendix are more difficult to explain. For example, why include a detailed breakdown of the share of different groups in the general population but only examine the share of voters who are African-American? There is also the issue of what has been left out. Given the Majority Report's emphasis on "intentional discrimination" (e.g., p. 37), why not try to account for those involved in the process who might have some reason for either discriminating against African-American voters or preventing such discrimination? Some obvious controls for this are the political party affiliation or race of the county election supervisor. If the suspected discrimination is occurring against African-Americans and given that African-Americans vote so heavily for Democrats, it seems doubtful that Democratic or African-American election supervisors would act in ways to increase the rate of non-voted ballots of African-Americans.

Because of these two sets of concerns we gathered data on the share of voters who are white or Hispanic and on the political affiliation and race of county election supervisors from the Florida Secretary of State's Office and individual county supervisors of elections. Section A in Appendix Table 3 contains descriptive statistics on the county data for the year 2000 obtained directly from the Majority Report's Appendix 1. Section B in Appendix Table 3 provides information on the new variables that I obtained.

Appendix Table 4 provides some preliminary information using the cross-sectional evidence that casts doubt on Republicans are responsible for the problems with non-voted ballots. Indeed, the counties with Democratic election supervisors have the highest non-voted ballot rate, with white Democrat supervisors having a higher rate than African-American Democrat supervisors. White Republican election supervisors have the lowest rate of spoiled ballots, indeed the non-voted ballot rate for white Republican supervisors is only a third of the rate of black Democratic supervisors. Comparing sections A and B in Appendix Table 4 also shows why cross-sectional analysis produces a simple correlation between race and non-voted ballots. Those counties with the highest rates of African-American voters also were more likely to have both Democratic supervisors and more spoiled ballots.

Since neither the Majority Report nor the accompanying "Draft Report" by Allan Lichtman show exactly what regressions specification they examined, we tried different specifications to replicate the commission's results. Because the Majority Report does not reference data on literacy rates, we report the results with and without the literacy variable included. However, it was difficult to find a consistent relationship between the share of voters who are African-American and the ballot spoilage rate. We started out by using all the variables reported in their Appendix 1 and the literacy rate (see column 1 in Appendix Table 5, section A). While the coefficient on the percent of voters who are African-American was indeed positive, implying that a greater share of voters being African-American (and not just characteristics correlated with the presence of African-Americans in the community) increased the spoilage rate, the coefficient was quite statistically insignificant. The probability that the coefficient was positive was only 28 percent. Excluding the literacy rate in Section B produced an even lower level of significance. Thus using the Commission's very own set of control variables, there is thus no real confidence that there is a positive relationship between the share of African-American voters and the ballot spoilage rate.[21]

Because the cross-sectional data might not be sufficient to disentangle the share of African-Americans in the general population from the measure of the share of

[20] National Center for Education Statistics, Adult Literacy in America: A First Look at the Results of the National Adult Literacy Survey, National Center for Education Statistics (Washington, D.C.: U.S. Government Printing Office, 1993), 18, 113.

[21] I tested for heteroskedasticity but could not find evidence for it.

voters who are African-American, column 2 in Appendix Table 5 removes the variable for the share of African-Americans in the county population. Interestingly, this specification implies that a higher share of voters being African-American actually reduces the ballot spoilage rate. Indeed, it is quite damming that any specification that accounted for something as simple as the share of the county population that is white resulted in no significant relationship between the share of voters who are African-American and the ballot spoilage rate. The specification in column 3 removes the percentage of the population that is white and is the only specification shown in Appendix Table 5 when literacy rates are included that provide statistically significant evidence consistent with the Majority Report's claims.

Even in the specification (column 3) which implies a significant impact of the share of voters who are African-American, the variable explains very little of the overall variation in spoilage rates. Removing the share of voters who are African-American reduces the amount of variation in ballot spoilage that can be explained by the regression from 73.9 percent to 72.2 percent, a 2.3 percent reduction. By contrast, removing the variables that account for the method of voting and where the counting takes place explains 31 percent of the variation. In none of other the specifications shown in Table 5 does removing any or all of the variables that contain the share of voters who are African-American reduce the amount of the variation in non-voted ballots that can be explained by any more than 2 percent. In the first specification that uses all of the variables provided by the Majority Report, the share of voters who are African-American explains less than two-thirds of one percent of the variation.[22]

Once we found a specification that was consistent with the Majority Report's claims, we examined whether the relationship between African-American and ballot spoilage rates might really be proxying for other left-out factors. The next four specifications (columns 4 through 7) point to one clear conclusion: there exist many other factors that occur in heavily African-American counties and any of these factors could generate a high non-voted ballot rate.

For example, the largest effect we find between the share of voters who are African-American and ballot spoilage rates exists when African-Americans are county election supervisors (column 6) and a net positive effect also occurs when Democrats are county election supervisors (column 5). Because the point estimates need to be added together in evaluating the impact of the percent of voters who are African-American in counties with African-American county election supervisors, the net effect in column 6 for the percent of voters who are African-American and that variable interacted with whether the county election supervisor is African-American is just short of being statistically significant at the 10 percent level (p=.1088). The estimates imply that each one percent increase in the share of voters by African-Americans produces 135 percent more non-voted ballots when the county election supervisors are African-American than when they are of some other race.

The data does not allow us to distinguish which is the primary reason for the higher spoilage rate when African-American voters are relatively more prevalent, but the most statistically significant effect still appears to be whether African-Americans are voting in a county where the election supervisor is African-American. Column 7 implies that the rate of non-voting when there are more African-Americans in a county is 43 percent larger when the supervisor is African-American. If county level voting is rigged (intentionally or not) to discriminate against African-Americans voters, the empirical method used by the Majority Report implies that by far the most discriminatory counties are ones where Democrats and African-Americans control the balloting process. Unless we actually believe that Democrats and African-American officials are discriminating either intentionally or not against African-American voters, and such discrimination would make no sense, the obvious conclusion is that this approach for ferreting out discrimination is flawed.

By contrast, the estimates imply that in counties with Republican election supervisors a higher share of voters who are African-Americans actually results in a tiny reduction in the non-voted ballot rate, though the effect is never statistically significant. For each additional one percentage point of the voters living in a county with a Republican election supervisor, columns 5 and 7 imply that the non-voted ballot rate falls by between .09 and .1 percentage points (a 6 to 7 percent decline in the average rate of non-voted ballots in counties with Republican supervisors).

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[22] The claim in Professor Lichtman's draft report that 25 percent of the variation can be explained simply by the share of voters who are black is very misleading. It is obtained only because no other variables are included in that regression. This only makes sense if he really believes that this is the only variable that should be included in explaining the variation in ballot spoilage rates.

I also tried another specification (not shown), similar to what is reported in the fourth column, that interacted the dummies for the four different types of voting machines and whether the ballots were counted centrally with the percent of voters who are African-American. Optical scans and punch card machines implied that more African-American voters resulted in more non-voted ballots, while lever machines and paper ballots implied fewer non-voted ballots when there were more African-American voters, but none of the coefficients were statistically significant nor statistically significantly different from each other. Generally, since one would expect that the ability to discriminate against black voters should vary with the type of voting machine used, it is hard to see any relationship here that implies discrimination.

The other control variables imply that combining optical voting machines with the central counting of votes produces significantly more non-voted ballots, whereas optical votes counted at the precinct reduces spoilage. Higher poverty rates are also significantly associated with more spoilage in seven of the eight specifications, though median income is rarely statistically significant and then only when literacy rates are accounted for.

Section B of Appendix Table 5 reruns the regressions reported in Section A, but without the literacy rate variable. Lichtman's comments suggest his primary specifications did not include this variable.[23] The general pattern of results is similar to what is shown in Section A, though the results are even stronger. Columns 13, 14, and 15 imply even more clearly that whatever relationship exists between a higher percentage of voters who are African-American and more non-voted ballots is driven by African-Americans living in counties with Democratic and/or African-American election supervisors. The net effects of the African-American voter interactions are always positive and the F-tests at the bottom of the section indicate that there is always at least one combination of these interactions that is statistically significant. By contrast, the net effect of Republican supervisors always implies that more African-American voters in those counties leads to fewer non-voted ballots.

Professor Lichtman's report, upon which the Majority bases it conclusions, makes the claim (p. 6) that: "is there some other factor which better explains this disparity in ballot rejection rates? In short the answer is no." This is indeed an important question. Yet, this section has shown that merely accounting for the data supplied in the Majority Report's appendix can reverse Lichtman's claim. In addition, this section has raised possible variables that help explain the variation in non-voted ballot rates that were never discussed in either the Majority Report or Lichtman's draft report. Any relationship between race and non-voted ballots is sensitive to the specification. Of the 16 specifications reported, only three exhibited positive relationships that were statistically significant at least at the 10 percent level, though another three specifications were significant at least at the 15 percent level. Yet, even the largest estimates imply that the percentage of African-Americans explains only two percent of the variation in non-voted ballots.

There is a long list of other factors that might help explain spoilage rates, such as voter age or gender, and these were never included in the simple regressions. It is also important to study not only the means but the distributions of different variables. Part of our reason for not going much beyond what was done in the Majority Report was to keep our results as similar to theirs as possible, though it was very easy to include variables that would eliminate any statistical significance with respect to the share of voters who were African-American. The panel data set over several presidential elections in the following section examine these issues in more detail because the larger sample allows us to more fairly make this type of detailed breakdown.

[23] Lichtman writes: "A multiple regression analysis that controlled for the percentage of high school graduates and the percentage of adults in the lowest literacy category failed to diminish the relationship between race and ballot rejection or to reduce the statistical significance of the relationship."

Figure 1: African Americans and Non-Voted Ballot Rate

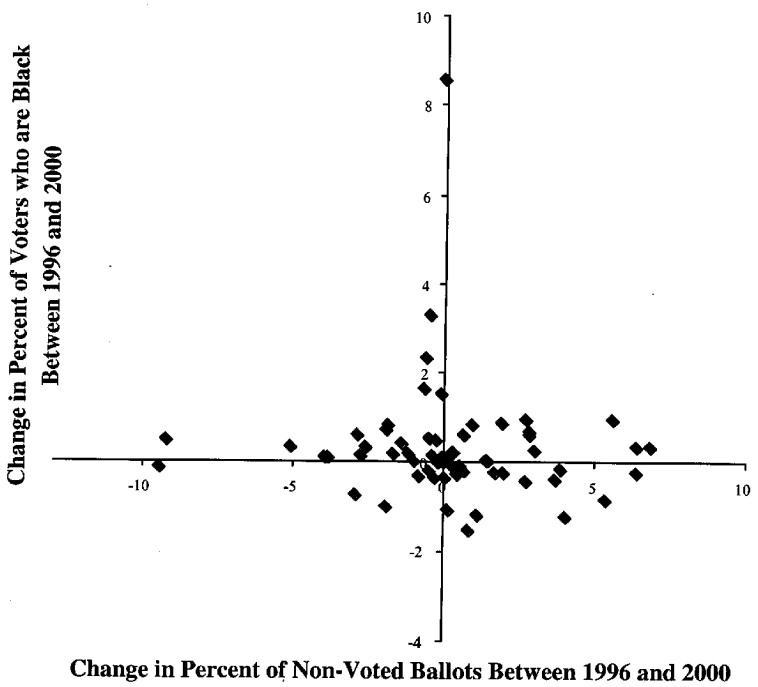


Figure 2: Whites and Non-Voted Ballot Rate

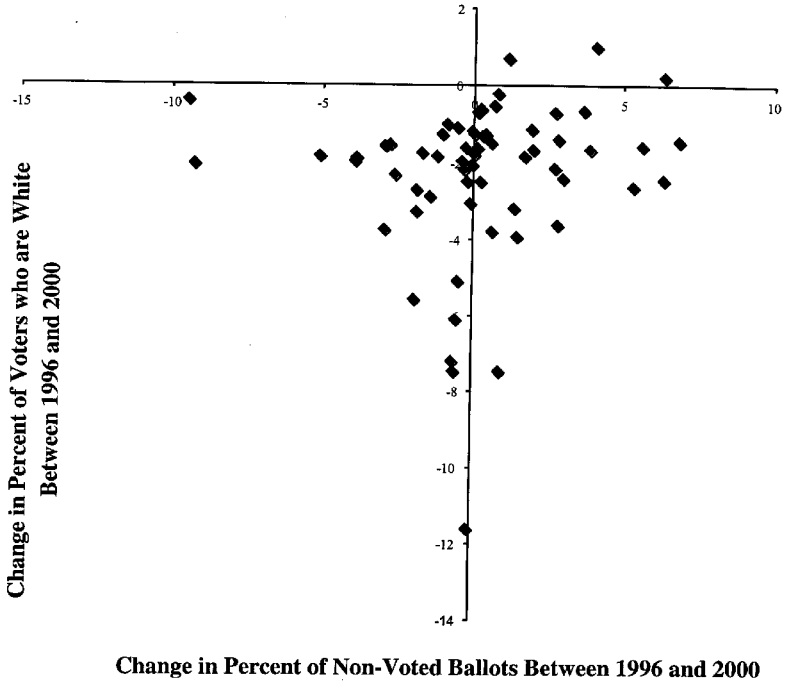


Figure 3: Hispanics and Non-Voted Ballot Rate

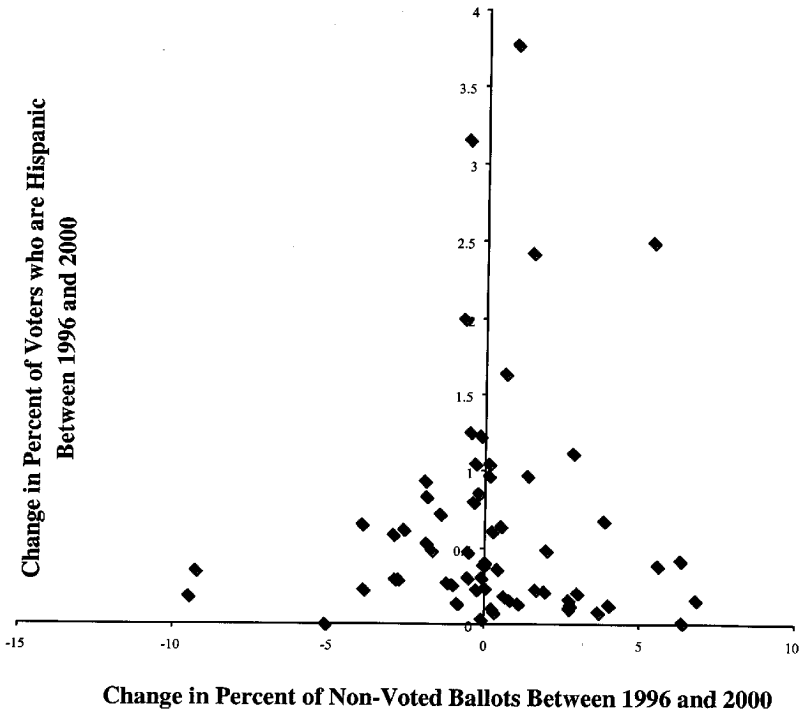
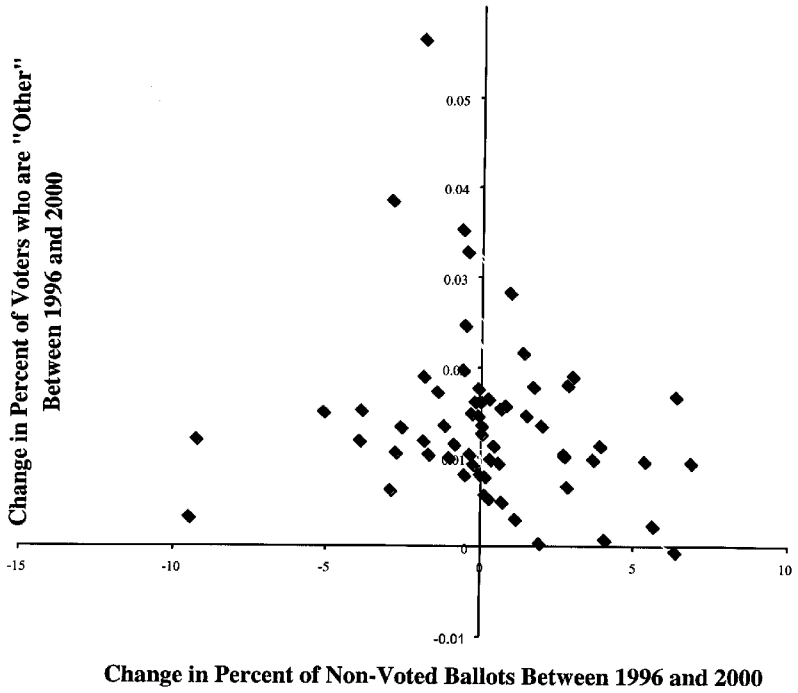
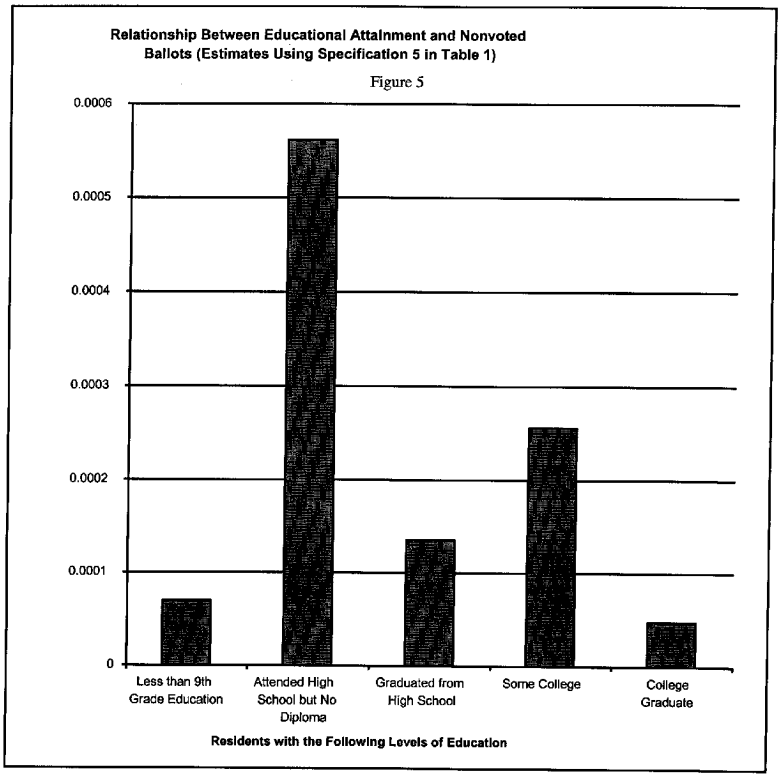
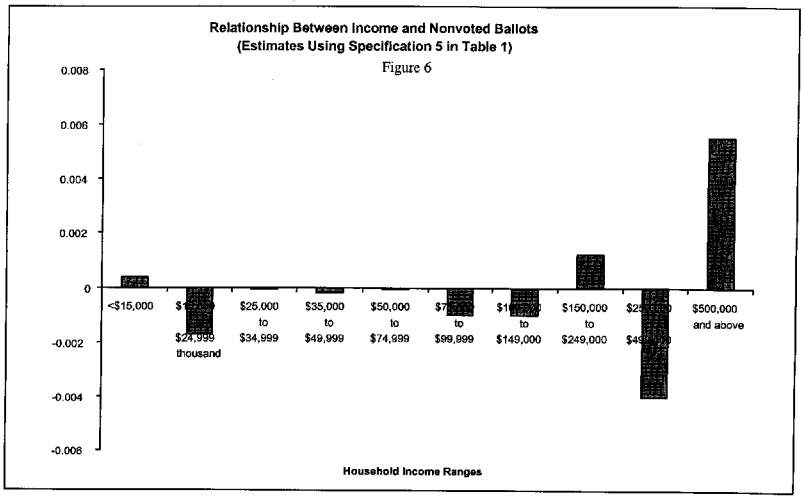
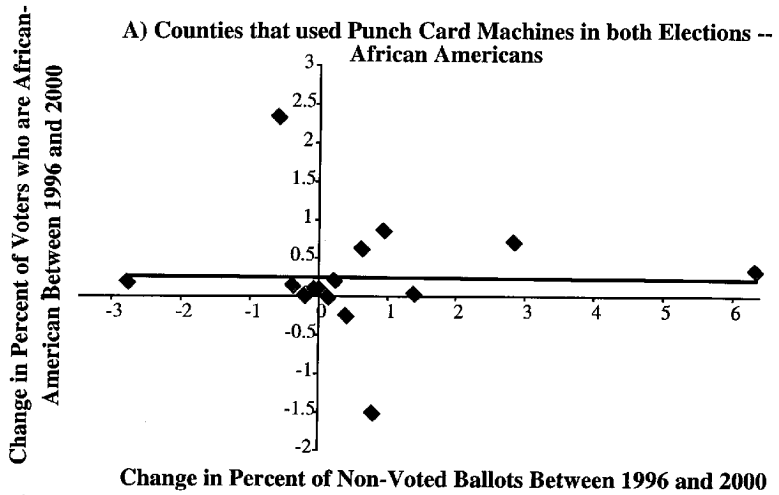


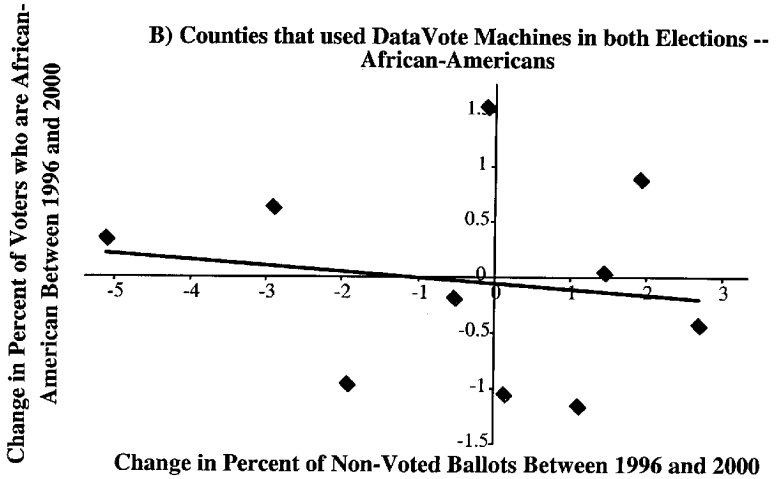
Figure 4: "Other" Voters and Non-Voted Ballot Rate

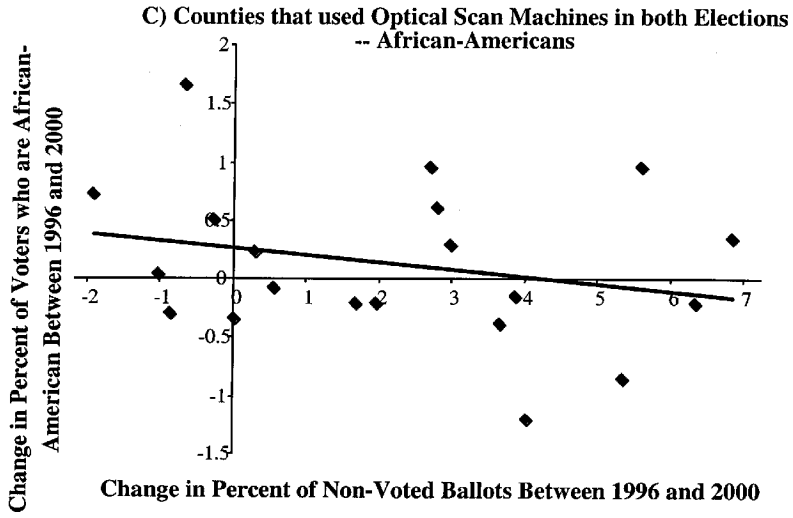


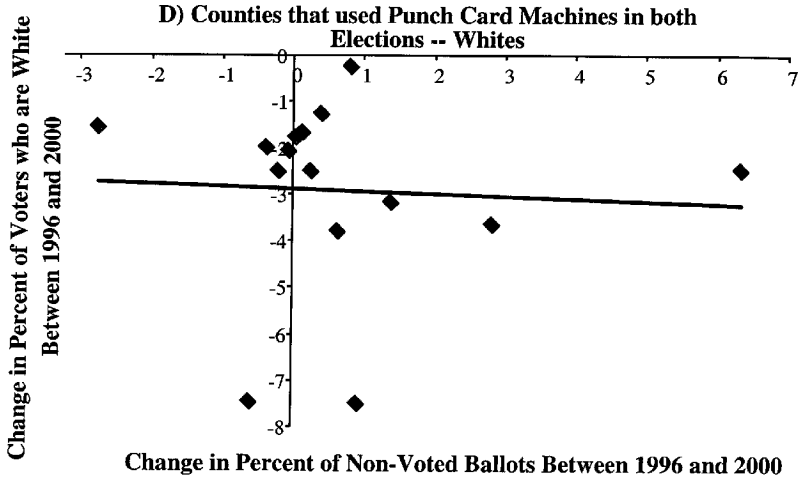

Relationship Between Educational Attainment and Nonvoted Ballots (Estimates Using Specification 5 in Table 1)
Figure 5
0.0006
0.0005
0.0004
0.0003
0.0002
0.0001
0
Less than 9th Grade Education
Attended High School but No Diploma
Graduated from High School
Some College
College Graduate
Residents with the Following Levels of Education

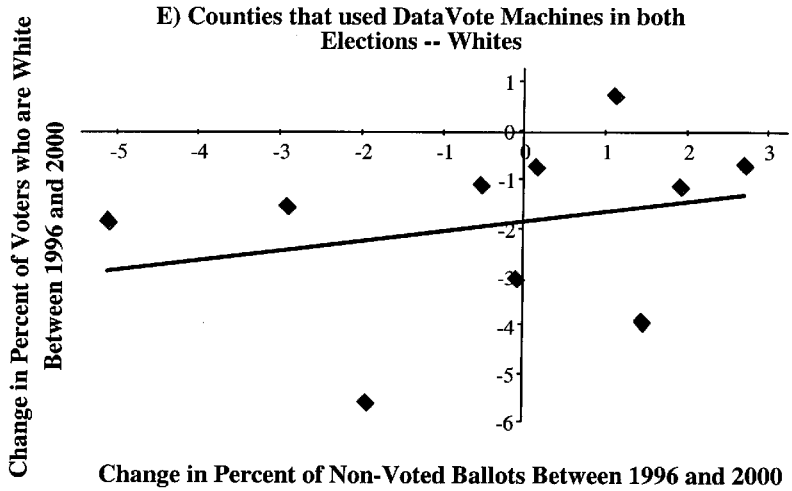

Relationship Between Income and Nonvoted Ballots (Estimates Using Specification 5 in Table 1)
Figure 6
0.008
0.006
0.004
0.002
0
-0.002
-0.004
-0.006
<$15,000
$25,000 to $34,999
$35,000 to $49,999
$50,000 to $74,999
to $149,000
$150,000 to $249,000
$500,000 and above
thousand
Household Income Ranges

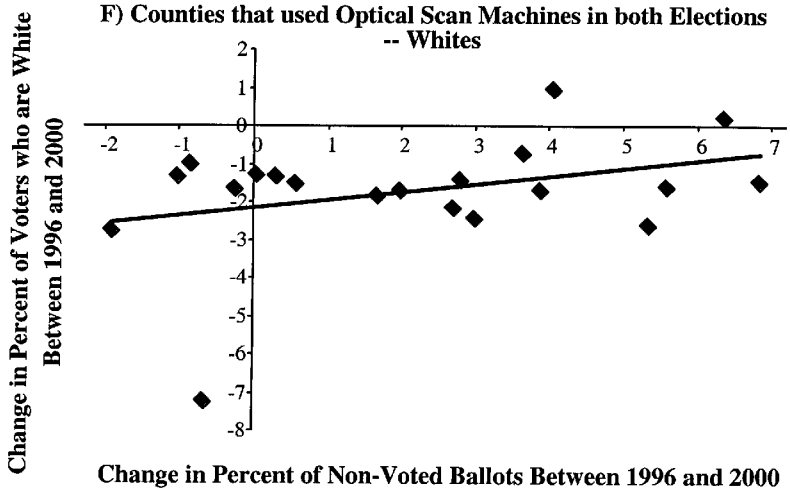

A) Counties that used Punch Card Machines in both Elections -- African Americans
Change in Percent of Voters who are African-American Between 1996 and 2000
Change in Percent of Non-Voted Ballots Between 1996 and 2000
3
2.5
2
1.5
1
0.5
-0.5
-1
-1.5
-2
-3
-2
-1
0
1
2
3
4
5
6

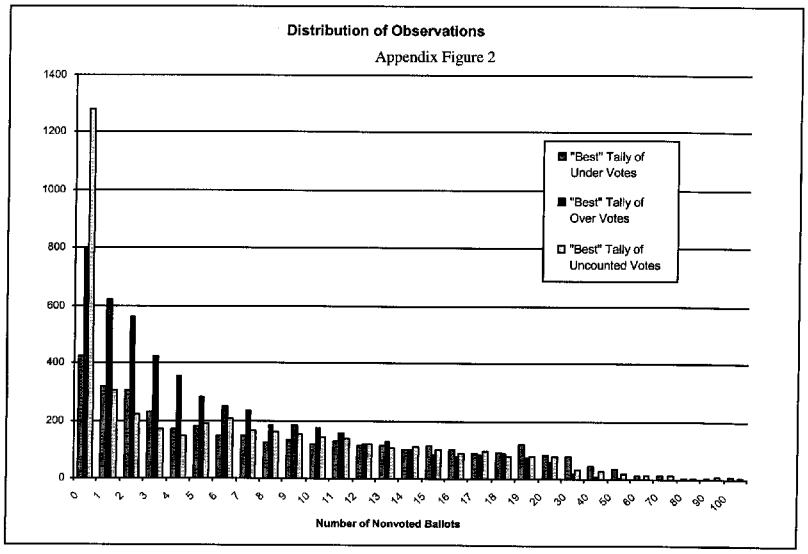

B) Counties that used DataVote Machines in both Elections -- African-Americans
Change in Percent of Voters who are African-American Between 1996 and 2000
Change in Percent of Non-Voted Ballots Between 1996 and 2000
1.5
1
0.5
0
-0.5
-1
-1.5
-5
-4
-3
-2
-1
0
1
2
3


C) Counties that used Optical Scan Machines in both Elections -- African-Americans
Change in Percent of Voters who are African-American Between 1996 and 2000
Change in Percent of Non-Voted Ballots Between 1996 and 2000
2
1.5
1
0.5
0
-0.5
-1
-1.5
-2
-1
0
1
2
3
4
5
6
7


D) Counties that used Punch Card Machines in both Elections -- Whites
Change in Percent of Voters who are White Between 1996 and 2000
Change in Percent of Non-Voted Ballots Between 1996 and 2000
0
-1
-2
-3
-4
-5
-6
-7
-8
-3
-2
-1
0
1
2
3
4
5
6
7


E) Counties that used DataVote Machines in both Elections -- Whites
Change in Percent of Voters who are White Between 1996 and 2000
Change in Percent of Non-Voted Ballots Between 1996 and 2000
1
0
-1
-2
-3
-4
-5
-6
-5
-4
-3
-2
-1
0
1
2
3


F) Counties that used Optical Scan Machines in both Elections -- Whites
Change in Percent of Voters who are White Between 1996 and 2000
Change in Percent of Non-Voted Ballots Between 1996 and 2000
2
1
0
-1
-2
-3
-4
-5
-6
-7
-8
-2
-1
0
1
2
3
4
5
6
7



Chairman SENSENBRENNER. Mr. Zelikow.

TESTIMONY OF PHILIP ZELIKOW, EXECUTIVE DIRECTOR, NATIONAL COMMISSION ON FEDERAL ELECTION REFORM

Mr. ZELIKOW. Good afternoon, Mr. Chairman and Members of the Committee. My name is Philip Zelikow. I'm the executive director of the National Commission on Federal Election Reform, also known as the Carter-Ford Commission, Ford's famous cochairs. They were listed as honorary cochairs; they were anything but in the process. They were actively engaged from start to finish and remain engaged. Thank you very much again for the opportunity to testify today.

Although it seems long ago, the 2000 Presidential election was a political ordeal that tested our electoral system unlike any other in living memory. Fortunately our political system proved its resilience, but last January, looking to the future, former Presidents Gerald Ford and Jimmy Carter, as well as former Senator Howard Baker and Lloyd Cutler, formed the National Commission on Federal Election Reform. The Commission was privately funded in order to be sure it could work quickly and not be encumbered by political pressures. Two ideas animated the Commission. First, we are not going to refight Florida. Second, Americans can and should expect their electoral system to be a source of national pride and a model to all the world.

Our cochairs asked a diverse group of outstanding individuals to join the Commission and spend a year investigating America's democratic processes. We held hearings all over the country. We heard directly from more than 50 witnesses, and our task forces consulted more than 200 other experts. The good news I can tell you is this, that in much of the country cadres of able and dedi-

cated election administrators, some of whom are sitting behind me, are in place who can show what is possible and carry reforms into practice.

In a world of problems that often defy any solution, the weaknesses in election administration are somewhat remarkably problems that government actually can solve. When the American people choose their President, Vice President, and Members of the Congress, our Commission agreed unanimously, and they were all partisans of one stripe or another, that voters should expect all levels of government to provide a democratic process that does at least six things: one, maintains an accurate list of citizens who are qualified to vote; two, encourages every eligible voter to participate effectively; three, uses equipment that reliably clarifies and registers the voters' choices; four, handles close elections in a foreseeable and fair way—Mr. Delahunt, I think, would take particular interest in that point; five, operates with equal effectiveness for every citizen and every community; and six, reflects limited but responsible Federal participation.

We agreed unanimously that the primary role remains with the States, but that there needs to be a Federal partnership to go with all those Federal mandates that are already in the law. The Commission envisioned a country where each State maintains accurate computerized voter lists of who can vote, network with local administrators. Using that system, qualified voters in our mobile society would be able to vote throughout their State without being turned away because of local administrative problems. Millions of military and overseas voters would find it easier to receive and return their ballots. Voting machines would meet a common standard of excellent performance. Each State would have uniform objective definitions of what constitutes a vote. Every jurisdiction and every official would obey the Voting Rights Act and other statutes that secure the franchise and prohibit discrimination.

Let me note that Presidents Carter and Ford, of course, have political experiences that go back in their active lives to the late 1950's. They wrote that they thought, that the Help America Vote Act adopt our Commission's most important recommendations, and, "aside from the civil rights acts," notably the Voting Rights Act of 1965, would "provide the most important improvements in our democratic election system in our lifetimes," and I can tell you that Jimmy Carter personally drafted that phrasing, and that's a person who experienced voter fraud at the origins of his political career.

The cornerstone of both our report and the Ney-Hoyer bill is a statewide voter registration database. This has not received enough attention, and it is vital. And I can go on why Republicans and Democrats can break out of the traditional trench warfare on vote fraud issues to leapfrog that into a system that helps both sides and both communities if you use statewide voter roles, helping the more mobile poor or ill-educated voters while dramatically reducing vote fraud.

The Ney-Hoyer bill is not perfect, yet a sense of perspective is needed. This legislation would create a genuinely national framework for the administration of elections for the first time in the history of the United States. It would create the first Federal partnership with State and local governments in paying for the ma-

chinery of democracy. It would transform the voter registration systems, voting procedures and voting systems in practically every county in America, and I think it does so with real sensitivity to federalism issues. So that is why this Commission of contentious partisans came together on our recommendations and why our Commission's leaders have endorsed the Help America Vote Act as a good bill, and they don't wish a search for the perfect to be the enemy of the good.

Chairman SENSENBRENNER. Thank you, Mr. Zelikow.

[The prepared statement of Mr. Zelikow follows:]

PREPARED STATEMENT OF STATEMENT OF PROFESSOR PHILIP ZELIKOW

Good afternoon Mr. Chairman and Members of the Committee. Thank you for the opportunity to testify today, particularly on a matter that goes to the heart of our nation's democracy. In these challenging times, the quality of our democratic processes can and should be part of our national debate.

Although it seems long ago, the 2000 presidential election was a political ordeal that tested our electoral system unlike any other in living memory. From November 7 to December 12 the outcome of the presidential election was fought out in bitter legal and political struggles that ranged throughout Florida and ultimately extended to the United States Supreme Court. Fortunately, our political system proved its resilience.

The ordinary institutions of election administration in the United States, and specifically Florida, just could not readily cope with an extremely close election. Many aspects of the election processes were put under a microscope and viewed by an anxious nation. With dismay and growing anger we saw controversial ballot design; antiquated and error-prone voting machines; subjective and capricious processes for counting votes; voter rolls that let unqualified voters vote in some counties and turned away qualified voters in others; confusion in the treatment of overseas and military ballots; and a political process subjected to protracted litigation.

Stepping back from Florida, the picture was no more encouraging. The chief election official of Georgia, Cathy Cox, testified to our Commission that: "As the presidential election drama unfolded in Florida last November, one thought was foremost in my mind: there but for the grace of God go I. Because the truth is, if the presidential margin had been razor thin in Georgia and if our election systems had undergone the same microscopic scrutiny that Florida endured, we would have fared no better. In many respects, we might have fared even worse." Across America, we heard from official after official who felt the same way.

Last January, looking to the future, former Presidents Gerald Ford and Jimmy Carter, as well as former Senator Howard Baker and Lloyd Cutler, formed the National Commission on Federal Election Reform. The Commission was privately funded in order to ensure that it could work quickly and not be encumbered by political pressures. Its mission was simple: to ensure that while our elections can and should be hard-fought, every American can be assured that the administration and determination of our elections is fair, accurate, and just.

Our co-chairs asked a diverse group of outstanding individuals to join the Commission and spend a year investigating American democratic processes at every level. These Commissioners from every region of the country have diverse political affiliations, professional, and personal backgrounds.

They listened hard, studied hard, and asked hard questions. They heard testimony in four public hearings from over 200 election administrators, civil rights groups, scholars, and concerned citizens. They looked at our election system as a whole, as well as that of individual states.

While the Commission observed many problems in our nation's electoral systems, there was also good news. In the last few years, and now spurred by the events of last year, election reform has returned to the legislative agenda in many states, most notably Florida and Georgia. In much of the country cadres of able and dedicated election administrators are in place who can show what is possible and carry reforms into practice. In a world of problems that often defy any solution, the weaknesses in election administration are, to a very great degree, problems that governments actually can solve.

With that optimism, both Republicans and Democrats on the Commission, sought solutions that were bipartisan and would be consistent with the historical development of America's electoral system. The Commission believes that when the Amer-

ican people choose their president, vice president, and members of Congress, voters should expect all levels of government to provide a democratic process that:

- Maintains an accurate list of citizens who are qualified to vote;
- Encourages every eligible voter to participate effectively;
- Uses equipment that reliably clarifies and registers the voter's choices;
- Handles close elections in a foreseeable and fair way;
- Operates with equal effectiveness for every citizen and every community; and
- Reflects limited but responsible federal participation.

For Americans, democracy is a precious birthright. But each generation must nourish and improve the processes of democracy for its successors. The Commission envisioned a country where each state maintains accurate, computerized voting lists of who can vote, networked with local administrators. Using that system, qualified voters in our mobile society would be able to vote throughout their state without being turned away because of local administrative problems. Millions of military and overseas voters would find it easier to receive and return their ballots. Election Day would be held on a national holiday, freeing up more people to serve as poll workers and making polling places more accessible. Voting machines would meet a common standard of excellent performance. Each state would have uniform, objective definitions of what constitutes a vote. News organizations would exert necessary restraint in predicting election outcomes. Every jurisdiction and every official would obey the Voting Rights Act and other statutes that secure the franchise and prohibit discrimination. In all of this there would be a delicate balance of shared responsibilities between levels of government, between officials and the voters they serve.

From that vision, the Commission recommended 13 reforms. They included a statewide voter registration database, provisional ballots, simplified procedures for uniformed and overseas voters, benchmarks and standards for voting systems, including clear definitions of what constitutes a vote on each kind of machine, the creation of a new federal election agency responsible for administering grants and setting voluntary standards, restoration of voting rights for felons after they have served their full sentence (including probation), and federal investment to capitalize state revolving funds that will provide long-term assistance to election administrators.

I will be happy to answer your questions about the specifics of any of these recommendations later in this hearing. However, in the meantime please allow me to highlight one of our core recommendations and a key provision of Chairman Ney and Congressman Hoyer's Help America Vote Act, because I believe that it goes a long way to explain the need, practicality, and bipartisan nature of both our Commission's Report and the Ney-Hoyer bill.

First, let me note that the Help America Vote Act could, in the words of our co-chairs, Presidents Ford and Carter, Michel and Cutler, "with the exceptions of the Civil Rights Laws of the 1960's . . . provide the most important improvements in our democratic election system in our lifetimes." The bill adopts our Commission's most important recommendations. It is bipartisan, innovative, and will actually work in practice.

The cornerstone of both our report and the Ney-Hoyer bill is a statewide voter registration database. One of the most serious problems in America's elections is also one of the most basic—identifying who can vote. For some this is a problem of disfranchisement. For others this is a problem of the integrity of the voting system.

The issue of voter lists now has well-drawn battle lines. Some argue that the "purging" of voter lists has been used to push minority voters off the rolls. Others maintain that "list maintenance" is essential to preventing fraud. Regardless of one's position, there is no disagreement that voter lists are swollen with large numbers of named voters who have moved, or died, or are no longer eligible to vote in the local jurisdiction where they are registered. For example, in Oklahoma, which gathered statewide data from its unitary election system, 25 percent of the voters on its roles are inactive. A number of other jurisdictions have compared their lists to census numbers and observed that they have thousands, sometimes ten of thousands, more registered voters than people.

Some contend that swollen voter rolls are harmless, since the individuals have moved or died and therefore do not vote, and since poll worker scrutiny and signature verification can prevent fraud. We disagree:

- Significantly inaccurate voter lists add millions in unnecessary costs to already underfunded election administrators and undermine public confidence in the integrity of the election system and quality of public administration.
- Significantly inaccurate voter lists invite schemes that use 'empty' names on voter list for ballot box stuffing, ghost voting, or to solicit "repeaters" to use such available names. The opportunities to commit such frauds are actually growing because of the trend toward more permissive absentee voting.
- Significantly inaccurate voter lists often penalize poor or ill-educated voters. Among the most mobile citizens in the country, these voters find that even modest residential changes, within a state or county, will keep them from appearing on the list of eligible voters at their new residence.

Rather than take a side in this ongoing partisan argument, the Commission and the Ney-Hoyer bill, propose to fix the problem in a way that breaks from the old controversies over "purging." Implementing statewide, computerized databases, similar to the one utilized by Michigan and Kentucky, will allow every state's voter registration lists to be more accurate and transparent.

A statewide database, tied to the DMV and other social service agencies, will ensure that the rolls are more accurate. It would keep the core constitutional responsibility for voter registration in the hands of state governments. In-precinct provisional ballots, which allow a voter to cast a ballot if they believe they have been incorrectly removed from or never added to the database, can only occur under this system. A statewide registration system is also more transparent and accountable to outside scrutiny and will be less susceptible to fraud. This is why this recommendation has been at the heart of almost every group who has studied the problems in our election systems, including the United States Commission on Civil Rights, the Cal-Tech MIT Project, the FEC, and the Election Center.

I use this relatively mundane example because it demonstrates that there are clear bipartisan solutions to large problems with our election systems. I use it because it is a clear example of the kind of role that the federal government can play, by providing funding and setting minimum standards that will ensure that the accuracy and fairness of our democratic processes for every voter. And, at the same time, it allows states and localities to enact this program in a way that fits the needs of their system and citizenry.

The Ney-Hoyer bill is not perfect. It did not include some of the suggestions made by our Commission. Yet, a sense of perspective is needed. This legislation would create a genuinely national framework for the administration of elections for the first time in the history of the United States. It would create the first federal partnership with state and local governments in paying for the machinery of democracy. It would transform the voter registration systems, voting procedures, and voting systems in practically every county in America.

If a bill emerges that is better than Ney-Hoyer, our Commission will readily endorse it. Perhaps this Committee can find amendments that will clarify or improve the bill, while maintaining the foundation of bipartisan spirit and substantive reforms on which the legislation was drafted in this brief window of legislative opportunity. We, like all Americans want what is best. But, for now, we do not wish to be the enemy of the good.

Thank you. I look forward to your questions.

The National Commission
on Federal Election Reform

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November 27, 2001

Dr. Carolyn Jefferson-Jenkins
League of Women Voters
1730 M Street NW,
Suite 1000,
Washington, DC 20036-4508

Dear Carolyn,

The Commission

Honorary Co-Chairs
President Gerald R. Ford
President Jimmy Carter

Co-Chairs
Robert H. Michel
Lloyd N. Cutler

Vice-Chairs
Slade Gorton
Kathleen M. Sullivan

Commissioners
Griffin Bell
Rudy Boschwitz
John C. Danforth
Christopher F. Edley Jr.
Hanna Holborn Gray
Colleen C. McAndrews
Daniel Patrick Moynihan
Leon Panetta
Deval L. Patrick
Diane Ravitch
Bill Richardson
John Seigenthaler
Michael Steele

Executive Director
Philip D. Zelikow

All four co-chairs of our Commission – former president Jimmy Carter, former president Gerald Ford, Lloyd Cutler, and Bob Michel – are about to issue a very strong and public endorsement of the Ney-Hoyer bill, HR 3295, the Help America Vote Act. All of our commissioners have been fully briefed on the bill's provisions. Not one has indicated a concern. That is partly because the Ney-Hoyer bill went beyond the Commission's report and even adopted the suggestions made by our dissenters, on the one recommendation (out of 13) where there was a substantial dissent.

That is why when we spoke a week ago, on November 20, I told you how surprised we were to read the League's press release denouncing the Ney-Hoyer bill. I explained why some of the League's allegations and polemical language seemed so misleading and unfortunate. At that time you said that you were not ready to engage the substance but that you would look into the matter with an open mind.

I was pleased at your readiness to work through the analysis. So I was startled today to see the letter that state chapters of the League have sent to their representatives in Congress. Your grassroots members may wonder why the League is so opposed to a bill that has been praised so warmly by the thoroughly bipartisan Carter-Ford commission. They will be even more curious if they study this letter.

Below you will find our analysis of the charges contained in the remarkable letter that has been sent under the League's name to every member of Congress.

League Letter Charge #1:
"It [Ney-Hoyer] fails to ensure a citizen can receive a provisional ballot because the bill provides a loophole allowing the adoption of an alternative to provisional ballots.

Reply #1:
The charge left out a rather critical phrase. HR 3295 requires every state to offer, by November 2002, "in-precinct provisional voting" or "an alternative which *achieves the same objective*" (Section 502(3)). This language was drawn directly from our Commission report.

Why allow for an alternative which "achieves the same objective"? We discussed this last week. Many states already have enacted procedures that are analogous to provisional voting but are even more generous to voters. No one on our Commission wanted Congress to outlaw such generosity.

For example, another option, similar to the practice that is now the law in states like Illinois and Michigan, would allow a voter not on the voter list to submit proof of identification and swear to or affirm an appropriate affidavit of eligibility to vote in that jurisdiction. This information could then be used as an application for voter registration and the voter list would be amended accordingly. If qualified, the voter could be issued a regular ballot not a provisional one. We wrote the language the way we did to be able to allow for such generous alternatives. A tighter federal standard would have the inadvertent consequence of tearing up a number of existing state laws that are very helpful to voters, as with the "affidavit voting" procedure in Illinois and Michigan.

The Ney-Hoyer bill requires in-precinct provisional voting. This is a major step forward from current federal law (the fail-safe provisions of the National Voter Registration Act, or NVRA). Indeed, the bill would codify the most expansive form of provisional voting now used anywhere in the United States.

League Letter Charge #2
"HR 3295 fails to require that voting machines meet basic minimum standards; such as, 1) the machines do not have a high error rate,"

Reply #2:
This criticism is based on a common misunderstanding. As we and other studies (like MIT/Caltech) have pointed out, voter error rates vary considerably even within machine types. Some punch card machines have low error rates, others do not. Some optical scan machines have low rates; the same machine in a different county may have a high rate. Voter error is caused, and solved, not just by hardware fixes but also by changes in ballot design, software, voter education, and other measures. So our approach is to set benchmarks for accountable performance that cover all of election administration, not just the machines. In other words it is an even broader approach than the one the League letter seems to advocate. Hence HR 3295 states that "In order to receive an Election

Fund payment for a fiscal year, the chief State election official of the State shall provide the Commission with the following certifications: ... (2) A certification that the State has set a uniform Statewide benchmark for voting system performance in each local jurisdiction, expressed as a percentage rate of residual vote in the contest at the top of the ballot, and requires jurisdictions to report data relevant to this benchmark after each general election for Federal office" (Section 233(a)(2)).

Second, HR 3295 has expanded federal voting system standards that embrace not just the hardware but also the software that goes with it, requires consideration of human usability as an aspect of engineering design, and allows for decertification of current systems as well as better certification of new ones.

Third, HR 3295 provides funding for a federal buyout of punch card voting systems – the type of system so tarnished in the public eye (Section 101).

League Letter Charge #3:
"HR 3295 fails to require that voting machines meet basic minimum standards; such as, ... (2) The machine gives the voter notice and a chance to correct a mis-cast ballot;"

Reply #3:
This charge is simply inaccurate. HR 3295 requires that, "If the State uses voting systems which give voters the opportunity to correct errors, the State shall ensure that voters are able to check for and correct errors under conditions which assure privacy. [State and local governments] shall ensure that the new voting system gives the opportunity to correct errors before the vote is cast." (Section 502(7)). Non-compliance with this requirement is subject to civil action by the Department of Justice (Section 503(b)).

Also, because most touch screen and optical scan machines already have this option and because of the buyout for punch card machines, second chance voting will exist de facto in almost every jurisdiction by 2004.

League Letter Charge #4:
"HR 3295 fails to require that voting machines meet basic minimum standards; such as ... (3) the machines are accessible, " "it [HR 3295] fails to adequately protect voters with disabilities, instead allowing excuses for non-compliance," and "it fails to ensure fails to ensure that citizens with special needs have access to voting machines they can actually use."

Reply #4:
First, HR 3295 requires that every state be in compliance with the Voting Accessibility for the Hand capped Act and the American with Disabilities Act or be subject to liability under those laws and civil action by the Department of Justice. (Section 501(a)(1)).

Second, the act also requires "new voting systems to provide a practical and effective means for voters with disabilities to cast a secret ballot (Section 502(6)). This language, which was drawn from our Commission's report, was chosen precisely because representatives of the interest groups for disabled voters had recommended it to us. They told us this language, which has successfully been enacted in some states, was a model. States using this language then publish very detailed regulations on how different kinds of voting systems are to be adapted in order to meet this statutory objective.

Third, as a condition for receipt of federal funds, "in each precinct or polling place in the State, there is at least one voting system available which is fully accessible to individuals with physical disabilities; and if the State uses *any* portion of its Election Fund payment to obtain new voting machines, at least one voting machine in each polling place in the State will be fully accessible to individuals with physical disabilities (Sections 233(4)(a) and (b)).

League Letter Charge #5:
"HR 3295 fails to require that voting machines meet basic minimum standards; such as ... (4) the machines can be audited."

Reply #5:
Again, this charge is simply incorrect. Under HR 3295, as a condition on receiving federal money, each State must either adopt federal standards and processes or develop their own "which (at a minimum) ensure that new voting mechanisms have the audit capacity to produce a record for each ballot cast" (Section 233(3)).

League Letter Charge #6
"It contradicts existing federal law by requiring voters to be purged from the rolls if they fail to vote in two successive federal general elections and fail to respond to a notice."

Reply #6:
This charge is again inaccurate. The Ney-Hoyer just restates the current requirement under the National Voter Registration Act. It was carefully cleared with career Justice Department voting rights attorneys who confirmed this. To make the point even clearer, HR 3295 expressly adds that the prescribed system of file maintenance must be "consistent with the National Voter Registration Act of 1993" (Section 502(2)(a)).

League Letter Charge #7
"It does not require a statewide, computerized voter registration list linked to registration agencies and every polling place."

Reply #7:
This charge is misleading. Under the bill, states must "implement a statewide voter registration system networked to every local jurisdiction in the state" (Section 502(1)).

So, by "registration agencies" the authors of the letter apparently meant every other agency that could accept voter registration applications, such as all social service agencies. But welfare agencies and jails cannot amend voter rolls. Those agencies must turn those applications in to the local jurisdiction anyway. Hence adding such a requirement would yield little if any benefit that would justify the monetary costs or danger to voter privacy.

The author of the letter also apparently advocates linking all statewide computerized voter registration systems to local polling places. (There are about 190,000 of them.) This is an odd reason to oppose the bill. The majority of states have no computerized statewide registration system at all. The bill makes a very ambitious step forward in effectively bringing such systems to every state. Until such systems are adopted, and the software and data transfer protocols can be worked out, it is impossible to assess the cost and feasibility of linking the state and county systems to each and every polling place. There are also very serious technical and security issues involved in using the Internet to provide such links. Passage of a bill like HR 3295 is thus the essential prerequisite before Congress or most states can usefully contemplate the precinct-linked system the author of the letter seems to want.

League Letter Charge #8
"It [HR 3295] amends the National Voter Registration Act to permit jurisdictions to purge registered voters by not allowing voters at the polling place to correct erroneous information about themselves, by not confirming their address in writing."

Reply #8:
The charge is inaccurate. It ignores the new federal standard requiring provisional voting, a standard designed precisely for just such a scenario.

But the charge is also an unusually cheap shot. The drafters of HR 3295 took particular care to state expressly that "Nothing in this Act and no action taken pursuant to this Act shall supercede, restrict, or limit the application of . . . the National Voter Registration Act." If that's not clear enough, the Ney-Hoyer bill adds that: "Nothing in this authorizes or requires any conduct which is prohibited by the National Voter Registration Act." (Sections 903(a) and (b)).

League Letter Charge #9
"It would create an expensive 166 member commission with advisory boards."

Reply #9:
The charge is false. The Election Assistance Commission has only four, repeat four, members. And there are advisory boards, but their members are unpaid! (Sections 213 and 214)

In stepping back from the nine charges levied by the League, what is most striking is how marginal they seem in comparison to the landmark character of the proposed legislation. This legislation would create a genuinely national framework for the administration of elections for the first time in the history of the United States. It would create the first federal partnership with state and local governments in paying for the machinery of democracy. It would transform the voter registration systems, voting procedures, and voting systems in practically every country in America.

If a bill emerges that is better than Ney-Hoyer, our Commission will readily endorse it. Right now there is no such bill. For instance, attached to this letter is our staff analysis, prepared months ago, of the existing Dodd-Conyers bill. But we understand that Senator Dodd and other Senators, Democrat and Republican, have been working on possible preparation of a new bill.

Perhaps a better bill can be crafted and adopted in this brief window of legislative opportunity. Of course we want what is best. But, for now, we do not wish to be the enemy of the good.

Sincerely,

Philip Zelikow
Executive Director

Attachment: Commission Staff Analysis of Dodd-Conyers bill (August 2001)

Chairman SENSENBRENNER. Mr. Leonard.

TESTIMONY OF LLOYD J. LEONARD, LEGISLATIVE DIRECTOR, LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Mr. LEONARD. Thank you, Mr. Chairman, Members of the Committee. I am Lloyd Leonard, legislative director for the League of Women Voters of the United States. The League of Women Voters is a nonpartisan citizen organization that has worked for more than 80 years to educate the electorate, register voters, and make government at all levels more accessible and responsive to citizens. We believe that voting is the most important expression of a citizen's participation in government.

Mr. Chairman, many Americans were shocked by the problems in election administration that were exposed by the 2000 election. That election demonstrated that our administration systems are in dire need of repair. To remedy the problems, the League urges that Congress pass legislation to fix the voting machines, to fix the voter registration rolls, and to protect voters.

The league supports election reform. We are disappointed, however, with H.R. 3295, the legislation currently before this Committee. In our view the bill falls short of ensuring that all of—all of America's voters have a full opportunity to cast their ballots and have their votes count. In important respects the bill moves backwards. That's why the League of Women Voters as well as many other civil rights, disability rights, religious and civic groups oppose the bill as reported by the Committee on House Administration.

With your permission I would like to submit a letter from the Leadership Conference on Civil Rights and its constituent organizations, such as the NAACP and the National Council of La Raza, stating opposition to the bill as reported.

Chairman SENSENBRENNER. Without objection, the letter will be included in the record.

Mr. LEONARD. Thank you.

I would also like to submit a letter from the Consortium of Citizens with Disabilities, including Easter Seals and the United Cerebral Palsy Association, voicing opposition to the bill as reported from the Committee.

Chairman SENSENBRENNER. Without objection, that letter will be included as well.

Mr. LEONARD. Thank you, Mr. Chairman.

There are some good elements in H.R. 3295. For example, there is an innovative program developed by Mr. Hoyer that would encourage young people to work at the polls on election day, but when it comes to some core elements, we believe that H.R. 3295 falls significantly short.

Fortunately the crucial shortcomings in the bill can be corrected. I would like to discuss the problems with the bill and suggest ways of fixing them.

First, H.R. 3295 amends current law in a way that removes existing protections for voters. Specifically the legislation amends the National Voter Registration Act in a way that allows citizens to be purged from voter registration rolls if they don't vote. Key safeguards under current law that protect against errors in election administration would be cut back. H.R. 3295 as currently written exposes millions of duly registered voters to removal from the rolls. Some of the supporters of the bill suggest that it merely restates the current requirements under the National Voter Registration Act. In response I will refer to you section 902(a) of the bill, which expressly amends the purging provisions of the NVRA that prohibit removing voters because they have not moved. Clearly section 902(a) does not restate NVRA requirements. It changes them. Mr. Chairman, we believe that the amendment to the National Voter Registration Act should be stricken from the bill.

Our second concern is that H.R. 3295 fails to ensure that voters with disabilities have access to the polls just as other American citizens. A full range of disability groups from the Paralyzed Veterans of America to the American Council of the Blind oppose the legislation as currently written. While H.R. 3295 reaffirms that the Americans with Disabilities Act applies in the voting context, it fails to take into account that more than half of all polling places remain inaccessible to voters in wheelchairs despite the provisions of the ADA. From our perspective, simply reinforcing the status

quo does not qualify as election reform. We believe the bill needs to be amended to set national standards for accessible voting with reasonable time frames for compliance.

Third, H.R. 3295 fails to ensure that citizens can receive a provisional ballot. Because many jurisdictions have problems getting all registered voters on their lists in time, provisional ballots are an important voter protection. While the bill purports to set a minimum standard, it includes a huge loophole that allows the adoption of an alternative to provisional ballots without stating what objectives the alternative would have to meet. These problems could be served by reworking the language of the bill.

Finally, Mr. Chairman, the bill fails to establish minimum Federal standards for America's voting systems. As a recent report from Cal Tech and MIT points out, millions of votes are, "Lost in each Federal election because voting machines and their associated systems fail to properly record the voter's intent." We believe that a voter in Alabama or Alaska, California or Connecticut should be recorded and counted equally. We need basic national standards to ensure that our voting systems work properly.

The events surrounding the 2000 election exposed many problems that have been festering for years. Congress should not miss the opportunity to fix these problems. We urge that the deficiencies in H.R. 3295 be corrected so that real election reform can be passed by Congress and signed by the President. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Thank you very much.

[The prepared statement of Mr. Leonard follows:]

PREPARED STATEMENT OF LLOYD J. LEONARD

Mr. Chairman, members of the committee, I am Lloyd Leonard, legislative director for the League of Women Voters of the United States.

I am pleased to have the opportunity today to express the League's strong support for speedy enactment of election reform legislation.

The League of Women Voters of the United States is a nonpartisan citizen organization with more than 125,00 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. We believe that voting is the most important expression of a citizen's participation in government.

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 and ballot systems that confuse the voter illustrate the problem at the most basic level. In addition, poll worker training issues, reports of differential application of voter ID requirements and other civil rights concerns, purging practices, accuracy problems, standardization and consistency issues—all these point to fundamental and systemic problems.

To remedy these problems, the League urges that Congress pass legislation to fix the voting machines, to fix the voter registration rolls and to protect voters. Voting machines, or voting systems to use the more technical term, must ensure that the voter's vote will be properly recorded. Registration rolls with the names of all properly registered voters should be available at the polls. And we need a variety of systems to ensure that the voter has full access to the polls and to the ballot.

Mr. Chairman, the League supports election reform. We are disappointed, however, with H.R. 3295, the legislation currently before this committee. In our view, H.R. 3295 falls short of ensuring that all of America's voters have a full opportunity

to cast their ballots and to have their votes count. In important respects, H.R. 3295 moves backwards. That's why the League of Women Voters, as well as many other civil rights, disability rights, religious and civic groups, oppose the bill as reported by the Committee on House Administration.

Fortunately, the crucial shortcomings in H.R. 3295 can easily be corrected. I would like to discuss the problems with the bill, and suggest ways of fixing them.

First, H.R. 3295 amends current law to remove existing protections for voters. Specifically, the legislation amends the National Voter Registration Act in a way that allows citizens to be purged from voter registration rolls if they don't vote. Key safeguards under current law that protect against errors in election administration would be cut back. H.R. 3295 as currently written exposes millions of duly registered voters to removal from the rolls. We believe that the amendment to the National Voter Registration Act should be stricken from the bill.

Second, H.R. 3295 fails to ensure that voters with disabilities have access to the polls just as other American citizens. That's why a full range of disabilities groups, from the Paralyzed Veterans of America to the American Council of the Blind, opposes the legislation as currently written. While H.R. 3295 reaffirms that the Americans with Disabilities Act applies in the voting context, it fails to take into account that more than half of all polling places remain inaccessible to voters in wheelchairs despite the provisions of the ADA. What's more, the bill allows federal funds to be used to purchase new voting machines that are inaccessible. The bill needs to be amended to set national standards for accessible voting, with reasonable time frames for compliance. From our perspective, simply reinforcing the status quo does not qualify as election reform.

Third, H.R. 3295 fails to ensure that citizens can receive a provisional ballot. This simple reform would provide a special ballot to those who come to the polls but whose names are not on the official registration list. The ballot would be held aside until election officials can check to see if the individual is eligible and qualified to vote. Because many jurisdictions have problems getting all registered voters onto their lists in time, this is an important voter protection. While H.R. 3295 purports to set a minimum standard, it includes a huge loophole that allows the adoption of "an alternative" to provisional ballots. It also fails to ensure that citizens will be notified whether the provisional ballot is ultimately counted. These problems could be solved by reworking the language of the bill.

Fourth, H.R. 3295 fails to establish a federal minimum standard for America's voting systems. As a recent report from Caltech and MIT points out, millions of votes are "lost" in each federal election because voting machines and their associated systems fail to properly record the voter's intent. H.R. 3295 does not provide for basic standards to protect each voter. We believe that a vote in Alabama or Alaska, California or Connecticut, should be recorded and counted equally. We do not advocate a "one size fits all" solution that requires the same machines to be used nationwide. Rather, basic national standards are needed to ensure consistently low error rates, notice to the voter if she or he has mistakenly miscast a vote by overvoting or undervoting, full access for persons with disabilities or limited English proficiency, and an audit trail. Representative Conyers has proposed such basic minimum standards for voting systems, and we believe that this common-sense approach should be added to H.R. 3295.

Mr. Chairman, the League of Women Voters has worked for years to protect voter rights. We have learned that the mechanisms of election administration can be complicated and detailed. But we have also learned that those mechanisms and those details determine whether each American citizen will have a fair opportunity to participate in our elections and whether every vote will count.

The events surrounding the 2000 election exposed many problems that have been festering for years. Congress should not miss the opportunity to fix these problems. We urge that the deficiencies in H.R. 3295 be corrected so that real election reform can be passed by Congress and signed by the President.

We thank you for your attention, and look forward to working with you on this vital issue.

Chairman SENSENBRENNER. The Committee will operate under the 5-minute rule, and the Chair has noted in which order Members have appeared on each side, and, again, because of the number of Members present, when the red light goes on, your time is up. And I would hope that Members would be accommodating to those who appeared later to give them a chance before we have to

go and vote. So I will yield myself 5 minutes and ask Mr. Zelikow a few questions.

Mr. Zelikow, the State of Wisconsin does not require statewide voter registration. It is required in communities of over 5,000, but it is optional for communities of less than 5,000 population. I believe that title 5 of the bill will require the State of Wisconsin to comply with this law by requiring registration at local government expense in the communities where registration is not required by State law. Am I correct in that?

Mr. ZELIKOW. Yes, you are correct in that, I believe, Mr. Chairman.

Chairman SENSENBRENNER. Now, since the registration function is handled by local officials, and the local officials maintain the voter registration roll, is that not an unfunded mandate on the local government that will be required under this law to impose registration?

Mr. ZELIKOW. No, sir, because the financial burden would shift to the State level and, therefore, would actually relieve county officials of a significant burden they now shoulder, and there is assistance specifically allocated for the State governments to pay for this. So it is both a funded mandate, to the extent it's a mandate at all. It's actually just a standard that Wisconsin can choose to implement in the way it finds most appropriate for its conditions, but the burden will fall on the State government that has access to Federal funds.

Chairman SENSENBRENNER. But won't this disenfranchise voters who have never had to register before, and all of a sudden there is a registration requirement imposed, and they show up to vote just like they voted in the past and find out that they haven't registered, and they are shown the door?

Mr. ZELIKOW. No, sir, because when you create the statewide registration system, the way that's done is the way they would then use the DMV database and other statewide databases in order to instantly create a voter roll that would be useful for all the citizens of the State and, in fact, would immediately include every resident of those towns who has a driver's license or is available through social service agencies of other kinds.

Chairman SENSENBRENNER. But you don't have to be a citizen to get a driver's license.

Mr. ZELIKOW. No, sir, you don't. The validation of citizenship, which, by the way, our Commission strongly supports, is a problem that has to be addressed in other ways, because no jurisdiction in America, Federal, State, or local, has reliable databases on who is and who is not a citizen.

Chairman SENSENBRENNER. Okay. Now, turning to your Federal aid to get rid of punch card ballots provisions, Wisconsin got rid of punch card ballots beginning with the year 2000 election, and there was a phase-out after we have had several horror stories on punch card ballots affecting several offices. The highest office was a special election for Congress in 1993. The communities in my State spent their own money to replace punch card ballots with better types of voting systems.

Do you think it's fair to tax my constituents again after they paid to clean up their own punch card ballot mess to provide aid for peo-

ple in jurisdictions that decided that they wanted to spend their State and local dollars doing something other than that?

Mr. ZELIKOW. Mr. Chairman, others here will know that I actually had the same concern you did and which other members of the Commission strongly hold, which is don't punish the good folks, don't punish the folks who have already cleaned up their system. Fortunately I can say that this bill heard that concern and did a couple of things to address it. First, they offered assistance to counties that don't want to avail themselves of punch card buyout, but secondly and more importantly, the counties that have already spent money are not going to be penalized because they've already spent the money. Instead they will be able to get election assistance to do things like poll worker training, poll worker recruitment, obtaining polling places, which in your counties I think they'll find are places where they are really strapped, having already spent the money on updating——

Chairman SENSENBRENNER. No, they are not strapped, because we use public buildings like schools and city halls and firehouses and things like that as polling places. We do not have polling places in most places in Wisconsin in any type of private building.

I just am very concerned that you're hanging a promise out there that if this is enacted, there are a lot of communities that are simply going to wait for the Federal aid to come, and given the fact that the appropriators are quite stingy, they are going to delay doing what my communities have taxed themselves to do. And I think that this might very well be an illusion on the horizon of the desert given the fact that we have had other expenses, particularly those caused by 9–11 and the economic downturn, and getting rid of punch card ballots I don't think is going to be one of the high priorities of the appropriators.

My time is up. The gentleman from Michigan, Mr. Conyers.

Mr. ZELIKOW. Mr. Chairman, could I respond very briefly?

Chairman SENSENBRENNER. All right.

Mr. ZELIKOW. Just simply to say that I'm very open-minded about the best way to address that, but the members of our Commission had your concern, and they were looking for a bill that would not penalize communities that had already spent their taxpayer money to work on these machines, and that's what we are trying to do, too.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. Thank you, Mr. Chairman.

I appreciate all the witnesses being here, but most of all I appreciate Mr. Zelikow being here because I knew Gerald Ford when he was a Congressman from Michigan, Grand Rapids, and I knew Jimmy Carter from a long time back as well.

Now, my understanding is that President Carter attended one out of five meetings, right?

Mr. ZELIKOW. No, sir, that's not correct.

Mr. CONYERS. Tell me what is right. Two out of five?

Mr. ZELIKOW. No, sir——

Mr. CONYERS. Wait a minute. Three out of five? Four out of five?

Mr. ZELIKOW. If I could just explain——

Mr. CONYERS. Pick a number. Give me a number.

Mr. ZELIKOW. President Carter chaired one of the four public hearings and attended and chaired the entirety of the key drafting session on the Commission report in addition to——

Mr. CONYERS. That's one out of five. Look now, you're not going to waste my time like this, my friend. Let's get that straight. Answer the direct question, no running the clock on me. Okay. Have you ever heard of a private nonpartisan group endorsing legislation? In other words, this distinguished Presidential private committee met and issued a report in August. What was that date?

Mr. ZELIKOW. July 31, sir.

Mr. CONYERS. July. And then you double—when did the Commission expire?

Mr. ZELIKOW. The Commission has not expired.

Mr. CONYERS. It's still going on?

Mr. ZELIKOW. Yes, sir.

Mr. CONYERS. In other words, if you had what George Will refers to as an epiphany, you would be able to go back and reassemble the Commission; is that correct?

Mr. ZELIKOW. Yes, sir.

Mr. CONYERS. If they decided—okay, you answered it. Right.

Now, what happened between July 31 and November 30 when we found out that you did this, little wonderful Gerald Ford—oh, God, here's an op-ed written by Carter, Ford, Cutler and Bob Michel, all four of them. Now, what transpired?

Mr. ZELIKOW. Some of you folks wrote a bill that adopted our language verbatim in many respects and which we thought we ought to notice.

Mr. CONYERS. And that was after you had examined all the bills that were in existence?

Mr. ZELIKOW. No.

Please continue. I don't wish to interrupt you, Congressman.

Mr. CONYERS. I don't want you to interrupt me. Did you consider all of the bills in existence?

Mr. ZELIKOW. Congressman, you may——

Mr. CONYERS. Yes or no.

Mr. ZELIKOW. To the best of my knowledge, yes.

Mr. CONYERS. Okay. Did you consider H.R. 1170?

Mr. ZELIKOW. Yes.

Mr. CONYERS. And what meeting was that, that this was considered?

Mr. ZELIKOW. The Commission exchanged written communications about your bill responding to——

Mr. CONYERS. Okay. I get it.

Mr. ZELIKOW [continuing]. In response to a written analysis——

Mr. CONYERS. I understand. I see how this is shaping up. Okay.

Mr. ZELIKOW. I should add, Mr. Conyers, you were present when you declared very firmly to leading members of our Commission what your bill did and how important that bill was.

Mr. CONYERS. Well, I didn't ask you to add that. That was an unsolicited comment, but we will leave it in the record.

Mr. ZELIKOW. I think your question had to do——

Mr. CONYERS. Just a moment, sir. You see that yellow light?

Mr. ZELIKOW. Yes, sir.

Mr. CONYERS. You've done a good job. Now, how in God's name can you come before—here is a civil rights matter, two past Presidents, and you tell me that several months afterward, without a meeting, talking over the phone and e-mailing and faxing, looking at all the bills, I believe you, you came to the total—was that a unanimous conclusion, by the way?

Mr. ZELIKOW. To which conclusion are you referring to, sir?

Mr. CONYERS. The only one that I have been talking about, the support of the measure before us. Was that a unanimous conclusion?

Mr. ZELIKOW. Yes.

Mr. CONYERS. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you all with us today.

Ms. Mitchell, you indicated that you don't see any need for the new Federal agency to administer programs contained in various election reform measures. Many people believe that the Federal Election Commission has been ineffective in its approach to election administration. What would you say to these Doubting Thomases and Doubting Janes to convince them that the FEC can handle these additional responsibilities?

Ms. MITCHELL. Mr. Coble, I think that it's clear that—let me just say this. I have been somebody who has been very critical of the Federal Election Commission. I do battle with them on a regular basis on behalf of clients and in my law practice. But the Office of Election Administration is a very small part of the Federal Election Commission, five staff people, not much appropriation, but the bill H.R. 3295—and I didn't emphasize earlier in my remarks I do support the legislation. I think it's really done a good job of balancing various interests. The one thing that concerns me about the new advisory commissions and boards and agency that's created in H.R. 3295 essentially is that it creates five more boards and temporary commissions, and it has over 160 people to be appointed. One of the boards has a hundred—over 110 people on it, and to have one meeting of all those different things is going to cost a quarter of a million dollars.

Mr. COBLE. I don't disagree with that. I guess I just wanted to hear from you about the FEC's role. But I don't disagree with that.

Mr. Dickson, you laced your testimony very generously with humor, and I appreciate it because we need all the humor we can get.

Mr. COBLE. Let me ask you a question, Mr. Dickson. You indicated that H.R. 3295 would have 50 different standards defining access to voting systems. Now section 221(b) of the bill authorizes the FEC to promulgate voluntary standards for States, including ensuring the accessibility of voting registration polling places, running equipment, et cetera. Furthermore, title five requires that States certify that they are in compliance with the ADA.

Now, the courts interpreting the ADA, it is my belief, have uniformly held that accessibility is precisely what is required. So having said that, Mr. Dickson, would not all States have standards that are at least consistent with the ADA?

Mr. DICKSON. Sir, there are problems with the ADA standards. There are two Federal courts that in tying their decisions in part to the ADA have ruled that there is no right to a secret ballot. One of those courts was in Michigan, the other in Texas. On the point of the 50 standards and the certification, the 17-year-old polling place access law required a similar voluntary standard and a similar certification that they were accessible, and we have the GAO saying that 80 percent of the polling places are not accessible and the cost of making a polling place accessible is minimal. It simply involves moving a polling place. We have seen all across this Nation election officials who have refused to do that.

Mr. COBLE. All right, sir. Thank you, sir.

Mr. Zelikow, it was reported or I've read somewhere that there was extended debate regarding the issue of fraud as you all met between the various parties in attendance. Can you tell us what specific concerns about fraud were discussed?

Mr. ZELIKOW. There were the entire litany of the usual partisan arguments over fraud. Is there fraud, is it a significant problem, is the problem outweighed by the abuses incurred in trying to purge lists and correct fraud? There were people who urged that we ought to take a firm stand on photo identification and back and forth on that. And essentially those disagreements were reconciled in our report by the decision to leap forward and recommend the statewide voter registration schemes that were recommended to us by many people as a way of kind of getting past that partisan trench warfare.

Mr. COBLE. Thank you all again. Thank you, Mr. Chairman. I yield back.

Chairman SENSENBRENNER. The gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. I'm very appreciative to you and to Mr. Conyers for this hearing today. As you know, I chaired the Democratic Caucus Committee on Election Reform and we had the opportunity to go throughout the country holding hearings in at least six States. We learned an awful lot. Unfortunately, I won't be able to ask all of the questions in the length of time that I have allotted, but let me start with Ms. Mitchell.

You made some points that our task force may agree with you on and may disagree with you on. You talked a lot about fraud, but you did not talk about on the opposite side voter intimidation and other obstacles to voting and the information and the documentation of obstacles to voting experienced by minorities, et cetera. What are your thoughts on the opposite side of this discussion relative to every citizen having access to the polling place and the right to vote without intimidation, et cetera? What do you think should be done on that side of the discussion?

Ms. MITCHELL. Congresswoman, it seems to me that these are not opposite ends. These are not contrary viewpoints. We can all support the notion that everybody has a right to vote who is eligible, who is duly registered. We ought to encourage everybody to vote. People ought to not fear intimidation when they go to the polls. I don't think there's any disagreement about that. It seems to me that the recommendations included the provisions that are

included in H.R. 3295 for creation of statewide voter registration databases that are maintained, that are accurate, that, for instance, take advantage of other agency databases that may exist in a State to make sure that if somebody is a convicted felon who is not eligible to vote under the State law, that that information is in the database before election day so that someone doesn't have to be fearful of being alleged to be ineligible.

Ms. WATERS. What about intimidation at the polling place? What do you recommend be done about that? What are your feelings about that?

Ms. MITCHELL. I think the most important thing is to recruit and train election poll workers who know how to treat people.

Ms. WATERS. You indicated there should be penalties for those who are suspected of fraud or convicted of fraud in some way. You seem to have a lot of information about that. What about penalties or exercising at least the law as we know it against those who prevent people from voting on election day?

Ms. MITCHELL. Well, I think that if that happens that shouldn't be allowed. By the same token I would look—for instance, I would call the Committee's attention to something that happened again in Florida with regard to the letter that went out on counting the—how not to count the overseas and military ballots that were coming in after the specified time because Florida was under consent decree. I think that any effort not to count duly cast eligible votes is improper. People should be punished for that.

Ms. WATERS. Let's talk about Missouri. You seem to know a lot about Missouri. I know quite a lot about Missouri, too. I happened to be there during one election where I went to the telephone, I called the Department of Justice to come in because of what I considered quite a bit of harassment in one section of St. Louis at the polling place where more than one piece of identification was being required of some and where people were being sent away from the polling place. Do you know about that in Missouri?

Ms. MITCHELL. No, but I think you've raised an important point here that if we have a voter registration data base that has integrity and is correct, one of the things I recommended in my testimony, other people have recommended as well, that people have a voter identification number, perhaps something that they can remember. The Office of Election Administration had recommended having a number that is the last four digits of your Social Security number plus your birth date. Anybody can remember that so even if you don't have a card that——

Ms. WATERS. In many States there are no voter identification requirements. I'm from California and we don't have that. In some States they have statutes or laws that require one piece of legitimate kind of identification. Sometimes it's not described thoroughly. But if there's a question at the polls about whether or not that identification meets the requirements, what do you think should happen at the polling place on that day?

Ms. MITCHELL. I think that issue should be addressed before election day to as great an extent as possible so that the database——

Ms. WATERS. But if it is not, what do you think should happen?

Ms. MITCHELL. I think the only alternative then is to have some method for provisional voting so that a——

Ms. WATERS. Have you looked at the provisional aspects of——

Chairman SENSENBRENNER. The time of the gentlewoman has expired.

Ms. WATERS. Unanimous consent for 30 seconds, please, Mr. Chairman.

Chairman SENSENBRENNER. The witness please answer the question.

Ms. WATERS. The question that I was putting to her has to do with provisional balloting. In this legislation there is some broad identification for how it should take place. Do you think that's tight enough or strong enough?

Ms. MITCHELL. Well, again I come back to—and this is really something that is going to be carried out on the local level, in those polling places. And I would highly recommend that that be something that be submitted from the local to the State to whatever agency or commission you end up with. I do not think that should be mandated in Federal legislation.

Chairman SENSENBRENNER. The time of the gentlewoman has now really expired. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Thank you, Mr. Chairman. Just following up a bit on the provisional voting that has just been discussed, in Pennsylvania our procedures call for allowing a voter who can swear that he is registered, knows that he's eligible to vote to sign an affidavit there on the spot at the polling place. It isn't called provisional voting, but we believe that it complies. Is that the general agreement among the witnesses that is an aspect of it that could comply?

Mr. ZELIKOW. Mr. Gekas, could I comment briefly, because this provision on provisional balloting in the bill has been attacked precisely because it allows for analogous methods. The irony is we wrote that language that way, which was then adopted into the bill in our commission, precisely for States like yours, for Pennsylvania, that have affidavit balloting, which is very generous to voters, and we did not wish to outlaw that procedure by an unduly constrictive provisional of balloting.

Ms. MITCHELL. I think the one issue arises where the question is, is the ballot then segregated in order to be able to validate subsequent to the election, or the incident itself or the time when the voter is there, is the ballot segregated so that it can then be counted once it is confirmed that the person is eligible to vote or whether it is just included based on the word of the voter.

Mr. GEKAS. I think the regulations would cover the consequences there. But now, quickly to Motor Voter, which has been giving us headaches since it was first conceived and enacted by this Congress. As a result, even before the Federal election in November of 2000, we had hundreds of complaints about the fraud and ineligibility of voters under Motor Voter. I had to—I finally convened a task force myself who had recommendations to offer about how to fine-tune Motor Voter. For instance, one of the things that they say is that the Motor Voter Act requires only the minimum amount of information necessary and it is insufficient in determining a registrant's eligibility.

Are you convinced that this bill can cure that defect that this Committee found?

Ms. MITCHELL. I think one of the most important things that it does is it allows for a better way of maintaining the voter registration lists that the National Voter Registration Act really created huge obstacles. My own State of Oklahoma, for instance, prior to the enactment of Motor Voter there were regular systems for purging rolls and making certain that the voter rolls were cleaned up regularly. The change, the Motor Voter, basically makes that almost impossible, and this bill does ease those restrictions and allows for the maintenance of a clean database. That's the best guard against voter fraud.

Mr. GEKAS. My recollection is that the fraud or scandal that occurred in St. Louis, Missouri, was because of the flaws in Motor Voter. I remember Senator Bond wrote a scathing editorial commentary on that. Do you agree that that was partially the cause for that?

Ms. MITCHELL. I think that was part of it, but again it is because you come back to there was not a good clean roster. There wasn't a method in place before election day to make certain that database is secure, that all people have the opportunity at any polling place to be electronically accessible to the central database and that you allow it to get cleaned up regularly. All of us—anybody who's been involved in politics knows the importance of the lists. And you know how difficult it is to maintain accurate lists of supporters and donors and everything else. It's important that we keep these lists——

Mr. GEKAS. Doesn't Motor Voter make—exacerbate that? Motor Voter exacerbated that. Now, the question arises does this bill cure that, and the question that I have is that if the last section of the bill makes certain that all the previous laws remain in force, that the National Voter Registration Act of 1993 shall continue unabated by this bill, yet Mr. Zelikow says this bill would transform the voter registration system, voting procedures and voting systems in practically every county. How do we do it if we maintain the flow of ineligibility that Motor Voter seems to provide?

Mr. ZELIKOW. Mr. Gekas, we took the same approach Ms. Mitchell recommends in our Commission. It's basically don't touch NVRA. There is a problem of dead wood. It's a real problem. But to fix that problem don't change NVRA on this. Actually it's ironic that we recommended not changing NVRA. The bill doesn't change NVRA, yet a number of its opponents claim that it does even though the bill expressly twice states that it does not.

Our approach then to solve the problem if you're not going to change NVRA is that you have to get at the underlying voter list, as Ms. Mitchell pointed out, and that was the approach we suggested. And we think try this approach because we think it will transform the quality of our voter lists.

Mr. GEKAS. So in other words, if we under this bill cause the obligatory nature of Motor Voter to clean up the rolls, that that would keep Motor Voter intact but deliver it from one of its evils?

Mr. ZELIKOW. Yes.

Chairman SENSENBRENNER. The gentleman's time has expired.

Ms. WATERS. I would ask unanimous consent to correct some incorrect misinformation that was just accepted as fact in the last discussion.

Chairman SENSENBRENNER. The gentlewoman is not recognized. This is a 5-minute rule with questions and answers.

The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I thank the Chair. I will yield some time to my colleague from California, but I think—and I'm going to, I think, interpret the question that was posed to you, Ms. Mitchell, by Congresswoman Waters, and I can speak to this firsthand because I was involved in a rather famous landmark case that was constantly quoted during Florida. But your emphasis in your opening remarks about ineligible voters, from where I sit, very clearly the problem was—and I don't want to describe it as fraud, but I think technology, system deficiency laws, the necessity to get eligible voters to the polls, let them vote and have it counted accurately was a far more significant crisis than so-called voter fraud.

And with that, I would yield a minute or so to my friend from California.

Ms. WATERS. Thank you very much. Congressman Gekas talked about the provisional balloting system in Pennsylvania. I held a hearing in Philadelphia. The provisional system there was in order to sign the affidavit you had to go to the local police department. That's why we have national standards because that's a deterrent to voting.

Thank you. I yield back.

Mr. ZELIKOW. Congresswoman, that's why we called for increasing provisional balloting.

Mr. FRANK. You better define what you mean by the precinct.

Mr. ZELIKOW. It's not usually the police station.

Mr. DELAHUNT. I'll take back my time from the gentleman from Massachusetts.

Mr. Leonard, I was called out when you were talking about in some cases the bill before us moves, goes backward. It's tough for me to imagine going backward. I'm going to review your testimony. And you had started to enumerate in those particular sections. I do agree I think it was with Mr. Zelikow about, you know, the—how does that cliche, the good and the perfect and the enemy thereof, I think whatever we do has to be a step forward. I think it's really critical given what occurred in the past presidential election that we take advantage of this opportunity. I think we owe it to the American people. We owe it to our heritage, to our Constitution to move forward.

But the one issue that concerns me, and I'm confused in this, is the concern by the disabled community. You know, Representative Hoyer was one of the original—in fact he was the lead House sponsor in 1990 of the Americans With Disabilities Act. He has circulated a fact sheet entitled "Myths and Facts," the myth being the Help America Vote Act will weaken the ADA and other important civil rights laws. The fact is according to this memorandum that absolutely nothing in H.R. 3295 diminishes the requirements of the ADA. It's simply wrong. In fact, he goes on to say that this is the first legislation to be reported by a House Committee that specifically requires State compliance with the existing applicable re-

quirements of the ADA in the administration of elections. Moreover, one of the eligibility requirements per election assistance funding under the bill is that there be at least one voting system available in each precinct or polling place that is fully accessible to voters with disabilities.

Now, somebody is not intentionally misrepresenting, but boy, there's a lot of confusion here and this is an important point I know for many of us in regards to this issue. I would hope that it could be clarified and that we could move on, because I think that it's important that Congress does something in this session so that the American people can have confidence in the integrity of their system.

Mr. Zelikow, why don't you respond?

Mr. ZELIKOW. Congressman, having read the bill line by line repeatedly, I agree with your assessment and I agree with the assessment that Congressman Hoyer offered to you. Not only does it reaffirm the existing laws repeatedly and require compliance with them, it also has the additional requirements for new voting systems to provide a practical and effective means for voters with disabilities to cast a secret ballot, language, by the way, that was recommended to us in one of our task force sessions by the disabilities groups as model language to use in legislation, which we then incorporated in our report and which was then adopted.

So we think this is a landmark achievement. We know it does not solve some problems. It does not solve accessibility of polling places. There are some complex reasons why that's a hard problem to solve, especially in places like Wisconsin where they use a lot of private places and homes and churches as polling places.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Virginia, Mr. Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman. I want to thank all the members of the panel for their contributions today. Ms. Mitchell, I think you summed up what many of us perceive to be the biggest problem here and that is, in your testimony where you said the real threat to the American election process is the potential for deliberate fraud and systems that fail to protect the integrity of the voting process.

I wanted to ask you in that regard your opinion of the National Voter Registration Act, the so-called Motor Voter law. That law has been criticized as loosening up the ability of the States to prevent fraud in a number of instances, whether it is removing voters who haven't participated in the process over several elections, that's been made much more costly and difficult to do and isn't done as much. There are lots of inaccurate information on the rolls. Allowing for registration by mail, not providing for requiring Social Security number or some proof of citizenship prior to registration in voting.

I'm wondering what your recommendation would be with regard to that law. Do you think it should be scrapped or, more likely, do you think it should be amended? What particular changes would you make? I'll extend that opportunity to other members of the panel who might want to comment on it as well.

Ms. MITCHELL. Congressman, I think that H.R. 3295 goes a long way in trying to address some of the problems created by Motor

Voter. I think it would be—I see no possibility or even perhaps desirability after the States have worked to try to figure out how to comply with Motor Voter to now come along and say we were just kidding. So I think that the reality is that we have the National Voter Registration Act, the States have been working with that for a number of years. We now know some of the problems created by that act. I think H.R. 3295 goes a long way to trying to resolve those, most particularly the recognition—I come back to my response to Congresswoman Waters—the best protection against voter fraud and against voter intimidation on election day at the polls is having as sound a system of a voter registration database as you can possibly establish. I do think there should be some kind of voter identification number that can be—I think that should not be issued until a photo ID is presented so that you make sure that that number goes with that person and that follows that person if they move from one precinct to another.

Mr. GOODLATTE. Are the provisions in the bill satisfactory in that regard?

Ms. MITCHELL. I think they could be strengthened. But at the same time we don't want the perfect to be the enemy of the good. But I do think that H.R. 3295 does go a distance to resolving some of the problems with Motor Voter. I think if this is enacted I think we'll begin to see from the States some of their recommendations and their—how it is that—they would recommend as part of their plans to get funding how they're going to enforce some of this effort to clean up the voter registration database.

Mr. GOODLATTE. What does this legislation do to enable the States to better clean up their records and would it make it easier for them to remove people from the rolls who haven't voted in several elections?

Ms. MITCHELL. My understanding is that it specifically provides that that particular provision of the National Voter Registration Act that prohibits—it eases the restrictions on removing people from the rolls. It also provides for funding possibilities for a State. Again I come back—I've been in a legislative body trying to deal with—the cost is millions of dollars to do these things, to have a centralized voter database, and to provide some funds for that from the Federal Government is very important to getting it done.

Mr. GOODLATTE. Anybody else want to comment?

Mr. LEONARD. I would like to say Ms. Mitchell is correct that with the next step in implementation of an improved voter registration system is a statewide list. It's important that it's a statewide list that operates well, and that's why it's key that it be hooked into the Department of Motor Vehicles, which frankly has the best information, including date of birth and address, to make the system work better.

One of the concerns we have about the bill is it does not explicitly call for the linkage with the Department of Motor Vehicles in the States, but that is the important next step in registration reform.

Mr. GOODLATTE. Anyone else?

Mr. Chairman, I'm pleased to yield back the balance of my time.

Chairman SENSENBRENNER. Fourteen seconds. The gentleman from Massachusetts, Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman. First, I think we should make it explicit that this is not an entirely neutral subject. Ideology is a factor. It's not an accident that conservatives tend to be more critical and liberals more supportive of efforts to make it easier to vote. In fact, voting is correlated with socioeconomic conditions, and the harder it is to vote, to some extent difficult voting machines and requirements become latter day functional equivalents of literacy tests or poll taxes. It's not odd that there's an ideological cast. We understand that. There is nothing wrong with that. In fact, it's only wrong when people are pretending it isn't. It is clear to me that the harder it is to vote, the less representative the actual result will be and it will have a conservative bias. It will particularly bias people who are the most vulnerable.

Now, I want to add that I know that Steny Hoyer well understands that. As my colleague pointed out, the gentleman from Massachusetts pointed out, Mr. Hoyer was in fact when Tony Coehlo left the parent of the Americans with Disabilities Act. So I have no question about his bona fides. If he was in fact in the majority I think we would have a different and better bill.

We have two sets of questions. One, if the bill makes some improvements but fewer than you want, do you accept this now or do you fight another day? That's a legitimate philosophical question.

But there is a second question. I want to get to Mr. Zelikow on this. And that is what if it makes it worse? Now, there were two areas where advocates with whom I am in agreement argue that it makes it worse. One has to do with the ADA. I must say there seems to me a contradiction there. One argument has been that this weakens the ADA, but Mr. Dickson I think more accurately says the problem isn't—he doesn't find the American Disabilities Act a sufficient standard. It does not seem to me this weakens the ADA. There is a quarrel about whether we should go beyond it. But it seem to me, Mr. Zelikow, that it weakens the National Voter Registration Act. Ms. Mitchell is right in being happy that it does and you are not quite right in claiming that it doesn't.

Go to page 105. And it specifically says, page 105, nothing in paragraph may be construed to prohibit a State—it says, "The National Voter Registration Act is amended by inserting the following: Except that nothing may be construed to prohibit a State, et cetera." Here is the difference: What it says is under this an individual can be dropped if he or she hasn't voted in two or more consecutive general elections and has not notified the registrar in writing that he or she is still there. You have this in the alternative. You say if you haven't voted twice you can be dropped either if you don't respond to a letter you get from the registrar or if you don't initiate it. In other words, under this the registrar wouldn't have to send you a notice. If you didn't vote twice and did not then take the initiative in notifying him I am still here, you could be dropped. That's a weakening of the National Voter Registration Act.

Now, if you didn't have that "or," it would be different. But you do. And so it reads, because of the "or if the individual," you can be dropped if the individual has not voted or appeared in two or more consecutive general elections for Federal office and has not notified the applicable registrar in person or in writing that the individual intends to remain registered in the registrar's jurisdiction.

Now I left out some words but the words I left out are preceded by an "or" which means that this stands independently.

Isn't that the case and do you really mean that to be the case?

Mr. ZELIKOW. No, sir.

Mr. FRANK. Which?

Mr. ZELIKOW. No, I don't think this bill does what you just said it does.

Mr. FRANK. How could it not? There's an "or" there. Does it not say that you can be dropped if you haven't voted twice and you haven't volunteered a notification?

Mr. ZELIKOW. No, sir, actually I read it—the language I have in front of me says, have not voted in two or more consecutive general elections for Federal office and who have not responded to a notice shall be removed. In other words, they don't have to then take the initiative to contact. They have to fail to respond.

Mr. FRANK. You left out words. Here's what it says. Appeared to vote in two or more consecutive general elections for Federal office and has not notified the applicable registrar or responded. What you read is correct but it comes after an "or." there's a phrase between that and the "or"

And that therefore stands independently.

Mr. ZELIKOW. We may be looking at two different sections of the act.

Mr. FRANK. I'm looking at page 105, H.R. 3295. The first paragraph, do you have that in front of you? It says, has not notified the applicable registrar, parentheses, in person or in writing, or responded to a notice.

Mr. ZELIKOW. No, I understand now. In the section you're referring to, I refer to, is a two-part test. They have to fail to do both.

Mr. FRANK. "or" doesn't make it a two-part test. "or" means it is either/or.

Mr. ZELIKOW. That's right. That have to either not do this or not do that. They have to fail both ways.

Mr. FRANK. That is the oddest reading of a statute I have ever seen. Mr. Dickson could read that statute better than that without his wife.

Mr. ZELIKOW. If you read 903(a) and (b) just to make sure that that odd reading is the reading the courts will give it.

Mr. FRANK. I'm very disappointed in that. I think you made a mistake. But it clearly doesn't say what you're trying to say.

Mr. ZELIKOW. But the act does say that it does not limit or change the NVRA.

Mr. FRANK. Except for this. That's a significant exception.

Mr. LEONARD. I would like to get in on this if somebody would like to——

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Pence.

Mr. PENCE. Thank you, Mr. Chairman. At the risk of changing the subject, I would like to focus my questions to Mr. Dickson, and I apologize for not being able to get away from the Israel resolution debate on the floor in time to hear your testimony, but I have read it with great interest and want to express my appreciation for your work at AADP and the clarity of your thoughts expressed in writing.

I come from a conservative perspective and I'm always looking for what we might have government not do, and what I'm genuinely curious about is the degree to which the American Association of People with Disabilities has looked at the issue of accessibility relative to voting. And I ask this knowing a lot of times you have people that have answers in mind. I don't know what the answer is. I spent a lot of time in my early political career eating stale donuts at polling places 11 hours into the day. Never have I been to a polling place where I didn't see people scramble to help people with disabilities in every way possible to exercise their franchise.

Is that a midwestern experience of mine from Indiana or do we have a genuine problem, Mr. Dickson, that the AADP is recognizing in expressing their discomfort with what you refer to as loopholes in this bill?

Mr. DICKSON. Sir, there are election officials who have been spectacular in their accommodating people with disabilities, but that is not the rule. Many election officials in their hearts believe and have said to us vote absentee, vote at the curbside. That takes away privacy and it sets up a separate standard for us. We wouldn't say to African Americans or women vote absentee or vote at the curbside.

On the question of how does this weaken the ADA, the difficulty is that under the ADA we have one national standard for defining access. Under this piece of legislation we would have 50 States setting up different standards. That's not only going to create confusion, it's going to hurt the industry, which is trying to build machinery to one standard. The problem is if the ADA afforded the protection that we need, why do 80 percent of the polling places still have physical barriers? As we speak, counties all across the Nation are rushing to buy inaccessible optical scan machines and they know that they're inaccessible, and they know about the ADA yet they're doing it. We've had to file suit against three cities. The State of Arizona is considering requiring optical scans statewide.

Mr. PENCE. Understood. What about the arguments of those, and maybe you have already heard them, Mr. Dickson, who says particularly section 502 of the bill that requires States—essentially comes in a way of—there's a lot of funding in these mandates that we might give in these bills, but it seems to me there's a little bit of unfunded mandates here. It requires States to adopt minimum standards in assuring, "No voting systems provide a practical and effective means for voters with disabilities to cast a secret ballot." As you point out in your piece, there is the equivalent facilitation requirement under the ADA. Is this not a higher standard that the bill calls for? And isn't that progress from the standpoint of people with disabilities relative to voting their franchise?

Mr. DICKSON. No, sir. Unfortunately it defines disability as physical. I've had election officials say to me and other blind people you don't have a physical disability, you have a sensory disability, therefore, that wouldn't apply to us. The same would apply to people with mental disabilities. And the key word is where it's practical and effective. We have election officials who believe that curbside voting or absentee ballots are practical and effective. I'm a blind man.

Chairman SENSENBRENNER. The gentleman's time has expired. There are three votes on the floor. The Committee will recess for these votes. I would encourage Members who have not asked questions yet to return promptly after the last vote, and we will then recognize you in the order in which you initially appeared.

The Committee stands in recess.

[Recess.]

Chairman SENSENBRENNER. The Committee will be in order. The gentlewoman from Texas, Ms. Jackson Lee, is recognized for 5 minutes. The gentlelady, Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, I would like to wait until there is order in the room; if everybody can be seated, I would appreciate it.

Chairman SENSENBRENNER. The Committee will be in order again. The gentlelady from Texas.

Ms. JACKSON LEE. I was wondering if we've lost one of the witnesses. I just wanted to make sure——

Chairman SENSENBRENNER. They're all accounted for.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Could the doors in the back be closed, please? Thank you. Thank you, Mr. Chairman. Let me also thank the Ranking Member for his leadership on this important issue and take note that although the Conyers-Dodd or the Conyers bill is not before this Committee, we recognize the work and the thoroughness of that effort. Likewise let me congratulate the proponents and authors of this legislation, Mr. Hoyer and Mr. Ney, as I do realize that their intentions are extremely meritorious, and I think they should be acknowledged for that.

I heard testimony earlier this afternoon that we should not relive Florida. I agree. Florida speaks for itself. No one can add to the story that Florida told, and that is that we denied Americans the right to vote. But I do think we should at least allude to the philosophical differences that we have seen play out in this room and I think that contributes to maybe the differences of opinion.

I happen to believe that every American has the right to vote. And what I have heard in some instances and some questions that there are those with philosophies that it should be the rich, the educated, the physically able, and the mentally able, and I believe the distinction in the two legislative initiatives, the Dodd bill and possibly the Dodd-Conyers and the Ney-Hoyer is the question of standards, and I would like to see that we have legislation that mandates particular standards so that we do not have 50 different standards in 50 different States.

I want to applaud the witnesses for their different perspectives. This is what testimony is all about. But let me briefly include in the record so that I will not have to revisit Florida, although I spent a lot of time in Florida, current day incidences that I think play into why we are here today. I also joined the Election Task Force and visited many cities listening to testimony and had the pleasure of being with the representatives of the Carter/Ford Commission, and I respect the work you've done.

But let me cite, and I think we had as a witness today Marilee P. Brown, who just had an election in 2001, and tell me what we faced on that day. Changing polling places right before the election, no notice particularly to minority communities, no voter verifica-

tion of the computerized system. It failed, and so voters who came were turned away, particularly in minority communities: Inconsistency of the application of the challenge of provisional ballots, precinct workers who did not understand that it was not discretionary to give a provisional ballot or a challenged ballot; voters turned away, misunderstanding about the need of a picture or a nonpicture ID, voters turned away; poll watchers talking to voters rather than just monitoring the voting circumstances and calling, voter suppression; voters on Election Day who voted in the general election, not on the list when they came back to vote in the runoff, voter suppression; precinct judges telling voters only one vote per household, therefore not allowing of the child that is 18 to vote when the mother voted.

Again people arrested at the polls for asking for challenged ballots or provisional ballots, no way to verify the electronic voting, and I see the equipment here is in this room and we happen to be using that equipment, but no way to verify close votes on electronic voting. We need to have paper trails to be able to reconcile electronic voting tabs with the votes. Too much discretion and not a lot of training. Not Florida. Houston, Texas, December 1, 2001.

So the standards issues are enormously important, and I wanted to submit those factors that occurred in the record because of the fact that we still deal with voter suppression and voter purging.

Let me now raise a question on these very points, and if I can have, I believe, one of our witnesses who did not get a chance to finish his answers——

Chairman SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman. Dr. Lott, based upon your analysis, was the overall nonvoted ballot rate any higher in the 2000 election than in previous elections?

Mr. LOTT. Are you talking about nationally or in Florida?

Mr. CHABOT. Let's start with Florida.

Mr. LOTT. Florida it was slightly higher than it was in previous elections. You're talking about maybe a few tenths of a percentage point.

Mr. CHABOT. And in your opinion, would that be not that significant then?

Mr. LOTT. I don't think it was statistically significantly different, no.

Mr. CHABOT. How about nationally relative to——

Mr. LOTT. Nationally, it's actually been falling over time. It's been fairly significantly falling over time. In Florida too, it depends whether you just want to compare it to the 1996 election or earlier ones. If you compare it to earlier ones, it's actually been falling, if you look at it over a decade or so period of time.

Mr. CHABOT. And there was, obviously, as a result of this election, a tremendous amount of hue and cry about nonvoted ballots and the rate, et cetera, but in reality, according to what you're saying, it wasn't that much more significant this time, at least in Florida than it was in previous elections.

Mr. LOTT. Yeah. It was significantly lower than it was, let's say, in 1992 in terms of spoiled ballots, significantly higher than 1996,

and nationally, you've been seeing a drop fairly consistently over time as long as we have data going back to about 1988.

Mr. CHABOT. It was obviously the closeness of the race that drew everyone's attention to the specific election.

Mr. LOTT. That is right.

Mr. CHABOT. Thank you. Also Dr. Lott, in your written statement, you state that, and I quote, "even voting methods that do not work well on average nationally still produce remarkably low spoiled ballot rates in some jurisdictions." Could you expound upon what that indicates or——

Mr. LOTT. Right. Well, one can go and look at the average rates of spoiled ballots across different types of machines, and you can say, for example, that maybe optical methods have lower spoiled ballot rates on average than punch cards, but there's still a large variance that you have there. In fact, the highest spoiled ballot rates for some counties for optical is much higher than it is for punch cards.

The highest punch card county in terms of spoiled ballots is about 16 percent. You actually have a half dozen or so counties in the country which have maybe about 5 percentage points higher and on average, nonvoted ballots that use optical type systems, and there is a fair number of punch cards systems that—counties which had zero spoiled ballots for all practical purposes. And so one of the concerns that you have there is that if you adopt a national standard—and simply when you change systems you can have an increase in spoiled ballots as people kind of get the kinks out of the system and people learn how to use it and get it up and running. And so having a national standard where you don't take into account the fact that maybe certain types of machines may have been working very well in certain areas could actually increase the number of spoiled ballots in those areas.

Mr. CHABOT. Thank you very much. Mr. Leonard, let me ask you a question if I can. In your written testimony, you stated that H.R. 3295 amends the National Voter Registration Act in a way that allows citizens to be purged from voter registration rolls if they don't vote. Now, under section 502(2)(a) of title five, it requires States to certify in writing to the Election Assistance Commission that they have enacted legislation that removes individuals from the list of eligible voters, if they have not voted in more than two or more consecutive general elections for Federal office and, and I want to emphasize the "and," have not responded to a notice. It specifically prohibits the removal of an individual solely by reason of a failure to vote. Would you comment on that?

Mr. LEONARD. Yes. As we have discussed earlier, section 902 of the bill amends the National Voter Registration Act to set up a new purging requirement, a new purging system under which someone could be purged for failure to vote and failure to respond to a notice. That is different than, and less protective of voters than the current system, whereby a person who has moved gets a notice, then has an opportunity to vote in two Federal elections, and then go to the polls and correct erroneous information.

That's the fail-safe voting provision of section 8(e) of the National Voter Registration Act and that is what has taken away—that is what is taken away by the amendment in section 902. Cleta Mitch-

ell and I agree that this changes the National Voter Registration Act and makes it easier for voters to be removed from the polls. Our concern is that people will be erroneously removed from the polls. Our difference with Mr. Zelikow is that he believes it does not change the Voter Registration Act.

Chairman SENSENBRENNER. The gentleman's time has expired, the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. A lot has been said about this provisional vote and what happens if people show up without an identification card. In Virginia, if you show up without an identification card, you sign the affidavit and vote. That is not a provisional vote. It's a vote. "provisional" is when you are told you can't vote and you insist on voting and you vote and that vote is put aside for further verification. Now, the bill provides for a requirement for provisional ballot or an alternative. What could be an alternative to a provisional ballot?

Mr. ZELIKOW. Is that question to me?

Mr. SCOTT. Sure.

Mr. ZELIKOW. An alternative to a provisional ballot would be an affidavit voting system——

Mr. SCOTT. That would provide that everybody who self-certifies that they are eligible to vote will in fact be allowed to vote; is that right?

Mr. ZELIKOW. Right and then you don't research the further eligibility of that voter. You accept the affidavit as binding. That's an affidavit voting system which is actually very generous of the voter because it doesn't do further research into the voter's qualifications.

Mr. SCOTT. And does the vote count?

Mr. ZELIKOW. Yes, it counts on the spot.

Mr. SCOTT. So anybody who self-certifies under that provision can vote.

Mr. ZELIKOW. If a State has chosen the affidavit balloting system, yes, and several States do have such a system.

Mr. SCOTT. Then there is no provisional situation?

Mr. ZELIKOW. Precisely.

Mr. SCOTT. The only provisional situation is when the State decides that you can't vote. In that situation nobody—anybody who shows up can vote, that's not after——

Mr. ZELIKOW. Correct. The goal is that no one who shows up claiming to be eligible to vote is turned away by being told that they are not eligible. If they assert their eligibility, that's either accepted on the spot or it is researched later, but they always get to cast a vote, at least provisionally.

Mr. SCOTT. Does any State have that process?

Mr. ZELIKOW. Yes, sir. Several do. We especially modeled our recommendations on the provisional ballot system in the State of Washington, which is the most ambitious form of this system. It allows voting statewide. That is, I can be in Tacoma, but I live in Seattle, but I want to go vote in Tacoma, cause I just happen to be in Tacoma that day. In Washington you can go in and vote in Tacoma and that ballot will be counted provisionally once they verify that you really do live in Seattle 'cause you live in the State of

Washington. It can be counted for those candidates that are on the statewide ballot.

Mr. SCOTT. Let me get to Individuals With Disabilities Act. Under the ADA, I mean, the Americans with Disabilities Act, if you don't like what's going on, you can file an individual suit. You have a private right of action under ADA. What is your remedy under this bill?

Mr. DICKSON. We like——

Mr. SCOTT. Can you push the——

Mr. DICKSON. I don't know how to turn this. We like the private right of action under the ADA. The difficulty with the ADA in terms of voting is that the Department of Justice has interpreted the ADA to say that a disabled person can be compelled to vote either absentee or at the curb. That's the DOJ ruling interpreting the ADA.

Mr. SCOTT. Well, how have the courts, if you used your—do you have a private right of action?

Mr. DICKSON. Yes. Several—two courts have ruled that under the ADA there is no right of a secret ballot.

Mr. SCOTT. Have other courts ruled differently?

Mr. DICKSON. No.

Mr. SCOTT. Does this bill advance or reduce your right to complain?

Mr. DICKSON. The right to complain under this bill?

Mr. SCOTT. Apparently there is no individual right of——

Mr. DICKSON. Yes. We would have like to have seen a private right of action in——

Mr. SCOTT. So are you better off with this bill or the ADA?

Mr. DICKSON. That's a difficult choice. Neither will—neither are going to solve the problem. If I could just answer one other question, we would like to see a dead date certain by which every polling place has to be accessible and by which there has to be one accessible machine.

Mr. SCOTT. Let me ask you. I have got little time left. Does the reduced mail rate make a difference or would it cause more confusion than it's worth? There is a provision in here, you get half priced mail. Does that make a difference, anybody——

Mr. ZELIKOW. It makes a huge difference to county officials to who pay for mailings, and it actually takes away one of their excuses for not contacting voters more often to give them information they need.

Mr. SCOTT. How about a bulk rate?

Mr. ZELIKOW. In effect, as I understand the amendment, it's an effort to try to get the benefits of a bulk rate mailing by specifying a reduced postal rate, but the details of what's the bulk rate versus the rate in this bill is a matter on which I can't help you.

Chairman SENSENBRENNER. The gentleman's time has expired. Gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I guess I'm the last person to ask questions. So I will try to be quick.

Chairman SENSENBRENNER. You can get up in line by being more prompt when the hearing starts.

Mr. WATT. No. I wasn't trying to get up in line. I wasn't complaining. I'm actually honored to be the last person to go because I may be a little bit out of step on some of these issues.

I don't want to pick a fight with Ms. Mitchell. Obviously I engage a lot in hyperbole myself, but I guess one of the concerns I have is that we start this hearing by talking about the prospect—and you were the first witness to talk about it—the prospect that voter fraud, potential voter fraud is a much, much more serious problem than the reality that we confronted that a number of people who showed up at the polls not intending to participate in any kind of fraudulent activities, just wanting to vote, had their votes not counted in the last election. That was the whole impetus for reform. And then we start a hearing by your pronouncement number 3 that the gravest danger to the election process is not, in all caps, faulty equipment that fails to protect voters from making mistakes. The real threat to the American election process is the potential for deliberate fraud in systems.

Now, I grant you if you believe that, that's fine. I'm not trying to pick a fight with you. I just can't get to that as a starting point. I can't get to the notion that the most important part of any kind of bill that we are going to pass is going to be a statewide registration system. I guess I have kind of been with the old-fashioned notion that if you were a United States citizen, it would be nice to be able to vote without having to register. I haven't seen anything in my Constitution that requires registration. We were the symbol of democracy until, I guess, South Africa did their democratic election without registration. They put pictures on the ballot so that people could—you know, except for people who couldn't see, people who even couldn't read could pick out their candidates by just identifying them.

I think the whole process that we engaged in here should be empowering people and encouraging people to vote, not setting up registration systems and checks and here and there that discourage people from voting.

So I guess I'm having trouble asking a question to the panel because everybody on the panel seems to have accepted this basic notion that there is something American or even religious about registration, and on that, I guess if anybody wants to comment, I'll leave the rest of my time.

Mr. DICKSON. Voter registration rolls did not exist in this country until the beginning of the last century and in fact, the State of North Dakota maintains no voter registration roll.

Mr. WATT. I admire North Dakota and maybe anybody else who wants to comment go right ahead. I'm not going to ask another question—I'm not going to ask a question. Comment.

Ms. MITCHELL. Congressman, I want to take exception to the idea that by having a—a correct as pristine as possible voter registration database, that that is somehow a discouragement and impediment to voting. Now, it is true that I accept the premise that the States have, over the past century, enacted voter registration procedures, and those vary from State to State, and I accept that premise as a matter of Federalism, and that that's within their constitutional prerogative.

And so I accept that and so I start with that basic premise. If you're going to have a registration system which every State but North Dakota has, some sort of a registration system, then it seems to me that the way to make sure it is not an impediment to voting is to make sure that it's accurate and that you can eliminate a lot of the mischief that you and others have pointed out, if it's correct before election day, and if your process is right then people will be able to get in and out smoothly, and they won't have people questioning whether they can vote, and you don't get into all the problems of provisional voting, et cetera. And that's all I think we're saying is you correct both problems through the same mechanism.

Chairman SENSENBRENNER. The gentleman's time has expired. That concludes the questioning.

Ms. JACKSON LEE. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas——

Ms. JACKSON LEE. To ask unanimous consent, I was trying to ask Mr. Leonard a question, and I would——

Chairman SENSENBRENNER. Everybody has been limited to 5 minutes and——

Ms. JACKSON LEE. I'm raising it and I'm asking unanimous consent.

Chairman SENSENBRENNER. You can put your question in writing and I would ask that whoever receives the question respond promptly so that we can include it in the record.

Ms. JACKSON LEE. Thank you, Mr. Chairman. That's never as effective as asking a question on the——

Chairman SENSENBRENNER. Well, everybody is able to allocate their time.

Ms. JACKSON LEE. I do understand that but in this instance I'm going to disagree because this is a very important hearing, and here we go again with cutting off conversation and debate. Thank you. I yield back my time.

Chairman SENSENBRENNER. If the gentlewoman from Texas appeared at hearings on time——

Ms. JACKSON LEE. I am on time and this is not a question of debating whether I'm on time. I was on time. This is an important issue and I wanted to ask him some additional questions, and we're always cutting off debate in this particular Judiciary Committee. I believe it's unfortunate because this is a Committee that makes very important decisions. I only ask unanimous consent. You're not giving it to me and I accept it. I believe it's important to talk about issues dealing with people's denial of the right to vote.

Chairman SENSENBRENNER. Well, then let me say——

Ms. JACKSON LEE. It's not about whether I'm on time at hearings. I'm on time. I do a lot of work in this Committee and I won't accept that challenge of my credibility and the work that I do.

Chairman SENSENBRENNER. The Chair announced what the rules were for the conduct of this hearing at the beginning of the hearing. Many Members wished to participate. I'm holding this hearing at the full Committee where there are 37 Members that have an opportunity to speak. It is the purpose of the rules and the Chair has applied the rules uniformly to all Members of the Committee

regardless of what side of the aisle they sit on, that we adhere to the 5-minute rule in order to give everybody the same shot at the witnesses and to be as fair as possible. Extensions of time merely impose on other Members of the Committee, and that's why the Chair stated expressly that when the red light went on, the questioners' time and the witnesses' time had expired. That is the way the Chair has operated this Committee since I became the Chairman in January.

I think that it has been fair to all of the Members of the Committee because they knew coming in what the rules were and how they could allocate their time for questions. And that's the way the Chair intends to continue conducting the hearings that we have and the markups that we have.

Ms. JACKSON LEE. Would the Chairman yield?

Chairman SENSENBRENNER. The gentleman from Michigan has got some unanimous consent requests.

Mr. CONYERS. Thank you, Mr. Chairman. I have a series of unanimous consents to include in the record statements, letters, and other documents from AFL-CIO, MALDEF, the National Council of La Raza, The Lawyers Committee for Civil Rights under Law, the Public Interest Research Corporation, Public Interest Research Group, Public Citizen United Methodist Church, NAACP—all in opposition to the legislation.

Chairman SENSENBRENNER. Without objection, the letters referred to by the gentleman from Michigan will be included in the record.

Mr. CONYERS. And I thank the Chairman for holding the hearings in such a timely fashion and I thank the witnesses as well.

Chairman SENSENBRENNER. And I thank the gentleman from Michigan for his cooperation. I thank the witnesses as well. It has been——

Ms. JACKSON LEE. Mr. Chairman, I have additional material to put into the record. May I have unanimous consent to put it into the record?

Chairman SENSENBRENNER. Without objection, the material that the gentlewoman from Texas wishes to put in the record will be included.

Ms. JACKSON LEE. I thank the Chairman.

Chairman SENSENBRENNER. The Chair would like to thank the witnesses as well. It has been a long day. We appreciate your patience during the pause of the four votes that called us away. All of your contributions have been very useful to this very controversial subject.

In closing, let me say that the House Administration Committee has yet to file the Committee report on this legislation, even though they voted out this legislation on November 15, 2001. It is the intention of the Chair to request the leadership to give this Committee a sequential referral in order that we can mark up those sections of this legislation that are within the jurisdiction of the Committee on the Judiciary. This may very well be an extremely short sequential referral. So I would ask the Members of the Committee to bear with me in trying to give this Committee a chance to mark this bill up. The notice of any markup may be extremely short as a result of the short nature of the sequential,

but I wish to give every Member of the Committee a shot at the provisions of the Ney-Hoyer bill that are within the Committee's jurisdiction.

Mr. CONYERS. Mr. Chairman.

Chairman SENSENBRENNER. The gentleman from Michigan.

Mr. CONYERS. I would like to congratulate you for attempting to acquire a sequential referral and under the exigencies of the time, the clock's running out, I think that's an extremely critical piece of business to accomplish for the Committee on the Judiciary.

Mr. WATT. Would the Chairman yield for a question?

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. Just on the sequential referral, I assume the sequential referral will be not for the period between Christmas and New Year's like the sequential referral that we got on the reinsurance bill that was between Thanksgiving and the following week when we——

Chairman SENSENBRENNER. You may recall the sequential we got on the Broad Band bill was over Memorial Day, but we were able to get that job done. If it comes the day before adjournment, obviously that is unreasonable and it is the intention of this Committee to state when something is unreasonable loudly and clearly. There being no further business to come before the Committee, the Committee stands adjourned.

[Whereupon, at 4:31 p.m., the Committee was adjourned.]

APPENDIX

STATEMENTS SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF BARBARA R. ARNWINE

The Lawyers' Committee for Civil Rights Under Law ("The Lawyers' Committee") has applauded the bipartisan efforts in both the United States House of Representatives and the United States Senate to pass comprehensive electoral reform before Congress adjourns for the year. Both the House and Senate have been working hard to move a bill on election reform this year, however, we must unequivocally state that the legislation which is the subject of the hearing today, which was introduced by Congressmen Robert Ney (R-OH) and Steny Hoyer (D-MD) called "Help America Vote Act of 2001" as it is currently drafted, is not the right vehicle to move election reform forward.

As it is currently drafted, the Help America Vote Act of 2001 plainly fails to address the grave problems so many Americans faced in the 2000 elections and continued to face this year in elections in New Jersey and Virginia. Consequently, the Lawyers' Committee cannot support it. Congress needs to ensure that when it passes election reform legislation it truly solves the problems that voters throughout our nation encounter as they cast their ballots. Comprehensive electoral reform must move us forward with minimum standards that ensure uniformity and nondiscrimination. Under these standards all voters must have effective machinery which allows them to cast the vote they intend and to correct their ballot if they make a mistake. Comprehensive electoral reform must guarantee that legally registered voters are not erroneously purged from registration rolls, that voters are notified of and given the opportunity to cast provisional ballots, and finally, it must require that voters are informed of their rights under state and federal law. The one bill that goes the distance and addresses these problems head on is the Equal Protection of Voting Rights Act of 2001, introduced by Senator Christopher Dodd and Congressman John Conyers.

A simple examination of the details of the Help America Vote Act makes clear that there are serious problems which prevent it from bringing about true election reform and which actually take steps backward.

H.R. 3295 has inadequate minimum standards for machinery. It does not ensure that voting systems, even those newly purchased with federal monies will be accessible, give the voter notice of overvotes and undervotes and the opportunity to correct their ballot before it is cast, and will meet a national error rate standard. Comprehensive electoral reform must provide these minimum requirements for all voting machines if it is to correct the problems that voters all over our nation faced on election day 2000 and 2001.

H.R 3295 creates a loophole that allows states to opt out of provisional balloting. Provisional balloting is critical to ensure that registered voters have the ability to cast provisional ballots when there is confusion over issues of registration, identification or voting rights at the polling place. H.R. 3295 allows states to adopt "an alternative" to provisional balloting which in practice will undermine the access to and uniformity of provisional ballots. Furthermore, H.R. 3295 does nothing to guarantee that voters are aware of their right to cast a provisional ballot. More often than not, election officials do not provide adequate notification to voters that they can cast a provisional ballot. Therefore, for a provisional ballot measure to be meaningful and be a true safeguard as it is intended to be, it must require that election officials notify voters that they can receive a provisional ballot and also notify the voter of the final result. Problems with registration cannot be remedied unless voters know whether their ballot is counted.

H.R. 3295 rolls back existing federal law that protects people from being purged if they have not voted. Two provisions in H.R. 3295 take a significant step backward to undermine the protections provided to voters against purging for erroneous infor-

mation. These provisions turn the National Voter Registration Act of 1993 (the "NVRA") on its head by allowing state officials to remove individuals from registration list because they have not voted in two successive federal elections and then don't respond to a notice. Current federal law does not allow voters to be purged from the rolls for not voting. However, the language of H.R. 3295 appears to allow such a practice and specifically amends a section of the National Voter Registration Act to change language which prevents voters from being purged for not voting. (See H.R. 3295, Section 502(2)(a) and Section 902(a)). Under these provisions, voters will be disenfranchised because the result of the purge is that they are not properly registered and, thus, cannot then have the safeguard of a provisional ballot to vote.

Additionally, H.R. 3295, as it is currently drafted, also eliminates the "fail safe" provision of the NVRA which allows voters to correct erroneous information that caused the purge and then confirm their address in writing so that they can cast their ballot at the polling place. (42 U.S.C. § 1973gg-6(e)). Without this provision voters can be removed from the polls with no opportunity to correct inaccurate information and will also not be able to cast an effective provisional ballot because the erroneous registration information drops them from the registration list so election officials will be unable to count the provisional ballot.

Finally, H.R. 3295 does not require full compliance with federal voting rights laws and offers no check on states to make sure they are in compliance. It is essential to election reform that as states contemplate how they will spend federal money there is a means to ensure that they are currently in compliance with existing federal voting rights laws. H.R. 3295 offers no such a provision. This bill by simply allowing states to self certify their compliance, and only in area of "administering election systems" (which narrows where states need to be in compliance), offers no real protection for taxpayers as states spend millions of federal dollars without having to be in compliance with federal law. True election reform must have in place a mechanism that requires the Attorney General to check for compliance prior to releasing funds for electoral reform.

These provisions make clear and other elements of the legislation confirm that H.R. 3295, the bill offered by Congressmen Ney and Hoyer, cannot meet the concerns and problems that voters continue to face at polling places around the country. Going partway, as H.R. 3295 would have us do, and turning back the clock on important current voting rights laws, is not a compromise—true election reform must safeguard existing law and then move to solve the problems.

PREPARED STATEMENT OF SECRETARY OF STATE MATT BLUNT

I am deeply grateful for the opportunity to provide testimony on H.R. 3295, known as the "Help America Vote Act of 2001," sponsored by Congressmen Ney, Hoyer and Blunt. I appreciate their hard work on the bill. I would also like to thank Congressman Conyers, Ranking Member of this Committee, for his interest in election reform.

In light of the contentious recount of presidential ballots in Florida, public trust in our election systems and procedures has been threatened. Closer to home in Missouri, court intervention in the November 7, 2000, general election, as well as allegations of fraud and a continuing federal investigation into the conduct of the election in St. Louis City, have heightened public concern with the voting process. Even before I took office in January, 2001, as Missouri's Secretary of State and the state's chief election official, election reform was a top priority of mine. One of my first official acts as Secretary of State was to convene a bipartisan commission of election officials from across Missouri to conduct a complete review of the state election code and provide recommendations to improve election laws and procedures. As a result, I put together a comprehensive package of election law reforms. These reforms included an advance voting program, uniform statewide standards for voting and counting votes, and strong anti-fraud enforcement provisions. Unfortunately, the Missouri House of Representatives did not take up election reform until the last few hours of the 2001 legislative session, too late to consider and pass meaningful reform. Realizing that immediate action was necessary to ensure fair elections in Missouri, I took direct action by using the administrative rulemaking authority of my office to address flaws in the election process. The "Florida Fiasco" could have easily been the "Missouri Fiasco." The changes I made by administrative rule establish a uniform standard for counting ballots, make modifications in the rules regarding postcard applications produced by the Secretary of State's office to register people to vote, provide for certification of new or modified electronic voting systems, and provide for counting electronic ballots. However, more needs to be done, especially in the area of election fraud. In the upcoming Missouri 2002 legislative session, I

will again be supporting a comprehensive election reform bill that includes strong anti-fraud provisions.

An important part of restoring public trust in Missouri elections was my office's investigation into the allegations of wrongdoing in the November 7, 2000, election in St. Louis City and County. I presented our findings in a report entitled, "Mandate for Reform," issued on July 24, 2001. I attach a copy of the report as an exhibit to this testimony. This report detailed massive problems with the election system in St. Louis. In the words of Congressman William L. (Lacy) Clay, the failures of the system in St. Louis "not only caused great inconvenience and confusion for the voters, they threatened the integrity of the electoral process."

The report sets out substantial and credible information that in St. Louis City and County, there was a coordinated effort to misuse the judicial process to manipulate the results of the election. One thousand two hundred thirty-three (1,233) persons who were not qualified to vote nonetheless obtained court orders to cast ballots. Court records spell out that in most cases the voters admitted in sworn affidavits that they were not registered to vote and thus were not legally qualified to cast ballots in the election. Nevertheless, they were given court orders to vote in violation of state law. Additionally, in St. Louis City a lawsuit filed by the Gore-Lieberman Campaign, Lacy Clay's Campaign Committee, and the Missouri State Democratic Party to keep the polls open late resulted in the polls being kept open approximately forty-five minutes longer that the law allowed before the Missouri Court of Appeals ordered the polls closed. The report details substantial and credible information that this lawsuit was a preconceived effort to misuse the court system to generate improper votes. The report also reveals that one hundred fourteen (114) convicted felons in St. Louis City and County voted in the election in violation of state law. Other potential violations of the election laws are set out in the report. I urge the members of the Committee to carefully review the report and its findings as well as the documentation supporting our findings. I understand that law enforcement authorities continue to investigate the possible criminal violations uncovered by my office's investigation. I continue to believe that vigorous prosecution of those who violated the law is necessary to restore trust in our election system.

Perhaps more importantly, our investigation revealed serious shortcomings in the operations of the local election authorities in St. Louis City and County. In both the City and County, my staff uncovered tens of thousands of inaccurate voter registrations. We found a huge number of duplicate registrations, that is, persons who were registered to vote in both St. Louis City and County. Moreover, the St. Louis press recently reported that in St. Louis City, the Board of Elections could not even correctly determine whether people were registered to vote from vacant lots in the City. In fact, many of the locations that the City Board verified were vacant lots were not vacant at all. These shortcomings by the St. Louis City and County election authorities are a recipe for disaster and create an environment that encourages fraud and abuse.

I want this Committee to know that I will continue to fight for election reform at the state level. I applaud the efforts of the United States Congress to pass federal election reform legislation, and I hope that my testimony will assist this Committee to that end. Thank you again for the opportunity to provide testimony.

PREPARED STATEMENT OF JOAN CLAYBROOK

The Ney-Hoyer "election reform" bill would do relatively little to fix our broken election system—which "lost" about six million votes in the 2000 presidential race. Unveiled barely three weeks ago, Ney-Hoyer compares unfavorably to the more pro-reform Dodd and McConnell-Schumer bills in the Senate. Both Senate bills require states and localities to meet strong national voting standards as an indispensable condition for federal assistance. But Ney-Hoyer offers only weak standards—shot through with loopholes—in a "hands off" program of grants to states and localities. Rather than fixing the wound to our democracy, Ney-Hoyer would largely perpetuate the flawed state and local system that produced the 2000 election fiascoes.

Unlike both Senate bills, the Ney-Hoyer bill:

- Does not require national standards for the permissible "error rate" of voting machines in counting and tabulating ballots.
- Does not require that voters be notified if they have voted for too few or too many candidates so they can know whether they need to correct their errors.
- Does not mandate that the states and localities ensure the availability of voting technology that would enable vision-impaired and other disabled voters to independently and privately fill in their ballots.

- Does not ensure that citizens deficient in English will have access to ballots in alternative languages.
- Does not ensure that voters are notified of their right to file a provisional ballot if their names are not on the precinct register, and to be informed whether their registration was ultimately verified and their vote counted.
- Undermines the "Motor Voter" law by allowing voters to be purged from registration lists if they have not voted in four years and not responded to a notice (regardless of whether they actually received it, for example, at a new address).

Nearly 80 percent of the Senate is co-sponsoring a better bill than Ney-Hoyer, so it is not true, as some argue, that the House "can't do better than this." If House leaders want to pass a serious reform, the best thing they could do now would be to await the imminently anticipated results of ongoing Senate compromise negotiations among Sen. Kit Bond (R-MO) and the principal sponsors of the superior Senate legislation, and take its cue from there. At the very least, they need to fix Ney-Hoyer and send a credible bill to an eventual House-Senate Conference.

The American people will not accept a fraudulent reform that makes a new Florida fiasco almost inevitable.

Ney-Hoyer "Help America Vote Act" Is a Band-Aid for a Gaping Wound to Our Democracy

The Ney-Hoyer "election reform" bill (H.R. 3295) approved November 15th by the House Administration Committee would do relatively little to address the range of serious voting problems highlighted by the 2000 presidential election. It fails to include most of the major federal voting reforms found in the two other major proposals before Congress: the Dodd-Conyers legislation (S. 565 and H.R. 1170) and the McConnell-Schumer bill (S. 953). In one instance, it even turns back the clock on reform by amending an important provision of the "Motor Voter Law" that prevents indiscriminate purging of legal voters from the rolls.

Did you know that the Ney-Hoyer bill:

- **Fails to create critically needed uniform national minimum standards for voting machines, even for those purchased with federal funds**. There is no requirement that the machines' "error rate" in counting and tabulating ballots should not exceed current or future national standards. There is no provision for notifying voters if they have "undervoted" or "overvoted" so they can correct their errors. There are no provisions to employ technology to ensure independent and private balloting by the vision-impaired and others with disabilities. Nor does the legislation seek to ensure that citizens deficient in English will have access to ballots in alternative languages.

- **Paralyzes federal supervision and taxpayer accountability for a $2.65 billion federal grant-in-aid program to the states to "help America vote."** The Ney-Hoyer bill fails to require any state or local program planning for the grants. Even worse, it allows states and localities to spend funds indiscriminately on any activities, even low priority ones, if they "certify" these will improve elections. It establishes permanent state and local domination of the program by designating a part-time federal "Election Assistance Commission" to run the grant program (with Commission members earning only $30,000 a year and permitted to have outside employment), forbidding the Commission from imposing "any" rule, regulation or requirement on a state or locality, and mandating Commission consultation with two advisory boards packed with state and local officials regarding all programs, plans and missions.

- **Fails to create any uniform national standard requiring advance mailing, publication and election site posting of a sample ballot, voting instructions and information concerning voters' rights.**

- **Contains a loophole-ridden national requirement for provisional balloting by those who are told that their names do not appear on the registration rolls at the polling place, but claim that they are registered.** Election officials are not obliged to: notify claimants they are able to file a provisional ballot upon written affirmation of their eligibility, promptly verify their claim, and inform them of the result and whether or not their vote was counted.

- **Undermines the National Voter Registration Act ("Motor Voter Law") and institutes a purge for non-voting by allowing voters to be purged from registration lists if they have not voted in federal elections in 4 years and not responded to a notice (whether or not they actually received it).** Under the NVRA, if a state believes a registered voter has moved, it may send a notice to the voter to verify the address. Unlike the process in Ney-Hoyer, the voter is given a subsequent, "fail-safe" opportunity to affirm his or her address and vote in two federal general elections. Only if the voter does not so appear may he or she be deleted from the rolls. According to the League of Women Voters, Ney-Hoyer would "effectively eliminate" this provision of NVRA. More fundamentally, by allowing states to delete voters from the rolls for non-voting (rather than change of address, death and other reasons defined in NVRA), the Ney-Hoyer bill would "effectively reinstate purging for non-voting, contrary to the principles of the NVRA."

The Ney-Hoyer bill may seem attractive to some because it allocates $400 million to replace or improve punch card machines, the object of so much controversy in Florida last year. Yet since then numerous independent commissions and reviews -- notably MIT-Caltech, Ford-Carter, The Constitution Project, and the General Accounting Office -- have emphasized that difficulties with punch card machines comprise only a small portion of voting problems in our essentially local and state election systems. Indeed, according to the MIT-Caltech study, replacing punch card by superior optical scan machines would have rescued only about 300,000 of 4-6 million lost votes in the 2000 presidential election. Much broader issues of state and local election practices, involving voter-friendly registration, the quality of machines and their utilization, accessible polling places, and improved voter education need to be adequately addressed before the 2002 and 2004 elections.

In sum, the Ney-Hoyer bill creates a new national program that is 75% financed by federal grants to the states and localities. Yet it fails to provide critically-needed federal minimum standards and supervision. Hence the Ney-Hoyer bill risks propping up a failed system and disappointing the hopes of tens of millions of Americans.

November 19, 2001

PREPARED STATEMENT OF MARISA J. DEMEO, REGIONAL COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (MALDEF)

INTRODUCTION

The Mexican American Legal Defense and Educational Fund (MALDEF) appreciates the opportunity to submit written testimony regarding H.R. 3295, The Help America Vote Act of 2001. MALDEF is a national nonprofit organization dedicated to protecting and promoting the rights of Latinos in the areas of education, employment, political access, immigrants' rights, and public resource equity. We achieve our mission through community education, litigation and advocacy. Founded in San Antonio, Texas, in 1968, MALDEF now is headquartered in Los Angeles with offices

in Sacramento, San Antonio, Houston, Albuquerque, Phoenix, Chicago, Atlanta, and Washington, D.C.

Under our political access program, MALDEF has concentrated on protecting the voting rights of Latinos throughout the United States. MALDEF and its voting rights attorneys are recognized as experts on the Voting Rights Act as it applies to Hispanics. Since the presidential election of 2000, MALDEF has been working with various congressional offices to design meaningful election reform that will significantly improve the voting process for Latinos. We appreciate the efforts that Congressmen Bob Ney and Steny Hoyer have made to address election reform issues in their bill, H.R. 3295; unfortunately, MALDEF must oppose the bill as it was reported out of the House Administration Committee because it falls woefully short of what is needed and what is possible in this Congress. In fact, in some parts of the bill, the bill would take away some of the gains we have made in the past to make voting more accessible to American citizens.

In this testimony, MALDEF addresses three issues: H.R. 3295's failure to address adequately the language barriers to voting faced by Hispanics and others with limited English skills; H.R. 3295's failure to address illegal and unfair voting systems; and H.R. 3295's failure to provide for provisional ballots as a national standard. There are other shortcomings to H.R. 3295; however, we are aware that other civil rights organizations and organizations concerned with access to the voting process will also be filing testimony, so we will limit our testimony to these three issues key to the Hispanic community.

H.R. 3295 FAILS TO ADDRESS ADEQUATELY THE LANGUAGE BARRIERS TO VOTING FOR HISPANIC AMERICANS AND OTHER CITIZENS WITH LIMITED ENGLISH SKILLS

Background

In 1990, 14% of the U.S. population spoke languages other than English at home.[1] Of those persons who spoke other languages, 54% spoke Spanish in the home.[2] Although the detailed Census 2000 data has not been released, the Census Bureau did conduct a Census 2000 Supplemental Survey, which estimates that the percentage of the U.S. population speaking languages other than English at home has risen to 18%, and 60% of those persons are speaking Spanish at home.[3]

Not all persons who speak Spanish in the home are citizens and eligible to vote, but a fair number of them are. Some of the citizens who speak Spanish in the home are naturalized citizens, but others are persons who are native-born citizens. Native-born citizens whose first language is Spanish could be Puerto Ricans who were born in Puerto Rico as U.S. citizens and raised in a Spanish-speaking environment. When they come to the U.S., although they are not immigrants, they still face many language barriers. In addition, other citizens, born in the States and raised in Spanish-speaking households, can also face language barriers.

In 1975, Congress recognized the language barriers that certain citizens faced in casting their vote when they extended protection against voting discrimination to "language minority groups."[4] If either 5% or 10,000 of the voting-age citizens of a State or political subdivision are limited English proficient and speak a single language, the jurisdiction is prohibited from providing materials exclusively in English.[5] Congress, at the time of amending the Voting Rights Act to protect language minorities, limited the protection to persons who are "American Indian, Asian American, Alaskan Natives, or of Spanish heritage."[6] Currently, twenty-eight states contain jurisdictions covered by either Section 4(f)(4) or Section 203(c), the language provisions of the Voting Rights Act.[7] Many states and local jurisdictions provide even further protection for a larger class of language minorities. Despite these legal protections, Latino citizens still face barriers when they try to cast their ballot at the polling place on election day.

In a report issued by the United States Commission on Civil Rights ("Commission") reviewing the voting irregularities that occurred in Florida in the presidential election in 2000, the Commission unveiled a number of language barriers faced by

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[1] U.S. Census Bureau, Language Use and English Ability, Persons 5 Years and Over By State: 1990 Census (visited Nov. 28, 2001) <www.census.gov>.

[2] Id.

[3] U.S. Census Bureau, Census 2000 Supplemental Survey Summary Tables (visited Aug. 7, 2001) <*http://factfinder.census.gov* >.

[4] 42 U.S.C. 1973b(f)(1) (2000).

[5] 42 U.S.C. 1973aa-1a (2000).

[6] 42 U.S.C. 1973aa-1a(e) (2000).

[7] Department of Justice Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. 55.1 (2000).

Spanish-speaking Latino citizens.[8] According to testimony submitted by the Puerto Rican Legal Defense and Education Fund (PRLDEF), many Latino voters were turned away at the polls without proper language assistance.[9] What the Commission found was that many poll workers were not properly trained to handle language accessibility concerns.[10] In addition, the Commission found that in some cases, either willing bilingual volunteers or poll workers were stopped from providing assistance to voters with limited English skills.[11]

In addition to barriers faced by Latinos, other citizens who have language barriers who do not receive protection as a language minority under the Voting Rights Act, such as Haitian-Americans, also experience barriers when going to the polls to vote. The Commission collected testimony from Marleine Bastien, a Haitian-American community leader, who testified that a county ordinance extends protection for the language needs of Haitians in Florida.[12] Despite that protection, precincts failed to provide a voting process accessible to the Creole-speaking citizens who needed assistance.[13]

H.R. 3295

H.R. 3295 does address the language barriers of Hispanic Americans, but it addresses those barriers in a limited fashion.

Title II of H.R. 3295 would establish an Election Assistance Commission consisting of 4 members, who would be advised by a 110-member Standards Board and a 25-member Board of Advisors.[14] The Commission would be charged with devising voluntary election standards.[15] While these standards are required to ensure that "new voting equipment systems certified by the Federal government or by any State should provide a practical and effective means for voters with physical disabilities to cast a secret ballot,"[16] there is no requirement that the standards ensure access for citizens with language barriers either those covered by the Voting Rights Act or to extend protection to other citizens with language barriers.[17]

In Title I of H.R. 3295, the bill provides grants ($400,000,000) for jurisdictions to replace punch card voting machines.[18] In order to be eligible to receive the grant, a State must make several assurances to the federal government.[19] Those assurances do include an assurance that the voting systems that will replace punch card machines will improve accessibility for individuals with limited English proficiency consistent with the requirements of the Voting Rights Act.[20] The accessibility would not have to address the growing needs of many ethnic groups beyond the American Indian, Alaskan Native, Asian, and Latino communities. There is some additional limited mention of addressing language barrier issues in the bill with regard to the Election Assistance Commission issuing studies,[21] as well as some mention in the sections related to grants for research on voting technology ($20,000,000)[22] and pilot programs for testing of equipment and technology ($10,000,000).[23] The major grant program in the bill, however—the election-fund payment program ($2,250,000,000)[24]—does not place requirements on States to meet the needs of voters with language barriers, other than certifying that they, generally, are in compliance with the Voting Rights Act.[25]

Further, in Title V of H.R. 3295, the bill sets forth certain minimum standards for State election systems.[26] The bill provides no minimum standards for assuring

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[8] United States Commission on Civil Rights, Voting Irregularities in Florida During the 2000 Presidential Election (Advance Copy) 128–131 (June 2001).

[9] *Id.* at 129; At the March 14, 2001 hearing on election reform before the Senate Rules Committee, witness Juan Figueroa, President and General Counsel of the Puerto Rican Legal Defense and Education Fund (PRLDEF) gave testimony further outlining the facts supporting the allegation that Puerto Rican and other Latinos were denied the opportunity to vote in central Florida.

[10] United States Commission on Civil Rights, *supra* note 8, at 129.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] H.R. 3295, 107th Cong., Sec. 201–216 (2001).

[15] *Id.* at Sec. 221.

[16] *Id.* at Sec. 221(a)(1)(D).

[17] *Id.* at Sec. 221(a)(1).

[18] *Id.* at Sec. 101–122.

[19] *Id.* at Sec. 112(a).

[20] *Id.*

[21] *Id.* at Sec. 221(a)(5); Sec. 221(b)(5).

[22] *Id.* at Sec. 241(b)(1); Sec. 243.

[23] *Id.* at Sec. 251(b)(1); Sec. 253.

[24] *Id.* at Sec. 231–234.

[25] *Id.* at Sec. 233.

[26] *Id.* at Sec. 501–502.

language minorities' access to voting; whereas, it does provide a requirement that new voting systems provide a "practical and effective means for voters with physical disabilities to cast a secret ballot."[27] To summarize, the voluntary grant-incentive programs of H.R. 3295 address the issue of language barriers for American citizens who have limited English proficiency to some extent, but the mandatory minimum standards do not.

By comparison, H.R. 1170, the Equal Protection of Voting Rights Act, goes far to protect the rights of citizens who are Hispanic as well as others who have language barriers.[28] For example, among other provisions helpful to limited English voters, H.R. 1170 contains in its minimum standards that voting systems "shall provide alternative language accessibility for individuals with limited proficiency in the English language."[29]

H.R. 3295 FAILS TO ADEQUATELY ADDRESS UNFAIR AND ILLEGAL VOTING SYSTEMS

Background

In addition to language barriers, Latino citizens face barriers to casting their vote by the voting systems that are often used by states and localities in predominantly Latino neighborhoods. A lawsuit brought by MALDEF demonstrates this type of barrier to voting. MALDEF has filed a civil rights class action lawsuit in the Northern District Court of Illinois on behalf of Latino and African-American voters challenging the non-uniform, arbitrary, and unequal system of voting in Illinois as violating Section 2 of the Voting Rights Act of 1964, 42 U.S.C.1973, and the Fourteenth Amendment to the Constitution of the United States.[30] The defendants include members of the Illinois State Board of Elections as well as a number of local election commissions and voting officials.

At issue in the complaint is that the type of voting systems that are located in predominantly Latino and African-American voting areas are more likely to produce errors in voting that are not corrected, than those voting systems available in other jurisdictions, thus infringing on the Latino and African-American right to vote. In Illinois, most jurisdictions, including some of the jurisdictions with the highest concentrations of Latino and African-American voters, use punch-card ballots. Other jurisdictions use optically-scanned ballots. Most of the jurisdictions that use optically-scanned ballots provide voters at the time they are at the poll with notice of certain errors on their ballots, and provide those voters an opportunity to vote again to correct the errors. This process is called "error notification."

For purposes of the litigation, "errors" refer to the case where a voter's ballot contains more votes for an office than is allowed by law (an "overvote") or in which the tabulating machines cannot accurately read the voter's ballot. Punch-card ballots and optically-scanned ballots without error notification have a higher error rate for recording, counting, and tabulating votes, than do optically-scanned ballots with error notification. In addition, punch-card ballots have a higher error rate among Latino and African-American voters than among non-minority voters.

In Illinois, the state legislature has refused to change the state law to allow or require error notification to voters in election jurisdictions using punch-card voting systems. By comparison, state law requires error notification in election jurisdictions using optical-scan voting systems where the ballots are counted in-precinct. At these precincts, voters can have their ballots placed in tabulation equipment, which will return any ballot with an overvote or which cannot be read. Then the voter has the opportunity to obtain a new ballot and correct the vote.

In the presidential election of 2000, the rate of votes not counted (the "fall-off rate") on ballots cast statewide was approximately 3.85%. In jurisdictions using optical-scanning systems with error notification, the fall-off rate was approximately 0.5%. By comparison, in jurisdictions and wards with significant Latino and African-American populations, the fall-off rate was significantly higher. The City of Chicago, which used the punch-card voting system without error notification, had a fall-off rate of 7%. In the Chicago wards where 65% or more of the residents are Latinos and/or African-Americans, the fall-off rates were even higher. In the heavily Latino 12th ward, the fall-off was 12.6%, and the predominantly African-American 37th ward was 12.4%. Similarly, the Township of Cicero, with a significant Latino population and located within Cook County, using a punch-card system without error no-

[27] *Id.* at Sec. 502(6).
[28] H.R. 1170, 107th Cong. (2001).
[29] *Id.* at Sec. 531(a)(5).
[30] The facts set forth in this article are taken from the amended complaint filed by MALDEF in federal district court. The lead attorney on the litigation for MALDEF is Maria Valdez, Senior Litigator, in MALDEF's Chicago office.

tification, had a fall-off rate of 8.8%. The City of East St. Louis, with a significant African-American population and which used optical-scan balloting but without error notification, had a fall-off rate of approximately 11%.

To summarize the primary facts in the case, the majority of Latino and/or African-American voters live in jurisdictions that use punch-card voting systems or that use optical-scan ballots without error notification, which result in substantially higher rates of voting error than optical-scan ballots with error notification. A larger proportion of Illinois' Latino and African-American voters live in such jurisdictions than the proportion of Illinois' white voters who live in such jurisdictions. Moreover, in jurisdictions with punch-card voting systems, areas with high Latino and/or African-American populations have higher error rates than areas with high non-minority populations. As a consequence, Illinois' Latino and African-American voters are significantly less likely to have their votes counted than non-minority voters. Thus, in elections at all levels, including municipal elections, the voting strength of Latino and African-American voters is thereby diluted and these voters have less opportunity than other members of the electorate to participate in the electoral process, to form coalitions with like-minded voters, and to elect representatives of their choice.

The problem identified through MALDEF's case in Illinois is found in many parts of the country.

H.R. 3295

While H.R. 3295 does provide funds for replacing punch-card machines,[31] the solution to the problem of ballots not being counted goes much further than simply replacing punch-card machines. The critical component that is needed is an opportunity for a voter to be notified of errors on the ballot while he/she is at the polling place, and an opportunity to correct the ballot. The notification and opportunity to correct can be done with punch-card machines or with optically-scanned ballots. It is possible, as the case in Illinois demonstrates, that jurisdictions could use optically-scanned ballots and still not provide the opportunity to be notified and correct ballot errors, such as overvotes and undervotes.

It is important to focus on the end goal for improving voting machines. It is to ensure that when a person casts a ballot, his/her ballot is actually counted and not thrown out. It is through the opportunity to notify and correct that this goal is best reached.

H.R. 3295 provides that, if a State uses a voting system that gives voters the chance to correct errors, the voter should be able to do so in privacy.[32] The bill further provides that "States, and units of local government within the States, replacing all voting machines within their jurisdiction shall ensure that the new voting system gives voters the opportunity to correct errors before the vote is cast."[33] Combining these two provisions means that, unless a State or local jurisdiction replaces all its voting machines, it does not have to address the critical issue of voter notification of error and opportunity to correct the error.

H.R. 1170, by comparison, sets minimum standards that require all voting systems used in federal elections provide a voter an opportunity to verify his/her votes on the ballot and an opportunity to correct the error.[34] The voting system must notify the voter if the voter accidentally voted for more than one candidate for a single office or for a fewer number of candidates than the ballot would allow to be cast.[35]

H.R. 3295 FALLS SHORT IN ADDRESSING THE NEED FOR PROVISIONAL BALLOTS FOR LATINO VOTERS

Background

Beyond the specific areas of language barriers and barriers created by certain voting systems, Latinos face a wide range of barriers to full and effective participation in the voting process by other practices. An example from Texas will illustrate how even when state law provides for provisional ballots, that is not enough to ensure that voters will have access to them.[36] MALDEF has received numerous complaints about election judges not administering elections in accordance with standing laws and regulations. Often, judges turn Latinos away from voting polls after telling them that they are not on the list of registered voters. Although Texas law allows

[31] H.R. 3295, 107th Cong., Sec. 101–122 (2001).
[32] *Id.* at Sec. 502(7).
[33] *Id.*
[34] H.R. 1170, 107th Cong., Sec. 531(a) (2001).
[35] *Id.*
[36] The facts set forth in this section are taken from testimony written by Nina Perales, Staff Attorney in MALDEF's San Antonio office.

a voter whose name does not appear on the voting rolls to complete a challenge affidavit and cast a vote, election judges often are unaware of this law and do not provide the voters an opportunity to vote.

H.R. 3295

While H.R. 3295 appears to address the issue of ensuring that provisional ballots are provided, the bill also provides a loophole that essentially makes the standard evaporate. The bill provides that States must permit "in-precinct provisional voting by every voter who claims to be qualified to vote in the State, or has adopted an alternative which achieves the same objective."[37] By providing States the option of coming up with their own alternative to provisional ballots, the bill removes the national standard needed that every voter who believes he/she is registered has an opportunity to file a provisional ballot in a federal election that can be verified later.

H.R. 1170, by comparison, provides a minimum standard for the country that election officials have to notify voters that they may cast a provisional ballot if their name does not appear on the registered voter list and allow the voter to cast a provisional ballot upon written affirmation by the individual before an election official that he/she is eligible to vote.[38] The vote will then later be verified to determine whether in fact there was an error on the part of the election officials or the voter.[39]

CONCLUSION

While the country focused on Florida's election system during the months of November and December of 2000, Florida only received that attention and scrutiny because of the presidential election which was decided by the outcome of the close Florida vote. In actuality, many voters, and particularly minority voters, face barriers to voting and a dilution of their vote in many elections throughout the states.

It is time for Congress to take action in the area of election reform, but the reform must be comprehensive. Part of the solution is related to voting systems and the technology available, as our Illinois litigation points out, but there are many other barriers to voting, as exemplified with our examples of language barriers in Florida and lack of access to provisional ballots in Texas. In the end, what will serve our country and serve its citizens is a comprehensive approach from the federal government to both set some key national standards ensuring that there is a minimum states and localities must do in order to ensure equal access to the voting polls, as well as provide grant money to states providing the incentive to go beyond the minimum standards to ensure each and every voting age citizen has the full opportunity to express his/her opinion at the voting polls.

While Congressmen Ney and Hoyer should be lauded for pushing forward a bipartisan approach to election reform, their effort falls too short of meeting the needs of Hispanic voters to warrant the support of MALDEF, an organization dedicated to improving access to the voting process for Latinos. H.R. 1170, sponsored by Congressman John Conyers provides a number of minimum standards regarding access to voting systems for persons with limited English, uniform and nondiscriminatory voting systems, and access to provisional ballots. These changes must be included in any bill passed by Congress in order to make a real difference in ensuring Hispanics access to the most fundamental right in our country, the right to vote.

[37] H.R. 3295, 107th Cong. Sec. 502(3) (2001).
[38] H.R. 1170, 107th Cong. Sec. 531(b) (2001).
[39] *Id.*

Statement

Opposition to the "Help America Vote Act" (H.R. 3295), House Judiciary Committee, Hearing on Election Reform

December 5, 2001

Dear Judiciary Committee Members;

The National Council of La Raza (NCLR), the largest national Latino civil rights organization, opposes the **"Help America Vote Act"** (H.R. 3295), because it will not fix the problems faced by voters in the 2000 presidential election, and in some instances will roll back civil rights laws. NCLR is an umbrella organization with over 270 local affiliated community-based organizations and a broader network of 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.

All Americans are concerned about the election irregularities observed during the 2000 presidential election. Hispanic Americans share these concerns. Too many Latinos were unfairly denied the opportunity to vote, or had their votes discarded, through no fault of their own. We 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.

Unfortunately, the **"Help America Vote Act"** (H.R. 3295) will not correct the problems stated above with enough veracity to ensure that all Americans, including those for whom English is their second language, are able to exercise the right to vote.

The Latino community needs strong, comprehensive election reform that fully protects and complies with existing civil rights laws, including the Voting Rights Act, the National Voter

Registration Act, the Voter Accessibility for the Elderly and Handicapped Act, and the Americans with Disabilities Act. The following elements must be an integral part of election reform legislation to ensure that it is fair and effective:

National Minimum Standards: Election reform legislation must establish strong and enforceable nationwide minimum standards for voting systems, ballot tabulation, voter education, election worker training, and voting booth accessibility. This will create uniformity among states that ensures all voters are treated equally.

Language Accessible Voting Systems: All new voting systems should provide alternative language accessibility for individuals with limited proficiency in the English language.

Provisional Ballots: A provisional ballot system must be required of every state. In this way, duly-registered voters who do not appear on the voter rolls are given the opportunity to receive a provisional ballot. Election officials would hold the ballot, check if the individual qualifies as a voter, count the ballot if appropriate, and then once that determination is made notify the voter of whether their ballot was finally counted.

Purging: Election reform must require specific safeguards to ensure that legally-registered voters are not erroneously eliminated from the voting register. To safeguard registered voters, there should be provisions to limit purges 90 days before an election. Voters must be given notice and the opportunity to make any corrections at the polling place.

No Additional Barriers for Minority Voters: 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. 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.

NCLR urges you to join us in opposing the "Help America Vote Act" (H.R. 3295).

2000 M Street NW, Suite 400, Washington, DC 20036 phone: 202/467-4999 email: pfaw@pfaw.org web: www.pfaw.org

FOR IMMEDIATE RELEASE
Wednesday, Dec. 5, 2001

CONTACT: Jason Young or Peter Montgomery
at 202/467-4999

PFAW Urges Meaningful Reform for 2002 Elections

Backs Dodd-Conyers bill, expresses 'serious concerns' over Hoyer-Ney

In a letter to members of the House of Representatives today, People For the American Way urged Congress to enact comprehensive election reform before the year's end and in time for the 2002 elections.

PFAW has endorsed the Dodd-Conyers proposal for reforming elections because it creates fair and uniform standards for ballots, voter education, poll worker training, and voting equipment and procedures. The PFAW letter said Dodd-Conyers "stands alone in its comprehensiveness addressing the many voting irregularities that consumed Florida and the nation in the 2000 election."

PFAW's letter also cited "a number of serious concerns" about the Hoyer-Ney proposal, including its failure "to adequately address issues of accessibility for disabled voters, assistance to language minorities, discrimination and intimidation, error notification and provisional ballots."

Explaining the urgency of election reform, People For the American Way President Ralph G. Neas said, "In the last election, we saw just how dire the need for election reform is. If we don't fix the system now, we risk experiencing more 'Floridas' and more voter disenfranchisement. The right to vote – nothing less than the institution that allows America to call itself a democracy – is at stake."

The full text of PFAW's letter to members of the House of Representatives follows:

> On behalf of the more than 500,000 members and supporters of People For the American Way (PFAW), we write to urge you to do all you can to ensure that comprehensive election reform is enacted before the end of this year. While we are pleased with the commitment of Congressmen Hoyer and Ney to enact election reform legislation, we have a number of serious concerns about their bill. The Help America Vote Act of 2001, H.R. 3295, fails to adequately address issues of accessibility for disabled voters, assistance to language minorities, discrimination and intimidation, error notification and provisional ballots.
>
> PFAW strongly supports the Equal Protection of Voting Rights Act of 2001, H.R. 1170, introduced by Congressman Conyers and co-sponsored by 161 other members of the House. We strongly believe that H.R. 1170 stands alone in its comprehensiveness addressing the many voting irregularities that consumed Florida and the nation in the

2000 election. The Equal Protection of Voting Rights Act would require that each state meet a set of minimum standards when it comes to voting equipment, the training of poll workers, absentee and bilingual ballots, provisional ballots, overseas voters and accessibility for the disabled.

In order to regain the trust and full participation of voters across the country, we need comprehensive election reform before next year's elections. We look forward to working with you as the legislative process continues to ensure that comprehensive election reform is enacted for the 2002 elections.

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November 26, 2001

Members
United States House of Representatives
Washington, D.C. 20515

RE: **COMPREHENSIVE ELECTION REFORM LEGISLATION**

Dear Representative:

The Rights Task Force of the Consortium for Citizens is writing to express its opposition to the passage of the Ney-Hoyer bill, The Help America Vote Act of 2001 (H.R. 3295) as it is drafted. The stated intent of this legislation is to improve the way in which we elect our leaders. We applaud the efforts of Representatives Ney and Hoyer to try to craft bipartisan election reform legislation. But we believe it falls far short of what is needed to remedy the flaws that kept an estimated 6 million Americans from having their votes counted in the 2000 election. Moreover, the disability access provisions of HR.3295 would do little more than preserve the *status quo* in which most polls and voting systems remain inaccessible to people with disabilities.

The disability community, therefore, strongly urges you to both speak out against and vote to reject passage of this legislation as drafted. Earlier this year the General Accounting Office issued a report stating that 84% of polling places they surveyed were found to have a barrier that prevents a person with a disability from voting and at least sixty-seven percent of those same polling places, the barriers completely prevent voters who use wheelchairs from even entering. The GAO survey also found that while most States and counties have laws and/or policies on the books requiring some degree of voting accessibility, they vary widely in terms of both what they require and the manner in which they are actually carried out.

Instead of rectifying these problems by setting clear nationwide voting accessibility standards, H.R. 3295 would allow each State to decide on its own what the most "practical and effective" way is for them to provide people with disabilities access to the polls, ballots and voting systems. This provision is similar to one in the 1983 Voting Accessibility for the Elderly and the Handicapped Act, which recently has been again found to be largely ineffective by the General Accounting Office.

In addition, the Ney-Hoyer bill continues the disenfranchisement of the ten million voting aged Americans who cannot see well enough to read print and the more than 1.2 million citizens whose disability prevents them from being able to use a pen. A secret ballot does not exist for these voters and the Help America Vote Act does not provide one for them. Technology exists that would allow a secret and independent ballot for voters who are blind or visually impaired

1730 K Street, NW, Suite 1212 • Washington, DC 20006 • PH 202/785-3388 • FAX 467-4179 • Info@c-c-d.org • www.c-c-d.org

and voters who cannot use a pen, as well as the scores of voters for whom English is a second language, but the Ney-Hoyer bill does not require these accommodations. Instead, the bill offers some federal money linked to audible ballots. The bill states that federal funds may be used to encourage voter participation or for other activities to improve election administration.

It cannot be left up to the states to determine what is an accessible polling place or voting system. The over thirty-five million voting aged citizens with disabilities can no longer be the nations largest disenfranchised minority. It is for these reasons that the disability community urges you to vote on H.R. 3295.

Sincerely,

CCD Rights Task Force

MATERIAL SUBMITTED FOR THE HEARING RECORD

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New Jersey PIRG
New Mexico PIRG
New York PIRG
Ohio PIRG
Oregon State PIRG
Pennsylvania PIRG
Vermont PIRG
Washington PIRG
Wisconsin PIRG

December 5, 2001

Members
House Judiciary Committee
United States House of Representatives
Washington, D.C. 20515

RE: U.S. PIRG opposition to H.R. 3295

Election Day 2000 shined a spotlight on the need to fix our troubled election system. Subsequent research and analysis—such as a recent GAO report citing "major problems" in 57% of voting jurisdictions—confirmed the need for swift and comprehensive action.

Over the past year, many legislators and advocacy organizations have been working diligently to craft substantive election reform legislation that will address the serious problems with our system and achieve bipartisan support. These efforts have resulted in the *Equal Protection of Voting Rights Act of 2001*, sponsored by Sen. Chris Dodd and Rep. John Conyers, and subsequent negotiations in the Senate to achieve bipartisan support.

Just recently, Reps. Ney and Hoyer introduced—and marked up in committee—H.R.3295. While we applaud Mr. Ney and Mr. Hoyer for their intentions and bipartisan spirit, we must oppose this legislation in its current form. This bill is not just a weak substitute for Mr. Conyers' more comprehensive reform bill (HR1170); it also rolls back an important voter protection provision.

- **H.R. 3295 Rolls Back Motor-Voter by Allowing States to Purge Occasional Voters**
  The National Voter Registration Act (often called "Moter-Voter") ensures that registered voters are not removed from the rolls simply because they have not voted recently. States must have a reason to believe that a voter is no longer eligible before initiating the "purging" process—and even in this case, there is a fail-safe mechanism to correct errors at the polls. This bill turns this protection on its head, permitting states to purge anyone who misses two successive federal elections and does not respond to a notice.

U.S. PIRG 218 D Street, SE Washington, DC 20003 (202) 546-9707 uspirg@pirg.org www.pirg.org

This provision would result in the purging of many eligible and properly registered voters. In the state of Delaware, over one third of registered voters (172,000 people) did not vote in either the 2000 or 1998 elections. According to the FEC, over 50 million registered voters in the U.S. did not vote in the 2000 elections. Since turnout is much lower in non-presidential years, it is likely that few of these people voted in 1998. Even if half either voted in 1998 or received and responded to a written notice, 25 million eligible and registered Americans would be forced off the rolls—nearly 10% of the U.S. population.

- **H.R. 3295 Fails to Ensure that Americans Receive a Provisional Ballot—and are Notified as to Whether That Ballot is Counted**
  Providing would-be voters with a "provisional ballot"—to be held aside and counted upon confirmation of eligibility—if their eligibility is questioned on election day is the only way to ensure that qualified voters are not turned away from the polls improperly. H.R. 3295 allows states to opt out of providing a provisional ballot in favor of an undefined "alternative" and does not require states to notify the prospective voter as to whether his/her provisional ballot was counted.

- **H.R. 3295 Provides Virtually No Minimum Standards for Machines—and Therefore Fails to Address the Most Glaring Problem with our System**
  The most obvious lesson from Election Day 2000 was that our voting machines performed inadequately. Unfortunately, H.R. 3295 does not comprehensively address this problem. The Ney-Hoyer bill does not require that voting machines meet minimum standards for error rates; does not require that voting machines—even those purchased with federal money—notify voters of errors and provide the opportunity to correct these errors; and does not require existing voting machines to be made accessible to persons with disabilities. H.R.3295 charges a new federal agency with the duty to create voluntary election standards—but does not make adoption of those standards a condition for receiving funding.

- **H.R.3295 Fails to Ensure Voting Access to All Americans**
  Citizens with disabilities, language minorities, and elderly Americans are consistently and needlessly denied their rights to access polling places and cast an anonymous ballot. Ney-Hoyer does nothing to ensure increased access.

- **H.R.3295 Does Not Ensure That Voters Are Educated About Their Rights and Choices on Election Day**
  Many Americans were turned away from the polls improperly in 2000 because they did not know their rights. Others were confused by their ballots and cast a vote that was not counted. Ney-Hoyer does not provide a minimum standard for voter education.

- **H.R.3295's Enforcement and Administration Provisions are Weak**
  Ney-Hoyer creates a new federal agency—the Election Assistance Commission—to monitor states' compliance with minimum standards and to administer a multi-billion dollar grant program, among other duties. This Commission is composed of part-time members and lacks subpoena power over the states. It cannot even place reasonable conditions on the use of the funding it is charged with handing out.

U.S. PIRG continues to support H.R.1170, the *Equal Protection of Voting Rights Act of 2001*, which is superior to H.R.3295 with respect to every point mentioned above. This is the only bill that can truly be called comprehensive election reform.

The legislation offered by Reps. Ney and Hoyer is an unacceptable substitute that both falls far short of the reforms needed to truly fix our broken democracy and rolls back a significant protection in the National Voter Registration Act. The purpose of election reform is to make voting easier and more accessible for qualified citizens. Removing millions of eligible voters from the registration rolls runs counter to that goal.

At this point, we are urging members to support strengthening amendments to the Ney-Hoyer bill. However, if the bill is not strengthened, we ask members to vote against H.R.3295 and instead support the much stronger H.R.1170.

Sincerely,

Adam Lioz
Democracy Advocate
U.S. PIRG

Paper: Houston Chronicle
Date: MON 11/19/01
Section: A
Page: 19 Metfront
Edition: 2 STAR

Officials deny *Brown* 's claim of voting problems

By ROMA KHANNA
Staff

Though Mayor ***Lee Brown*** 's campaign alleges registered voters were turned away from polls Saturday, Harris County officials maintain no one was excluded from this weekend's early voting for the runoff election.

People reported being told they could not vote without voter registration cards - though other forms of identification such as a driver's license are sufficient under Texas law, according to the ***Brown*** campaign.

"We have a problem where voters are being turned away from polls even though they have the proper identification," said Joe Householder, spokesman for the ***Brown*** campaign. "A potential reason may be that computers were down, but that is not an excuse. The law is pretty clear on this."

A computer problem cut off access to the county's voter registration database for about one hour after polls opened Saturday afternoon, said Tony Sirvello, administrator of elections for the Harris County Clerk's Office.

The glitch may have caused some delays as election workers verified people's registration by phone, but no one would have been turned away, Sirvello said. He said the problem affected four polling sites: the Fiesta Mart on Kirby, the Spring Branch Community Center, Kashmere Multi-Service Center and the Sunnyside Multi-Service Center.

"I have not talked to one voter who said they were told they could not vote without their registration card," Sirvello said. "What has happened is A told B and B told C and the ***Brown*** campaign overreacted."

Attorneys for the ***Brown*** campaign on Sunday sent a letter to Harris County Clerk Beverly Kaufman and Sirvello citing "numerous reports" of poll workers turning away registered voters.

Don Hollingsworth, senior executive assistant to ***Brown*** , said he was told he could not vote without his voter registration card Saturday at the Fiesta Mart poll.

Hollingsworth said he was fourth in line before 1 *p* .m. when polls opened. He said that after standing in line for nearly two hours, he was told by election officials that they could only process voters with registration cards.

"The lines grew to about 150 people," Hollingsworth said. "Eventually they told people with other forms of ID that they could not vote."

Hollingsworth was able to vote Sunday afternoon when he returned to the facility.

[Under Texas law, an election official cannot reject voters without informing them of their right to cast a challenge ballot.]

Sirvello said he questioned several election supervisors Sunday about the allegations of voting irregularities.

"They have been insulted that I even asked because they know what the law is," he said.

The ***Brown*** campaign also received reports of irregularities, including extraordinarily long lines, at voting sites in Lockwood and Sunnyside, Householder said. He said the problems with early voting also occurred before the Nov. 6 election.

The county recorded a large turnout over the weekend - more than 5,300 as of Sunday afternoon - and deployed additional employees Sunday to expedite processing, Sirvello said.

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Paper: Houston Chronicle
Date: SUN 12/02/01
Section: A
Page: 11
Edition: 3 STAR

Election 2001 / Turnout strong for tight race /Complaints leveled by voters, monitors

By SALATHEIA BRYANT
Staff

Saturday's hotly contested Houston mayoral runoff drew more voters to the polls than the first round Nov. 6, and also generated an increase in complaints about voting ***problems*** .

One man was arrested after he refused to leave a polling place where he had been deemed ineligible to vote. County election officials said the police had to be called out to two other locations because voters were getting into arguments with precinct judges.

It made for a hectic day for election officials. But Tony Sirvello, administrator of elections for the county clerk's office, said none of the incidents seemed to result from deliberate efforts to prevent voting.

"The intensity of the mayoral campaign has carried over to today. I have not seen or heard any evidence where people are doing it deliberately," Sirvello said.

The runoff between Mayor Lee Brown and challenger Orlando Sanchez was the closest Houston mayoral contest in years.

Both sides in the race had poll watchers out to prevent election fraud, and the Texas secretary of state sent additional monitors.

Disputes that arose involved the rights and limitations of poll watchers, confusion over polling locations and interpretation of affidavits of ***voter*** challenge, a process designed to resolve disputes over ***voter*** eligibility.

A number of charges of improper behavior were leveled by voters and monitors. Some angry voters made reference to last year's disputed presidential election in Florida.

Representatives from the NAACP made the rounds to polling places throughout Houston to ensure voters were being allowed to vote. Executive director Yolanda Smith complained that some precincts in predominantly black and Hispanic neighborhoods lacked proper signage directing voters to their polling place.

"There was no signage telling them where to go, so people are discouraged," Smith said.

Sirvello said that signage was posted but that voters were confused because some voting locations changed between the general election Nov. 6 and Saturday's runoff.

Some voters complained of political dirty tricks.

Myrna Campbell said her sister received two calls from someone who claimed to represent the Brown campaign directing her to a different polling location than the one announced. The new location turned out to be bogus.

Another ***voter*** complained that negative campaign literature about Sanchez was in the polling place where she voted.

Voters interviewed gave different reasons for coming to the polls - desire for change, racial pride, civic duty.

Jesse Morales, a 20-year-old Democrat, put aside partisan considerations and cast a vote of ethnic pride for Sanchez, a Republican.

Morales, who lives two blocks from the Eastwood Park Community Center on Harrisburg where he voted, said his neighborhood has been neglected and needs more attention from City Hall.

"I think we need a Hispanic. We don't get a lot of recognition. Everybody knows Third Ward and Fifth Ward," Morales said. "Nobody talks about Second Ward. We need programs. We need a lot of things.

By 11 a.m. Chivonne Goodson was the last one on her street to vote. Even her elderly grandparents had beat her to the polls.

She had come to vote for Lee Brown.

"I think he's a much better person for Houston," she said.

At the precinct where Goodson voted, precinct judge Bessie Swindle said voting was strong.

"They are really coming out to vote. I have a lot of new voters. I have to show them how to use the ballot," said Swindle.

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Paper: Houston Chronicle
Date: SUN 12/02/01
Section: A
Page: 11
Edition: 4 STAR

Election 2001 / Emotions run high in runoff /Voters complain of various glitches

By SALATHEIA BRYANT
Staff

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One man was arrested after he refused to leave a polling place where he had been deemed ineligible to vote. County election officials said the police had to be called out to two other locations because voters were getting into arguments with precinct judges.

It made for a hectic day for election officials. But Tony Sirvello, administrator of elections for the county clerk's office, said none of the incidents seemed to result from deliberate efforts to prevent voting.

"The intensity of the mayoral campaign has carried over to today. I have not seen or heard any evidence where people are doing it deliberately," Sirvello said.

More than 300,000 voters cast ballots in the mayor's race Saturday, compared with 288,000 Nov. 6.

With counting continuing after midnight, the runoff between Mayor Lee Brown and challenger City Councilman Orlando Sanchez appeared headed for the closest finish in years in a Houston mayoral contest.

Both sides in the race had poll watchers out to prevent election fraud, and the Texas secretary of state sent additional monitors.

Disputes that arose involved the rights and limitations of poll watchers, confusion over polling locations and interpretation of affidavits of ***voter*** challenge, a process designed to resolve disputes over ***voter*** eligibility.

A number of charges of improper behavior were leveled by voters and monitors. Some angry voters made reference to last year's disputed presidential election in Florida.

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Sirvello said signage was posted but voters were confused because some locations changed between the general election Nov. 6 and Saturday's runoff.

Some complained of political tricks.

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Voters interviewed gave different reasons for coming to the polls - desire for change, racial pride, civic duty.

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Morales, who lives two blocks from the Eastwood Park Community Center on Harrisburg where he voted, said his neighborhood has been neglected and needs more attention from City Hall.

"I think we need a Hispanic. We don't get a lot of recognition. Everybody knows Third Ward and Fifth Ward," Morales said. "Nobody talks about Second Ward. We need programs. We need a lot of things.

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"They are really coming out to vote. I have a lot of new voters. I have to show them how to use the ballot," Swindle said.

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Paper: Houston Chronicle
Date: FRI 11/30/01
Section: A
Page: 45
Edition: *3* STAR

Changes in polling places could cause confusion

By STEVE BREWER
Staff

Harris County Clerk Beverly Kaufman told local black leaders Thursday her office will do everything possible to lessen ***voter*** confusion about changes in polling locations for Saturday's runoff.

Election officials conceded there could be confusion if steps are not taken, especially with 174 changes made in the city's polling-place locations since the Nov. 6 election.

"That's a lot," said Tony Sirvello, elections administrator for the county, who added that 449 polling places will be open Saturday.

Sirvello said there are two basic reasons for the changes - city officials combined some precincts for the runoff, and other locations usually available for weekday voting aren't available Saturdays.

After meeting with black leaders, Kaufman said her office will enlist the help of the media to get out the word about new polling locations and place posters in all precincts to let people know where they can go to cast a ballot.

She also urged voters to check their polling-place location carefully.

Members of the local chapter of the Coalition for Black Civic Participation and representatives of other black groups said they were satisfied with Kaufman's response and vowed to augment her efforts with their own information campaign.

But, they added, they have worked hard to get more minorities to vote in the runoff and they have concerns about other issues - ***voter*** intimidation and election judges improperly turning away registered voters.

"It's imperative people are not intimidated or become discouraged or have anyone violate their constitutional right to vote," said Sylvia Brooks, president of the Houston Urban League.

Keryl B. Douglas, regional director for the NAACP, said many of the same ***problems*** encountered by minorities during the 2000 presidential election were experienced locally during the Nov. 6 election that threw incumbent Mayor Lee Brown and City Councilman Orlando Sanchez into Saturday's runoff.

Douglas said her group received several complaints after Nov. 6 and are investigating.

When pressed for specifics, she said no actual ***voter*** intimidation has turned up. But, she added, the location of polling places changed during the general election, too, and there was no adequate notification.

Douglas said black voters would stand in long lines at the wrong polling place and only later learn they needed to be somewhere else.

Kaufman said she's heard such complaints before, but she added she doesn't think there are widespread voting irregularities in the county.

"Everyone is more sensitive to any potential ***problems*** voters might run into because of the news from Florida," she said, referring to ***problems*** in tabulating ballots in that state in the 2000 election. "And, because (the mayoral runoff) is so close, we're trying to be extra careful to identify any ***problems*** ."

Kaufman will hold a news conference today to explain how voters without proper identification or with other ***problems*** can challenge election judges and vote.

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Table 1: Relationship between Race, Political Affiliation, and Party Candidate Voted for and Nonvoted Ballot Rate: Poisson Estimates (Coefficients are Incident Rate Ratios so values greater than one indicate the percent increase in uncounted votes from a one unit increase in exogenous variable while values less than one indicate the opposite. Not all variables are reported below. Dummy variables involved votes counted centrally or at the precinct; different types of voting machines; type of ballot used; income categories from $15,000 to $25,000 and up through over $500,000; level of schooling by residents from high school not completed through college graduate. Additional variables were the number of males, number of females, number of absentee ballots, number of new voters, mean age, and number of people over 65. The left out categories were people earning under $15,000, less than 9th grade of schooling, gender unknown, punch card (can be counted as central), punch with chads, and neither white, African-American or Hispanic voters who were neither Republicans or Democrats. z-statistics in parentheses unless otherwise noted.)

	Endogenous Variable: Uncounted Tally					
Selected Exogenous Variables	(1)	(2)	(3)	(4)	(5)	(6)
Number of African-Americans	1.00038 (23.314)	1.00025 (14.863)				
Number of African-American Republicans			1.0206 (44.912)	1.0166 (33.456)	1.0192 (24.50)	1.0138 (16.644)
Number of African-American Democrats			.9999 (-5.627)	.9999 (-6.532)	1.0016 (4.742)	.9963 (-10.61)
Number of African-American Independents or Third Party members					1.0037 (8.332)	1.0026 (5.056)
Number of White Republicans					1.0029 (6.352)	1.0006 (1.306)
Number of White Democrats					1.0016 (4.720)	.9962 (-10.64)
Number of White Independents or Third Party members					.9993 (-2.311)	1.00198 (5.175)
Number of Hispanic Republicans					1.003 (7.028)	1.00099 (2.106)
Number of Hispanic Democrats					1.004 (10.63)	.9983 (-4.196)
Number of Hispanic Independents or Third Party members					.9979 (-5.363)	.9994 (-1.288)
Number of Other Race Republicans					.9951 (-8.29)	.9997 (-0.421)
Number of Other Race Democrats					.9974 (-5.98)	1.0049 (9.495)
Total of Voters ("Best" Estimate)	1.00596 (81.18)	1.0049 (60.44)	1.0065 (88.10)	1.0052 (64.225)	1.0061 (77.11)	1.0047 (53.52)
Number of Bush Voters	.99451 (75.305)	.99525 (59.52)	99384 (82.94)	.99488 (63.99)	.9945 (64.54)	.99574 (45.36)
Number of Gore Voters	.99451 (73.660)	.99550 (54.499)	99383 (81.253)	.99511 (59.03)	.9938 (78.77)	.99516 (56.44)
County Level Dummy Variables only recorded here when County Fixed Effects Not Used						
Democratic Election Supervisor	1.129 (15.321)		1.142 (16.759)		1.137 (15.333)	
African-American Election Supervisor	1.116 (2.506)		1.126 (2.731)		1.168 (3.544)	
F-statistic that the Nonvoted Ballot rate for African-American Republicans is greater than for African-American Democrats (Probability in Parentheses)			1946 (.0000)	1087 (.0000)	398 (.0000)	355.40 (.0000)
F-statistic that the Nonvoted Ballot rate for White Republicans is greater than for African-American Democrats (Probability in Parentheses)					4.40 (.0360)	45.43 (.0000)
F-statistic that the Nonvoted Ballot rate for Hispanic Republicans is greater than for African-American Democrats (Probability in Parentheses)					6.87 (.0087)	53.15 (.0000)
F-statistic that the Nonvoted Ballot rate for Bush voters is different than for Gore Voters (Probability in Parentheses) [Candidate with the larger Nonvoted Ballot rate is in brackets]	0.00 (.9568)	162.57 (.0000) [Gore]	0.25 (.6178)	153 (.0000) [Gore]	347 (.0000) [Bush]	139.3 (.0000) [Bush]
County Fixed Effects	No	Yes	No	Yes	No	Yes
Number of obs	5739	5739	5739	5739	5739	5739
Log Likelihood	-35871	-27743	-34991	-27236	-33850	-26818
Pseudo R^2	.6732	.7472	.6812	.7519	.6916	.7557

Table 2: Disaggregating Under Counts and Over Counts: Poisson Estimates (Coefficients are Incident Rate R atios so values greater than one indicate the percent increase in uncounted votes from a one unit increase in exogenous variable while values less than one indicate the opposite. Not all variables are reported below. Other variables include dummy variables involved votes counted centrally or at the precinct; different types of voting machines; type of ballot used; income categories from $15,000 to $25,000 and up through over $500,000; level of schooling by residents from high school not completed through college graduate. Additional variables were the number of males, number of females, number of absentee ballots, number of new voters, mean age, and number of people over 65. The left out categories were people earning under $15,000, less than 9th grade of schooling, gender unknown, punch card (can be counted as central)y, punch with chads, and neither white, African-American or Hispanic voters who were neither Republicans or Democrats. z-statistics in parentheses unless otherwise noted.)

	Endogenous Variable: Under Count Tally		Endogenous Variable: Over Count Tally	
Selected Exogenous Variables	(1)	(2)	(3)	(4)
Number of African-American Republicans	1.0143 (9.508)	1.01336 (8.557)	1.0196 (20.246)	1.01357 (13.301)
Number of African-American Democrats	.9999 (-0.019)	.9980 (-3.162)	1.00016 (0.398)	.99477 (-12.027)
Number of African-American Independents or Third Party members	1.0028 (2.663)	1.00650 (5.874)	1.0079 (10.249)	1.00317 (3.986)
Number of White Republicans	1.0078 (9.616)	1.00462 (5.515)	.9996 (-0.711)	.99679 (-5.382)
Number of White Democrats	1.0005 (0.817)	.998627 (-2.144)	.99994 (-0.155)	.99445 (-12.624)
Number of White Independents or Third Party members	.9982 (-2.220)	1.0040 (4.662)	1.0038 (5.985)	1.0035 (5.321)
Number of Hispanic Republicans	1.00795 (9.750)	1.00458 (5.413)	1.00013 (0.214)	.99732 (-4.439)
Number of Hispanic Democrats	1.00212 (-2.084)	1.00005 (0.070)	1.00387 (8.131)	.99708 (-5.624)
Number of Hispanic Independents or Third Par ty members	.99667 (-3.479)	1.00243 (2.436)	1.00123 (1.676)	1.00046 (0.604)
Number of Other Race Republicans	.98996 (-7.984)	.99996 (-0.032)	1.00206 (2.150)	1.0038 (3.812)
Number of Other Race Democrats	.99774 (-2.084)	1.0049 (4.339)	1.00316 (4.125)	1.0081 (10.058)
Total of Voters ("Best" Estimate)	1.00997 (74.00)	1.0110 (77.829)	1.00332 (34.158)	1.0017 (21.691)
Number of Bush Voters	.99053 (-67.774)	.98929 (-71.584)	.99747 (-24.241)	.99897 (-11.351)
Number of Gore Voters	.98970 (-75.715)	.98990 (-70.735)	.99650 (-36.178)	.9977 (-26.489)
County Level Dummy Variables only recorded here when County Fixed Effects Not Used				
Democratic Election Supervisor	1.04929 (3.467)		1.0584 (5.015)	
African-American Election Supervisor	3.3733 (22.720)		.18072 (-11.240)	
F-statistic that the Nonvoted Ballot rate for Af rican-American Republicans is greater than for African-American Democrats (Probability in Parentheses)	71.10 (.0000)	77.66 (.0000)	321.89 (.0000)	274.41 (.0000)
F-statistic that the Nonvoted Ballot rate for W hite Republicans is greater than for African-A merican Democrats [The exception is column 3 where the reverse is true] (Probability in Par entheses)	46.52 (.0000)	32.51 (.0000)	52.65 (.0000)	6.54 (.0106)
F-statistic that the Nonvoted Ballot rate for Hi spanic Republicans is greater than for African-American Democrats [The exception is colum n 3 where the reverse is true] (Probability in P arentheses)	48.28 (.0000)	48.98 (.0000)	0.00 (.9650)	38.38 (.0000)
F-statistic that the Nonvoted Ballot rate for Bu sh voters is different than for Gore Voters (Pr obability in Parentheses) [Candidate with the l arger Nonvoted Ballot rate is in brackets]	119.23 (.0000) [Bush]	48.14 (.0000) [Gore]	318.32 (.0000) [Bush]	418.75 (.0000) [Bush]
County Fixed Effects	No	Yes	No	Yes
Number of obs	5631	5631	5631	5631
Log Likelihood	-18259	-16829.6	-28413.5	-21689
Pseudo R^2	.5717	.6052	.6959	.7679

Table 3: How much can be explained simply by using information of voting methods and machines	
Regression Type	Pseudo R^2
1) All variables including County Fixed Effects	.7557
2) All Variables excluding County Fixed Effects	.6916
3) All Variables excluding county fixed effects, whether ballots are counted centrally or at precinct, the ballot type, and the machine type	.5823
4) All Variables excluding county fixed effects and race and political affiliation measures	.6697

Table 4: Disaggregating Under Counts and Over Counts for Precincts Where Over 90 Percent of Voters are African-American: Poisson Estimates

(Coefficients are Incident Rate Ratios so values greater than one indicate the percent increase in uncounted votes from a on e unit increase in exogenous variable while values less than one indicate the opposite. Not all variables are reported below, though all the variables used earlier are employed here. z-statistics in parentheses unless otherwise noted.)

	Endogenous Variable: Under Count Tally		Endogenous Variable: Over Count Tally		Endogenous Variables: Total Non-voted Ballots	
	(1)	(2)	(3)	(4)	(5)	(6)
Number of African-American Republicans	1.0564 (3.674)	1.0430 (2.759)	1.0130 (1.587)	1.0095 (1.068)	1.0378 (5.14)	1.0202 (2.667)
Number of African-American Democrats	.9984 (-0.411)	1.0050 (1.222)	.9993 (-0.355)	.9979 (-0.951)	.9992 (-0.43)	.9987 (-0.653)
F-statistic that the Nonvoted Ballot rate for African-American Republicans is greater than for African-American Democrats (Probability in Parentheses)	13.69 (0.0002)	5.67 (0.0172)	2.68 (0.098)	1.66 (0.1975)	26.48 (.0000)	7.83 (.0051)
County Fixed Effects	No	Yes	No	Yes	No	Yes
Number of obs	204	204	204	204	204	204
Log Likelihood	-701.8	-659.97	-943.8	-781.3	-1116	-904
Pseudo R^2	.5551	.5816	.8356	.8639	.8201	.8542

Table 5: Using County Level Data During Presidential Years from 1992 to 2000 (Endogenous vari able is the percent of ballots that are spolied. Weighted least squares, where the regressions are weighted b y the total number of presidential voters in a county, are used because of heterogeniety. Fixed county and year effects are not reported. N=136.)

	Explaining the Percentage of Ballots Non-voted				
	1	2	3	4	5
Percent of Voters who are African American	.343 (1.081)	..325 (0.951)	.661 (1.853)*	.192 (1.077)	
Percent of Voters who are Hispanic	-.158 (0.335)	-.323 (0.643)	.2096 (0.364)	-.380 (1.411)	-.221 (0.404)
Percent of Voters who are White	.161 (0.576)	.113 (0.390)	.2398 (0.838)		.211 (0.671)
Percent of Voters who are African American a nd have a County Election Supervisor who is a Republican			-.8067 (1.775)*		
Percent of Voters who are African American a nd have a County Election Supervisor who is a Democrat			-.2259 (2.245)**		
Percent of Voters who are African American * Dummy for Punch Card voting equipment					.4476 (1.243)
Percent of Voters who are African American * Dummy for DataVote voting equipment					-.0167 (0.036)
Percent of Voters who are African American * Dummy for Lever voting equipment					.248 (0.607)
Percent of Voters who are African American * Dummy for Paper Ballot voting equipment					.3191 (0.493)
Percent of Voters who are African American * Dummy for Optical Scan voting equipment					.423 (1.151)
County Election Supervisor is Nonpartisan	4.744 (5.852)***	4.618 (5.447)***	.6872 (0.352)	4.714 (5.859)***	4.630 (5.364)***
County Election Supervisor is Republican	2.63 (3.050)***	2.56 (2.746)***	3.8099 (1.551)	2.634 (3.072)***	2.271 (2.297)**
Voting Equipment Dummy					
DataVote	.536 (0.586)	.792 (0.824)	.9397 (1.006)	.477 (0.528)	2.790 (1.307)
Lever	.681 (0.386)	1.276 (0.709)	1.540 (0.881)	.5332 (0.307)	2.681 (1.022)
Optical Scan	-1.931 (2.328)**	-1.531 (1.774)*	-1.343 (1.598)	-2.007 (2.464)**	-1.623 (1.359)
Per Capita Income		-.00018 (1.009)	-.00018 (1.052)		-.00017 (0.931)
Per Capita Unemployment Insurance Paymen ts		.0138 (0.453)	.0208 (0.693)		-.0138 (0.445)
Per Capita Income Maintanence Payments		-.0156 (1.015)	-.0198 (1.291)		-.0164 (1.035)
R^2	.8449	.8488	.8651	.8440	.8531
Prob>F	.0000	.0000	.0000	.0000	.0000

* Statistically significant at the 10 percent level for a two-tailed t-test.
** Statistically significnat at the 5 percent level for a two-tailed t-test.
*** Statistically significant at the 1 percent level for a two-tailed t-test.

Table 6: Examing the Racial and Gender Differences Further Using County Level Data from 1992 to 2000 (The regression corresponds to es timate reported in column 1 in Table 4. Endogenous variable is the percent o f ballots that are spolied. Weighted least squares are used because of hetero geniety. The only coefficient signs reported here are those for the percentag e of the population that fall into a particular age, sex, and race category. N=1 99)

The variables below measure the perc ent of the general population living in a particular age, sex, and race categor y.	Coefficient Sign	Is the coefficient statistic ally significant at the 10 percent level for a one-tai led t-test?
Between 20 and 29 years of age		
Percent African-American Male	Negative	No
Percent African-American Female	Positive	No
Percent White Male	Positive	No
Percent White Female	Negative	No
Percent Other Male	Positive	Yes
Percent Other Female	Negative	Yes
Between 30 and 39 years of age		
Percent African-American Male	Positive	No
Percent African-American Female	Negative	No
Percent White Male	Negative	No
Percent White Female	Positive	No
Percent Other Male	Negative	Yes
Percent Other Female	Positive	Yes
Between 40 and 49 years of age		
Percent African-American Male	Negative	No
Percent African-American Female	Positive	No
Percent White Male	Positive	No
Percent White Female	Negative	No
Percent Other Male	Positive	No
Percent Other Female	Negative	No
Between 50 and 64 years of age		
Percent African-American Male	Positive	No
Percent African-American Female	Negative	No
Percent White Male	Negative	Yes
Percent White Female	Positive	Yes
Percent Other Male	Positive	No
Percent Other Female	Negative	No
Over 64 years of age		
Percent African-American Male	Positive	No
Percent African-American Female	Negative	No
Percent White Male	Negative	No
Percent White Female	Positive	No
Percent Other Male	Negative	Yes
Percent Other Female	Positive	Yes

Appendix Table 1: Precinct Cross-sectional data

Variable	Obs	Mean	Std.Dev.	Min	Max
pwhite	5815	735.34	551.2017	0	4240
pblack	5815	97.958	196.2034	0	1959
potherra	5815	33.199	35.35334	0	843
phispani	5815	72.243	204.7526	0	2549
Number of White Republicans	5815	332.45	297.6515	0	2243
Number of White Democrats	5815	297.513	221.881	0	1941
Number of White Independents or Third Party members	5815	105.38	91.39534	0	810
Number of African-American Republicans	5815	3.8298	6.394757	0	58
Number of African-American Democrats	5815	86.919	180.1781	0	1813
Number of African-American Independents or Third Party members	5815	7.2089	13.43715	0	232
Number of Hispanic Republicans	5815	35.909	128.8997	0	1841
Number of Hispanic Democrats	5815	21.747	47.16606	0	490
Number of Hispanic Independents or Third Party members	5815	14.588	37.30828	0	442
Number of males	5815	416.64	263.8099	0	2531
Number of females	5815	517.42	313.3403	0	2846
Number where gender unknown	5815	4.6765	6.963052	0	208
Number with less than 9th grade education	5814	159.307	231.4853	0.03	3725.7
Number with some high school education	5814	275.866	284.7844	0.1	4171.59
Number graduated from high school	5814	534.442	522.7859	0.17	7892.95
Number with some college education	5814	469.265	476.7318	0.09	6670.18
Number graduated from college	5814	335.03	392.3077	0.05	5421.22
Number of adults in households making less than $15,000	5814	165.069	185.4892	0.06	2609.43
Number of adults in households between $15,000-$24,999	5814	151.666	153.9805	0.05	2536.39
Number of adults in households between $25,000-$34,999	5814	145.971	146.36	0.05	2245.02
Number of adults in households between $35,000-$49,999	5814	175.122	175.4718	0.06	2588.12
Number of adults in households between $50,000-$74,999	5814	188.291	195.2891	0.05	2872.29
Number of adults in households between $75,000-$99,999	5814	85.152	97.65628	0.02	1296.69
Number of adults in households between $100,000-$149,999	5814	54.950	73.36145	0	1158.85
Number of adults in households between $150,000-$249,999	5814	25.795	42.41607	0	764.04
Number of adults in households between $250,000-$499,999	5814	8.845	16.10889	0	238.52
Number of adults in households over $500,000	5814	4.6333	11.14299	0	197.68
Number of Bush Voters	5799	432.37	347.7245	0	2666
Number of Gore Voters	5799	455.35	299.9227	0	2967
Number of Undervotes	5707	9.0273	12.83895	0	200
Number of Over votes	5707	18.37	28.31868	0	401
Number of Non-voted ballots	5815	27.69	35.63885	0	417
Dummy variable for candidates listed in straight line	5860	0.8080	0.3938907	0	1
Dummy variable for candidates listed in 8-2 ballot	5860	0.0456	0.2085535	0	1
Dummy variable for candidates listed in 9-1 ballot	5860	0.0043	0.0651823	0	1
Dummy variable for butterfly ballot	5860	0.0881	0.2833985	0	1
Dummy variable for two page ballot	5860	0.0457	0.208925	0	1
Dummy for counted centrally	5860	0.1036	0.3047456	0	1
Dummy for counted at precinct level	5860	0.276	0.4470241	0	1
Dummy for punch cards with chads	5860	0.5846	0.4928258	0	1
Dummy for punch cards without chads	5860	0.0179	0.1326651	0	1
Dummy for optical with ovals	5860	0.283	0.450628	0	1
Dummy for optical with arrows	5860	0.097	0.2961178	0	1
Dummy for Lever machines	5860	0.0068	0.0823438	0	1
Dummy for Paper counted by hand	5860	0.0019	0.0432889	0	1
Number of Absentee Ballots	5815	99.34	116.9331	0	3497
Number of Voters registered since primary	5761	72.15	67.74891	1	1276

Appendix Table 2: Description of Variables Used in Cross-Sectional Time-Series Data

Variable	Mean	Standard Deviation	Minimum Value	Maximum Value
Percent of the Ballots that are Non-voted (though either either not voting for a candidate or for voting for too many candidates for President)	3.641642	3.00916	0	19.08
Information on County Election Supervisors not Included in the Majority Report (N=201)				
Democrat Election Supervisor	0.73134	0.44437	0	1
Nonpartisan Election Supervisor	0.03015	0.17143	0	1
Republican Election Supervisor	0.23116	0.422635	0	1
Percent of Voters who are African American and whether the County Election Supervisor is a Democrat (N=150)	7.186407	9.19716	0	51.41108
Information on the Race and Ethinicity of Voters from the Florida Secretary of State's Office				
Percent of Voters who are African American (N=138)	9.476006	8.629639	0.862250	51.41108
Percent of Voters who are Hispanic (N=137)	2.054501	5.755577	0.019414	45.54942
Percent of Voters who are White (N=138)	86.56636	10.98606	30.96044	97.85489
Information on Type of Voting Machine from the Election Data Service				
Punch Card	.5025	.5012	0	1
DataVote	.2637	.4417	0	1
Lever	.1045	.3066	0	1
Paper Ballot	.0199	.1400	0	1
Optical Scan	.3433	.4760	0	1
Electronic	.00995	.0995	0	1

Appendix Table 3:
Description of Variables Included in the Majority Report's Appendix 1 (N=67 except for the last three rows that we obtained from Florida Secretary of State's Office where N=65. The means are simple averages and are not weighted by population.)

Variable	Mean	Standard Deviation	Minimum Value	Maximum Value
A) Data From Majority Report				
Method of Voting				
Lever Machines	0.0149254	0.1221694	0	1
Optical	0.5820896	0.4969377	0	1
Paper/hand	0.0149254	0.1221694	0	1
Punchcard	0.3880597	0.4909861	0	1
Where Votes are Counted				
Central	0.6268657	0.4872875	0	1
Other (Union and Martin Counties)	0.0298507	0.1714598	0	1
Precinct	0.3432836	0.4783887	0	1
Percent of the Ballots that are Non-voted (though either not voting for a candidate or for voting for too many candidates for President)	0.0390851	0.0311629	0.0018	0.124
Population Demographics				
Percent of Population that is White	81.64925	11.06598	36.3	96
Percent of Population that is African American	16.52537	11.18624	2.6	63
Percent of Population that is Hispanic	7.167164	8.731663	0.9	57.4
Percent of Population that is Minority	24.82239	13.17135	6.9	77
Income Measures				
Median Income	31033.36	5452.027	21982	43061
Poverty Rate	16.74627	5.235176	7.7	27.8
Focus Variable				
Percent of Voters who are African American (from Majority Commission Report)	10.34627	9.106913	1.4	54.4
Variable Reported by Lichtman				
Percent of Adults in lowest Literacy Category	24.3433	5.8428	14	42
B) Information on County Election Supervisors not Included in the Majority Report				
Race of Election Supervisor is African American	0.0597015	0.2387212	0	1
Democrat Election Supervisor	0.6865672	0.4673898	0	1
Nonpartisan Election Supervisor	0.0447761	0.2083729	0	1
Republican Election Supervisor	0.26865	0.4466064	0	1
Percent of Voters who are African American and whether the County Election Supervisor is African American	1.019403	6.761685	0	54.4
Percent of Voters who are African American and whether the County Election Supervisor is a Democrat	8.253731	9.911492	0	54.4
Information on the Race and Ethinicity of Voters from the Florida Secretary of State's Office (unlike other variables N=65)				
Percent of Voters who are African American	9.54846	8.713725	1.303079	51.41108
Percent of Voters who are Hispanic	2.451787	6.059622	0.03870	45.54942
Percent of Voters who are White	85.32495	11.32964	30.96044	97.02997

Appendix Table 4: What Types of Counties had the Highest Non-voted Ballot Rates

Breaking Down the Rate of Non-Voted Ballots by the Race and Political Affiliation of County Election Supervisors			
	Democratic Election Supervisor	Republican Election Supervisor	Nonpartisan Election Supervisor
African-American Election Supervisor	4.55%	. . .	. . .
non-African American Election Supervisor	4.8%	1.52%	4.62%

Breaking Down the Percent of Voters who are African-American by the Race and Political Affiliation of County Election Supervisors			
	Democratic Election Supervisor	Republican Election Supervisor	Nonpartisan Election Supervisor
African-American Election Supervisor	22.8%	. . .	. . .
non-African-American Election Supervisor	11.3%	4.97%	16.9%

Appendix Table 5:
Using the Majority Report's Cross County Data for 2000 (The endogenous variable is the percent of non-voted ballots. All coefficients are reported. t-statistics are in parentheses except where noted for the F-tests. The dummy variable for "Where Votes are Counted" for Union and Martin Counties was dropped due to colinearity. The first column tried to include the variable for the percent of the general population that was minority but that was also dropped due to collinearity with the other demographic variables. Section A includes the variables from the Majority Report's appendix as well as the literacy rate variable, while Section B excludes the literacy rate. Not all the results are reported in Section B. I also tried including the percent of adults with a high school diploma, but the results were similar. N= 67.)

A) Using Majority Report Data with Lichtman's Literacy Rate	1	2	3	4	5	6	7	8
Percent of Voters who are African American	.00115 (1.093)	-.0003 (0.264)	.00067 (1.932)*	.00061 (1.573)	.0012 (1.152)	.00037 (0.842)	.0009 (0.860)	.002 (1.005)
Percent of Voters who are African American and whether the County Election Supervisor is a Democrat					-.00056 (0.603)		-.00046 (0.495)	
Percent of Voters who are African American and whether the County Election Supervisor is a Republican					-.0021 (1.151)		-.0019 (0.988)	
Percent of Voters who are African American and whether the County Election Supervisor is African American						.0005 (0.842)	.00039 (0.654)	
F-test for whether the net effect of the first two variables is postive (probability in parentheses)					2.35 (0.1314)		1.59 (0.2125)	
F-test for whether the net effect of the first and fourth variables is postive (probability in parentheses)						2.66 (0.1088)	0.36 (0.5494)	
F-test for whether the net effect of the first, second and fourth variables is postive (probability in parentheses)							2.43 (0.1250)	
Method of Voting: Optical	.0432 (2.440)**	.0372 (1.957)*	.038 (2.03)**	.038 (1.932)*	.042 (2.12)**	.038 (1.93)**	.042 (2.066)*	.045 (2.58)**
Method of Voting: Paper/hand	.0356 (1.465)	.0204 (0.794)	.0262 (1.047)	.025 (0.953)	.032 (1.186)	.025 (0.955)	.031 (1.147)	.026 (1.113)
Method of Voting: Punchcard	.0300 (1.744)*	.0255 (1.377)	.027 (1.465)	.026 (1.391)	.031 (1.590)	.027 (1.427)*	.031 (1.574)	.032 (1.901)*
Votes are Counted at the Precinct Level	-.050 (7.87)***	-.043 (6.68)***	-.043 (6.69)***	-.043 (6.14)***	-.044 (6.14)***	-.042 (5.81)***	-.043 (5.81)***	-.041 (6.25)***
Percent of Population that is Hispanic	-.008 (3.45)***	-.00097 (1.221)	-.00025 (0.843)	-.00034 (1.004)	-.0005 (1.191)	-.00036 (1.080)	-.00044 (1.157)	
Percent of Population that is White	-.0074 (3.35)***	-.0009 (0.972)						
Percent of Population that is African-American	-.0081 (3.19)***							
Percent of Voters who are Hispanic								.0004 (0.198)
Percent of Voters who are White								.0015 (0.793)
Republican Election Supervisor				-.009 (0.702)	.007 (0.337)	-.0124 (0.953)	.0034 (0.148)	-.020 (1.667)
Democratic Election Supervisor				-.0058 (0.478)	-.0052 (0.22)	-.0077 (0.628)	.0028 (0.117)	-.016 (1.387)
Race of Election Supervisor African American				-.0032 (0.757)	.0018 (0.148)	-.0067 (0.407)	-.0056 (0.334)	-.002 (0.217)
Median Income	1.95e-6 (1.859)*	6.36e-7 (0.609)	9.37e-7 (0.941)	1.13e-6 (1.044)	1.41e-6 (1.25)	1.27e-6 (1.168)	1.41e-06 (1.247)	1.99e-6 (2.057)**
Poverty Rate	.0022 (2.16)**	.00139 (1.301)	.0018 (1.929)*	.0019 (1.754)*	.0022 (2.02)**	.0020 (1.89)**	.0022 (1.96)*	.0022 (2.322)**

Percent of Adult Population in Lowest Literacy Group	.0023 (2.43)**	.00076 (0.861)	.00088 (1.002)	.00098 (1.064)	.001 (1.054)	.00097 (1.047)*	.0011 (1.271)	.0013 (1.480)
R^2	.7833	.7431	.7387	.7424	.7487	.7460	.7490	.7947
Prob>F	.0000	.0000	.0000	.0000	.0000	.0000	.0000	.0000

B) Using Majority Report Data Appendix (While the specifciations used here are the same as those in Section A with the exception of the literacy variable, only selected coefficients are reported)	9	10	11	12	13	14	15	16
Percent of Voters who are African American	.00073 (0.675)	-.0002 (0.208)	.00087 (3.08)***	.00082 (2.442)**	.0011 (1.062)	.0006 (1.535)	.00085 (0.788)	.003 (1.607)
Percent of Voters who are African American and whether the County Election Supervisor is a Democrat					-.00026 (0.300)		-.00017 (0.191)	
Percent of Voters who are African American and whether the County Election Supervisor is a Republican					-.0019 (1.034)		-.0017 (0.879)	
Percent of Voters who are African American and whether the County Election Supervisor is African American						.00045 (0.788)	.00036 (0.601)	
F-test for whether the net effect of the first two variables is postive (probability in parentheses)					5.33 (0.0248)		2.74 (0.1038)	
F-test for whether the net effect of the first and fourth variables is postive (probability in parentheses)						4.15 (0.0465)	1.35 (0.2510)	
F-test for whether the net effect of the first, second, and fourth variables is postive (probability in parentheses)							3.98 (0.0514)	
R^2	.7600	.7397	.7341	.7370	.7433	.7407	.7451	.7859
Prob>F	.0000	.0000	.0000	.0000	.0000	.0000	.0000	.0000

* Statistically significant at the 10 percent level for a two-tailed t-test.
** Statistically significnat at the 5 percent level for a two-tailed t-test.
*** Statistically significant at the 1 percent level for a two-tailed t-test.