



Voting Rights in Florida 2002:

Briefing Summary

August 2002

BACKGROUND

Interviews of advocates, elected officials, civil rights activists, and others conducted by the U.S. Commission on Civil Rights raised concerns that the scope and implementation of Florida's reform measures may not prevent future irregularities like those experienced during the 2000 presidential election. Consistent with these concerns is the fact that the reform measures do not address Commission recommendations to place the burden on election officials to show that a voter is ineligible to vote, do not create automatic restoration of voting rights for former felons, do not enhance voting access for individuals with disabilities or for individuals with limited English proficiency, do not establish uniform poll closing times, and do not completely eliminate the use of private contractors in the central voter list purge process.

The failures described by the Commission in its report *Voting Irregularities in Florida During the 2000 Presidential Election* resulted in investigations, litigation, and reform measures. The Justice Department investigated some of the abuses involving access to the polls by individuals with limited English proficiency and individuals with disabilities. However, other irregularities have not been investigated by the department. In litigation filed by the NAACP, the Lawyers Committee for Civil Rights, and others, Leon, Broward, Duval, Miami-Dade, and Volusia counties have all entered into agreements that will require them to modify voter registration, voter roll maintenance, and polling practices. The agreements, for example, call for county officials to identify and restore the voting rights of people incorrectly removed from voter rolls as a result of errors on the felon lists provided by the state Division of Elections, will make sure that all voters in line at polling places before closing time are allowed to vote, and require written notification and explanation for the rejection of provisional ballots. The state and two counties, Hillsborough and Orange, have yet to settle and they are scheduled to go to trial in August 2002.

It was important for the Commission to revisit Florida to discuss the implementation and likely impact of Florida's reforms. Unfortunately, the Commission found that the governor, the secretary of state, and other state elected officials are no longer willing to discuss voting rights and election reform. Instead, at its briefing on June 20, 2002, in Miami, the Commission heard from state and national organizations, local election officials, policy analysts, and voting rights organizations on the scope and implementation of the election reforms adopted in Florida. The Commission heard testimony on the successes and challenges involved with implementing the reforms including, but not limited to, time constraints and limited financial resources for fulfilling legislative election reform mandates, and concerns that provisions of Florida's election reform law may not comply with the Voting Rights Act.

SUMMARY OF TESTIMONY ON SEVERAL PROVISIONS OF THE FLORIDA ELECTION REFORM ACT OF 2001

Voting Technology

Florida's election reforms decertify punch card ballots, certify touch voting systems, and require every Florida county to use either optical scan or direct record electronic voting systems that have "second chance" technology. While these are welcome reforms, replacing the punch card machines has potential shortcomings. First, local election officials have a limited choice of voting machines certified by the Division of Elections. Second, there is the possibility that a malfunction or error will not be corrected because there is no paper ballot to provide vote verification. Finally, insufficient funding is an obstacle. In Miami-Dade County, the supervisor of elections purchased new voting machines. With approximately 940 precincts, Miami-Dade County spent about \$26,596 per precinct. The total cost for voting machines throughout the county was approximately \$25 million. Under the legislature's formula of \$3,750 per precinct for counties with populations larger than 75,000, Miami-Dade County would likely receive slightly more than \$3 million from the Division of Elections.

At the June 2002 briefing, several panelists discussed the advantages and disadvantages of the new voting systems. Howard Simon, executive director of the ACLU of Florida, noted that while touch screen machines will address many of the problems in accurately recording and counting votes, the technology is not without problems. According to Mr. Simon, touch screen machines did not record 5 percent of the votes cast in a local city council race in Palm Beach County. Mr. Simon, as well as Ion Sancho, the supervisor of elections in Leon County, stressed the need for intensive voter education in the most populous counties of the state because many voters will be using the new technology in September and November for the first time.^{1[1]}

Mr. Sancho praised the state for decertifying the punch card systems but insisted that without poll worker training and voter education, the touch screens systems would also

^{1[1]} Howard Simon, testimony before the U.S. Commission on Civil Rights, Miami, FL, June 20, 2002, transcript, p. 61 (hereafter cited Briefing Transcript).

be problematic.^{2[2]} According to Mr. Sancho, 41 of the 67 counties will be introducing new technology that voters have probably never seen.^{3[3]} Voter education could decrease the number of undervotes by preventing a voter from casting an “emphasis vote,” which occurs when a voter presses the button twice to ensure that his or her vote is registered.^{4[4]} Unfortunately, pressing the touch screen system twice deselects a voter’s ballot choices.

Provisional Ballots

As revealed in the Commission’s report in 2001, eligible and registered voters often unknowingly arrive at incorrect precincts to vote. Accordingly, the Commission recommended that the state of Florida provide an absolute right to a provisional ballot at any polling place so long as the voter executes an appropriate affidavit attesting that he or she is eligible to vote. This recommendation was not adopted in Florida—a failure that may have devastating consequences for thousands of Florida voters. It is estimated that population growth in Florida will result in the creation of approximately 200 new precincts; and congressional redistricting is expected to result in 500 additional precincts being changed. This means that thousands, if not tens of thousands, of voters will have their polling sites changed for the general election. Looking at these changes, many voting rights advocates argue that the legislation should eliminate the precinct restriction for provisional ballots and count provisional ballots regardless of where they are cast.

The foreseeable problems with respect to the provisional ballots were discussed in depth by many of the panelists. Florida Senator Kendrick B. Meek of the 36th District spoke about the efforts of the Florida Conference of Black State Legislators to improve the provisional balloting in light of the overwhelming number of new precincts that will be established in Florida. Senator Meek testified that Florida will create more than 200 new precincts and experience over 500 precinct changes. As a consequence, there is increasing concern that a large number of people will arrive at their usual voting precinct only to be told that they are not going to be able to cast a ballot at that precinct. To address this problem, Senator Meek suggests allowing a ballot cast in the wrong precinct, but cast in the correct county, to be counted the same as if it had been cast in the proper precinct; essentially, the ballot should count for all state, county, and precinct races or issues to the extent that they exist.^{5[5]}

Maintaining Voter Rolls and Proving Eligibility

^{2[2]} Ion Sancho, testimony, Briefing Transcript, p. 102.

^{3[3]} Ibid., p. 130.

^{4[4]} Ibid., pp. 130–131.

^{5[5]} Kendrick B. Meek, testimony, Briefing Transcript, p. 16.

During its investigation following the 2000 presidential election, the Commission identified a lack of state leadership and guidance as primary contributors to problems with purging voter rolls and providing adequate notice to voters of their removal from the voting list.

The Commission recommended that the Division of Elections provide step-by-step instructions to supervisors of elections on verifying the accuracy of any information that may purge a voter from the central voter file. This recommendation has not been adopted. Instead, the reforms attempt to correct problems with purging voter lists by requiring that no voter be removed unless that voter's ineligibility is verified. Verification usually constitutes supervisors' providing written notice to a voter before purging the voter. Unfortunately, a letter is no safeguard that a registered voter is not wrongfully removed from the voter list, since such notices often lack uniformity, do not clearly explain why the voter is in jeopardy of being purged, and often fail to provide information on how the voter can establish voter eligibility. Moreover, some voters may never receive these letters, and such notices continue to place the burden of proving eligibility on the voter.

Charles Elsesser, the project co-director of the Florida Equal Voting Rights Project, spoke specifically about his organization's position on Florida's reforms. Mr. Elsesser believes that the notification-by-letter provision will adversely affect people who move frequently, who are not likely to receive or pick up registered mail, and people who do not arrange for mail to be forwarded from their last address to their new residence. He noted that minorities are much more likely to be renters in the state of Florida and, as such, are much more mobile. Indeed, Mr. Elsesser maintained that mandating removal of voters from the voter rolls because they failed to receive or respond to a letter will disproportionately affect minorities.^{6[6]}

Another significant change in the Florida electoral process is the elimination of the requirement that the Division of Elections contract with a private entity in the central voter file purge process. The Division of Elections currently has a consulting contract with Accenture, a management and technology services organization. The specific purpose, scope, and level of supervision and accountability built into that contract are unknown. Obviously, Florida's legislation does not completely prevent the use of a private contractor nor is it evident that clear and effective guidance is provided to any private entity consulting with election officials. As a result, the same sweeping efforts to identify former felons that wrongfully purged eligible voters from the central voter file can be repeated.

In 2000, Florida contracted with DBT Online to purge the central voter list. The Commission found that the use of a private entity without clear and effective guidance from the highest state levels, coupled with the absence of uniform and reliable verification procedures, resulted in the disenfranchisement of countless eligible voters in 2000.

^{6[6]} Charles Elsesser, testimony, Briefing Transcript, p. 25.

Poll Worker Training

In 2001, the Commission made several recommendations related to poll worker training in its report. These recommendations include, but are not limited to:

- Training poll workers to use available measures that allow properly registered individuals to vote, such as voting by affidavit, provisional balloting, and language and special needs assistance.
- Training poll workers about proper closing procedures to ensure that all voters who arrive at the polls before closing time are permitted to vote.
- Establishing state and county certification requirements for poll workers to ensure that poll workers have recently received instruction on the basics of election law and procedures.
- Allocating state and county funds and resources to train precinct managers and poll workers on providing required assistance to individuals with disabilities and limited-English-proficient voters and to provide sensitivity training to better assist and accommodate people with special needs.

Instead of adopting specific reforms or creating clear and uniform training guidelines, the Florida reforms merely require each county supervisor of elections to ensure that poll workers receive training and education prior to an election.^{7[7]} As of the June briefing, the Division of Elections had not yet published its manual on polling place procedures. When completed, the manual will be incorporated into poll worker training and will contain examples of problems likely to be encountered and the specific procedures for resolving those problems.^{8[8]}

Several witnesses at the briefing discussed the importance of recruiting and training poll workers. Supervisors of elections noted the difficulty of getting poll workers who were capable of doing all aspects of the job. Miriam Oliphant, the supervisor of elections for Broward County, established a partnership with Nova Southeastern University that allowed her to train poll workers.^{9[9]} Mr. Sancho also addressed this issue. He remarked that recommendation number five of the Governor's Select Task Force on Election Procedures, Standards and Technology report *Revitalizing Democracy in Florida* was to recruit more qualified poll workers.^{10[10]} In fact, he noted that this task force made several

^{7[7]} S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 85. The Florida legislature originally created chapter 102.014(4)(a), which required that each "pollworker" received a minimum of six hours of training to be entitled to work at the polls. However, in the "Glitch Bill," S.B. 618, 104th Reg. Sess. (Fla. 2002), the Florida legislature changed this provision to require that poll workers receive only three hours of training (codified at FLA. STAT. ch. 102.014(a) (2002)).

^{8[8]} S.B. 1118, 103 Reg. Sess. (Fla. 2001), p. 8 (codified as amended at FLA. STAT. ch. 98.255 (2002)).

^{9[9]} Miriam Oliphant, testimony, Briefing Transcript, p. 95.

^{10[10]} The Governor's Select Task Force on Election Procedures, Standards and Technology, *Revitalizing Democracy in Florida*, Mar. 1, 2001 <<http://www.collinscenter.org>>. "Recommendation 5: Recruit More Qualified Poll-workers. The Florida Legislature and the county government should increase the numbers of

recommendations for increasing the number of qualified poll workers, including, but not limited to, reassigning government workers to serve as poll workers, moving elections to Saturday, and making elections a holiday.¹¹[11] Many supervisors of elections indicated it was virtually impossible to recruit volunteers given the amount of money that poll workers are paid.

Voter Rights and Responsibilities

Florida reform mandates a 10-point list of voter rights and responsibilities. The list of voter responsibilities encourages the voter to, among other things:

- Be familiar with the candidates and issues.
- Be familiar with the operation of voting equipment.
- Know the location and hours of his or her polling place.
- Check the completed ballot for accuracy.
- Keep his or her current address updated with the office of the supervisor of elections.¹²[12]

These rights and responsibilities will be published and posted inside every voting precinct.

At the briefing, Senator Meek explained that the voter rights and responsibilities sections of the Florida Election Reform Act and the “Glitch Bill” troubled many Florida legislators because they were afraid that some voters would interpret the new rules to imply that if they do not “know” the candidates and the issues, then they did not have the right to vote or that they should not vote.¹³[13] Supervisor of Elections Ion Sancho concurred with this assessment by Senator Meek. Others are still concerned that, for some voters, the wording of the voter responsibilities might still create a psychological deterrent. The impact of these “rights and responsibilities” will ultimately have to be weighed following the voting in the September and November elections in Florida.

qualified poll-workers by, for instance, reassigning government workers who will serve as poll-workers on election days and by encouraging and recognizing private employers and qualified colleges students who do the same.” Ibid., p. 22.

¹¹[11] Ion Sancho, testimony, Briefing Transcript, p. 106.

¹²[12] S.B. 618, 104th Reg. Sess. (Fla. 2002), p. 7 (codified as amended at FLA. STAT. ch. 101.031 (2002)).

¹³[13] Kendrick B. Meek, testimony, Briefing Transcript, p. 63. The Florida Election Reform Act in originally proposing a list of “Voter Responsibilities” stated: “Each registered voter in this state has the responsibility to (1) Study and know candidates and issues. (2) Keep his or her address current. (3) Know his or her polling place and its hours of operation.” S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 82. Upon reflection, the Florida legislature realized that the language was too strong and arguably suggested that individuals did not have the right to vote if they had not met certain mandated responsibilities. Consequently, in the “Glitch Bill,” these and other “voter responsibilities” were modified.

Computer and Telephone Access

As discussed in the Commission's report, some voters in low-income and minority areas stood in line for hours waiting for confirmation of their registration status. Generally, long waits did not exist in high-income areas where poll workers had laptop computers and cell phones to access voter information quickly. Although some supervisors of elections have secured laptop computers and cell phones for use in each precinct on Election Day, it is unlikely that most Florida counties can afford to do likewise. Clearly, inequities in funding may still leave some voters disenfranchised despite reforms aimed at standardizing polling place procedures.

In reference to using computerized methods of verifying voter registration information at polling sites with records located at county supervisor of elections offices, Miriam Oliphant, Broward County's supervisor of elections, conceded that budgetary constraints have prevented her office from obtaining 800 laptop computers.¹⁴[14] However, she indicated that a partnership between her office and Nova Southeastern University will improve telephone communication between local polling sites and Broward County's Supervisor of Elections Office on election days.¹⁵[15] In addition, Ms. Oliphant plans to have technology support staff from the touch screen vending company available at polling sites on election days; they would be responsible for providing assistance with the voting equipment.

Military Absentee Ballots

During the 2000 presidential election, the counting of military ballots became a serious issue. The Florida Election Reform Act of 2001 addresses the counting of mailed absentee military ballots by creating a presumption that the postmark on the envelope containing the absentee ballot is the date the ballot was mailed.¹⁶[16] This presumption can be overcome by the voter's representation of a different mailing date even if the postmark has a different date or a date later than the date of the election. This "witnessed" date gives military ballots a greater opportunity to be counted in future elections than was available during the 2000 election.

Restoration of Former Felon Voting Rights

The Commission recommended that the state of Florida institute automatic restoration of the civil rights of former felons, including voting rights, upon satisfaction of their sentences and probation. The Commission also recommended sufficient funding to promulgate administrative rules in support of this mandate and an executive order to

¹⁴[14] Miriam Oliphant, testimony, Briefing Transcript, p. 95.

¹⁵[15] Ibid.

¹⁶[16] S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 67 (codified as amended at FLA. STAT. ch. 97.0555(2) (2001)).

expedite the clemency process and facilitate the swift restoration of civil rights to those who are so entitled.

Although community-based organizations continue to advocate for the restoration of voting rights for former felons, Florida's reforms do not include this recommendation and thousands of citizens remain disenfranchised. While the Governor's Select Task Force recommended that the issue of restoration of voting rights for former felons be studied, there are no ongoing efforts by the Florida legislature to study this important issue.

During the briefing on June 20, 2002, many panelists spoke of the need to restore former felons' voting rights. Howard Simon of the ACLU, for example, focused his opening statement on this issue and stated that he considered it "the overriding civil rights problem in the state of Florida."¹⁷[17] A report issued in June 2001 by the Florida Parole Commission and the Executive Clemency Board noted that there are 418,000 Floridians who have permanently lost the right to vote.¹⁸[18] Florida is only one of eight states in the nation that permanently disenfranchises former felons.¹⁹[19]

Mr. Simon noted that at the close of the last decade in Florida there were 139,000 former felons and that 107,000 of them were black men.²⁰[20] He added that the 107,000 constituted 9 percent of Florida's voting-age African American population and 15 percent of Florida's voting-age African American male population.²¹[21] Senator Meek maintained that the vast majority of these convicted felons are first-time offenders who pled guilty and were sentenced to probation and never incarcerated.²²[22] Despite the relatively minor nature of most offenders' crimes, Senator Meek noted that Florida has the largest backlog in the nation of individuals who have filled out the necessary paperwork to have their rights restored. Approximately 50,000 individuals in Florida have been on the waiting list for restoration of rights for two to three years.²³[23]

Equal Accessibility for Individuals with Disabilities

The Commission recommended that the Florida legislature enact legislation and promulgate appropriate administrative rules to ensure that the state of Florida complies

¹⁷[17] Howard Simon, testimony, Briefing Transcript, p. 28.

¹⁸[18] *Ibid.*, p. 31.

¹⁹[19] *Ibid.*, p. 30.

²⁰[20] *Ibid.*, p. 32.

²¹[21] *Ibid.*

²²[22] Kendrick B. Meek, testimony, Briefing Transcript, p. 49.

²³[23] *Ibid.*, p. 15.

with the requirements of the Voter Accessibility for the Elderly and Handicapped Act and other applicable federal laws, and that all inaccessible precincts be made accessible through the use of ramps or relocated to accessible buildings.

Under Florida's Accessibility Act, enforcement of which begins in 2004, every polling place must be accessible to voters with disabilities and must allow them to vote without assistance. Disability advocates disagree over whether the legislation provides appropriate enforcement measures against noncompliance because the Accessibility Act provides that it will only be enforced if the federal government appropriates proper funding. Some disability advocates are hopeful that federal election reform will result in federal funding for state voting processes; however, few believe that the level of federal funding will be sufficient to make all polling places accessible.

During the briefing, Dr. Fred Shotz, president of ADA Consulting Associates, a firm that gives advice to government and private businesses on complying with the Americans with Disabilities Act (ADA), spoke about the accessibility of polling places in Florida. He said the state of Florida continues to fail to provide access to polling places for voters with disabilities—a criticism based on the failure of the state to ensure full funding for its Accessibility Act, including funding to make polling place alterations. Dr. Shotz noted that after meeting with an ADA coordinator in Broward County, several noncompliance issues were identified. Problems included parking spaces with inadequate wheelchair access and a cross-slope of a sidewalk between parking spaces and the polling place entrance that was two times the maximum slope allowed by the ADA.²⁴[24]

Accessibility for Limited English Proficiency Voters

The Commission found language accessibility to be a large problem in central and southern Florida and recommended that individuals with special language needs receive proper language assistance, that voting machinery be able to accommodate the language needs of the multilingual population of Florida, and that election supervisors actively recruit bilingual poll workers.

James Auffant, the president of the Hispanic-American Voter's League, and Marliene Bastien, the executive director of the Haitian Women of Miami, testified at the Commission briefing. They reaffirmed the Commission's finding that language accessibility was a large problem during the 2000 presidential election and continues to be a problem in central and southern Florida.²⁵[25] Unfortunately, the Florida Election Reform Act of 2001 fails to address language accessibility issues. Furthermore, it was apparent from the testimony of the witnesses at the Commission briefing that while some counties have shown initiative with regard to language assistance, many counties are slow to implement reform measures that would ensure that limited-English-proficient

²⁴[24] Fred Shotz, testimony, Briefing Transcript, p. 117.

²⁵[25] James Auffant, testimony, Briefing Transcript, pp. 180–87, 210–12; Marliene Bastien, testimony, Briefing Transcript, pp. 189–92.

voters receive proper language assistance.²⁶[26] Mr. Auffant added that the county supervisors of elections in central Florida have taken the position that unless they are notified by the Department of Justice that they are required to provide language assistance, they do not have to take any measures to provide language assistance to limited-English-proficient voters. These counties appear to believe that they are providing language assistance by placing Spanish literature at polling places. Still, this approach disregards the fact that not all voters who speak Spanish are literate.²⁷[27]

In addition, Marliene Bastien testified that even though the election reforms are supposed to be implemented before the next election, with only about 80 days remaining until the next election in Miami, no concrete steps have been taken to remedy the problems that the Haitian American voters faced in the 2000 presidential election.²⁸[28] She explained that the new voting machines in Miami-Dade County have instructions in English and Spanish but do not include Creole.²⁹[29] Ms. Bastien also indicated that while the county is considering adding Creole instructions to the new voting machines, she still sees many potential problems with the new voting machines.³⁰[30] She emphasized that the Miami-Dade County Board of Commissioners passed ordinances in 1999 and 2000 mandating that Creole ballot translation be made available; yet, the new voting machines do not include Creole translation, and it is a major concern for the Haitian American community.³¹[31] Ms. Bastien stated that while the supervisor of elections in Miami-Dade County has repeatedly expressed the need for a lot of work in the Haitian community and his willingness to meet with the community, he has yet to take any action that indicates a willingness to actually address the issue.³²[32] She added that in light of all the problems the voters experienced in the 2000 presidential election, more should be done in preparation for the September election to train and bring information to the voters. Nevertheless, she is concerned that there has not been much effort by the county.³³[33]

The fact that the Florida Election Reform Act does not address language accessibility appears to indicate a lack of sensitivity to the issue and a failure of leadership by state officials. While the witnesses at the Commission briefing testified that the state

²⁶[26] James Auffant, testimony, Briefing Transcript, pp. 214–15.

²⁷[27] Ibid.

²⁸[28] Marliene Bastien, testimony, Briefing Transcript, p. 189.

²⁹[29] Ibid.

³⁰[30] Ibid., p. 190.

³¹[31] Ibid.

³²[32] Ibid., p. 212.

³³[33] Ibid.

government has made little effort to address the problem of language accessibility, some counties have taken the initiative. Local election officials in counties with sufficient budgets are implementing their own measures to accommodate individuals with limited English proficiency. Several counties, including Miami-Dade and Palm Beach counties, are now using new touch screen voting technology that is programmed for use in multiple languages. However, as articulated by Mr. Auffant and Ms. Bastien, county governments can take even more proactive measures to provide proper language assistance, and poll workers who speak Spanish and Creole must be actively recruited.

Voter Education

The Florida Election Reform Act required the Division of Elections to adopt final rules for minimum standards for nonpartisan voter education by March 1, 2002.³⁴[34] The standards must address voter registration, absentee balloting, polling place procedures, voter rights and responsibilities, distribution of sample ballots, and public service announcements. As of the June 2002 briefing, the Division of Elections had not adopted final rules. State Senator Meek and Elliot Minberg with People for the American Way expressed concern that voter education will be left up to individual counties without minimum requirements or suggestions from the state level. This issue of lack of uniformity has not been effectively addressed in Florida.³⁵[35] Senator Meek expressed his belief that while the law mandates that there be a minimum requirement for voter education in Florida, there is little confidence that there is a real minimum requirement in place.³⁶[36] According to Ion Sancho, supervisor of elections for Leon County, the proposed standards are so general and broad that they provide no guidance or direction to local election officials.³⁷[37]

County supervisors of elections must implement minimum voter education standards and conduct nonpartisan education so that voters in their respective counties have a working knowledge of the voting process, and are provided instruction on the proper method of casting a ballot specific to the voting system used in the voter's jurisdiction. Mr. Sancho testified about the absence of accountability for various county voter education programs.³⁸[38] He noted that all any supervisor of elections has to do to receive a portion of the \$5.9 million appropriated for voter education is to submit a plan. However, no plan submitted has been evaluated for effectiveness and, once a plan is received in

³⁴[34] S.B. 1118, 103rd Reg. Sess. (Fla. 2001), p. 80 (codified at FLA. STAT. ch. 98.255 (2001)).

³⁵[35] *Ibid.*, pp. 75–76.

³⁶[36] *Ibid.*, pp. 72–73.

³⁷[37] Ion Sancho, testimony, Briefing Transcript, p. 103.

³⁸[38] *Ibid.*

Tallahassee, election supervisors automatically receive their portion of the voter education money.³⁹[39]

Senator Meek maintained that there is no real voter education plan in place for the 2002 elections and that there is insufficient funding to provide voter education.⁴⁰[40] He said funding for voter education was significantly reduced during the first and second years of the state's implementation of the new election reform law.⁴¹[41] Senator Meek and Elliot Minberg both raised a concern that Florida is implementing a new technology without voter education for the upcoming September and November elections.⁴²[42] Mr. Minberg testified that efforts have not been made to reach out to the people who need voter education.⁴³[43]

The testimony from the witnesses at the Commission briefing reaffirmed the concern of community-based organizations that there will be insufficient time to implement the approved voter education rules before the 2002 election cycle and insufficient funding to execute the education and training. As many civil rights groups fear, training voters to use the new voting machines may be eliminated should funding become an issue.

Another voter education issue addressed in depth at the briefing in Miami, that had not been discussed in great detail in the Commission's report, was the importance of distributing correct sample ballots in eliminating voter error and reducing voter confusion. Commissioner Cruz Reynoso noted that the sample ballot used in at least one county during the 2000 presidential election was different from the actual ballot used at the polling places.⁴⁴[44] Elliot Minberg pointed out that sample ballots were a particular problem in Palm Beach County.⁴⁵[45] Commissioner Reynoso noted that sample ballots help educate voters about candidates and, to some extent, neutralize the advantage that those with money have on those without money.⁴⁶[46]

SUMMARY

³⁹[39] Ibid.

⁴⁰[40] Kendrick B. Meek, testimony, Briefing Transcript, pp. 17–18.

⁴¹[41] Ibid.

⁴²[42] Ibid.

⁴³[43] Ibid., p. 43.

⁴⁴[44] Cruz Reynoso, testimony, Briefing Transcript, pp. 61–63.

⁴⁵[45] Elliot Minberg, testimony, Briefing Transcript, pp. 64–65.

⁴⁶[46] Cruz Reynoso, testimony, Briefing Transcript, p. 55.

Dr. Richard Scher, a professor of political science at the University of Florida, highlighted for the Commission the ultimate goals of meaningful election reform: that every valid voter be allowed to vote, that every vote be accurately recorded, and that every vote be accurately counted.⁴⁷[47] While significant progress has been made following the 2000 election in Florida, a review of the Florida Election Reform Act of 2001 and the June 2002 witness testimony indicate that there are still areas where more must be done if every eligible and registered Florida voter can vote and if every vote will count. Specifically, the testimony highlighted that the reforms do not:

- Remove the burden from the voter to prove registration status.
- Allow automatic restoration of voting rights to former felons who satisfied their sentences.
- Enhance services to give complete access to the voting booth to individuals with disabilities and those with limited English proficiency.
- Establish uniform hours for polling places.

Furthermore, it appears that the reforms do not sufficiently resolve other issues that surfaced during the 2000 presidential election:

- Unless a provisional vote is cast in the voter's correct precinct, the provisional balloting provisions will not count the vote.
- Provisional balloting provisions do not require that a voter be notified that a provisional ballot was cast in the wrong precinct or that the voter be given an opportunity to correct the problem—in short, someone who votes via provisional ballot will never know whether his or her vote was actually counted.
- Purging errors are still likely because the Division of Elections has not provided step-by-step instructions on how supervisors of elections should verify the accuracy of any information that may purge a voter from the central voter file.
- The reforms eliminate the requirement that the Division of Elections contract with a private entity to purge its central voter file; however, a private contractor is still being used.
- There is little information on the structure and guidelines for purging the central voter file.
- Although the Accessibility Act establishes the services each county should provide to individuals with disabilities, it may never be enforced if sufficient funding is not provided.
- Sufficient funding for voter education, poll worker training, and the timely replacement of voting machinery to reduce ballot rejection or spoilage rates is uncertain.
- The absence of a process and timetable for identifying and promptly reinstating voters erroneously purged from voter rolls in 2000 may continue to disenfranchise voters.

EPILOGUE

⁴⁷[47] Richard Scher, testimony, Briefing Transcript, pp. 176–77.

On September 3, 2002, a final settlement of a lawsuit brought by the NAACP, People for the American Way, and other civil rights groups against state and local elections officials and agencies was reached. As mentioned earlier, the lawsuit alleged that African Americans in Florida were denied their right to vote because of faulty election equipment, inadequate and mishandled voter registration procedures, and a flawed system for removing convicted felons and others from voter registration lists. The terms of the settlement include, among other provisions:

- The creation of a new position to monitor Florida's compliance with the National Voter Registration Act, also known as the "motor-voter" law.
- Increased efforts by the Departments of Highway Safety and Motor Vehicles and Children and Families to encourage voter registration at their offices under the motor-voter law.
- Restoration of the names of voters who were improperly removed from the voter lists.
- Reevaluation of the names purged from the voter rolls and the application of more stringent criteria than were used before the 2000 election.
- Increased training on voter registration and polling place procedures for election workers.

After the settlement was reached, Florida Secretary of State Jim Smith and representatives of the plaintiffs issued a statement saying that while they "may not agree about the scope, impact and effect of the problems that surfaced during the 2000 presidential election, they share a common desire to promote the continuation and enhancement of election reform in Florida, which transcends their differences."⁴⁸[48]

Jim Smith replaced former Secretary of State Katherine Harris, who resigned to run for Congress. Mr. Smith previously served as secretary of state from 1987 to 1995 and was attorney general from 1979 to 1987. Smith ran for governor as a Democrat in 1986, before becoming a Republican. Secretary Smith, a lawyer and lobbyist, most recently served as co-chairman of the governor's 21-member select task force appointed to examine problems in Florida's election system following the 2000 presidential election. According to Governor Bush, Smith's experience and leadership will be critical as Florida approaches the 2002 elections.

⁴⁸[48] Edward Walsh, "Settlement Reached in Florida Election Suit," *The Washington Post*, Sept. 4, 2002.