



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

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**Election Reform: An Analysis of Proposals and the Commission's  
Recommendations for Improving America's Election System**

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**Acknowledgments**

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## **Election Reform: An Analysis of Proposals and the Commission's Recommendations for Improving America's Election System**

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### **Summary**

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The Office for Civil Rights Evaluation reviewed national election reform initiatives, as well as studies and proposals of both public and private entities, to facilitate the Commission's ongoing monitoring of voting rights enforcement and election reform. This review includes four parts:

- I. an overview of enforcement of existing laws that govern the voting process;
- II. an analysis of proposed and recently enacted legislation;
- III. an examination of proposals made by national organizations that have studied the election process; and
- IV. election reform recommendations emerging from the foregoing as well as the Commission's review since the November 2000 election.

The Commission's 18 recommendations, which are presented in greater detail in chapter IV, are summarized here:

#### **1. Minimum, mandatory, and voluntary national standards must be set.**

Congress should pass legislation authorizing the establishment of minimum standards that all states must follow for equipment, error rates, use of absentee ballots, sample ballots, list maintenance (minimum periods for list review and unacceptable error rates), identity verification, ballot counting and tabulation (including what constitutes a valid vote), recounting, voter education efforts, felon disenfranchisement, and responsibilities of states versus counties during an election.

Mandatory standards must be established that include: use of provisional ballots, incorporation of ballot kick-back features in voting equipment, collection and reporting of statistics immediately following an election, provision of language assistance, and assurance of physical accessibility for both polling places and voting materials. Other

administrative procedures and practices of states not referenced here should be subject to voluntary compliance.

## **2. Sufficient funding must be provided for election reform.**

Congress should pass election reform legislation that allocates sufficient appropriations to address the array of needs of the states.

## **3. One central, high-ranking official must have sole responsibility and accountability for elections.**

To ensure accountability, it is necessary that each state establish one central, high-ranking official responsible for overseeing the entire election process and conforming to established national standards. The Commission supports the model wherein the chief election official of the state has sole responsibility for the management of elections, as is currently the case with most states. States set up under this model should have a designated staff or office within the office of the chief election official (for many, the secretary of state) that provides information, guidance, and training to local officials. That chief election official's office should also manage all local election-related data such as registration files and election statistics. The chief election official should ultimately be accountable for any failures in the election system. Chief election officials in each state should be subject to the same ethical standards as the sitting judiciary in the state's highest court. In addition, standards for the behavior of chief election officials could be established as a condition for receipt of federal grant monies.

## **4. Laws protecting voting rights must be strictly enforced.**

The federal government's monitoring function before and on Election Day must be expanded. Specifically, Congress should provide sufficient funding to enable the Department of Justice to engage in activities to prevent discrimination before it occurs. Funds should also enable the Justice Department to purchase materials necessary to monitor registration and purge procedures; provide attorneys who would assist voters during the election and thereafter with pursuing allegations of discrimination or irregularities and with activating the complaint/appeals process; and assist local precincts with monitoring on short notice. The federal government should also establish standard operating procedures and requirements for monitoring.

## **5. Procedures for processing complaints must be improved.**

Complaint filing and resolution should take place outside the authority of the chief election official's office, or the offices of other state or local election officials, so individuals are not forced to file a grievance with the same entity that committed the alleged violation. The Commission thus recommends that the U.S. attorney's office in each state be designated as the entity responsible for complaint resolution. Procedures for responding to complaints must be clearly defined to include strategies for investigation, timelines, and guidelines for remedies. Oversight of state procedures to ensure voting

fairness should rest with the Department of Justice's Civil Rights Division, which should perform random administrative audits of precincts' voting procedures. In addition, instructions for filing a grievance must be readily available and highly publicized so that voters are aware of their rights and options.

#### **6. Election data must be uniformly tracked and reported.**

To facilitate both individual rights of action and federally initiated legal challenges, it is necessary that appropriate election data be collected uniformly across precincts in every state. To identify disparities in precinct election systems, states should collect data on such precinct characteristics as the equipment and types of ballots used; the availability of communications systems; number of poll workers; poll worker training programs; polling place hours; ballot availability in non-English languages and Braille; accessibility features used to assist voters with disabilities and non-English speakers; and criteria used for purging names from registration lists. These data should be made available for public use immediately following an election. It is also important that states collect and report data on voter turnout and spoiled ballots (overvotes and undervotes) by county.

As the officer responsible for election administration, every chief election official should collect election data and make the data readily available to constituents. Standards for the information to be collected should be established at the federal level, through the Federal Election Commission (FEC), so that state-by-state comparisons and analyses can be performed.

#### **7. Election checklists must be established.**

Because of the many tasks required to ensure the smooth operation of elections, state election officials should work with the federal government to develop minimum requirements for a standard checklist that would be tailored by states to accommodate local needs, for every function that should be completed before, during, and after an election. The list would include all tasks that must be performed by state and local election officials, including supervisors of elections and precinct workers. The list must also serve as an accountability tool, requiring specific designation of duties to individuals, and signatures that certify the accomplishment of each task. Attaching timelines to actions would also ensure that appropriate steps are taken far enough in advance to correct problems.

#### **8. Provisional ballots must be provided to voters on Election Day.**

Every state should be required to provide provisional ballots to all voters who wish to contest their elimination from voter registration lists or who have recently moved to a new jurisdiction. Additionally, voters should be allowed to cast a provisional ballot at any polling place irrespective of the precinct in which the voter resides. Such ballots should be sent to the home jurisdiction for tallying. Verification of the eligibility of provisional ballot voters should be performed immediately after an election (within three days, for

example) so that either the vote can be counted or the voter can be given the opportunity to appeal the decision not to count his or her ballot.

**9. A 21-day certification period must be established for election results.**

Congress should establish a mandatory waiting period after elections before certification of the results to include the counting of provisional, absentee, and overseas ballots and to allow for appropriate resolution of any voting discrepancies or disputes (such as those that surfaced with the butterfly ballot in the 2000 Florida election). The Commission recommends that states allow 21 days after an election to perform the necessary administrative and counting duties associated with elections, as well as any necessary recounts. State election officials should be prohibited from “calling” an election until such a time when *all* votes have been counted, discrepancies resolved, and voter complaints addressed. States should develop clear guidelines and/or modify existing regulations for the conduct of election certification, giving consideration to all possible scenarios.

**10. Voter registration deadlines must be set later.**

States must develop improved registration technologies that would enable real-time statewide registration of voters. Implementation of such a data system would eliminate the need for early registration deadlines and at the same time reduce susceptibility to data entry errors. Deadlines could be set as late as a week before an election and, in less populated states, even later.

**11. Uniform nationwide voting hours must be established.**

Election Day should be made a national holiday, perhaps Veterans Day, to enable more states to solve logistical problems related to hiring poll workers and holding elections in accessible buildings. The Commission supports the creation of uniform polling hours (for example, 8 a.m. to 8 p.m. local time) within states to avoid potential voter confusion, and to simplify the task of election administration.

**12. Minimum national standards must be set for voting equipment.**

Congress should establish statutory authority for the FEC to develop national voting system standards and operational guidelines in conjunction with state election officials. The standards should be broad enough to accommodate the different needs of states. However, at the very least, federal guidelines should dictate that voting systems meet minimum standards. For example, while not requiring states to purchase specific voting machines from specific vendors, standard requirements for how the equipment processes a vote should be specified at the federal level. The standards should also include lists of acceptable technologies that improve accessibility for language minorities and people with disabilities.

**13. Guidelines for voter identification requirements must be set.**

Federal guidelines should be developed for the verification of voter identification. States would thus be able to ensure that poll workers follow procedures precisely and uniformly. Election officials and poll monitors must ensure that some voters, minorities and new citizens in particular, are not required to show additional identification. Further, in the event that an individual cannot present the necessary identification, he or she should be allowed to vote using a provisional ballot until identification and eligibility can be verified.

**14. Federal language assistance standards must be set and compliance must be monitored.**

The federal government must set minimum requirements for the means used to accommodate the language needs of voters. The federal government must establish proficiency standards for bilingual poll workers and translation services used at both registration and polling sites. In addition, quality assurance procedures must be put in place in states with large language minority populations to ensure that language-appropriate ballots, voting instructions, technical assistance materials, and complaint forms are readily available and free from translation errors or confusing language.

In addition to actually implementing language accommodations, states should be required to submit regular reports to the Justice Department on the provisions implemented, utilization rates of bilingual materials, and outcomes of their efforts, such as whether more language minority voters participated in the election or whether bilingual voter education services were effective.

**15. Uniform standards for accessibility must be set and compliance must be monitored.**

The federal government must develop uniform standards for disability access to improve enforcement of the existing laws. State election officials must be given the responsibility for ensuring that all polling places are accessible to voters with disabilities prior to the 2002 election. The federal government should allocate funds to states specifically to improve accessibility. Funding should be allocated for Braille ballots, TDD devices, wheelchair accessible voting booths, and to run pilot programs that use Internet voting programmed for use by disabled voters. States should also be required to work with the FEC to adopt what are currently voluntary standards for accessibility.

The federal government should also track the success of states in carrying out their mandated responsibilities. States should be required to report to the federal government, either through the FEC or a legislatively established panel, the provisions implemented and outcomes of their efforts.

**16. Voting rights of former convicted felons must be restored.**

Felons should have their voting rights restored. All states should follow the lead of the states with existing legislation to reinstate voting privileges to felons upon completion of their sentences and parole. Individuals on probation should also have the right to vote.

### **17. Requirements for public education must be established.**

Congress should give the FEC the authority to develop, with input from the states, minimum standards for acceptable forms of voter education material, as well as the frequency with which such material should be disseminated to voters. The federal government should also establish minimum requirements for the production and distribution of material that informs voters of where and how to file complaints of voting rights violations and options that exist for the voter when his or her complaint is ignored.

Information on where one can find copies of voting laws in full should be included in material developed locally. Outreach at the local level should also include the circulation of sample ballots before an election and technology demonstrations at public forums. This latter recommendation would serve the dual purpose of enabling voters to familiarize themselves with the technology used in their jurisdiction, and allowing election officials to detect errors or common usage problems in advance.

### **18. Reform measures must assist new Americans in obtaining the right to vote.**

Voter registration cards should be provided to individuals being sworn in as citizens to help new Americans become eligible to vote. The federal government, through immigration offices, should also provide assistance to individuals in filling out voter registration material. At a minimum, the Immigration and Naturalization Service (INS) should provide information on voting in the citizenship application packet. Additionally, INS, recognizing the importance of voting to the democratic process, should streamline and expedite naturalization so that new citizens may vote sooner.

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## **Chapter I**

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### **Enforcement of Existing Voting Rights Legislation**

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Over time, the federal government has enacted legislation to safeguard voting rights, notably the Voting Rights Act of 1965 (amended in 1970, 1975, and 1982)<sup>1[1]</sup>; the Voting Accessibility for the Elderly and Handicapped Act of 1984;<sup>2[2]</sup> the Americans with Disabilities Act of 1990;<sup>3[3]</sup> the National Voter Registration Act of 1993 (also known as the Motor Voter Act);<sup>4[4]</sup> and the Uniformed and Overseas Citizens Absentee

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<sup>1[1]</sup> 42 U.S.C. §§ 1973 *et seq.* For an overview, *see* U.S. Department of Justice, Civil Rights Division, Voting Section, “Introduction to Federal Voting Rights Laws,” Feb. 11, 2000, <<http://usdoj.gov/crt/voting/intro/intro.htm>> (hereafter cited as DOJ, “Introduction to Federal Voting Rights Laws”).

<sup>2[2]</sup> 42 U.S.C. §§ 1973ee *et seq.*

<sup>3[3]</sup> 42 U.S.C. §§ 1994 *et seq.*

<sup>4[4]</sup> 42 U.S.C. §§ 1973gg *et seq.* For an overview, *see* U.S. Department of Justice, Civil Rights Division, Voting Section, “About the National Voter Registration Act,” Feb. 11, 2000, <[http://usdoj.gov/crt/voting/nvra/activ\\_nvra.htm](http://usdoj.gov/crt/voting/nvra/activ_nvra.htm)> (hereafter cited as DOJ, “About the National Voter Registration Act”).



Voting Act of 1986.<sup>5</sup>[5] For the purpose of this report, an examination of the existing laws protecting the rights of *all* voters and proposed electoral reforms, the most critical of these acts are the Voting Rights Act and the National Voter Registration Act.

## **THE VOTING RIGHTS ACT OF 1965**

The Voting Rights Act of 1965 was passed by Congress to address both “direct and indirect obstacles to minority voting,”<sup>6</sup>[6] establishing protection of the voting rights of those individuals disenfranchised because of their race.<sup>7</sup>[7] Specifically, the act was a response to the extensive disenfranchisement of African Americans throughout the South. The act penetrated areas previously the sole domain of states’ rights with regard to the “right to vote” by, among other directives: (1) ending literacy tests as a prerequisite to voting in states and counties where voter registration and turnout in the 1964 presidential election was less than 50 percent of the voting-age population; (2) preventing the legal enforcement of voting changes, until approved by either a three-judge court in the District of Columbia or the Attorney General (thus requiring “preclearance” before implementing any voting changes), in these states and counties; and (3) nationally prohibiting the denial or abridgement of the right to vote on account of race or color.<sup>8</sup>[8] As a result of the Voting Rights Act, the number of African Americans registered to vote increased substantially in these states. For example, while in March 1965 only 6.7 percent of eligible African Americans were registered to vote in Mississippi, by 1988 74.2 percent of these individuals were registered. However, it must be noted that the percentage of white registered voters in Mississippi during this same period also increased, from 69.9 percent to 80.5 percent.<sup>9</sup>[9]

## **THE NATIONAL VOTER REGISTRATION ACT OF 1993**

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<sup>5</sup>[5] 42 U.S.C. §§ 1973ff *et seq.* See also the Constitution Project, *Building Consensus on Election Reform: A Report of the Constitution Project’s Forum on Election Reform*, August 2001, <[http://constitutionproject.org/eri/report\\_text.doc](http://constitutionproject.org/eri/report_text.doc)>, p. 25; DOJ, “Introduction to Federal Voting Rights Laws”; U.S. Department of Justice, Civil Rights Division, Voting Section, “Voting Rights Act of 1965,” Feb. 11, 2000, <[http://usdoj.gov/crt/voting/intro/intro\\_b.htm](http://usdoj.gov/crt/voting/intro/intro_b.htm)> (hereafter cited as DOJ, “Voting Rights Act of 1965”); U.S. Department of Justice, Civil Rights Division, Voting Section, “The Effect of the Voting Rights Act,” Feb. 11, 2000, <[http://usdoj.gov/crt/voting/intro\\_c.htm](http://usdoj.gov/crt/voting/intro_c.htm)> (hereafter cited as DOJ, “The Effect of the Voting Rights Act”); U.S. Department of Justice, Civil Rights Division, Voting Section, “The Uniformed and Overseas Citizens Absentee Voting Act,” Feb. 23, 2001, <[http://usdoj.gov/crt/voting/misc/activ\\_uoc.htm](http://usdoj.gov/crt/voting/misc/activ_uoc.htm)>; DOJ, “About the National Voter Registration Act.”

<sup>6</sup>[6] Virginia E. Hench, “The Death of Voting Rights: The Legal Disenfranchisement of Minority Voters,” *Case Western Reserve Law Review*, vol. 48 (Summer 1998), p. 6.

<sup>7</sup>[7] *Ibid.*

<sup>8</sup>[8] Voting Rights Act, 42 U.S.C. §§ 1973 *et seq.* See also DOJ, “Introduction to Federal Voting Rights Laws”; DOJ, “Voting Rights Act of 1965.”

<sup>9</sup>[9] DOJ, “The Effect of the Voting Rights Act.”

Despite passage of the Voting Rights Act of 1965 and its subsequent extensions, full equality for minority voters remained an elusive aim. It was in this context, and as a further effort to equalize the voting rights of all citizens, that the Motor Voter Act was enacted in 1993. The act seeks to increase voting opportunities for all citizens and to “remove the vestiges of discrimination which have historically resulted in lower voter registration rates of minorities and persons with disabilities.”<sup>10</sup>[10]

To accomplish these goals, the act requires states to provide (1) the opportunity for voter registration concurrent with driver’s license application or renewal; (2) the opportunity for voter registration concurrent with the receipt of public assistance at all offices offering such assistance and those offices administering state-funded programs to assist persons with disabilities; and (3) the opportunity for mail-in voter registration. The National Voter Registration Act also includes limits on purging voter rolls, specifically prohibiting states from removing names of voters who have not voted or purging names for criminal convictions, mental incapacity, or change of address. Names may be purged due to a change of address only at the voter’s request, and in the event of death only at the request of a family member. Upon taking general effect on January 1, 1995, several states were excluded from the requirements because they already met them or were given an extension in order to amend state constitutions to allow for their implementation. However, several states (e.g., California, Pennsylvania, New York, and Virginia) were sued by the Voting Section of the Department of Justice on January 23, 1995, for failing to comply with the act. Despite states’ assertions that the act was unconstitutional, on June 23, 1995, the Seventh Circuit Court of Appeals ruled the act to be constitutional.<sup>11</sup>[11]

## **ENFORCEMENT OF EXISTING LAWS**

The federal enforcement of voting rights laws falls to the Voting Section of the Department of Justice’s Civil Rights Division. In performing this responsibility, the Voting Section has brought lawsuits throughout the nation to ensure compliance with these laws. However, these efforts alone have not proven sufficient. In addition to the federal laws governing the election process in the United States, there are laws governing the election process, along with voting policies, regulations, and procedures, in every state in the Union. Yet, as numerous as are these edicts, it is clear that their enforcement is haphazard, at best. It is difficult to assign responsibility for the violation of an individual’s voting rights because state and local governments delegate election authority diversely. Moreover, because some jurisdictions do not require the reporting of voting irregularities, it cannot be known if violations occurred to hold those responsible accountable.

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<sup>10</sup>[10] 42 U.S.C. § 1973gg.

<sup>11</sup>[11] Association of Community Organizations for Reform Now (ACORN) v. Edgar, 56 F.3d 791 (7th Cir. 1995). *See also* DOJ, “About the National Voter Registration Act.”

However, in a clear scenario of ineptitude, where complaints by voters are given credence, those charged with the investigation are often responsible for the violation. Furthermore, and the encompassing factor in this entire process, states and counties willing to investigate complaints may lack well-established procedures for investigating them, such as having neither internal reporting systems nor complaints processing. Clearly, there is a lack of coherent enforcement of existing laws—state and federal—protecting the rights of voters.

Impediments to enforcing voting rights are widespread. And what is evident is that only full enforcement of existing federal and state election laws will bring about equality in America's voting booths. For, laws are worthless if they do not uphold the rights of the people they were passed to protect. The one safeguard designed to ensure enforcement of the laws, and which is intrinsic to the American democracy, is the right to file suit to force compliance.

Legal challenges to the sufficiency of voting systems and the denial of the right to vote can stem from citizens exercising their private right of action or federal entities charged with enforcement of voting rights. As will be discussed in greater detail in the recommendations that follow, one obstacle to exercising the private right of action is the lack of sufficient data following an election and the resulting difficulty individuals have in obtaining evidence to prove a violation has occurred. Given these limitations and the need for broad enforcement, federally initiated litigation is an option that should be exercised more frequently. Existing federal offices such as the Federal Election Commission or the Department of Justice's Civil Rights Division should bring cases to prosecute violations separately from state administrative divisions. There are several areas in particular where the federal government should concentrate its enforcement efforts through litigation. The federal government should initiate litigation against state and local election officials:

- who, either through their actions or failure to act, violate the Voting Rights Act of 1965, as amended, the Voting Accessibility for the Elderly and Handicapped Act, and other relevant federal and/or state laws, resulting in the disproportionate inability of certain groups of individuals to vote and have their vote counted;
- who implement list maintenance activities before, during, or after an election that either intentionally discriminate against people of color or result in the denial of equal access to the political process;
- who violate federal and/or state laws that regulate how funds are distributed to polling places or precincts;
- whose actions or failure to act violate federal and/or state laws that require poll workers to communicate with election officials or access data during an election;
- whose actions or failure to act violate federal and/or state laws that ensure voters who arrive at a polling place during official poll hours can exercise their right to vote, and that polling places are neither closed nor moved without required notification to affected voters;
- who fail to provide required training for poll workers;

- who violate relevant federal and/or state laws by failing to uniformly inform voters about the registration process;
- who implement practices that either intentionally discriminate or result in discrimination against persons with disabilities and language minorities;
- whose actions or failure to act violate relevant federal and/or state laws by permanently disenfranchising voters on the basis of felony conviction; and
- whose actions or failure to act violate federal and/or state laws by failing to allow voters to cast ballots after challenging their absence from registration lists and signing an affidavit attesting to their eligibility to vote.<sup>12</sup>[12]

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### **Chapter II**

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#### **Federal Legislation Addressing Election Reform**

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The authority Congress possesses in the administration of federal elections is relevant to a comprehensive review of election reform. According to one scholar,

Congress has broad authority under the Constitution to regulate the manner of House and Senate elections, to protect the right of citizens to vote, and to initiate amendments to the Constitution altering the method by which presidents are selected . . .<sup>13</sup>[1]

More specifically, although states have responsibility for administering federal elections, Congress has the authority to legislate in this area as set forth in the Constitution. Congress' power in congressional elections principally derives from Article I, Section 4, Clause 1, of the Constitution. This section, known as the Elections Clause, grants Congress the authority to "make or alter" the regulations established by states regarding

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<sup>12</sup>[12] See generally U.S. Commission on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election*, June 2001.

<sup>13</sup>[1] Thomas E. Mann, "An Agenda for Election Reform," *Policy Briefing No. 82*, June 2001, <<http://www.brookings.edu>>, p. 4.

the administration of federal elections, but Congress may not alter state-established polling sites for the election of senators.<sup>14</sup>[2]

For presidential elections, Congress' authority is more limited. As set forth in Article II, Section I, Clause 4, of the Constitution, "Congress may determine the Time of choosing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States."<sup>15</sup>[3] However, statutory provisions giving Congress greater authority in presidential elections have been upheld by the Supreme Court and federal appellate courts. Still, such legislation has been fairly limited and, consequently, so has case law in this area.<sup>16</sup>[4]

Congress is also able to affect the way states run elections through the appropriation of federal funds. In exercising its spending power, Congress may "encourage State action by attaching certain conditions to the receipt of federal funds." Congress' authority to do this has been upheld by the Supreme Court, although with certain restrictions. Among these are that any requirements be in pursuit of the general welfare of the population and that states be made fully aware of any requirements before given a grant.<sup>17</sup>[5]

Clearly, Congress has some authority to regulate the administration of federal elections. However, the extent to which this is advisable, or feasible, has yet to be clearly established. In fact, some scholars have argued against the creation of a "federal election system" because of the limitations of the existing U.S. federal system.<sup>18</sup>[6]

### **PROPOSED LEGISLATION: S. 565, S. 953, AND H.R. 1170**

Congressional authority to regulate elections has been tested and debated in recent months. In the wake of the 2000 election, there have been many legislative proposals at the national level to reform and indeed repair the election system in the United States. Central to each proposal is the balance between federal involvement and state responsibility, although how these are exercised varies from one bill to the next. The following discussion will compare two major proposals, S. 565 sponsored by Christopher

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<sup>14</sup>[2] U.S. CONST. art. I, § 4, cl. 1. *See also* U.S. General Accounting Office, "The Scope of Congressional Authority in Election Administration," Mar. 3, 2001, <<http://www.gao.gov/cgi-bin/getrpt?rptno=GAO-01-470>>, pp. 1–2.

<sup>15</sup>[3] U.S. CONST. art. II, § 1, cl. 4.

<sup>16</sup>[4] GAO, "The Scope of Congressional Authority," p. 2.

<sup>17</sup>[5] *Ibid.*, pp. 2, 10–11.

<sup>18</sup>[6] Mann, "An Agenda for Election Reform," p. 4.

Dodd (D-CT)19[7] (its companion bill in the House is H.R. 1170)20[8] and S. 953 sponsored by Charles Schumer (D-NY) and Mitch McConnell (R-KY).21[9]

S. 565 lists 10 congressional findings addressing the federal role in guaranteeing the right to vote. Among these findings are (1) “the right to vote is a fundamental and incontrovertible right under the Constitution,” (2) “there is a need for Congress to encourage and enable every eligible American to vote by reaffirming that the right to vote is a fundamental right under the Constitution,” (3) “there is a need for Congress to encourage and enable every eligible American to vote by reaffirming that the United States is a democratic government ‘of the people, by the people, and for the people’ where every vote counts,” and (4) “there is a need to counter discrimination in voting by removing barriers to the exercise of the constitutionally protected right to vote.”22[10]

A similar bill introduced in the House of Representatives, H.R. 1170, sponsored by John Conyers (D-MI), lists 13 congressional findings also addressing the federal role in guaranteeing the right to vote. Among these findings are (1) “the right to vote is fundamental and incontrovertible under the Constitution,” (2) “the United States Supreme Court held in *Bush v. Gore* that a lack of uniform and nondiscriminatory standards with respect to presidential elections violates the Equal Protection Clause of the 14th Amendment to the Constitution of the United States,” (3) “there is overwhelming evidence that disparate procedures and antiquated machinery are potentially resulting in the disenfranchisement of millions of voters,” (4) “there is overwhelming evidence that disparate procedures and antiquated machinery have a disproportionate racial impact,” and (5) “Congress should counter discrimination in voting by removing barriers to the exercise of the constitutionally protected right to vote.”23[11]

S. 953 offers no findings.24[12]

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19[7] Equal Protection of Voting Rights Act of 2001, S. 565, 107th Cong., 1st Sess. (2001).

20[8] Equal Protection of Voting Rights Act of 2001, H.R. 1170, 107th Cong. (2001). H.R. 1170, the House version of S. 565, was introduced by John Conyers, D-MI.

21[9] Bipartisan Federal Election Reform Act of 2001, S. 953, 107th Cong., 1st Sess. (2001).

22[10] S. 565, 107th Cong., 1st Sess. § 2 (2001); the Constitution Project also performed a side-by side comparison of the two bills. See the Constitution Project, “S. 953 (Schumer-McConnell)/S. 565 (Dodd) Side-by-Side,” June 7, 2001, <<http://www.constitutionproject.org/docs/Schumer%20Dodd%20side-by-side1.doc>>.

23[11] H.R. 1170, 107th Cong., 1st Sess., § 2 (2001). In areas where S. 565 and H.R. 1170 replicate each other, have minor differences as to content, or H.R. 1170 does not make any proposal, H.R. 1170 is not discussed.

24[12] S. 953, 107th Cong., 1st Sess. (2001).

## Temporary Organization to Review the Election Process

### *Membership*

S. 565 establishes a “Commission on Voting Rights and Procedures” (Voting Rights Commission) consisting of 12 members of whom six are appointed by the President; three are appointed by the minority leader of the Senate unless the minority leader is of the same political party as the President, in which case they are appointed by the majority leader of the Senate; and three are appointed by the minority leader of the House of Representatives unless the minority leader of the House is of the same political party as the President, in which case they are appointed by the majority leader of the House.<sup>25</sup>[13]

S. 953 establishes a “Blue Ribbon Study Panel” (Panel) also consisting of 12 members of whom three are appointed by the majority leader of the Senate, three are appointed by the minority leader of the Senate, three are appointed by the speaker of the House of Representatives, and three are appointed by the minority leader of the House. Unlike S. 565, S. 953 requires that the Panel be balanced. The Panel, “to the maximum extent possible,” is to encompass the numerous views on the matters it will study, as well as a “regional and geographic balance” among its members.<sup>26</sup>[14]

### *Duties*

S. 565: The duties of the Voting Rights Commission encompass the thorough study of:

- voting technology and systems;
- design of ballots and the uniformity of ballots;
- access to ballots and polling places (e.g., early notification of voting localities and access for voters with disabilities, visual impairments, and limited English proficiency);
- how the limitations of voting systems affect the efficiency of election administration;
- voter registration and maintenance of voter rolls;
- alternative voting methods;
- voter intimidation, both real and perceived;
- accuracy of voting, election procedures, and voting equipment;
- voter education;
- election personnel and volunteer training;
- implementation of Title I of the Uniformed and Overseas Citizens Absentee Voting Act;

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<sup>25</sup>[13] S. 565, 107th Cong., 1st Sess. § 101 (2001).

<sup>26</sup>[14] S. 953, 107th Cong., 1st Sess. § 101 (2001).

- the feasibility and advisability of establishing the date of federal elections as a federal or state holiday;
- the feasibility and advisability of establishing modified polling place hours; and
- how permanent federal assistance can best be provided to state and local authorities to improve the administration of elections for federal office.<sup>27</sup>[15]

S. 953: The duties of the Panel encompass a thorough study of:

- current and alternate methods and mechanisms of voting and counting votes in elections for federal office;
- existing ballot designs for federal elections;
- existing methods of voter registration, including the maintenance of secure and accurate lists of registered voters and ensuring the appearance of registered voters on the polling list at the appropriate polling site;
- existing methods of conducting provisional voting, including notification of ballot disposition to the voter;
- existing methods of ensuring accessibility to voting, registration, polling places, and voting equipment to all voters (e.g., blind, disabled, and limited-English-proficient voters);
- existing methods of voter registration for members of the military and overseas voters, including the timely delivery, handling, and counting of their ballots;
- existing methods of recruiting and improving the performance of poll workers;
- federal and state laws governing the eligibility of persons to vote;
- existing voter education methods regarding the process of registering to vote and voting, operating voting systems, locating polling places, and all other areas of voter participation in elections;
- critical points in voting and the administration of elections in rural and urban areas;
- holding elections for federal office on different days, places, and hours as well as the advisability of establishing a uniform poll closing time; and
- how best the federal government can assist state and local authorities in improving the administration of elections for federal office and the level of funding required for this.<sup>28</sup>[16]

Under H.R. 1170, the duties of the Voting Rights Commission are exactly like those of S. 565 except for very minor differences primarily found in the order and phrasing of topics.

### ***Recommendations to be Addressed***

S. 565: The Voting Rights Commission's recommendations are to address:

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<sup>27</sup>[15] S. 565, 107th Cong., 1st Sess. § 103 (2001).

<sup>28</sup>[16] S. 953, 107th Cong., 1st Sess. § 103 (2001).



- best practices in voting and election administration regarding the areas of study presented above and identifying those methods of voting and administering elections that would be convenient, accessible, nondiscriminatory, and easy to use for voters in election for federal office; yield the broadest participants; and produce accurate results;
- the permanent federal assistance to state and local authorities toward improving the administration of elections for federal office;
- voter participation in federal elections regarding methods to increase voter registration; increased accuracy of voter rolls and participation and inclusion of legal voters; improved voter education; and improved training of election personnel and volunteers; and
- consistency with election technology and administration requirements.<sup>29</sup>[17]

S. 953: The Panel's recommendations are to address:

- which methods in voting and election administration are most convenient, accessible, and easy to use for all voters; provide the most accurate, secure, and expeditious voting system and election results; do not discriminate and provide equal opportunity to all voters; and are most efficient and cost-effective; and
- the most effective method of providing federal assistance to state and local authorities in order to improve the administration of elections and the levels of funding required for this.<sup>30</sup>[18]

### ***Reports***

S. 565: The Voting Rights Commission is to issue as many interim reports, no later than the date of the final report, as the majority of its members deem necessary. The final report, having been approved by the majority of the Voting Rights Commission's members, is due no later than one year after enactment of this act and is to be submitted to the President and Congress. Included in the report is a detailed statement of the Voting Rights Commission's findings and conclusions, recommendations approved by the majority of the commission, and any dissenting or minority opinions.<sup>31</sup>[19]

S. 953: An interim report is to be issued by the Panel, if deemed necessary, prior to the final report and with enough time to permit full or partial implementation prior to the federal elections of 2002. The final report of the Panel is due no later than six months

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<sup>29</sup>[17] S. 565, 107th Cong., 1st Sess. § 103 (2001).

<sup>30</sup>[18] S. 953, 107th Cong., 1st Sess. § 103 (2001).

<sup>31</sup>[19] S. 565, 107th Cong., 1st Sess. § 103 (2001).

after all the members have been appointed. Included in this report must be a detailed statement of the issues and any dissenting or minority opinions.<sup>32</sup>[20]

### ***Powers***

S. 565: The Voting Rights Commission has the power to hold hearings, issue and enforce subpoenas, have allowances and fees for witnesses, request information from federal agencies, use the postal service as other federal departments and agencies, request administrative support services from the General Services Administration, and accept, use, and dispose of gifts in order to perform its duties. Furthermore, the Voting Rights Commission is subject to the requirements of the Federal Advisory Committee.<sup>33</sup>[21]

S. 953: The Panel has the power to hold hearings, including the administration of oaths and affirmations, which are open to the general public, to approve actions by a majority vote, request information from federal agencies, establish a Web site, use the postal service as other federal agencies and departments, request administrative support services from the General Services Administration, and contract and reimburse persons and federal agencies for supplies and services.<sup>34</sup>[22]

### ***Termination***

S. 565: The Voting Rights Commission shall terminate 45 days after submitting its final report.<sup>35</sup>[23]

S. 953: The Panel shall terminate 30 days after submitting its final report.<sup>36</sup>[24]

## **Permanent Organization to Oversee the Election Process**

### ***Membership***

S. 953 establishes the Election Administration Commission (EAC) consisting of eight members appointed by the President through the approval and with the advice and consent of the Senate. More specifically, the majority and minority leaders of the Senate, the speaker of the House, and the minority leader of the House will each recommend a

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<sup>32</sup>[20] S. 953, 107th Cong., 1st Sess. § 103 (2001).

<sup>33</sup>[21] S. 565, 107th Cong., 1st Sess. § 104 (2001).

<sup>34</sup>[22] S. 953, 107th Cong., 1st Sess. § 105 (2001).

<sup>35</sup>[23] S. 565, 107th Cong., 1st Sess. § 106 (2001).

<sup>36</sup>[24] S. 953, 107th Cong., 1st Sess. § 107 (2001).

candidate to the President “with respect to each vacancy on the Commission affiliated with the political party of the officer involved.”

The length of appointments varies initially with four of the original members serving for five years and the remaining four for four years. In both instances, not more than two members of each group may be affiliated with the same political party.

### ***Duties***

The duties of the EAC include:

- adopting or modifying any recommendation developed by the Panel, including updating the recommendations adopted or modified once every four years;
- issuing or adopting updated voting system standards, including updating such standards at least every four years. This is to be done no later than six months after the enactment of this act;
- advising states on their compliance with federal laws regarding accessibility of registration and polling places for people with disabilities;
- having primary responsibility for carrying out federal functions of the Uniformed and Overseas Citizens Absentee Voting Act;
- assembling and distributing information related to federal, state, and local elections;
- carrying out provisions of Section 9 of the National Voter Registration Act of 1993;
- making information on the federal election system available to the public and the media;
- assembling and making available bipartisan panels of elections professionals to state election officials, upon request, for the review of election or vote counting procedures in federal, state, and local elections;
- compiling and making available to the public official certified results of federal elections and statistics on national voter registration and turnout; and
- administering the Federal Election Reform Grant Program established by this act.<sup>37[25]</sup>

S. 565 does not establish a permanent organization to oversee the federal election process.<sup>38[26]</sup>

### **Grant Program**

#### ***Establishment and Administration of Grant of Program***

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<sup>37[25]</sup> S. 953, 107th Cong., 1st Sess. § 203 (2001).

<sup>38[26]</sup> S. 565, 107th Cong., 1st Sess. (2001).

S. 565 establishes a grant program to be administered by the attorney general through the assistant attorney general for the Office of Justice Programs and the assistant attorney general for civil rights in consultation with the Federal Election Commission.<sup>39</sup>[27]

S. 953 establishes a grant program to be administered by the EAC.<sup>40</sup>[28]

### ***Eligibility and Authorized Activities***

States and localities are eligible to apply for grants under S. 565, which may be used for improving, acquiring, or replacing voting equipment; increasing accessibility to voting places; implementing new election administration procedures to increase voter participation; educating voters; and implementing the recommendations contained in the final report of the Voting Rights Commission.<sup>41</sup>[29]

Under S. 953 states and localities are also eligible to apply for grants, which may be used to implement recommendations adopted or modified by the EAC and to meet certification requirements established by this act.<sup>42</sup>[30]

### ***Requirements for Grant Applicants***

Among the requirements that grant applicants must meet to receive funds under the regulations established in S. 565 are:

#### *States—*

- uniform nondiscriminatory voting standards;
- accuracy of voter registration lists; and
- voter education and poll worker training programs.

#### *Localities—*

- to be submitted under the state plan and cannot be inconsistent with that plan.<sup>43</sup>[31]

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<sup>39</sup>[27] S. 565, 107th Cong., 1st Sess. § 201 (2001).

<sup>40</sup>[28] S. 953, 107th Cong., 1st Sess. § 204 (2001).

<sup>41</sup>[29] S. 565, 107th Cong., 1st Sess. § 202 (2001).

<sup>42</sup>[30] S. 953, 107th Cong., 1st Sess. § 204 (2001).

<sup>43</sup>[31] S. 565, 107th Cong., 1st Sess. § 203 (2001).

Among the requirements that grant applicants must meet to receive funds from the EAC as established in S. 953 are:

- compliance with the Voting Rights Act of 1965, the Motor Voter Law, and the Voting Accessibility for the Elderly and Handicapped Act;
- prior implementation of a system ensuring accuracy of registration lists; and
- voter education and poll worker training programs.<sup>44</sup>[32]

### ***Preference for Fund Dispersal/Grant Approval***

S. 953 gives preference to states and localities that have the greatest need in terms of deficient voting systems, election administration, and assistance required to implement the recommendations adopted by the EAC.<sup>45</sup>[33]

S. 565 does not give preference.<sup>46</sup>[34]

### ***Amount of Federal Funds***

S. 565 authorizes 80 percent in federal matching funds for each state and locality, although this may be increased by the attorney general, and applications submitted before March 1, 2001, will have the federal share increased to 90 percent.<sup>47</sup>[35]

S. 953 authorizes the EAC to provide funds that do not exceed 75 percent of costs. However, this may be increased if the EAC determines that the state or locality does not have adequate resources to meet election costs with a 75 percent federal share.<sup>48</sup>[36]

### ***Oversight of Grant Recipients***

S. 565 provides for the auditing and examination of grant recipients.<sup>49</sup>[37]

S. 953 requires that grant recipients report to the EAC within six months of receiving a grant and provides for audits of recipients.<sup>50</sup>[38]

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<sup>44</sup>[32] S. 953, 107th Cong., 1st Sess. § 204 (2001).

<sup>45</sup>[33] *Id.*

<sup>46</sup>[34] S. 565, 107th Cong., 1st Sess. (2001).

<sup>47</sup>[35] S. 565, 107th Cong., 1st Sess. § 206 (2001).

<sup>48</sup>[36] S. 953, 107th Cong., 1st Sess. § 204 (2001).

<sup>49</sup>[37] S. 565, 107th Cong., 1st Sess. § 207 (2001).

### ***Accountability to Congress***

S. 565 establishes that the attorney general will report to Congress, no later than January 31, 2003, regarding “any activities funded by a grant awarded under this title” and “any recommendation for legislative or administrative action that the Attorney General considers appropriate.”<sup>51</sup>[39]

S. 953 establishes that within one year of the first payment to a grant recipient, EAC will report to Congress and that it do so annually thereafter.<sup>52</sup>[40]

### ***Funding Authorization***

S. 565 authorizes “such sums” as may be necessary for fiscal years 2002 through 2006.<sup>53</sup>[41]

S. 953 authorizes \$500 million for fiscal years 2002 through 2006.<sup>54</sup>[42]

### ***Advisory Boards***

S. 953 establishes an advisory board consisting of 24 members of whom 12 are appointed by the chairperson of the EAC and 12 by the vice chairperson of the EAC. The advisory board is to assist the members of the EAC with “matters relating to the administration of election” when requested to do so. The board is established indefinitely.<sup>55</sup>[43]

S. 565 does not establish an advisory board.<sup>56</sup>[44]

### ***Mandatory Election Requirements Independent of Grants***

S. 565 establishes the following mandatory requirements for federal elections independent of grants:

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<sup>50</sup>[38] S. 953, 107th Cong., 1st Sess. § 204 (2001).

<sup>51</sup>[39] S. 565, 107th Cong., 1st Sess. § 208 (2001).

<sup>52</sup>[40] S. 953, 107th Cong., 1st Sess. § 204 (2001).

<sup>53</sup>[41] S. 565, 107th Cong., 1st Sess. § 210 (2001).

<sup>54</sup>[42] S. 953, 107th Cong., 1st Sess. § 208 (2001).

<sup>55</sup>[43] S. 953, 107th Cong., 1st Sess. §§ 301–303, 307 (2001).

<sup>56</sup>[44] S. 565, 107th Cong., 1st Sess. (2001).

- Vote verification/error notification for both overvotes and undervotes; audit capacity for each ballot cast; accessibility to individuals with disabilities and provision of the same opportunity for privacy and independence for those voters as for non-disabled voters; provision of alternative language accessibility for limited-English-proficient voters; and an error rate no greater than the error rate established by Federal Election Commission as of the date of enactment of the act.
- Provisional voting: if the name of an individual who declares to be a registrant eligible to vote at a polling place in an election for federal office does not appear on the official list of registrants eligible to vote at the polling place, among other requirements, that individual should be notified that he or she can cast a provisional ballot in the election or the individual will be permitted to cast a vote at that polling place upon written affirmation by the individual before an election official at that polling place.
- Sample ballot requirement: the appropriate election official shall mail to each registered voter a sample ballot that will be used for the election. There should be information regarding the date of the election and the hours polling places will be open. Instructions on how to cast a vote on the ballot, general information on voting rights under federal and state laws, and instruction on how to contact the appropriate officials if these rights are alleged to be violated should be also be included. The mailed sample ballot, which would be used for an election for federal office, would also be published in a newspaper of general circulation in the applicable geographic area not later than 10 days prior to the date of the election, and would be posted publicly at each polling place on the date of election.

The attorney general has civil rights enforcement authority through the Department of Justice's Civil Rights Division.

S. 953 does not mandate requirements independent of grants.<sup>57</sup>[45]

## **DISTINCT ISSUES ADDRESSED BY H.R. 1170**

### **Voting Rights**

H.R. 1170 proposes requirements for the equal protection of voting rights by seeking to amend Part E of Title I of Public Law 90-351 (42 U.S.C. §§ 3750 *et seq.*) by adding a new subpart at the end. This proposed addition is *Subpart 4—Requirements For Equal Protection of Voting Rights*, which is divided into “Chapter A—Voting Rights in Federal Elections,” “Chapter B—Voting Rights In State and Local Elections,” and “Chapter C—Definitions.” Chapter A addresses such matters as requirements for protecting voting rights (Section 531), requiring states to meet requirements (Section 532), and reimbursement for costs of meeting requirements (Section 533) as related to federal

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<sup>57</sup>[45] S. 953, 107th Cong., 1st Sess. (2001).

elections. Chapter B addresses these same issues, except for Section 532, as related to state and local elections (Sections 541 and 542, respectively). Issues discussed in these sections include, for example, voting systems, provisional voting, sample ballots (Sections 531 and 541, respectively), and regulations for state reimbursement and authorization of appropriations (Sections 533 and 542, respectively). Finally, Chapter C defines the terms “election” and “state” as understood and identified in this bill.<sup>58</sup>[46]

### **Early Bird and Good Citizen Grant Program**

Part E of Title I of Public Law 90-351 (42 U.S.C. §§ 3750 *et seq.*) is further amended by H.R. 1170 through the addition of *Subpart 5—Early Bird and Good Citizen Grant Program*, which contains Section 571 through Section 581. The purpose of Subpart 5 is to provide equal protection of voting rights through the establishment of a grant program. The issues discussed include such matters as (1) the authority and responsibility of the attorney general, the assistant attorney general for the Office of Justice Programs, and the assistant attorney general for the Civil Rights Division in the administration of this grant program; (2) the authorized use of grant payments by a state or locality, including such things as the improvement, acquisition, and replacement of voting equipment or technology and the improvement of polling place accessibility for people with physical disabilities; (3) the establishment of general policies and criteria for the approval of grant applications and requirements to be met by state plans. These criteria include “uniform and nondiscriminatory standards for the equal protection of voting rights” and the maintenance of accurate voter rolls to prevent the removal of “legal voters”; (4) the audit and examination of state and localities, including a requirement that grant recipients maintain such records as prescribed by the attorney general and the assistant attorney general for civil rights; and (5) the establishment that programs and activities receiving full or partial financial assistance under this subpart are considered to be receiving federal financial assistance and therefore must adhere to such federal legislation as Title VI of the Civil Rights Act of 1964.<sup>59</sup>[47]

### **Antitrust Exemption**

H.R. 1170 proposes that the “sharing of any information, research, or data relating to the development or sale of voting systems and related products” with the purpose of promoting the compliance of voting systems with the requirements set forth in this bill, shall not violate antitrust laws. However, this shall not be the case for any “activity which results in price fixing or the boycott of any person.”<sup>60</sup>[48]

### **HOYER-NEY PROPOSAL**

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<sup>58</sup>[46] H.R. 1170, 107th Cong., 1st Sess. § 101 (2001).

<sup>59</sup>[47] H.R. 1170, 107th Cong., 1st Sess. § 201 (2001).

<sup>60</sup>[48] H.R. 1170, 107th Cong., 1st Sess. § 401 (2001).



As this report was being prepared, the chairman and ranking member on the House Administration Committee, Representatives Bob Ney (R-OH) and Steny Hoyer (D-MD), were reportedly working on language for a proposal that would establish minimum standards for state and local election administration. The proposal is expected to contain requirements for statewide voter registration, revotes if a voter spoils a ballot, and provisional ballots when registration status is in question. The proposal also will seek \$2.5 billion to help purchase new equipment and train personnel. A four-member commission would take over responsibilities currently carried by the Federal Election Commission's Office of Election Administration and the Pentagon (for military voting).<sup>61[49]</sup>

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<sup>61[49]</sup> "Election Hope," editorial, *Roll Call*, Oct. 29, 2001, p. 4.

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## **Election Reform: An Analysis of Proposals and the Commission's Recommendations for Improving America's Election System**

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### **Chapter III**

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#### **National Election Reform Research and Recommendations**

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#### **NATIONAL COMMISSION ON FEDERAL ELECTION REFORM**

##### **Overview**

Out of the irregularities in the 2000 election came a call for national election reform and the creation of the National Commission on Federal Election Reform (NCFER). NCFER was chaired by former Presidents Jimmy Carter and Gerald Ford and became known as the Carter/Ford Commission. After months of task force meetings and public forums,

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NCFER released goals and recommendations for how the voting system in the United States could be improved.<sup>61[1]</sup> According to NCFER, the goals for an efficient democratic process are fairly straightforward. Government at all levels should provide a process that:

- maintains accurate voter registration lists of all eligible citizens;
- 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.

Meeting these goals, according to NCFER, requires the precise balancing of federal and state responsibilities. NCFER agreed that state governments should continue to have a primary role in the conduct of elections because there are “widely varying conditions” across states that influence how elections should be run.<sup>61[2]</sup> To that end, NCFER recommended that state governments do far more to accept a lead responsibility for improving the conduct of elections.

### **Conclusions of NCFER**

NCFER's 13 recommendations are as follows:

1. Every state should adopt a system of statewide voter registration.
2. Every state should permit provisional voting by any voter who claims to be qualified to vote in that state.
3. Congress should enact legislation to hold presidential and congressional elections on a national holiday.
4. Congress should adopt legislation that simplifies and facilitates absentee voting by uniformed and overseas citizens.
5. Each state should allow for restoration of voting rights to otherwise eligible citizens who have been convicted of a felony once they have fully served their sentence, including any term of probation or parole.
6. State and federal governments should take additional steps to assure the voting rights of all citizens and to enforce the principle of one person, one vote.
7. Each state should set a benchmark for voting system performance, uniform in each local jurisdiction that conducts elections. The benchmark should be expressed as a percentage of residual vote (the combination of overvotes, spoiled votes, and undervotes) in the contest at the top of the ballot and should take account of deliberate decisions of voters not to make a choice.
8. The federal government should develop a comprehensive set of voting equipment system standards for the benefit of state and local election administration.
9. Each state should adopt uniform statewide standards for defining what will constitute a vote on each category of voting equipment certified for use in that

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- state. Statewide recount, election certification, and contest procedures should take account of the timelines for selection of presidential electors.
10. News organizations should not project any presidential election results in any state so long as polls remain open elsewhere in the 48 contiguous states. If necessary, Congress and the states should consider legislation, within First Amendment limits, to protect the integrity of the election process.
  11. The federal government, on a matching basis with the governments of the 50 states, should provide funds that will add another \$300–400 million to annual spending on election administration in the United States. The federal share will require a contribution totaling \$1–2 billion spread out over two or three years to help capitalize state revolving funds that will provide long-term assistance.
  12. The federal responsibilities envisioned should be assigned to a new agency, an Election Administration Commission (EAC).
  13. Congress should enact legislation that includes federal assistance for election administration, setting forth policy objectives for the states while leaving the choice of strategies to the discretion of the states.

Following is a summary of NCFER's stance on some of the more widely debated voting and election administration issues.

### ***Voter Registration***

NCFER does not recommend any changes to the National Voter Registration Act itself, but does stress the importance of accurate registration lists. Rather than focusing efforts on purging lists, NCFER recommends that states undertake the objective of accurately registering every eligible voter. This can be accomplished through the development of statewide computerized voter files that are linked and accessible to every election jurisdiction in the state and that can be shared with other states. A statewide voter database would lessen the chance for fraud, particularly in jurisdictions that have a high percentage of ineligible voters on their lists, and make it less likely that voters will be wrongfully purged. A statewide system might also result in lower mailing costs for both local jurisdictions and political campaigns.

States should request the following from individuals registering to vote: a residential address, other information such as a digitized signature, at least the last four digits of their social security number (or some other numeric identifier to compensate for typographical errors or misspelled names), and a separate affirmation that the applicant is a U.S. citizen. The states of Michigan and Kentucky are cited as models with respect to voter registration systems. NCFER makes no recommendations for appropriate deadlines for voter registration or on the issue of Election Day registration, although it does suggest that states requiring advance registration make some allowance for citizens who have recently relocated. This issue can be resolved through provisional voting, which is discussed below.

### ***Voter Identification***

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NCFER did not come down on either side of the debate over whether voters should be required to provide proof of identification at the polls. Some commissioners believe that it is entirely reasonable to ask voters to provide ID, as they would have to in many everyday situations. Other commissioners believe that this requirement has a disproportionately negative effect on low-income and minority voters, who make up a greater percentage of individuals lacking required identification. The report indicated that this decision should be left to the judgment of local election officials given local conditions. However, NCFER does believe that states should be allowed to verify a voter's identity through some mechanism when necessary.

### ***Provisional Voting***

NCFER is clear in its recommendation that all persons wishing to vote should be given a provisional ballot on Election Day if their names do not appear on voter lists, for any reason. The provisional ballot would only be counted upon verification of the person's eligibility. NCFER envisions that ultimately statewide provisional voting would be linked to a statewide computerized voter file. The model cited is that of the state of Washington, where "special ballots" are also issued to voters who have moved into a new county or from another state. In that model, after the election, officials research eligibility and if the voter is eligible to vote in another jurisdiction within the state, the ballot will be mailed there to be tallied. Recognizing that this feature may not be possible in every state, NCFER recommends that such ballots be counted as "limited ballots," valid only for those races in which the voter was eligible to vote.<sup>61</sup>[3]

### ***Polling Place Accessibility***

One of NCFER's biggest concerns with respect to voter participation is providing polling place accessibility to disabled voters, and the report presents Census Bureau statistics showing that 16 percent of all non-voters cited illness or disability as their reason for not voting. According to NCFER, this issue requires state and local assessments of what can be done to improve accessibility in compliance with the standards established in existing legislation.

### ***Election Day Holiday***

NCFER recommends that Election Day be made a national holiday. Specifically, NCFER recommends that in even-numbered years, the Veterans Day national holiday be held on the Tuesday following the first Monday in November and double as Election Day. A national holiday would allow use of more polling places that are accessible to disabled voters. Currently, many accessible public buildings, such as schools, are unavailable for election use. While some skeptics believe voters would spend the day engaged in activities other than voting, NCFER believes the benefits would outweigh drawbacks. Among benefits would also be greater availability of poll workers. Localities could recruit and hire better trained poll workers, including federal, state, and local government

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employees who are experienced in dealing with the public and have knowledge of relevant civil rights laws.

### ***Military and Overseas Voting***

NCFER identified two main problems with military and overseas voting: the time needed to apply for and receive an absentee ballot, and the varying local requirements for ballot return and deadlines. NCFER, therefore, recommends that overseas and military ballots be counted according to uniform statewide rules, which would be enforced by a designated state official. States and the Federal Voting Assistance Program should develop common standards for validation of ballots mailed on or before Election Day. Counting of absentee and overseas ballots would further be aided by a statewide voter registration system and provisional balloting, as discussed earlier.

### ***Early, Remote, and Internet Voting***

In its report, NCFER expressed opposition to early and absentee voting out of concern that these methods tend to reduce the significance of Election Day and civic participation, which could lead to lower voter turnout. In addition, while citing some benefits, NCFER believes use of Internet voting raises serious technical and security concerns. NCFER stated that it hopes to undermine the acceptance of such practices and to discourage states from adopting “convenient” approaches to voting.

### ***Felon Voting Rights***

Although it believes states should have some discretion in formulating felon disenfranchisement laws, NCFER favors restoration of voting rights when the individual has completed a full sentence, including any probation or parole. However, in states that still choose to disenfranchise felons for life, NCFER recommends they at least include a provision allowing for reconsideration in special cases.

### ***Enforcement of Voting Rights Laws***

NCFER strongly urges federal and state governments to intensify efforts to enforce compliance with the existing statutes that guarantee the right to vote and prohibit discrimination. It further recommends that the methods for funding and administering elections should seek to ensure that every qualified citizen has equal opportunity to vote and have that vote counted.

### ***Language Assistance***

NCFER recognizes the growing number of language minority voters and therefore demands that election administrators ensure that language minority voters receive the assistance at the polls that is legally required. Furthermore, NCFER recommends that wherever possible, accommodation, including translators, bilingual poll workers,

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language-appropriate voter education materials, and assistance in the voting booth, be provided. NCFER recommends that interest groups that represent minority voters work with local election officials to recruit translators and poll workers.

### ***Voting Equipment***

NCFER recognizes the impact of voting equipment and technology on the outcome of elections. However, it does not believe that the federal government can effectively pick “winners and losers” in the rapidly evolving technology environment.<sup>61[4]</sup> Nor does NCFER advocate a one-size-fits-all approach. Instead, it favors a strategy of focusing on outputs rather than inputs for measuring improvements in vote counting accuracy. States should set a standard for reliable performance, indicated by a benchmark of a maximum acceptable percentage of residual votes, and require election jurisdictions to disclose and be accountable for how they performed. NCFER recommends that, for the next election, benchmarks for combined overvotes, undervotes, and spoiled votes should be set no higher than 2 percent, with the goal of further reduction in future elections. As jurisdictions buy new equipment and technology develops, the benchmarks could be lowered.

NCFER also recommends that Congress grant statutory authority to an appropriate government agency to develop comprehensive voting equipment standards. The standards should include security, procedures for certification and decertification of software and hardware, assessment of human usability, and operational guidelines for proper use and maintenance. In addition, NCFER recommends that voters have the opportunity to correct errors at the polling place; voting tally systems certified for use include a statement of what constitutes a valid vote; and equipment systems provide a means for voters with physical disabilities to cast a secret ballot. The federal agency given this responsibility would provide certifications of hardware and software and oversee independent testing authorities. This would prevent states from having to individually test and certify voting equipment.

### ***Recount and Election Certification Procedures***

Using the events that occurred in Florida as an example, NCFER recommends that every state reevaluate its election code to include the following sequence of events: vote tabulation and retabulation, machine or manual recounts, certification of a final count, and contests of the certification based on allegations of fraud or other misconduct. Each state should allow at least 21 days before requiring certification of the final count because of the increased time needed to verify and count provisional ballots. NCFER also recommends that each state develop a uniform design for the federal portion of the ballot to be used for all of that state’s certified voting equipment.

### ***Uniform Poll Closing Times***

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NCFER recommends that uniform poll closing times be adopted only as a last resort. In general, however, NCFER does not view uniform poll closing times as a viable solution to early election result projections. A system of uniform closing times would require either polls to stay open later in the East or close earlier in the West. This could be a costly undertaking and would result in differential treatment of Western voters.

### ***Funding Elections***

NCFER noted the meager funding allocated to the election process and determined that overall spending on election administration nationwide should be increased by 30 to 40 percent above current levels. This figure includes expenditures for creating statewide registration systems; county responsibilities in maintaining accurate voter files, handling provisional ballots, and training election officials; purchasing new voting equipment; and building up the federal agency charged with overseeing voting system standards. NCFER believes the bill should be split between state and federal governments.

### ***Federal Responsibility for Elections***

NCFER does not find utility in creating another federal task force or commission to study election reform, but rather calls for the creation of an Election Administration Commission (EAC) to take over the election administration function currently housed in the Office of Election Administration in the Federal Election Commission. The EAC would develop federal voting system standards, oversee implementation of these standards, maintain a national clearinghouse of best practices in election administration, and administer the federal assistance programs to the states. Enforcement of other federal election laws would remain the responsibility of the Department of Justice's Civil Rights Division and Criminal Division.

Finally, NCFER recommends that Congress enact legislation that includes federal assistance for election administration, setting forth policy objectives for states while leaving the choice of strategies to the discretion of states. States would administer the grants through a capitalized state revolving fund. This would create long-term funding for election administration, rather than a onetime expenditure. The funds could be given to localities in the form of grants, loans, loan guarantees, or whatever fits the need of a particular locality's plan to improve its election process. NCFER's proposal for federal legislation gives states room to "adapt to local circumstance" and remain open to future developments.<sup>61[5]</sup>

## **CALIFORNIA INSTITUTE OF TECHNOLOGY/MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

### **Overview**

In July 2001, the California Institute of Technology (Caltech) and the Massachusetts Institute of Technology (MIT) released a 92-page report, which evaluates existing voting

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technologies to determine whether they meet the country's needs for a secure, reliable system of elections.<sup>61</sup>[6] The purpose of the report was to show how equipment and its performance affect the election process. The premise was that many of the major problems that surfaced during the November 2000 election, particularly in Florida, could be attributed to poor technology (e.g., faulty equipment). The report states, "It is evident that problems with counting the votes of the citizens of Florida and elsewhere originated in unsound technology."<sup>61</sup>[7]

The researchers estimate that between 4 million and 6 million votes were lost in the November election. Using Census and election returns data, the study estimates that faulty equipment caused 1.5 million to 2 million votes to be unrecorded or uncounted. The report states that residual votes—the number of uncounted, unmarked, and spoiled ballots—provide a yardstick for measuring the effect of different machine types on the incidence of lost votes. The report does not consider political or sociological issues, such as the high rate of invalidated ballots in minority precincts. However, the study goes beyond equipment analysis and examines almost every aspect of election procedures, including registration, ballot security and the use of the Internet for voting, absentee voting, and the cost and finance of elections.

The study emphasizes the need to reform registration processes and polling place selection criteria. It criticizes the use of absentee voting, and does not support the use of the Internet as a means for voting.

### **Conclusions of Caltech and MIT**

With respect to technology and equipment, the study recommends replacing punch cards, lever machines, and older electronic machines with optical scan ballot systems, or any electronic voting system proven to perform well in extensive field tests. The report concludes that there is a need to improve voter registration systems, improve and expand databases to include polling place and provisional ballot information, and upgrade voting equipment and technology nationwide.

The study supports a federal role in technology reform. It recommends that the federal government have more responsibility in financing elections. First, the federal government should finance the upgrading of equipment in order to phase out antiquated machinery. Second, it should establish an independent agency for election administration. The new agency would function as a clearinghouse, as well as establish best practices related to technology, and would disseminate information when new equipment is developed. In addition, the new agency would oversee grants to counties for voting equipment and grants to conduct research on voting equipment, as well as direct an office of standards and certification. The agency should also develop accounting standards for reporting election expenditures and equipment field performance. The federal government should provide research funding for the innovation of new technologies. Federal and state governments should finance and coordinate the upgrading and ongoing maintenance of voter registration databases for counties and states. The federal government should also



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establish a National Elections Research Lab, which would foster the development of better voting equipment and voting systems.

In essence, the report calls for a “new architecture for voting technology”;<sup>61</sup>[8] federal funding for research and development of voting equipment technologies and testing of machines; and the establishment of an independent federal agency to oversee the new technology and to serve as a clearinghouse for technology in voting (in all areas, including registration).

## **NATIONAL ASSOCIATION OF SECRETARIES OF STATE**

### **Overview**

In July 2001, at its annual summer conference, the National Association of Secretaries of State (NASS) adopted its Resolution on Reform Policies and the Federal Government. The NASS resolution overlaps with some of the recommendations presented in the MIT report, but focuses more on voter education and the training of election officials. The resolution does not support a new election system or a federal enforcement role. In fact, NASS’ position is that the administration of elections is primarily the responsibility of state and local election officials.<sup>61</sup>[9]

The resolution covers such issues as the need for a federal grant program, improved election administration, expanded provisional balloting, and more election study commissions with NASS involvement.

### **Conclusions of NASS**

According to the resolution, the federal government can best ensure meaningful election reform throughout the country by providing major funding assistance to state and local officials. Funding should be provided in the form of block grants to the states for training, education, and technology based on the size of the voting-age population.<sup>61</sup>[10] The resolution states that the administration of elections is a state and local responsibility, and that the federal government should serve as a resource for research and voluntary guidelines. NASS contends that every eligible voter should have access to the voting process, and that the format for administering this accessibility should remain with the states. The resolution advocates a study or research commission and a special “elections class” postage rate.

## **NATIONAL COMMISSION ON ELECTION STANDARDS AND REFORM**

### **Overview**

In May 2001, the National Commission on Election Standards and Reform (NCESR) released its report, *Report and Recommendations to Improve America’s Election System*, which focuses on problems reported in voter access, voting technologies, ballots and

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residuals, recount procedures, and elections staff, and the need for partnership between federal, state, and local governments in the operation of the election system.<sup>61</sup>[11] NCESR's approach was to study the problems that were reported at its meetings, in other studies (such as the Caltech/MIT report), and in the press; identify probable causes; enumerate possible remedies; and develop recommendations for federal, state, and county governments to improve the present election system. The organization did not investigate complaints or conduct in-depth research and analysis of each issue.<sup>61</sup>[12]

## **Conclusions of NCESR**

Generally, NCESR concluded that election reform should be undertaken within the present system, rather than by creating a new election system or imposing nationwide procedures or standards on state and local governments. The study states that such components as a uniform national ballot or standard voting equipment would be impractical and stifle innovation for future elections.<sup>61</sup>[13]

The report presents recommendations for all three levels of government in improving the elections process:

### ***Federal Government***

NCESR recommends that the federal government provide funding through grants to state and local governments for research, equipment, and election administration. The report identified three areas for the grants: upgrading voter registration and voting systems through hardware, software, and supplies; an ongoing formula-based program to share the cost of the administration of federal elections; and creation of an "elections class" postage for mailing election-related materials.

With respect to the Federal Election Commission (FEC), the study recommends that the Office of Election Administration be given funds to conduct research and collect information on running elections and to disseminate the information. The Federal Communications Commission should be responsible for public service announcements to educate voters. There is no mention of a federal enforcement role in the process.

### ***State Governments***

The report lists 16 recommendations for state governments. State responsibilities include providing funds to counties for the cost of elections, determining what constitutes a vote for each type of equipment used, minimizing the need for many poll workers, and streamlining laws and procedures for the restoration of voting rights. The study's position is that the enforcement of voting rights should be at the state level.

### ***County Governments***

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The report's recommendations for county governments focus on the administration of elections with funding support to come from federal and state governments.

Administration responsibilities include staffing, staff training and development, informing voters about the voting process, and selecting accessible polling places.

## **THE CONSTITUTION PROJECT**

### **Overview**

In the aftermath of the historically close 2000 presidential election, the Constitution Project organized a forum on election reform to explore areas of agreement among organizations and individuals that share an interest in election reform, resulting in the report, *Building Consensus on Election Reform*.<sup>61</sup>[14] According to the report, improvement of the election system requires attention to each major stage of the voting process, such as measures applicable to steps that mainly precede Election Day, measures that apply directly to Election Day and procedures at the polls, and rules and procedures for counting and recounting votes.

### **Conclusions of the Constitution Project**

#### ***Before Election Day***

Prior to Election Day, there needs to be voter education and election personnel training. There also needs to be a system for fostering development of voting technologies. All states should develop statewide registration databases; and the accuracy of registration information should be maintained through integration or improved communications between voter registration and other databases, such as motor vehicle department records.

#### ***Election Day***

Polling places should be fully accessible, and accessibility should be broadly defined. Materials, including directions to polling places, should be available in multiple languages and formats. Additional resources should be provided to hire and train Election Day personnel. To provide a common point of reference for election officials and voters in resolving disputes, a notice of voters' rights and responsibilities should be posted in every polling place. To preserve the rights of voters who come to the polls, voters in line by poll closing time should be allowed to cast a ballot. Along with good ballot design, technologies should be used that enable voters to avoid error and record their choices accurately. Technologies that let voters correct overvotes or undervotes should be used. Additionally, technologies should be used that enable disabled voters to vote independently and therefore secretly.

#### ***After the Polls Close***

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State election calendars should allow sufficient time for all counting and contest procedures to be completed in time for presidential electors to cast the state's vote. States should provide for pre- and post-election audits of equipment to ensure integrity of the final count. Every cast vote that is valid should be counted, including those submitted by military and other absentee voters, in addition to provisional ballots submitted by qualified voters.

### ***Alternate Methods of Voting***

Internet voting, voting entirely by mail, unlimited absentee voting, and early voting at election offices are all alternative forms of voting. But, early voting at election offices is the only alternative that can achieve the same objectives as Election Day voting, and it is essential to have a hospitable and efficient system of absentee voting with protections against fraud or other abuse for segments of the population unable to cast votes at polling places.

### ***Top-to-Bottom Review of State Election Codes***

Each state should review its election code to ensure that it is easily usable by participants in the voting process, clear to the courts, and comprehensible to the public. State reviews should also consider other issues such as reinstating voting rights for people who completed criminal sentences, minimizing partisan influences in election administration, and consolidating elections in order to reduce their frequency.

### ***Recommendations for Congressional Action***

*Federal Assistance for Research and Technology Standards.* Congress should provide authority and funds for research and development on voting equipment and equipment standards, with particular emphasis on ease of use, accessibility for people with disabilities or low levels of English literacy, and special issues relating to electronic equipment, including the ability to audit election results; an expanded standards program that includes management or operational standards, and performance or design standards to optimize ease of use; an expanded testing program to ensure that voting machinery complies with established standards; and a clearinghouse allowing states and industry to share experiences with the performance of voting technologies.

*Federal Grants for Capital Investment in Voting Technology and Use.* Congress should establish a multi-year capital investment grant program for investment in voting technology improvements, including funds for training in the use of technologies. The scope of the grant program should include funding for improved registration systems; precinct-level voting and counting equipment, including equipment that allows voters with disabilities to vote independently; and election personnel training and voter education about the use of voting technologies. The duration of the grant program should allow for systematic implementation of changes over the next three federal election cycles. Those states whose grant programs are principally formula based, according to

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voting-age population, should be given preference when it comes to allocating funds among states. Each state and its local governments should work together to formulate a plan that the state submits to the federal government. To assist in evaluating whether federal grants are improving the administration of elections, states should regularly provide statistical information on the performance of new and existing voting technologies. At the end of a funding period, each state should publicly report what it has done with the grants it received. Congress should vest final responsibility in a single agency to carry out the research, standards development, and grant functions under an election reform act. Congress should authorize and appropriate sufficient funds to provide a significant incentive to states to participate in the grant program and to enable them to make necessary improvements.

*A Permanent Program to Defray Expenses of Federal Elections.* The Constitution Project could not come to an agreement on a permanent federal role in funding the conduct of federal elections.

## **HOUSE COMMITTEE ON GOVERNMENT REFORM**

### **Overview**

In the months following the 2000 election, despite the widespread attention to the issue, there had been no large-scale analysis of uncounted ballots nationwide or the characteristics of the precincts that had the highest percentage of ballot spoilage. It is estimated that 1.9 percent of all ballots (nearly 2 million votes) in the 2000 election were not counted. Thus, members of the House Committee on Government Reform asked for an investigation of the income and racial disparities in the undercount of the 2000 election.<sup>61</sup>[15]

The resulting study analyzed voting results from 40 congressional districts in 20 states: 20 districts with high poverty rates and large minority populations, and 20 with low poverty rates and small minority populations. These districts used a variety of voting machines, including punch card, lever, optical scan, and electronic systems. Congressional districts were used instead of counties primarily because of their smaller size. (It was determined that analysis of large counties in the aggregate, which might contain up to 15 congressional districts with both very poor and very affluent areas, could mask important racial and economic differences that appear on the district level.) In the 40 congressional districts studied, more than 9 million ballots were cast. Of those, more than 200,000 (2.2 percent) were not counted in the presidential race.

### **Conclusions of the House Committee on Government Reform**

The final report presented the percentage of uncounted votes for President in each district and compared the percentages in the two types of districts—low income/high minority and affluent/ low minority. The report also looked at the effect of voting equipment on the percentage of spoiled ballots. The report's major findings are as follows:

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1. Voters in low-income, high-minority districts were significantly more likely to have had their votes discarded (at a rate of 4.0 percent of all cast ballots) than voters in affluent low-minority districts (at a rate of 1.2 percent). Overall, voters in low-income, high-minority districts were more than three times as likely to have their votes discarded, and in some cases, they were 20 times more likely to have their ballots discarded as compared with other districts. Further, the 10 districts with the highest rates of uncounted ballots were all low-income, high-minority districts, and 8 of the 10 districts with the lowest rates of uncounted ballots were affluent, low-minority districts.
  2. Voting technology had a significant impact on vote undercount. Voters in low-income, high-minority districts had higher rates of discarded ballots when using older technology, such as punch cards and lever machines, than when using newer technologies, such as electronic voting systems and precinct-counted optical scan machines. Voters using punch card machines were seven times more likely than those using precinct-counted optical scan machines to have uncounted ballots.<sup>61</sup>[16]
  3. Better voting technology narrowed the disparity in uncounted votes. Low-income, high-minority districts had higher rates of uncounted votes than affluent, low-minority districts on all types of equipment, but the size of the disparity was much lower when the districts used more advanced technologies. For instance, when using the punch card system, the disparity between the two types of districts (low income/high minority and affluent/low minority) was 5.7 percentage points, whereas when using precinct-counted optical scan machines, the disparity was only 0.6 percentage points. Thus, the percentage of uncounted ballots in low-income, high-minority districts was reduced by more than 85 percent when improved voting technology was used.

The House study demonstrates that disparities in spoiled ballot rates across districts are linked to demographic makeup of the districts. The report also reaffirms the need for the use of improved voting technology, particularly in low-income, high-minority districts. According to Congressman Henry A. Waxman, this report proves the problems in Florida were not an exception. He stated: “This report shows it’s a national issue and we need the federal government to step in. . . . I think the report should wake us up to the fact that we need federal legislation to help local governments modernize their technology in conducting elections.”<sup>61</sup>[17]

## **NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE**

### **Overview**

Since the 2000 election, the National Association for the Advancement of Colored People (NAACP) has been defending the right to vote and working to ensure that every eligible citizen has his or her vote counted.<sup>61</sup>[18] Although the organization has not commissioned any major studies on voting rights issues, it continues to have an active

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voice in voting rights and has launched an election reform campaign. In particular, the NAACP helped to develop the Dodd-Conyers “Equal Protection of Voting Rights Act” to strengthen the election process by 2004.

In addition, the NAACP has actively worked toward registering people to vote and informing voters about the issues that affect their well-being and the well-being of their community. The NAACP, in the spirit in which the organization was created, continues to fight to protect the right to vote free from intimidation or harassment and in an environment conducive to full participation in the process. In an attempt to hold officials accountable for election reform, the NAACP has mounted a campaign to develop report cards on what election officials are doing about election reform. The campaign asks citizens to help the NAACP gather information about the voting record and issue positions of key state officials on election reform, and to work with the NAACP to hold accountability sessions with elected officials.

The NAACP Voter Empowerment Program will grade governors and state legislatures on whether they have signed election reform bills that provide for new voting machines, advocated support for re-enfranchising ex-felons, and increased dollars spent on voter education and registration. Secretaries of state and election commissioners will be graded on designing and implementing new voter registration and education projects, providing counties with on-site technical assistance to train poll workers, designing a program to ensure that only legitimate names are removed from rolls, endorsing on-demand voting, allowing for a provisional ballot, ensuring equal access to people with disabilities and language and other minorities, and auditing registration and balloting procedures to ensure they are fair.

Recognizing the disparate impact felon disenfranchisement laws have on minorities, particularly African American males, the NAACP has issued statements and testimony supporting the restoration of voting rights to ex-felons. According to Kweisi Mfume, president and CEO, “America expects felons to come out of our penal system prepared to act as productive members of society. But, far too often the fundamental American right to vote is denied to ex-felons. Voting is an integral part of being a productive member of society; we should be encouraging ex-felons to vote, not prohibiting them.”<sup>61</sup>[19]

### **Conclusions of the NAACP**

In addition to its voting rights campaigns, the NAACP has made recommendations for election reform. Specifically, the organization has called upon the federal government and each state to enact laws, policies, and procedures that:

1. ensure equal, nondiscriminatory access to the election process for all voters;
2. modernize voting and counting procedures, including voting machines, to include procedures that ensure that the genuine intentions of voters are reflected in their ballots;
3. provide adequate funding to modernize equipment statewide;

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4. retrain poll workers and election officials so that there is fair and uniform treatment of all voters;
  5. launch an aggressive voter education initiative;
  6. expand poll worker training and recruitment programs;
  7. put in place systems to maintain and easily access up-to-date voter rolls using the latest technology;
  8. enhance the integrity and timeliness of absentee ballots;
  9. ensure that all states and municipalities are in full compliance with the Voting Accessibility for the Elderly and Handicapped Act, the Voting Rights Act of 1965, and the National Voter Registration Act of 1993;
  10. identify and eliminate practices that might be perceived as intimidating to certain sectors of the population;
  11. establish clear standards for bilingual ballots for language minorities; and
  12. simplify and standardize voter re-enfranchisement laws so that every American who is not incarcerated can cast a vote.<sup>61</sup>[20]

## THE ELECTION CENTER

### Overview

*Election 2000: Review and Recommendations by the Nation's Election Administrators*, issued by the Election Center and prepared by the National Task Force on Election Reform, begins with the assertion that the nation's "election system is *NOT* in crisis."<sup>61</sup>[21] If, of the numerous reports issued to date, and those yet to be issued, this is the sole report to make this claim, perhaps the assertion should still be highly regarded if only because the task force consists exclusively of individuals charged with the operation and oversight of the nation's elections (i.e., election administrators). Furthermore, these authors state unequivocally that neither the public nor academics often looked upon as experts truly comprehend the complexities involved in conducting elections.<sup>61</sup>[22]

Members of the Election Center, located in Houston, Texas, include voter registrars, election supervisors, state election directors, city clerks/city secretaries, county clerks, county recorders, and secretaries of state for each state and territory, and the District of Columbia. Member governments are provided many services, such as surveys and peer review programs, by a small professional staff.<sup>61</sup>[23]

In order to examine election reform and propose recommendations in a timely manner, members of the task force formed three committees: (1) Elections Governance and Administration, (2) Election Systems, and (3) Voter Registration. The task force generally recommends the active involvement of the federal government in developing and maintaining vote counting system standards and operational standards and guidelines. Although the committees acknowledge that this is an unexpected departure from the traditional "hands-off" view of states toward the federal government, it is due to the belief that "state and national standards [are] the primary mechanisms for improving America's elections . . ."<sup>61</sup>[24]



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## Conclusions of the Election Center

The Elections Governance and Administration Committee made the following recommendations: when provisions are made for either judicial or administrative recounts, whether by hand or machine, a state must allow for a reasonable period of time to complete them; to verify voting machine counts or to count votes a machine cannot count, hand recounts should be used; Congress and states should amend laws to make it easier for overseas and military voters to cast their ballots; states should enact or clarify laws stating parameters for a valid vote for a particular voting system; and extended voting periods, such as 24 or 48 hours, should not be put in place because of the ballot security and poll worker issues involved. Securing hundreds of polling sites over a number of days is difficult, if not impossible, and the inherent difficulties lead to questions of ballot integrity. Specifically, “suspicious of what happens to ballots when left unguarded for long periods of time, leads to questions and concerns about the integrity of the election.”<sup>61</sup>[25] Furthermore, hiring poll workers for extended voting periods will be difficult.

The Election Systems Committee made the following recommendations: statutory authority and sustained funding should be established by Congress in order to maintain federal voting equipment standards, such as technical standards and operational guidelines; the development and maintenance of federal equipment standards should be done principally under the direction of state and local election officials; federal voting system standards and operational guidelines should be adopted by each state; what constitutes a valid vote for a particular voting system should be included in federal standards; and a uniform national voting system should not be established.<sup>61</sup>[26]

The Voter Registration Committee made the following recommendations: voters should be provided with an acknowledgement of registration and instructions on how to resolve lack of official notification regarding registration; emphasis should be placed on the question, “Are you a United States citizen?” on voter registration applications; state laws should be amended so that former convicted felons can register to vote upon pardon or full completion of their sentences; provisional ballots should be adopted by all jurisdictions in the absence of Election Day registration or other solutions; and persons committing election and registration violations, and who are convicted of such, should “be treated as any other felon.”<sup>61</sup>[27]

Finally, this report examines the issue of civil rights and voting. The report states:

[B]ecause of the nation’s history in the area of voting rights, it has become the opinion of some that the process is designed to keep certain citizens from participating. The system, many believe, has been used to discriminate against anyone who could change the power structure of local communities.<sup>61</sup>[28]

However, the authors argue that:

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since the passage and implementation of the Voting Rights Act of 1965, the nation has become enlightened and responsive to the rights of *others*. . . . Present day elections administrators manage the process without regard to its partisan influences so it can be fair for all Americans. Elections professionals help ensure a fair and equitable process, to protect the rights of *others*, and to assure full access for all eligible voters.<sup>61</sup>[29]

Furthermore, to ensure that all eligible voters are heard at the polls, instruction must be provided to “those who do not know how to properly vote so that they have every opportunity to cast a vote that can be counted.”<sup>61</sup>[30]

Still, in order to make the process fair for all, much remains to be done. According to the Election Center report, the first step is to investigate the allegations of voting irregularities in the 2000 Florida election made to the U.S. Commission on Civil Rights since these are serious. Yet, it is claimed that the majority of those allegations have no substantiated evidence supporting them. Nevertheless, since the allegations must be investigated, the “U.S. Department of Justice should interview all voters who made complaints to the U.S. [Commission on] Civil Rights . . . and determine the veracity of the allegations. Investigators should be advised by the U.S. [Commission on] Civil Rights . . . , representatives of the national political parties, and the election administrators in each and every location where such an alleged action occurred.”<sup>61</sup>[31] If the ensuing investigation proves the allegations to be false, voters will come to realize that the voting process is fair and equitable. However, if a *substantial portion* is proven to be true, then election administrators should seek legislative remedies. “If the allegations prove to be limited to a few locations, then it must be assumed that the states should have the opportunity to resolve their own problems.” Thus, if Congress decides to take action based on the events of the 2000 election, “it must ensure against unintended consequences that could have a devastating effect on democracy.”<sup>61</sup>[32]

## **NATIONAL CONFERENCE OF STATE LEGISLATURES**

### **Overview**

The National Conference of State Legislatures’ (NCSL) report, *Voting in America: Final Report of the NCSL Elections Reform Task Force* (August 2001), addresses election reform by concentrating its recommendations on 10 subjects designated by the NCSL Elections Reform Task Force. These areas are voter rights and responsibilities, election administration, voter registration, provisional ballots, absentee and early voting, voter assistance and polling place accessibility, voting systems, post-election procedures, Election Day workers, and voter education.<sup>61</sup>[33]

The foundation for these areas is the 10 core principles adopted by the task force. Included among these principles are:

- It is the province of states to administer the election process.
- The voting process should be easy, open, and understandable to every citizen.

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- “Criminal conduct by election officials diminishes participation and voter confidence in elections, and should be vigorously prosecuted and severely penalized.”<sup>61</sup>[34]

## **Conclusions of NCSL**

The task force made the following recommendations for reform:

1. States should collect and archive election data so that “error rates, undervotes and overvotes for each voting system and [the] number of persons presenting themselves to vote” are known.
2. State election officials should not be permitted to “campaign in partisan elections, other than their own, when applicable.”
3. Registration databases should be continually maintained and easily accessible from all polling places.
4. Communication between polling places and central election offices should be improved.
5. Voters should be allowed to cast provisional ballots at polling places, and a uniform method for doing so should be established.
6. States should have a “uniform method to judge and count provisional ballots.”
7. Permanent absentee voter applications should be permitted for people with disabilities.
8. Clear and understandable ballot instructions should be provided for voters who have low levels of English proficiency.
9. States should adopt “uniform standards for maintenance, operation, counting (including what constitutes a vote), security, verification, accuracy, and ballot design for each type of voting system used in the state.”
10. States should collect and make available statistics on the types of voting equipment used throughout the state.
11. Use of public resources for voter education should be “expended fairly and in a politically neutral manner”; and voter education efforts should be undertaken when “voting equipment or procedures are changed.”<sup>61</sup>[35]

To fully appreciate NCSL’s recommendations it is necessary to note its official policy on federal election reform legislation. A brief review of this policy reveals that NCSL advocates equal partnership with any federal commission or task force, formed by Congress, to undertake election reform and that its support for any election reform legislation is dependent on arriving at legislation via this partnership. Furthermore, NCSL is against funding that imposes any federal mandates for specific requirements on states and thus supports block grants. Finally, NCSL believes that the Federal Election Commission is the appropriate entity to administer block grants and is therefore opposed to the creation of a new agency.<sup>61</sup>[36]

**HOUSE COMMITTEE ON THE JUDICIARY, DEMOCRATIC  
INVESTIGATIVE STAFF**

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## Overview

*How to Make Over One Million Votes Disappear: Electoral Sleight of Hand in the 2000 Presidential Election* (August 20, 2001), a report prepared by the Democratic Investigative Staff of the House Judiciary Committee, presents a national analysis of “election machinery and unrecorded ballots, election administration and complaints surrounding the 2000 election.”<sup>61</sup>[37] The report finds numerous problems nationwide in such areas as election machinery, administration, and voting rights. Specifically:

- A number of states experienced rampant spoilage of ballots.
- Voters in most states reported being improperly excluded or purged from voting rolls.
- People with disabilities faced obstacles to voting in nearly every state.
- Intimidation at the polls still casts a shadow over elections.
- The vast majority of states appear to have recount laws that would likely be found unconstitutional under *Bush v. Gore*.<sup>61</sup>[38]

Documenting and adding to these claims, the report argues that a minimum of 1,276,916 voters had their votes discarded, with no vote for President, in 31 states and the District of Columbia. Election officials in 19 states maintain no statewide record of discarded ballots. The report also found that in at least 25 states, eligible voters had their names removed from voter rolls; in at least 18 states, disabled voters faced daunting obstacles in order to cast their ballots; voters in at least 18 states reported being intimidated by either police or other officials; voters in 17 states and the District of Columbia complained about lack of assistance at polling sites due to undertrained and underpaid poll workers; and recount standards and procedures in at least 38 states “would likely fail constitutional scrutiny under *Bush v. Gore*.”<sup>61</sup>[39]

The report details incidents of voter disenfranchisement from throughout the nation. Included in these are the following:

- A disabled voter in California requested the use of a portable voting machine but when provided with the only available one, a demonstration machine, the only choices for president were “George Washington” or “John Adams.”
- Reverend Willie Whiting of Tallahassee, Florida, was told he was not allowed to vote because of a felony conviction. Reverend Whiting has never committed a crime.
- Voters in Detroit, Michigan, had to wait three hours to vote at the Coleman A. Young Recreation Center.
- In Tennessee, a voter reported that an election worker placed several white voters ahead of an African American voter with the statement, “You know what it means to sit at the back of the bus.”
- In Texas, a leaflet was distributed in African American communities in which seven African Americans who were actively involved in elections were accused of voter fraud and “selling votes to the highest bidder.”<sup>61</sup>[40]

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## **Conclusions of the House Committee on the Judiciary**

To spur election reform, the report advocates congressional action. According to the authors, “the Constitution gives Congress the primary responsibility to regulate federal elections.”<sup>61</sup>[41] They argue that state legislatures are not responding to problems that surfaced during 2000 election quickly enough, and at the pace the states are proceeding, these problems will persist in the 2002 and 2004 elections. Furthermore, it has been the federal government that has historically led in guaranteeing equal voting rights to all citizens. As has been demonstrated by states over the past decades, voting reform in states occurs because the federal government takes the initiative in forcing change.<sup>61</sup>[42]

To this end, the report suggests that Congress take four actions to correct the problems in the U.S. voting system. These recommendations include establishing minimum national voting rights standards that:

1. establish acceptable election machinery in federal elections. Included among these minimum standards should be the requirements that all voting machines used in federal elections notify voters of overvotes and undervotes and allow a voter to correct these mistakes before the ballot is cast;
2. guarantee a voter the right to cast a provisional ballot if he or she asserts to having been improperly removed from the voting rolls;
3. require the mailing of a sample ballot and voting instructions to every registered voter prior to every federal election; and
4. require the mailing of information on voting rights and what agencies to contact if these rights are violated, such as through intimidation at the polls.<sup>61</sup>[43]

## **NATIONAL ASSOCIATION OF STATE ELECTION DIRECTORS**

### **Overview**

The National Association of State Election Directors (NASSED) issued recommendations on August 15, 2001, generally recommending that Congress enact laws to improve the nation’s election system.<sup>61</sup>[44]

### **Conclusions of NASSED**

Specifically, NASSED concluded that Congress should:

1. Establish a long-term federal program, administered by the Office of Election Administration (OEA), to foster continuing improvements in election administration and voting technology. The OEA or its successor organization must be adequately funded and staffed to continue the important mission of standards development, research for those standards, and information compilation and distribution.

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2. Establish a multi-year grant program for capital investment in election technology hardware and software. The grant program should provide a range of infrastructure purposes, such as improved voter registration systems, improved voting and tabulation equipment, the development of new training programs for election workers and voters, and accessibility of polling places. Individual states could establish priorities based on their needs.
  3. Establish a grant program that would provide improvements over the three election cycles beginning in 2004 and continuing through the 2008 election cycle. At that point the program should sunset and any extension would be subject to a fresh determination by Congress.
  4. Allocate funds among the states according to a formula based on each state's portion of the voting-age population. The District of Columbia, which appoints presidential electors, should be treated as a state under the grant program.
  5. Establish the grant program as a state program with each state's chief election officer or body responsible for making the grant application. The state application should describe how the funds will be used and certify compliance with the Voting Rights Act, the National Voter Registration Act, Voting Accessibility for the Elderly and Handicapped Act, and the Uniformed and Overseas Citizens Absentee Voting Act. States should be required to include a specific action plan on how recounts and contests are disposed of within the time periods allowed. Additionally, the plan should explicitly detail the uniform criteria in the state law of what constitutes a vote.
  6. Ensure through law that technology grants are used to enable voters with disabilities to vote independently and therefore privately.
  7. Provide for the use of provisional ballots and notices of voter rights and responsibilities. Election officials should prominently post at polling places clear notices of the rights and responsibilities of voters under applicable federal and state laws. Congress should not mandate the wording of this notice.
  8. Establish requirements for public reports on the use of the federal funds and periodic audits.
  9. Provide for a single federal agency responsible for the voting system standards, the grant program, and research and information gathering duties. Currently, the OEA is the primary federal office involved in election administration and the NASED supports the continuation and significant expansion of the OEA. Congress should not place the grant program in any agency charged with enforcement of federal election laws.
  10. Establish a new elections class of postage that provides first-class service at half the first-class rate.
  11. Not remove the Federal Voting Assistance Program from the Department of Defense. Congress should enact specific requirements that postmarks be affixed to all election ballots moving through the military mail system; that the military be required to provide expedited handling of election ballots through its mail system; that the late counting of overseas absentee ballots be required if ballots are not available for distribution at least 30 days before an election; that the federal postcard form serve as an application to register to vote and as a request

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for an absentee ballot without regard to a specific close of registration deadline; and that all states accept facsimile transmitted applications for an absentee ballot.

## **UNITED STATES GENERAL ACCOUNTING OFFICE**

### **Overview**

Events surrounding the November 2000 presidential election raised broad-based concerns about a number of issues, including, but not limited to, the performance of different types of voting equipment, the disqualification of absentee ballots, and the accuracy of vote tallies and recounts. As a result, the General Accounting Office (GAO) was asked by several congressional committees and members of Congress to review certain aspects of elections throughout the United States. In response to these requests, GAO has issued a series of reports that address a range of issues that were identified in the November 2000 election.

A capping report draws on a considerable body of work recently done by GAO on election systems; and it serves the following three purposes: (1) provides a discussion about how the constitutional and operational division of federal and state authority to conduct elections has resulted in great variability in the ways elections are administered in the United States; (2) provides a discussion of the main challenges that election officials faced in major election system components—the people, processes, and technology; and (3) offers basic criteria for assessing a range of election reform proposals.<sup>61</sup>[45]

In reviewing election systems throughout the United States, GAO conducted a detailed analysis of relevant constitutional provisions, federal statutes, and federal court decisions as well as state statutes and regulations on selected election issues. GAO reviewed documents provided by local election officials in 41 jurisdictions in 22 states and met with officials at the Department of State, the Department of Defense, the Federal Election Commission, and the National Conference of State Legislatures. The District of Columbia and state election directors were surveyed. GAO used both mail and telephone surveys and interviews with local election officials to obtain information about the election process that would be representative of the more than 10,000 election jurisdictions in the United States. GAO met with embassy and military personnel abroad and overseas citizens as well as with manufacturers and testers of voting equipment. Additionally, 585 polling places were visited. GAO also reviewed documents provided by state and local election officials, and voting equipment manufacturers and testers, and obtained data on voting methods and election results for the November 2000 election from sources such as Election Data Services, Inc.

### **Conclusions of GAO**

#### ***The Scope of Congressional Authority in Election Administration***

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1. Under the Constitution, states are responsible for the administration of both their own and federal elections. As a result, states and localities incur the costs associated with these activities.
  2. With regard to the administration of federal elections, Congress has constitutional authority over both congressional and presidential elections, which derives primarily from Article I, Section 4, Clause 1, of the Constitution (known as the Elections Clause).
  3. With regard to state and local elections, although Congress does not have general constitutional authority to legislate these elections, a number of constitutional amendments authorize Congress to enforce prohibitions against specific discriminatory practices, such as discrimination on the basis of race or color, in all elections—federal, state, and local.
  4. Historically, Congress has passed legislation related to the administration of both federal and state elections in several major functional areas of the voting process, including (1) timing of federal elections; (2) voter registration (the National Voter Registration Act of 1993); (3) absentee voting (Uniformed and Overseas Citizens Absentee Voting Act of 1986); (4) accessibility provisions for elderly and disabled voters (the Voting Accessibility for the Elderly and Handicapped Act of 1984); and (5) prohibitions against discriminatory voting practices (the Voting Rights Act of 1965).

### ***Main Challenges Faced by Election Systems***

1. *Voter Registration.* Based on GAO's Telephone Survey of Jurisdictions, nearly 46 percent of jurisdictions nationwide had problems associated with the National Voter Registration Act of 1993, including incomplete, illegible, and late applications forwarded to election offices by the motor vehicle authority; and voters who claimed to have registered through the motor vehicle authority but whose applications never arrived in the election office.
2. *Absentee and Early Voting.* About 47 percent of jurisdictions nationwide experienced problems with voters failing to complete applications properly, such as not providing a signature. Additionally, about 39 percent of voters failed to provide their mailing addresses and 44 percent of voters failed to provide their voting residence addresses. Based on the GAO survey, about 2 percent of absentee ballots were disqualified in November 2000. Roughly two-thirds of these absentee ballots were disqualified because ballots arrived late or the accompanying envelopes or forms were not completed properly.
3. *Election Day.* Roughly 57 percent of voting jurisdictions nationwide reported experiencing major problems in conducting the 2000 election. The single biggest challenge was obtaining a sufficient number of poll workers. According to GAO's Mail Survey of Jurisdictions, about 51 percent of jurisdictions nationwide found it somewhat or very difficult to recruit a sufficient number of poll workers. About 30 percent of jurisdictions nationwide reported that the second biggest challenge stemmed from people who appeared at polls expecting to vote on Election Day but were not on the voter registration lists.



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4. *Vote Counting.* About 98 percent of all precincts nationwide count votes using some type of vote-counting equipment, with the remaining precincts using manual tabulations. Not being prepared to anticipate the technical difficulties and human error that affected vote-counting equipment was a challenge faced by precincts. Problems in vote counting are most evident when elections are close and voters have marked their ballots in ways that prevent the vote-counting equipment from reading them. According to the GAO Mail Survey of Jurisdictions, roughly 32 percent of jurisdictions nationwide had no written instructions, from either the state or local jurisdiction, to interpret voter intent, such as marks on paper ballots or partially punched chads on punch cards. The true impact of this problem is not easy to determine because results of GAO's mail survey indicated that only 51 percent of jurisdictions nationwide collected data on undervotes, and about 47 percent of jurisdictions nationwide collected data on overvotes.
  5. *Voting Technology.* In the November 2000 election, precincts used a variety of voting methods—hand-counted paper ballots (2 percent), lever machines (18 percent), punch card (33 percent), optical scan (30 percent), Direct Recording Electronic (DRE) equipment (11 percent), or a mixture of methods (6 percent). GAO found that any voting method could produce complete and accurate counts as long as the technology used is properly maintained and effectively integrated with both voters and election workers and processes. Although about 96 percent of jurisdictions nationwide reported being satisfied with the performance of their voting equipment, this satisfaction was typically based not on hard data measuring performance, but on subjective impressions of election officials. It was estimated that less than half of election jurisdictions collected data on performance in the November 2000 election. None of the jurisdictions that stated their voting equipment was 100 percent accurate were able to provide actual data to substantiate these statements.
  6. *Internet Voting.* There are both social and technological challenges to overcome with Internet voting, including ensuring adequate ballot secrecy and privacy safeguards; providing adequate security measures to guard against intentional intrusions and inadvertent errors; providing equal access to all voters, including persons with disabilities, and making the technology easy to use; and ensuring that the technology is a cost-beneficial alternative to existing voting methods.
  7. *Cost of Replacing Equipment.* Much attention has focused on the potential cost of replacing existing voting equipment, and GAO estimated the cost of purchasing new optical scan or DRE touch screen voting equipment nationwide. Using August 2001 unit cost data, GAO estimated that the costs would range from \$191 million for optical scan equipment that uses a central-count unit in each jurisdiction to about \$3 billion for DRE touch screen units in precincts nationwide. The DRE estimate includes one unit in each precinct that would permit persons who are blind, deaf, or paraplegic to cast a secret ballot without assistance.

## **Criteria for Assessing Election Reform Proposals**

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1. *The Appropriate Role of the Federal Government in Election Reform.* In the past, Congress has enacted legislation focused on facilitating the opportunity for voters to participate in the voting process and ensuring fair and equitable treatment of voters. For example, Congress has prohibited discrimination based on certain voter characteristics, such as race or age, for both state and federal elections. Aside from direct regulation of election administration, Congress may also, in exercising its spending power, encourage state action by attaching conditions to the receipt of federal funds. Various reform proposals differ in the role envisioned for the federal government and can be categorized into four options for federal action. Under the first option, Congress could require the FEC to act as a clearinghouse to gather and disseminate information and to sponsor research on the various types of voting equipment. This approach still leaves the greatest discretion and control to states and local election jurisdictions. Under the second option, the federal government could create a grant program that would make federal funds available to states to purchase and install new voting equipment. Funds would be provided with no “strings” attached regarding which type of equipment the state could buy. Under the third option, the federal government could create a similar grant program, except that strings would be attached. Under the fourth option, the federal government could mandate that only certain types of voting equipment could be used in federal elections.
  2. *Balancing Accessibility and Integrity.* The issue of accessibility might be addressed by reform proposals that attempt to (1) make voter registration less cumbersome, (2) give voters more opportunity to cast absentee or early ballots, or (3) provide voting equipment that all voters can use with ease. Other proposals that could increase the system’s integrity include implementing controls to ensure that voters present identification or proof of eligibility at the polls on Election Day and that all eligible votes are counted.
  3. *Integration of People, Processes, and Technology.* As Congress assesses various reform proposals, it may consider both reforms that address a discrete problem and that address the election system more broadly. For example, successfully registering a new voter, whether the person registers by mail, at the Department of Motor Vehicles, or at the registrar’s office, involves the coordination and integration of (1) voters and registration workers who know and follow the registration process; (2) a process for registering new voters that guides election workers as they supply the correct forms to voters, compile and update voter information, and notify voters of their registration status; and (3) a computer system or other means of creating and updating a voter registration list to ensure an accurate, current list of registered voters. Shortcomings in any of these areas could affect the ability of persons to register, as well as the accuracy of the registration rolls.
  4. *Affordability and Sustainability of Proposed Election Reforms.* Choosing election reform proposals should include a careful assessment of the affordability and sustainability of the reform as well as who is expected to shoulder the costs. Simply making funds available to state and local governments to implement a reform without considering whether all associated lifecycle costs have been

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considered or how the reform is to be sustained could result in having to revisit reform sooner. Along this line, Congress should consider the following: (1) whether the initial outlay for the proposed reform would be affordable to the state and localities; (2) whether the federal government and/or state and local jurisdictions could afford the long-term costs of sustaining the proposed reform over time; and (3) whether all levels of government could commit to implement and sustain the reform.

Because GAO's principal objective was to provide analysis and information regarding election administration in the United States, the reports make no recommendations.

**NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM AND THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND: STATEMENTS ON NATURALIZATION AND VOTER REGISTRATION**

Perhaps surprisingly, the issue of naturalization and voter registration is not, or has not yet become, a topic of considerable discussion within the context of election reform. Specifically, a thorough search of congressional caucuses<sup>61</sup>[46] and civil rights organizations<sup>61</sup>[47] whose constituents include immigrant populations has resulted in only three discussions addressing this topic. Congressman Silvestre Reyes (D-TX), chair of the Congressional Hispanic Caucus, briefly addressed this issue during a hearing on election reform organized by the Congressional Black Caucus. According to Representative Reyes, many first-time voters are Latinos who are newly naturalized citizens and, as such, are especially open to "confusion about the voting process . . ." <sup>61</sup>[48] While not directly addressing the question of voter registration, Representative Reyes does raise the query of voter education—that is, if individuals are to be registered or informed about registering to vote during naturalization or soon thereafter, a necessary next step is to offer them some instruction, perhaps in the form of a class, on correctly navigating the voting process.

A civil rights organization that briefly addresses the question of naturalization and voter registration is the National Asian Pacific American Legal Consortium (NAPALC). According to NAPALC, "many eligible Asian Pacific immigrants and refugees who want to naturalize and then vote have had limited access to effective citizenship assistance."<sup>61</sup>[49] Again, while not directly addressing naturalization and simultaneous or immediate subsequent voter registration of individuals, the critically important question of impediments to obtaining citizenship is raised. This is especially significant in this context since many of these individuals intend to obtain the franchise upon becoming citizens. Thus, another factor in registering naturalized citizens to vote is that many individuals seeking U.S. citizenship and, then, the franchise are hindered in overcoming the mandatory first step that would allow them to become a registered voter.

Another civil rights organization that examines this question is the Asian American Legal Defense and Education Fund (AALDEF). AALDEF argues that:

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in 1996, when anti-immigrant welfare and immigration laws went into effect, millions of immigrants applied to become naturalized citizens, many citing the right to vote as a major reason. While many have gone on to become naturalized US citizens and thus eligible to vote, 1.8 million are stuck in the INS backlog of naturalization applications. In New York, immigrants are forced to wait more than three years for their applications to be processed. The long wait, rising naturalization fees and the mishandling by INS of applications [have] deterred many other immigrants from applying for citizenship.<sup>61</sup>[50]

Raising the same question as NAPALC, AALDEF further illustrates that the issue of registering new U.S. citizens to vote is secondary to first permitting immigrants to become citizens.

## RECENT RELEASES

Organizations and government entities continue to assess voting rights issues and to provide recommendations regarding election technology and administration. At the time of the publication of this report, other reports were being issued, including:

- *America's Modern Poll Tax*, released by the Advancement Project, November 7, 2001. Accessible at <<http://www.advancementproject.org>>, the report coins the term "structural disenfranchisement," the cumulative effect of multiple voting problems and breakdowns. Included are analyses of failures to comply with laws, bureaucratic blunders, indifference, and disregard for voting rights. The Advancement Project is a policy and legal action organization that focuses on education, civic participation, and effective policing.
- *Revitalizing Our Nation's Election System*, released by the Democratic Caucus Special Committee on Election Reform, November 7, 2001. House Minority Leader Richard Gephardt formed the caucus to study election reform. The report, which includes recommendations, is the result of six public hearings held in Philadelphia, San Antonio, Chicago, Jacksonville, Cleveland, and Los Angeles at which election experts, representatives of civil rights organizations and the disability community, and voters discussed American elections.

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## **Election Reform: An Analysis of Proposals and the Commission's Recommendations for Improving America's Election System**

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### **Chapter IV**

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#### **Conclusions and Recommendations**

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The Commission has spent the last nine months studying the problems that occurred in the 2000 election and the ensuing reform efforts. The recommendations that follow have been proposed or supported by the organizations discussed in the preceding section. The Commission believes that their prompt implementation will lay the foundation for a more just and efficient election process.

#### **NATIONAL ELECTION STANDARDS**

In order for the recommendations that follow to be carried out, stronger partnerships must exist between state and federal officials. The diverse manner in which state and local

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governments administer elections results in unclear delineation of authority and accountability when irregularities occur. Thus, federal officials, with input from states, must establish national standards. There are several schools of thought on the extent to which the federal government should be involved in regulating state election systems. One is that there should be federal mandates requiring specific systems and processes, another is that there should be federally established minimum standards, and the third is that any standards established should be strictly voluntary (an approach favored by states).

The Federal Election Commission (FEC) is the regulatory agency originally charged with enforcing the statute that governs the financing of federal elections. Its role has been expanded to include oversight of election administration. The FEC already has the authority to provide a national clearinghouse for the compilation of information and review of procedures with respect to the administration of federal elections. It also has already developed voluntary national standards for voting systems.<sup>61</sup>[1]

**Recommendation 1: Minimum, mandatory, and voluntary national standards must be set.**

The Commission finds that some processes are either at a level of importance, or so subject to violation, that they require federal mandates. However, most provisions only require the establishment of minimum federal standards while allowing states latitude to develop and implement systems tailored to local needs. Thus, Congress should pass legislation authorizing the FEC to obtain input from states in the establishment of minimum national standards for (but not limited to): equipment, error rates, use of absentee ballots, sample ballots, list maintenance (minimum periods for list review and unacceptable error rates), identity verification, ballot counting and tabulation (including what constitutes a valid vote), recounting, voter education efforts, felon disenfranchisement, and responsibilities of states versus counties during an election. For example, counties should maintain responsibility for recruiting and training poll workers according to minimum standards established by the federal government.

Components so critical to the preservation of voting rights that they require mandatory standards include: use of provisional ballots, incorporation of ballot kick-back features in voting equipment, collection and reporting of statistics immediately following an election, provision of language assistance, and assurance of accessibility for both polling places and voting materials. It is worth noting that legislative standards already exist for language and physical accessibility, which must now be translated into state practices. Other election administration procedures not presented here, as well as implementation and tailoring of practices and materials to local voter needs, would be voluntary.

The Commission recognizes that reform must take place swiftly and therefore implores Congress to also set dates and milestones and allocate sufficient funding to the FEC for the development and delivery of national standards for election administration. Finally, federal regulations must specify which agencies have the authority to enforce compliance

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with each of the standards and set forth the administrative procedures and penalties for noncompliance.

## **FUNDING ELECTION REFORM**

Sufficient resources are vital to the implementation of nationwide election reform. States, and in turn counties, are ill equipped to pay costs associated with the implementation of new election standards and systems. Several significant proposals before Congress call for the federal government to fund elections. Election reform funding proposals in Congress range from \$500 million to \$2.5 billion. Proposed bills address such issues as the purchase of new voting equipment, poll worker training, and voter education.<sup>61</sup>[2]

In addition to the amount of funding, a further consideration is who will have the authority to direct how the money is spent once it has been allocated. Views center on what, if any, federal guidelines or mandates should be attached to funding and how the delineation of responsibilities between state and federal governments should be set up. One view holds that federal funds lead to federal mandates. The other perspective is that federal funds for election reform must not impose any requirements on states.

### **Recommendation 2: Sufficient funding must be provided for election reform.**

The Commission urges Congress to pass election reform legislation that is sufficient to address the array of needs of the states. Without adequate funding, there is little hope that future elections will run without as much controversy and error as found in the 2000 election, or that the commitment to reform will be more than rhetoric. With the allocation of funds to public or private entities comes the responsibility of judicious spending. States must continue to control election administration, but as discussed in the preceding recommendation, the federal government should set mandatory minimum guidelines and standards to ensure that baseline requirements for voting are being met and that resources, particularly for voting equipment and registration technologies, are being maximized.

## **STATE ADMINISTRATION OF ELECTIONS**

The problems cited since the 2000 election have evoked questions about election accountability. Reform must take into account who will be responsible for ensuring that the myriad problems that occurred are remedied, that the right to vote is protected for all individuals, and that voters are able to file complaints and obtain assistance. The responsibility for the administration of elections rests largely with the states, which have great discretion to establish election procedures and delegate responsibilities to local government entities. However, someone must be held accountable for ensuring that election procedures are implemented in a nondiscriminatory manner and in compliance with the Voting Rights Act.

The Commission’s review identified three structures or models of state election administration.<sup>61</sup>[3] In two of the models, the secretary of state is the chief election official and as such has a significant role in elections. The models identified are the “Sole” model, in which the secretary of state is the chief election officer; the “Shared” model, in which the secretary shares authority or responsibilities with another state entity; and the “Uninvolved” model, in which the secretary has no role in the election process. The degree of a chief election official’s involvement in the administration of the election process depends on state statutes and regulations. Following is a table showing the administration model employed by each state.

### Models of State Election Administration by Authority of Chief Election Official

Model of election administration	Secretary of state			Number of states
	Appointed	Elected	None	
1. “Sole”: Secretary of state as chief election official is the only official responsible for election administration	OR, TX	AL, AZ, CA, CO, CT, FL, IA, ID, IN, KS, MA, ME, MO, MN, NM, NE, NH, NV, ND, OH, SD, TN, VT, WA, WV, WY		28
2. “Shared”: Secretary of state shares responsibility with other state and local offices	MD, NJ	AR, GA, LA, MI, MS, MT		8
3. “Uninvolved”: Secretary of state has no election duties; another state office houses the chief election official	DE, NY, OK, PA, VA	AK, HI, IL, KY, NC, RI, SC, UT, WI	DC	15
Number of states	9	41	1	51

Source: U.S. Commission on Civil Rights analysis using Federal Election Commission, “The Administrative Structure of State Election Offices,” <<http://www.fec.gov/pages/tech3.htm>>, and other documents.

### Recommendation 3: One central high-ranking official must have sole responsibility and accountability for elections.

To ensure accountability, it is necessary to have one central, high-ranking state official responsible for overseeing the entire election process, and conforming to the national standards referenced earlier. The Commission, therefore, supports the model wherein a chief election official, not necessarily the secretary of state, has sole responsibility for the management of elections, as is currently the case with most states (28). States set up under this model should have a designated staff or office within that of the chief election official, which provides information, guidance, and training to local officials. That office would also manage all local election-related data such as registration files and election statistics. The chief election official should ultimately be accountable for any failures in the system. The goals of such an administrative structure are to ensure accountability, but also non-partisanship. Therefore, chief election officials in each state should be subject to the same ethical standards as the sitting judiciary in the state’s highest court. In addition,



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standards for the behavior of chief election officials could be established as a condition for receipt of federal grant monies.

## **ENFORCEMENT OF VOTING RIGHTS**

The existing voting rights laws, including the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act of 1984, and the National Voter Registration Act of 1993, must be enforced judiciously and strictly. One critical element to voting rights enforcement is on-site monitoring of polling places to ensure that procedures are followed and that every eligible citizen is afforded the right to vote. The current system, whereby the Department of Justice is responsible for monitoring elections on a request basis or based on past violations, has proven inadequate.

### **Recommendation 4: Laws protecting voting rights must be strictly enforced.**

Efforts to strengthen enforcement at the federal and state levels must be made. The right to vote must be given top priority by all election officials. Enforcement of voting rights legislation should become a cooperative effort between all levels of government, the nongovernment sector, and the public.

The federal government's monitoring function before and on Election Day must be expanded. Specifically, the Justice Department should be allocated sufficient funds to initiate a proactive discrimination prevention program. The Justice Department should take steps to identify, before an election, jurisdictions where there are large increases in voter registration, particularly in minority communities, so that it can watch for potential problems and be better prepared to vindicate any voting rights violations that occur. In addition, Congress should provide funding sufficient to enable the Justice Department to (1) purchase appropriate technology and equipment to monitor registration and purge procedures; (2) provide attorneys who would assist voters during the election and thereafter with pursuing allegations of discrimination or irregularities and with activating the complaint/appeals process; and (3) assist local precincts with monitoring on short notice. The federal government should also establish standard operating procedures and requirements for monitors.

## **PROCESSING COMPLAINTS**

For the election process to work there must be government accountability at the federal, state, and local levels for ensuring that the right to vote is not impeded. Election officials should enforce the laws that protect the right to vote by implementing appropriate election systems, as well as procedures for recourse when the system fails. However, neither state nor county entities appear to have procedures for internally monitoring and documenting voting irregularities or complaints. States do not consistently use internal reporting systems or complaints processing to monitor the quality of local elections. Even in states that provide avenues for filing complaints to a state elections office, the

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complaints are usually referred back to the county or local official, who may be responsible for the problem in the first place, for investigation.

While some voters who had complaints in the 2000 election did contact an elections office or official, many did not file complaints with a government entity. In many instances, complaints were filed through community advocacy organizations such as the Lawyers Committee for Civil Rights Under Law, the NAACP, and the ACLU. While these groups receive complaints and represent litigants, they have no federal or state enforcement role. Acceptance of a case usually depends on the issue, the number of complainants involved, the strength of the case, and the likelihood of success.

**Recommendation 5: Procedures for processing complaints must be improved.**

The Commission believes complaint filing and resolution should take place outside the authority of the chief election official's office, or the offices of other state or local election officials, so individuals are not forced to file a grievance with the same entity that committed the alleged violation. Further, it is important that the complaint process not be driven from the local level, so that local election officials can be held accountable for their actions and the actions of their poll workers.

The Commission thus recommends that the U.S. attorney's office in each state be designated as the entity responsible for complaint resolution. Procedures for responding to complaints must be clearly defined to include strategies for investigation, timelines, and guidelines for available remedies. U.S. attorneys should be statutorily required to investigate complaints within an appropriate timeframe and provide written justification to voters for the dismissal of a complaint. Simultaneously, oversight of state procedures to ensure voting fairness should rest with the Department of Justice's Civil Rights Division. The division should perform random administrative audits of precincts' voting procedures to ensure they are in compliance with federal legislation and provide legal consultation to U.S. attorneys as needed.

In addition, to facilitate the complaint process, the instructions for filing a grievance must be readily available and highly publicized. Brochures explaining voters' rights and complaint forms should be made available at all polling sites and on the Internet, and a statewide toll-free complaint hotline should be established in each state. The complaint process itself should be simple enough so as not to discourage voters from utilizing this as an option.

**TRACKING AND REPORTING ELECTION DATA**

States do not have uniform standards to follow for collecting election data. Some states currently provide precinct information immediately after an election, such as analyses of ballots, how many were spoiled, what equipment was used, and how many poll workers were available to assist with problems. Other states compile such information months after an election, while still others do not compile it at all. Lack of information makes it

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hard for individuals to file a complaint, much less take legal action. This issue must be addressed in order for private rights of action to be maximized and voter rights protected, as well as to make states and precincts accountable for their election systems.

**Recommendation 6: Election data must be uniformly tracked and reported.**

The Commission believes that to facilitate both individual rights of action and federally initiated legal challenges, it is necessary that appropriate election data be collected uniformly across precincts in every state. To identify disparities in precinct election systems, states should collect data on such precinct characteristics as the equipment and types of ballots used; the availability of communications systems; number of poll workers; poll worker training programs; polling place hours; ballot availability in non-English languages and Braille; accessibility features used to assist voters with disabilities and non-English speakers; and criteria used for purging names from registration lists. These data should be made available for public use immediately following an election.

From an enforcement standpoint, it is also important that states be required to collect and report data on voter turnout and spoiled ballots (overvotes and undervotes) by county. This will enable both state and federal investigators to identify election irregularities. This is a long-term measure that would make precincts more accountable for ensuring that voting equipment is adequate, ballots are not confusing, and Election Day procedures are implemented appropriately.

As the officer responsible for election administration, the chief election official should be responsible for collecting election data, which should be readily available to constituents. Information about how to obtain data should be available on the Internet and in brochures available at polling places. Standards for the information to be collected should be established at the federal level, through the FEC, so that state-by-state comparisons and analyses can be performed. In addition, there should be a central repository established for all election data to facilitate the public's ability to obtain information.

**CHECKLIST OF ELECTION ACTIVITIES**

State election officials are responsible for year-round activities targeted toward protecting voting rights, as well as ensuring that local officials have appropriate resources to conduct elections efficiently. Local election officials must ensure the smooth operation of voter registration and the polls so that voters, irrespective of race, national origin, ethnicity, gender, age, disability, or religion, have the opportunity to vote and have their vote counted.

**Recommendation 7: Election checklists must be established.**

Because of the many tasks required to ensure the smooth operation of elections, the Commission recommends that state election officials work with the federal government to develop minimum requirements for a standard checklist that would be tailored by

states to accommodate local needs, for every function that should be completed before, during, and after an election. The list would include all tasks that must be performed by state and local election officials, including supervisors of elections and precinct workers. The list must also serve as an accountability tool, requiring specific designation of duties to individuals, and signatures that certify the accomplishment of each task.

A checklist would be useful because it would help ensure that long enough before an election, the necessary systems and procedures were in order. It would enable those responsible to identify problems in advance and correct them. Attaching timelines to actions would also ensure that appropriate steps are taken far enough in advance to correct problems. A checklist would also provide the opportunity for those responsible to verify to local, state, and federal officials, as well as the public, that they have prepared appropriately. A sample checklist for state election officials follows. Other similar lists would be developed for each person who has responsibility in the election process, from top-level election officials to poll workers. The following list is offered as a conceptual model for discussion and is not intended be an exhaustive list of the contents of a checklist.

### Sample Checklist for State Election Officials

<b>Verification of Task Completion</b>	<b>Completion Dates</b>		<b>Signature of Responsible Official (Upon Completion)</b>
	<b>Planned</b>	<b>Actual</b>	
<b>Tasks to be Completed</b>			
<i>General Civil Rights Compliance</i>			
1. Verify that state and local election procedures are in compliance with federal civil and voting rights laws, including Section 5 of the Voting Rights Act of 1965.			

<p>2. Ensure that counties have adequate funding for</p> <ul style="list-style-type: none"> <li>a. required voting technology, including precinct computers to access voter registration lists and additional telephone lines for Election Day communication between the precinct and supervisors of elections;</li> <li>b. appropriate staffing for election precincts;</li> <li>c. additional staff and training required for departments of motor vehicles to provide the additional services mandated by the National Voter Registration Act;</li> <li>d. appropriate voter education on voting processes, including initiatives for first-time voters, and for special needs of residents in their respective counties, and for formats, such as public service announcements and advertisements, that are best designed to reach residents with limited English proficiency or other special needs;</li> <li>e. effective training for poll workers and other election workers and officials, including training on providing required assistance to individuals with special needs.</li> </ul>			
<p>3. Adopt appropriate administrative rules that provide clear guidance and oversight responsibilities for election officials at every level to ensure proper implementation of procedures that protect the voting rights of all citizens.</p>			
<p>4. Work to pass and implement any state laws, funding, and/or administrative rules needed to provide former felons restoration of their civil rights upon satisfaction of their sentences.</p>			
<p>5. Provide technical assistance to local election officials in developing estimates of expected election turnout by precinct.</p>			
<p>6. Establish and clearly publicize statewide complaint procedures.</p>			
<p><b><i>Accessibility Issues</i></b></p>			
<p>7. Establish minimum standards for polling places to ensure that they are fully accessible for individuals with disabilities and that persons with special needs receive proper language assistance in exercising their right to vote.</p>			
<p>8. Study and collect information on the accessibility of polling places throughout the state.</p>			
<p>9. Develop legislation or promulgate administrative rules to require that supervisors of elections consult with people with disabilities, people with limited English proficiency, and their advocacy and affected community groups to ensure that ballots are readily understood by voters; that voting systems are accessible to them; and that poll workers provide adequate assistance.</p>			
<p><b><i>Voter Registration and List Maintenance</i></b></p>			

10. Establish a system for monitoring list maintenance activities to ensure that voter registration lists do not discriminate and are in compliance with the Voting Rights Act. In particular, examine for compliance the methods of and criteria for compiling the exclusion lists, matching algorithms for identifying duplicates, error rates for purge lists, the burden placed on the voter to void the purging of his or her name from these lists, and the method by which private entities are involved with list maintenance.			
11. Provide clear guidance on how supervisors of elections verify the accuracy of information used to purge a voter from the voting file. Require timely notification of persons whose names will be purged from the lists and provision for an appeal process.			
12. Mandate through legislation and/or the appropriate promulgation of administrative rules that the state's department of motor vehicles forward completed voter registration applications to the supervisor of elections office of the new county of residence for the voter.			
13. Ensure that driver's license examiners are trained to inform applicants that any change in their driver's license files does not automatically update their voter registration information or that completion of registration applications does not guarantee the appearance of their names on the voter rolls in their county of residence.			
<b><i>Verification of Voter Registration on Election Day</i></b>			
14. Establish a monitoring system to ensure that polling places have adequate technological support (i.e., sufficient telephone systems or computers) to communicate with election officials or to access data to resolve voter registration issues on Election Day; or work to establish procedures that minimize or eliminate the need to contact election supervisors to resolve voter registration issues on Election Day.			
<b><i>The Use of Affidavits and Provisional Ballots</i></b>			
15. Promulgate appropriate administrative rules regarding the use of affidavits and provisional ballots when eligibility to vote is in question. The rules should provide voters access to provisional ballots in every polling place where the voter executes an appropriate affidavit attesting that he or she is legally entitled to vote on Election Day; and provide the voter an immediate right to appeal the discarding of a ballot prior to the canvassing of the election or counting of ballots.			
16. For votes cast by affidavit or provisional ballot, provide a method of distinguishing such ballots from other ballots; establish a mechanism for verification to capture and annul any fraudulent votes, as well as to notify the voter of the reason for the rejection of the ballot; and provide the voter with an immediate right to appeal the discarding of any ballot or the refusal of any opportunity to vote prior to the final canvassing of the election.			
17. Require each supervisor of elections to submit a report providing detailed information on specific steps that ensure that voters are given adequate notice about opportunities and requirements relating to voting by affidavit or provisional ballot. The report should also include information about the training of poll workers and other election officials to implement these provisions.			
<b><i>Voting Systems, Equipment, and Ballots</i></b>			

18. Work to enact legislation requiring the use of voting technology that maximizes the chances that a voter will have his or her vote count.			
19. Institute an effective monitoring system to ensure uniform implementation of voting systems throughout the state. In particular, the system should ensure that uniformity exists with respect to uncounted or rejected votes throughout the state, for example through handling spoiled ballots appropriately, allowing for a precinct count, or providing an opportunity for the voter to correct his/her ballot.			
20. Ensure through legislation or administrative rulemaking that ballot designs are as uniform and simple as possible for all state residents, including individuals with disabilities and those with language assistance needs.			
<b><i>Training for Election Officials and Poll Workers</i></b>			
21. Monitor technical assistance, education, and training to ensure that supervisors of elections, other election officials, and poll workers are receiving uniform interpretation of election laws.			
22. Provide technical assistance to supervisors of elections to promote uniformity in poll worker training materials and provide guidance on state voting regulations, as well as to provide funding for supplemental training.			
23. Establish certification requirements for poll workers to ensure that poll workers are recently instructed in the basics of election law and procedures and in protecting voters' rights.			
24. Ensure that voter education and training for poll workers and other election workers and officials has information on all appropriate policies and procedures, including, but not limited to, general voting rights, a voter's rights while at the polling place, how the voter should use the selected voting technology, and the proper procedures to resolve issues that arise at the polling place on Election Day.			

## PROVISIONAL BALLOTS

Despite improvements in voter registration management brought on with the National Voter Registration Act of 1993, there were still numerous complaints of erroneous registration lists, names falsely being purged, and delays in adding new names to the lists. In many states, voters are not provided the option to vote via provisional ballot until verification of their voting eligibility is proven, and in other states where this alternative exists, voters are unaware of this right. In fact, the National Voter Registration Act requires states to let voters cast a ballot if they have moved within a jurisdiction in which they were previously registered. However, at the time of the 2000 election, only 19 states used provisional ballots.

### **Recommendation 8: Provisional ballots must be provided to voters on Election Day.**

The Commission has stressed the importance of the right to vote, and certainly that right should not be impeded by avoidable clerical or administrative errors, or confusion about complicated registration procedures. Therefore, the Commission recommends that every state be required to provide provisional ballots to all voters who wish to contest their absence from voter registration lists or who have recently moved to a new jurisdiction. In

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addition, provisional ballots should be available to voters at any polling place, irrespective of the precinct in which the voter resides. Ballots should be sent to the home jurisdiction for tallying. Verification of the eligibility of provisional ballot voters should be performed immediately after an election (within three days, for example) so that either the vote can be counted or the voter can be given the opportunity to appeal the decision not to count his or her ballot.

## **CERTIFICATION OF ELECTION RESULTS**

The early release of election results, compounded by premature speculation by the media, resulted in confusion over the winner and dissuasion of voters who had not yet cast a ballot. Because of the closeness of the 2000 election, the effect was magnified. In addition, many questions arose about the certification of results and whether election officials were to cease counting and recounting ballots. While the media cannot be forced to withhold projections, election officials can be prohibited from making early declarations about an election's outcome, and provisions can be put in place to ensure adequate time to resolve emerging issues that might affect election results.

### **Recommendation 9: A 21-day certification period must be established for election results.**

Congress should establish a mandatory waiting period after elections before certification to include the counting of provisional, absentee, and overseas ballots and to allow for appropriate resolution of any voting discrepancies or disputes (such as those that surfaced with the butterfly ballot in the 2000 Florida election). The Commission recommends that states allow 21 days after an election to perform the necessary administrative and counting duties associated with elections, as well as any necessary recounts. This would also give individuals who have a complaint the opportunity to have some resolution and perhaps cast a post-election ballot, and would allow time for those who cast provisional votes to appeal a decision not to count that vote. State election officials should be prohibited from "calling" an election until such a time when *all* votes have been counted, discrepancies resolved, and voter complaints and appeals addressed. States should develop clear guidelines and/or modify existing regulations for the conduct of election certification, giving consideration to all possible scenarios.

## **DEADLINES FOR VOTER REGISTRATION**

Under the National Voter Registration Act states may impose deadlines for registration and other requirements that can impede voting opportunities. The following table shows that about half the states and the District of Columbia require people to register to vote 29 to 31 days before an election. In 13 states citizens can register 16 to 28 days before an election. Six states permit registration as few as 10 to 15 days before an election. Only six states provide for voter registration at the polls on Election Day and are thereby exempt from the National Voter Registration Act. North Dakota is also exempt—it requires no voter registration.<sup>61</sup>[4]



## Deadlines for Voter Registration by State

Days before an election	States	Number of states
No registration	ND	1
On Election Day	ID, ME, MN, NH, WI, WY	6
10-15	AL, CT, IA, KS, SD, VT	6
16-28	DE, IL, KT, MD, MA, MO, NE, NM, NY, NC, OK, OR, UT	13
29-31	AK, AZ, AR, CA, CO, DC, FL, GA, HI, IN, LA, MI, MS, MT, NJ, NV, OH, PA, RI, SC, TN, TX, VA, WA, WV	25

Source: U.S. Commission on Civil Rights analysis using Federal Election Commission, "Frequently Asked Questions About Voter Registration," <<http://www.fec.gov/pages/FAQVOTERREG.htm>> (Jan. 4, 2001).

### **Recommendation 10: Voter registration deadlines must be set later.**

The Commission supports the recommendations by several working groups that states develop improved registration technologies that would enable real-time statewide registration of voters. Implementation of such a data system would eliminate the need for early registration deadlines and at the same time reduce susceptibility to data entry errors. Deadlines could be set as late as a week before an election and, in less populated states, even later. The Commission recommends that states with early registration deadlines examine the procedures of those states that allow Election Day registration to determine if similar systems can be implemented.

### **UNIFORM VOTING HOURS**

The hours that polls close may be an issue for some voters. Most states—43 states and the District of Columbia—close their polls between 7 and 8 p.m. More variation occurs in the hours polls open. Thirty-eight states and the District of Columbia open the polls between 6 and 7 a.m. Five states have at least some polls that do not open until 8 a.m. Another seven states have some polls that open after 8 a.m.

Opening polls late and closing them early may not be a hardship in states that make Election Day a holiday. A dozen states have a holiday, 10 of which let state employees take off the full day. The two states where some polls open at noon—Rhode Island and Montana—have a holiday and give state employees a day off work so that they can vote.<sup>61</sup>[5]

The needs of voters, and hence polling place hours, vary from district to district based on population characteristics. For example, extended polling hours might be necessary in precincts with large numbers of voters who do shift work, whereas in precincts with large retired populations this might not be as critical. In Alabama, for instance, 29 out of 67 counties open at 8 a.m. and close at 6 p.m. This gives voters only a 10-hour window in which to cast their ballots, two hours less than the 12-hour window most voters get.<sup>61</sup>[6]

## Hours Polls Open and Close by State

Opening hours	Closing hours				Number of states
	6 p.m.	7- 8 p.m.	9 p.m.	Varies across the state	
6 - 7 a.m.	HI, IN,* KY*	AK, AZ, AR, CA, CO, CT, DE, DC, FL,* GA, IL, KS,* LA, MD, MA, MI,* MN, MS, MO, NV, NJ, NM, NC, OH, OK, OR,* PA, SC, TX,* UT, VA, WA, WV, WY	IA, NY		39
By 8 a.m. in all areas		NE,* SD,* TN* (7-8 a.m.); ID* (8 a.m.)		AL (8 a.m. to 6-8 p.m.)	5
After 8 a.m. in some areas		ME, VT (6-10 a.m.); WI (7-9 a.m.); MT, RI (7 a.m.-12n); NH (by 11 a.m.)		ND* (7- 9 a.m. to 7- 9 p.m.)	7
Number of states	3	44	2	2	51

\* States spanning more than one time zone. See “Standard Time Around the World,” <<http://www.circ.Uab.edu/nypldr/1time/standard.htm>> (Feb. 14, 2001).

Source: U.S. Commission on Civil Rights analysis using Federal Election Commission, “Frequently Asked Questions About Election Day and Voting Procedures,” <<http://www.fec.gov/pages/faqvdayeprocedures.htm>>.

Differences in time zones present another challenge, as election results from one part of the country (or even a state in some cases) may be revealed before polls have closed in another region, thereby affecting voter turnout. There are two ways to resolve this issue: either staggered polling hours (i.e., open polls earlier in the West and close them later in the East) or the creation of a national holiday for elections.

### **Recommendation 11: Uniform nationwide voting hours must be established.**

The Commission supports the notion of making Election Day a national holiday, perhaps Veterans Day, to enable more voters to cast a ballot and to solve logistical problems related to hiring poll workers and utilizing accessible buildings. The Commission also supports the creation of uniform polling hours (for example, 8 a.m. to 8 p.m. local time) within states to avoid potential voter confusion, and to simplify the task of election administration.

## **VOTING EQUIPMENT**

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As has been discussed, the allocation of federal funds for election reform evokes questions about what the proper role of the federal government should be and what responsibilities should rest with the states. What is evident, however, is that states have very different needs based on the sophistication of existing election systems and their unique populations. Expecting one voting system to be efficiently used in every state may be unfeasible, but some degree of uniformity and minimum standards are necessary to ensure that states prioritize voting equally and that citizens in every state can participate fully in the process.

**Recommendation 12: Minimum national standards must be set for voting equipment.**

Congress should establish statutory authority for the FEC to develop national voting system standards and operational guidelines in conjunction with representatives from state election administrations. The standards should be broad enough to accommodate the different needs of states. However, at the very least, federal guidelines should dictate that voting systems meet minimum standards. For example, while not requiring states to purchase specific voting machines from specific vendors, standard requirements for how the equipment processes a vote should be specified at the federal level. Thus, regardless of whether touch screen or optical scan voting equipment is used, a voter would receive immediate notice of any circumstance that may lead to his or her vote not being counted and be allowed the opportunity to correct it. The standards should also include lists of acceptable technologies that improve accessibility for language minorities and people with disabilities.

**VOTER IDENTIFICATION**

Credentials that voters must present in order to vote are also determined by the states, which may impose such requirements to guard against fraud. Requirements for identification are viewed by some as necessary to prevent fraud, and by others as a barrier that may intimidate voters. The table below shows whether or not states require and verify a voter's signature to vote. Thirty-nine states and the District of Columbia require a voter's signature, but of these only 16 verify the signatures. Four states that require a person's signature do some verification. Twenty states that require signatures do not verify them.<sup>61</sup>[7]

Twenty-nine states and the District of Columbia do not require identification to vote. For example, a person is asked to state his or her name and address and is allowed to vote once that information is verified against a registration list. Fourteen states require voter identification, although West Virginia requires it only if it is the first election after the voter registered by mail. Another seven states may require voter identification.<sup>61</sup>[8]

Taken together, the table shows that most states require voter signatures, but no voter identification. However, 12 states require both a signature and identification; Virginia and Connecticut require identification, but no signature; and seven states require neither voter identification nor a signature.

### States Requiring Voter Credentials to Vote

Voter's signature		Voter identification required			Number of states
		Yes	May	No	
Required	Verified	AR, DE, FL, LA, MO, SC, TN, WV*		IL, IN, NY, NJ, NY, OH, OR, PA	16
Required	Sometimes verified		MN, TX	CO, MI	4
Required	Not verified	AK, GA, HI, KY	IA, OK, UT	AL, AZ, CA, DC, ID, KS, MD, MS, MT, NE, NM, RI, WA	20
	Not required	CT, VA	MA, WI	ME, NH, NC, ND, SD, VT, WY	11
Number of states		14	7	30	51

\* WV requires identification if it is the first election after the person registered by mail.

Source: U.S. Commission on Civil Rights analysis using Federal Election Commission, "Frequently Asked Questions About Election Day and Voting Procedures," <<http://www.fec.gov/pages/faqvdayprocedures.htm>>.

### **Recommendation 13: Guidelines for voter identification requirements must be set.**

The Commission acknowledges the interest states have in verifying voter identification, either through signature or photo ID. This is an example of when one set of federal guidelines should be developed that all states follow for acceptable forms of identification. It would be incumbent upon the states then to ensure that poll workers follow procedures precisely and uniformly. There was some indication during the 2000 election that minority voters and new citizens were more likely to be asked to show identification than nonminority voters, and in some instances multiple forms of ID were requested. Election officials and poll monitors must ensure that this practice is ceased in future elections and that all voters are asked for the same identification. Further, in the event that an individual cannot present the necessary identification, he or she should be allowed to vote using a provisional ballot until identification and eligibility can be verified.

### **LANGUAGE ACCESSIBILITY**

In 1975, Congress amended the Voting Rights Act to include protection of the voting rights of individuals whose primary language is one other than English.<sup>61</sup>[9] Where written languages are commonly used, jurisdictions are required to provide written election materials in those languages. Written and oral assistance must be made available throughout the voting process, from registration to ballot casting. In short, assistance must be available if 5 percent (or 10,000 individuals) of a jurisdiction's voting-age population are members of a single language minority group and are limited English proficient.<sup>61</sup>[10]

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Several states have also enacted their own laws requiring some form of language assistance during the voting process. Those states include California, New Jersey, Texas, North Dakota, and Colorado. The state provisions range in requirements from simply allowing non-English-speaking voters to have assistance upon request, to the more comprehensive approach of requiring that assistance be available in all jurisdictions where 3 percent of the voting population lacks sufficient English skills.<sup>61</sup>[11]

The Department of Justice's Voting Section has authority to use federal observers to monitor designated areas for compliance with the Voting Rights Act. According to the Section's special counsel, the majority of the jurisdictions monitored in the 2000 election involved language minority issues. For example, observers were monitoring compliance in New York and California for Chinese-speaking voters, in New Jersey for Spanish-speaking voters, and in New Mexico, Arizona, Utah, and Mississippi for American Indian language speakers.<sup>61</sup>[12]

Language assistance requirements are expected to change as a result of the 2000 census, with some jurisdictions being required to provide ballots and other voting materials in additional languages. For example, Los Angeles may have to print ballots in nine languages instead of the seven currently required, and New York City may have to add Korean to its English, Spanish, and Chinese requirements.<sup>61</sup>[13] This would invariably add costs to the existing election budgets, but might also inspire a reevaluation of the voting equipment used. Touch screen voting, for instance, makes it easier to provide multilingual ballots and instructions, and therefore might be a viable alternative for communities with changing populations.

**Recommendation 14: Federal language assistance standards must be set and compliance must be monitored.**

Given the changing demographics of the nation, the Commission recommends that the federal government set minimum requirements for the vehicles used to accommodate the language needs of voters. For example, the federal government must establish proficiency standards for bilingual poll workers and translation services used at both registration and polling sites. In addition, quality assurance procedures must be put in place in states with large language minority populations to ensure that language-appropriate ballots, voting instructions, technical assistance materials, and complaint forms are readily available and free from translation errors or confusing language. Federal funds allocated for election reform should be sufficient to facilitate the implementation of these provisions. In addition, when developing national standards for voting technology, the federal government should include guidelines for the selection of machines that can be readily programmed to meet the needs of diverse populations.

The federal government's role in ensuring language assistance should not be limited to the establishment of standards for the provision of such assistance. It should also carefully monitor and track the success of states in carrying out their mandated responsibilities. In addition to actually implementing language accommodations, states

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should be required to submit regular reports to the Justice Department on the provisions implemented, utilization rates of bilingual materials, and outcomes of their efforts, such as whether more language minority voters participated in the election process or whether bilingual voter education services were effective. The federal government could then track compliance and at the same time provide recommendations to improve the provision of language assistance.

## **ACCESSIBILITY FOR VOTERS WITH DISABILITIES**

In the 2000 election, more than 14 million disabled Americans voted, a number up 3 million from 1996. This promising increase is due, in large part, to the efforts of grassroots organizations. Still, only 40 percent of people with disabilities vote, and they make up one-fourth of all non-voters.<sup>61[14]</sup> It is speculated that people with disabilities do not vote because they have lower registration rates, they have higher rates of isolation and poverty, and most importantly, many polling places are simply not accessible.<sup>61[15]</sup>

According to the Federal Election Commission, the greatest problems with inaccessibility occur in sparsely populated rural areas and mountainous areas where buildings are old and alternative sites are not readily available.<sup>61[16]</sup> The FEC estimates that 20,000 polling places are not accessible to individuals with disabilities, but others estimate that this number is closer to 40,000.<sup>61[17]</sup> Another issue at the forefront of the disability rights movement is that of ballot secrecy. Some 8 million Americans cannot see well enough to read the print of a ballot and another 2 million, due to physical limitations, cannot hold a pen. For these individuals who require assistance in the voting booth, secrecy is not an option.

Several pieces of existing legislation pertain to the accessibility of the election process to people with disabilities, including Section 208 of the Voting Rights Act of 1965,<sup>61[18]</sup> Section 504 of the Rehabilitation Act of 1973,<sup>61[19]</sup> the Voting Accessibility for the Elderly and Handicapped Act of 1984,<sup>61[20]</sup> and Title II of the Americans with Disabilities Act of 1990.<sup>61[21]</sup> Despite federal legislation, a lack of commitment on the part of some state and local election officials to ensure accessibility is still evident. There are many exceptions to compliance with federal legislation, which have become loopholes for state compliance, resulting in large numbers of inaccessible sites. Further, the matter of defining the criteria for polling place accessibility is left to the states, with wide discretion for perceived compliance.

### **Recommendation 15: Uniform standards for accessibility must be set and compliance must be monitored.**

The Commission strongly urges the federal government to develop uniform standards for voting accessibility to improve enforcement of the existing laws. State election officials must be given the responsibility for ensuring that all polling places are accessible to voters with disabilities before the 2002 election. Many election boards cite the costs involved in making polling places accessible as the prohibitive factor. Therefore, the

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Commission recommends that the federal government allocate funds to states specifically to improve accessibility. Funding should be allocated for Braille ballots, TDD devices, wheelchair accessible voting booths, and to run pilot programs that use Internet voting programmed for use by disabled voters. States should also be required to work with the FEC to adopt what are currently voluntary standards for accessibility.

As was discussed in the previous recommendation pertaining to language assistance, the federal government's role in ensuring accessibility should include consistent monitoring and strict enforcement of established standards. It should also track the success of states in carrying out their mandated responsibilities. States should be required to report to the federal government, either through the FEC or a legislatively established panel, the provisions implemented and outcomes of their efforts. The federal government could then track compliance and at the same time provide recommendations to improve accessibility.

## **FELON DISENFRANCHISEMENT**

An estimated 3.9 million Americans have lost the ability to vote because of a felony conviction. Of those, 1.4 million are African American men; 13 percent of the black adult male population are disenfranchised, a rate seven times the national average.<sup>61</sup>[22] The effect of felon disenfranchisement laws on black voters is more profound in some states than others. For example, in Florida, 31 percent of all black men are permanently disenfranchised. In five other states (Iowa, Mississippi, New Mexico, Virginia, and Wyoming) one in four black men is permanently disenfranchised. It is speculated that if the current trend in incarceration continues, 3 in 10 of the next generation of black men can expect to be disenfranchised in their lifetime.<sup>61</sup>[23]

Whether or not felons are allowed to vote is subject to state discretion. The table below summarizes state disenfranchisement policies, as in place during the 2000 election, based on the status of offenders. Every state but two—Maine and Vermont—denied the right to vote to offenders serving a prison sentence. Most states also denied the right to vote to individuals on probation and parole. Another nine states denied the right to vote to all ex-felons, even after they had completed their sentences. Five other states disenfranchised certain ex-felons (for example, after a second felony) or disenfranchised them for a specified period of time after completing their sentences.<sup>61</sup>[24]

In some states a felon's right to vote is restored once the individual has served his or her sentence, but most states have placed restrictions on the ability of ex-prisoners to have their voting rights reinstated. In eight states, a pardon or order from the governor is required; in two states action from the pardon or parole board is necessary.<sup>61</sup>[25] Obtaining a full pardon or other such measure is often difficult,<sup>61</sup>[26] and many convicted felons are not made aware of these states' reinstatement policies.

### **State Felon Disenfranchisement Laws**

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Status	States that disenfranchise	Number of states
Prisoners	AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY	49*
On probation	AL, AK, AZ, AR, CT, DE, FL, GA, IA, KY, MD, MN, MS, MO, NE, NV, NJ, NM, NC, OK, RI, SC, TN, TX, VA, WA, WV, WI, WY	29
On parole	AL, AK, AZ, AR, CA, CO, CT, DE, FL, GA, IA, KY, MD, MI, MS, MO, NE, NV, NJ, NM, NY, NC, OK, RI, SC, TN, TX, VA, WA, WV, WI, WY	32
Ex-felons	AL, AZ (2nd felony), DE (5 years), FL, IA, KY,  MD (2nd felony), MS, NV, NM, TN (pre-1986), VA, WA (pre-1984), WY	14

\* Includes the District of Columbia

Source: The Sentencing Project, "Felony Disenfranchisement Laws in the United States" (updated December 2000), <<http://www.sentencingproject.org/news>>.

After the 2000 election, many state election reform bills included provisions to restore the right to vote to convicted felons. For example, in the state of Connecticut, beginning January 1, 2002, an estimated 36,000 probationers will regain the right to vote. Beginning on March 19, 2001, a simplified process for reinstating voting rights to ex-felons in the state of Kentucky was instituted. New Mexico recently enacted a law restoring the voting rights of ex-felons who have completed all phases of their sentence, including probation and parole. A move to revoke the voting rights of prisoners in Maine was rejected by the state legislature.

Other states, however, have not worked toward protecting the right to vote for felons. For instance, in Florida, a bill designed to restore the voting rights of nonviolent ex-felons a year after serving their sentences and for violent offenders five years after completing their sentences died in committee. In Mississippi, some politicians have proposed expansion of the state's prohibition on voting from 10 types of felony offenses to all felony offenses.

**Recommendation 16: Voting rights of former convicted felons must be restored.**

The Commission believes that to integrate ex-felons fully into society, they should have their voting rights restored. Therefore, all states should follow the lead of the states with existing legislation to reinstate voting privileges to felons upon completion of their sentences and parole. As an exercise to facilitate reintegration into society, individuals on probation should be given the right to vote.



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## **PUBLIC EDUCATION AND OUTREACH**

Many civil rights groups and grassroots organizations have dedicated resources to developing large-scale voter education programs and registration drives. As increased voter turnout indicates, these groups have been somewhat successful in getting voters to the polls, but ensuring that voters know how to correctly cast a vote has proven more elusive. Further, it appears that many voters are not aware of their voting rights. Given the varied voting procedures from state to state, and even among jurisdictions within states, the need for systematic voter education and outreach is critical. State and local governments do not uniformly or consistently make legal or administrative information on the voting process available to the public. Nor do they adequately inform voters of where and how to file complaints or seek redress when complaints go unanswered.

### **Recommendation 17: Requirements for public education must be established.**

Improving voter education and outreach should be a collaborative effort between all levels of government and nongovernment organizations. Congress should give the FEC the authority to develop, with input from the states, minimum standards for acceptable forms of voter education material (such as printed brochures, television and radio announcements, magazine, billboard, and other media advertising, and Internet applications), as well as the frequency with which such material should be disseminated to voters. The federal government should also establish minimum requirements for the production and distribution of material that informs voters of where and how to file complaints of voting rights violations and options that exist for the voter when his or her complaint is ignored.

Information on where one can find copies of voting laws in full should be included in material developed locally, thus empowering the voter to recognize and stand up for his or her rights. Outreach at the local level should also include the circulation of sample ballots before an election and technology demonstrations at public forums. This latter recommendation would serve a dual purpose of enabling voters the opportunity to familiarize themselves with the technology used in their jurisdiction and allowing election officials to detect errors or common usage problems in advance.

## **VOTING RIGHTS FOR NEW AMERICANS**

It is noteworthy that on the test administered by the Immigration and Naturalization Service (INS) to immigrants seeking citizenship the answer to the question, “What is the most important right granted American citizens?” is “the right to vote.”<sup>61[27]</sup> Yet INS’ inability to expeditiously process immigrant applications for citizenship and the lack of registration assistance and outreach provided to these new voters have had a detrimental effect on their ability to participate in the democratic process. Few organizations have addressed this issue, but two have identified problems faced by new Americans: (1) the drawn-out process of citizenship itself hinders the ability to vote, and (2) once citizenship is obtained, little information is provided on how to exercise this right.

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Despite the general lack of attention on voting rights issues directly affecting new Americans, there have been some admirable, if somewhat isolated, efforts. This review uncovered at least one instance in which individuals being sworn in as citizens are provided with a voter registration card. Specifically, in West Palm Beach, Florida (and possibly in other parts of the nation), individuals becoming U.S. citizens are automatically given the opportunity to register to vote.<sup>61</sup>[28] Though difficulty immigrants may encounter in obtaining citizenship may remain, at least in West Palm Beach those who are successful are automatically provided with the opportunity to exercise one of the basic rights of a democracy, the right to vote.

**Recommendation 18: Reform measures must assist new Americans in obtaining the right to vote.**

Facilitating voter registration for new U.S. citizens should be a priority in election reform. Immigration offices should provide assistance to individuals in filling out voter registration material. Another way to promptly register new citizens would be to provide a class on voting, at the end of which everyone would be appropriately registered. At a minimum, INS should provide information on voting in the citizenship application packet. Additionally, INS, recognizing the importance of voting to the democratic process, should take immediate steps to streamline and expedite naturalization so that new citizens may vote sooner.

**CONCLUSION**

The recommendations presented here are based on a review of reports produced by national committees, task forces, and organizations, as well as the Commission's own research. While the Commission encourages initiative and innovation in implementing election reform measures, it cautions both state and federal governments to remain cognizant of and always vigilant in their responsibilities to uphold existing voting rights laws. Any reform measures implemented should be checked against the laws to (1) ensure that they are in compliance, and (2) avoid those that would have a potential outcome that violates existing voting rights statutes. Keeping those parameters in mind, the Commission urges the federal government and the states to push forward swiftly in the election reform process so that by the next election cycle, the problems faced in 2000 will not resurface.

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