

1 of 1 DOCUMENT

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Legislative Reform: A Call for Election Reform

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... The United States must recognize the failures of its own election system and embrace election reform, from the registration process through the casting and counting of ballots, if it is to successfully recapture its place as the world's leading democracy. ... The States of Florida, Pennsylvania, Colorado, Wisconsin, and Wyoming have hired Accenture to manage or assist them in developing their statewide-centralized voter registration databases. ... Observations of how states and local governments adopt e-voting technology indicate a strong likelihood that any centralization of voter registration will be outsourced to third party non-government entities. ... The dexterity and land level of vision needed to load a ballot into the voting machine to cast a vote may have been increased by the poor design of ballots; such was the case with the infamous Miami-Dade butterfly ballot. ... Application of DRE paperless voting technology in US public elections address some issues of voter privacy while potentially creating others. ... The conundrum presented by paperless DRE voting technology further complicates this transaction of voter choice and privacy in a populous self-governing matrix of nearly 200 million potential participants by not producing a physical audit instrument that is verified by each voter at his or her choice. ... An adaptation of the jury pool system currently used to satisfy the legal requirements of jury trials, which relies upon voter registration lists, could be modified for a new poll worker pool program. ...

TEXT:

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I. Introduction

The United States must recognize the failures of its own election system and embrace election reform, from the registration process through the casting and counting of ballots, if it is to successfully recapture its place as the world's leading democracy. n1 The 2000 Presidential Election brought decade's old systemic problems in our nation's electoral process to the attention of the mainstream media, a majority of voters, policy makers, and international observers. n2 A confluence of the perfect political storm occurred when the margin of electoral votes between the top two candidates was only five votes. n3 In the 2000 election, there were only two other states with more electoral votes than Florida; California with 54 and Texas with 32. n4 Due to the narrow margin separating the candidates in the Florida 2000 Presidential Election, the winner of that electoral rich state was to be declared the next President of the United States. The post-election battle for the White House began in Florida and eventually was decided by the United States Supreme Court. n5 The impact of this Supreme Court decision required an expanded resource allocation for candidates in post

2000 elections to include the retaining of attorneys. n6

[*184] In 2000 the focus was on Florida, but the problems in that state were repeated in many others. n7 That 2000 presidential election was like any other except for one fact: the deciding margin of victory came down to one state with only 537 votes separating the top two candidates for the Presidency of the United States. n8 According to the Caltech-MIT Voting Technology Project report "Voting: What Is, What Could Be," n9 this number is dwarfed by the number of voters disenfranchised - between 4 and 6 million votes were lost in the 2000 election. n10 This high number is attributable to problems with voter registration or polling place practices, as well as with ballot problems. As a consequence, voters received a rude introduction to the reality of elections in the United States: not every vote cast was counted.

In reply to the crisis of the Presidential Election of 2000, the federal government attempted to clarify and codify voting rights in the United States for the 2004 election through the enactment and implementation of the Help America Vote Act (HAVA). n11 This law, however, was in many ways too little too late. n12 HAVA, for the first time in the nation's history, established a role for the federal government in public elections held to fill federal elected offices. The statutory establishment of the U.S. Election Assistance Commission (EAC) in statute did not translate into expedited action on the part of policymakers to appoint the EAC leadership. The four Commissioners, two Democrats, Gracia Hillman and Ray Martinez, and two Republicans, DeForest B. Soaries and Paul DeGregorio, were selected to serve as the first EAC Commission but not sworn into office until December 12, 2003. n13 The EAC Commissioners received only \$ 1.2 million in funding for Fiscal year 2004 and did not move into their own offices until April 1, 2004, seven months prior to the election. n14 The new law included a directive to states to create statewide voter registration databases, identification, and new requirements for first time-registered [*185] voters. n15 To accomplish these objectives the law provided over \$ 3 billion in federal funds to be allocated to states under the guidance of the EAC. n16 However, the EAC lacked the time and funding resources necessary to ensure that the goals of election reform outlined in HAVA were accomplished. n17 EAC's late start did not allow them the time that was necessary to develop federal standards that would guide the states in the use of the funds made available. In particular, the Technical Guidelines Development Committee (TGDC), a technical advisory body to the EAC charged with the development of voluntary standards n18 for voting technology, met for the first time on July 9, 2004. n19

This article will explore two major components of our nation's election system that are in need of significant reform: voter registration and casting of ballots. In order for our nation to reform its election process, more must be done than hiring lawyers to fight over the counting of ballots and voters' rights to cast ballots during early voting and on election day. We must have some consensus on the source of the problems and their potential solutions.

II. Voter Registration

It is known that the first Tuesday after the first Monday in November is Election Day. On November 2, 2004, millions of dollars, thousands of work hours, tens of thousands of workers and the very best technology and skills available should have been devoted to implementing a democratic process born in the eighteenth century. Unfortunately, that was not the case. Poor administration of the voter registration lists, inadequate training of election workers, poorly implemented third party registration efforts, abuse of public access to voter registration data, and bogus felony purge lists, all contributed to the disenfranchisement of millions of American citizens in 2004. n20

[*186] The first step in participating as a voter in an election held in the United States is voter registration. North Dakota is the only state that does not have voter registration. n21 There are six states with same-day voter registration: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming. n22 All other states use varying methods to provide for and authenticate voter registration for citizen participation in public elections.

The record of events regarding voter registration from Election Day 2000 and 2004 are a direct result of the process and motives that established voter registration in this nation. Voter registration is not, nor has it ever been, intended to facilitate voting. It was designed to deny suffrage to those groups that were deemed not to be worthy of equal

participation in the democratic process. From generation to generation the list of the outcasts of American Democracy included women, new citizens, minorities, young adults, first time voters, poor people and immigrants. n23

The Election Incident Reporting ("EIRS") system used by the Election Protection Coalition registered 14,813 incidents from their trained field staff or voters that encompassed registration-related problems during early voting and on Election Day. n24 North Dakota is the only state that listed zero registration-related problems during either the early voting period or on November 2, 2004, attributed to their lack of a voter registration system. n25 Every other state had registration related problems recorded in the EIRS, including those six states with same day registration. n26 The rosters of registration problems that occurred during the last voting season are numerous, but the list should not be considered all-inclusive. The EIRS gives us a composite of events that provide researchers with data that requires further investigation, election administrators with feedback on their election administration efforts, and provides civil liberties and voting rights advocates, and the public with some guidance on working to make the one-person-one-vote rule a reality. The Electronic Privacy Information Center (EPIC) identified five general problem areas surrounding voter registration during the elections. These problems were confirmed by many [*187] of the reports recorded on the EIRS. The problems included: poor administration of voter registration, uncertainty about voter registration status, third party voter registration efforts, an invalid Department of Motor Vehicle voter registration process, and a bogus voter exclusion list. n27

A. Poor Administration of Voter Registration

1. Multiple Registrations

There may be a number of contributing factors to the existence of multiple registrations, not all of which can be associated with voter fraud. Citizens are not clear on the rules of voter registration that govern their participation in public elections. Even when voters present themselves to vote and have a current voter registration document, they can be refused the opportunity to vote. n28 A number of comments on the EIRS expressed confusion on the part of voters regarding the rules that govern voter registration in several key areas: changes of address within or among counties and/or states, n29 registration deadlines prior to elections, n30 rules that bar registration, i.e. felony convictions or college student enrollment, n31 requirements for possession of voter registration document, n32 removal from registration rolls between primary and general elections in 2004, n33 and routine voter participation requirements for continued registration. n34 In [*188] addition to these questions, voters have a wealth of experience in this and past elections where the voter registration administration has failed them.

These factors contribute to voters' lack of confidence in the proper management and recording of their voter registration applications, which in turn may lead to multiple registration attempts in the hope of having at least one single successful registration. n35 Therefore, multiple registrations should not always be seen as proof of intent to cast more than one ballot in an election. Election administrators should investigate post election records for actual incidents of multiple votes in a single federal election. This would be an expected course of action if the volume of news items prior to the November 2 election were any indication of the level of concern related to this issue. n36 There may be other reasons for multiple registrations, including poor record keeping on the part of the state or local governments. Such incidents occurred in Marion County, Indiana and Davidson County, Tennessee. n37 Unfortunately, the subject of voter fraud and charges of fictitious registration prior to the election fueled efforts to challenge voters and their ballots in many states. However, in the wake of the election, have there been any efforts to pursue actual cases of multiple votes being cast in the November 2, 2004 election?

Insufficient transparency of the voter registration process prevents further scrutiny of certain types of voter registration management issues. One challenge that is as old as public elections includes multiple inter and intra-state voter registrations. In 2004, it was discovered that over 11,000 voters, some of them deceased, were registered in more than one county in Indiana. n38 Although voting more than once in state and federal elections is a felony, few can expect to be caught because states and the federal governments rarely investigate charges of multiple voting across state lines. n39

Several regional newspapers took it upon themselves to check for multiple registrations on voting rolls across state lines. The Orlando Sentinel reported that in their investigation they found more than 68,000 [*189] cases of voters with the same names and dates of birth registered in two states Florida, Georgia, and North and South Carolina. n40 The Charlotte Observer found that as many as 60,000 voters may be registered in both North Carolina and South Carolina. n41 The Kansas City Star provided proof in its report of previous elections where some voters had cast multiple ballots in the same federal election in both Kansas and Missouri. n42

In addition to these problems referenced, there was also the disturbing issue of gender bias that was evident in a number of complaints regarding Election Day and voter registration experiences of women. Female voters reported that they had to use provisional ballots while men with similar situations were allowed to vote using the usual method. n43 In addition, there were a number of EIRS reports of women facing problems due to marriages and divorces because of name and address changes on their identification that were not reflected in their voter registration documentation. n44

2. Errors on Voter Rolls and Voter Registration Documents

In October of 2004 it was reported that four Ohio counties had voter registration numbers that exceeded the population of voting age persons living within their boundaries, based on 2003 U.S. Census population estimates. n45 A similar report came out of Lincoln County, West Virginia, where 105% voter registration was reported. n46

Despite errors on public voter registration rolls, Election Day poll workers and election administrators treated their voting eligibility records as if they were flawless. The Maricopa County, Arizona election office sent 8,800 residents election notification cards listing wrong polling places in the wrong cities. n47 One election official, following last year's primary election in Pulaski County, Arkansas, speculated on the reason why so [*190] many voters went to the wrong polling place; he concluded that it could have been based on incorrect information provided to voters on voter registration documents sent to them by the county. n48

The errors found in voter registration records could occur at any point in the process due to factors such as mistaken data entry, poor handwriting by the applicant, or through omissions. It is important for states to develop data quality control protocols to improve the accuracy and reliability of voter registration records.

3. Problems with Voter Registration Forms

The key to free and fair elections may lie in the design of voter registration forms. Voter registration could greatly benefit from the expert resources of the field of human factors, which specializes in usability - the ability of everyone to use the voting systems easily and effectively. Among the registration form problems faced by voters in 2004 who wished to register to vote included state applications that were cluttered with text, asked the same question multiple times, and challenged a voter's right to privacy while the form was in transit to the registrar's office.

Voters in the state of Massachusetts faced the daunting challenge of out-dated registration forms. The forms lacked an entry for a personal identification number, a requirement by the Help America Vote Act. n49 There were charges made that New Hampshire's same-day voter registration process was too restrictive due to the language used in the sworn affidavit's requirements. n50 The New Hampshire process required getting a New Hampshire state drivers license and registration of a voter's motor vehicle within 60 days of registering to vote. n51

In Washington State, voters faced disenfranchisement in the primary election because they did not mark a box on the form to attest that they were U.S. citizens. n52 Fortunately for the residents, election administrators decided to allow the voters to cast ballots in the November Election. Unfortunately, Florida's election officials worked aggressively not to include applications on the voter rolls that were incomplete, even in cases where the information may have been requested and provided elsewhere on [*191] the form.

Additional obstacles include voter intimidation and discouragement. Some statements found on state voter

registration forms may intimidate or frighten new voters. For example, the State of Florida warns in an oath found adjacent to the signature line that applicants face a third degree felony and a \$ 5,000 fine for providing inaccurate information. n53

4. Conflict of Interest Questions and Voter Registration Administrators

The rules and administration of voter registration on the state level may fall to the office of the Secretary of State, Attorney General, a special board, or a commission. In 2004, There were two note-worthy examples of partisan activity on the part of election officials that also control voter registration rules. The Secretary of State for Missouri Matt Blunt was on the November 2, 2004 ballot competing for the office of governor of that state. Although he may not have used his position to secure his victory for that office, the appearance of a conflict of interest in fulfilling his public responsibility to conduct a fair election and his personal interest in the outcome of his own race should have been obvious. n54 In addition to this situation, Ohio voters had to contend with their Secretary of State for Ohio, J. Kenneth Blackwell, holding the position of co-chair of the Ohio 2004 Bush Re-Election Campaign. n55 There appeared to be a clear conflict of interest when he ruled that any voter registration form that was not produced on 80-pound stock paper would be invalid. n56 Many new voter registration efforts targeted urban and minority communities, which were expected to heavily favor John Kerry, the Democratic nominee for president. Secretary Blackwell reportedly also had a role to play in the first Bush Presidential Campaign as his "principal electoral system advisor," who was sent to Florida during the chaotic end of the Presidential general election in 2000. n57

[*192]

5. Voting Roll Purges

The most vulnerable and marginalized in our society are the canaries in the coalmine of the American democratic experience. This group includes those who are poor, minorities, immigrants, young people, or the incarcerated. n58 They are the first to be denied basic rights and civil liberties and therefore are the best indicators of the health of our system of government. n59

There are approximately 4.7 million Americans who are prevented from voting because of a felony conviction. n60 A report compiled by the ACLU, the Right to Vote Coalition, and Demos entitled "Purged!," released in October of last year, reviewed individual state felony voter roll purge practices. n61 In 2000, Florida purchased a list of 8,000 names from a data broker acquired by ChoicePoint prior to the election. The list incorrectly identified legal voters as having felony convictions in the state of Texas, denying them their right to vote in Florida. n62 This was only one of the many errors discovered on the purge list used in that, and other, states during the 2000 Presidential election.

The disparate conditions of voter roll purges based on felony convictions, especially those that occurred outside of the states in question, have wrongfully disenfranchised thousands of voters. In 2004 Florida produced an inaccurate felony purge list that included thousands of state residents, most of which were African American, who had their voting rights restored. n63 A number of problems in the method and means of compiling purge lists contributed to the disparity in voting roll purges among the states and disenfranchisement of voters. Voter roll purges often lack legislative standards, routine checks to ensure data quality and accuracy, codification of minimum criteria for purges and notice requirements to those voters targeted for removal from voting rolls. n64

Other voting list purging efforts by state and local government were done in the period between presidential election years. n65 The rolls of [*193] inactive voters, those who have not voted within a certain time frame, also face the threat of disenfranchisement. Congressman William Lacy Clay of Missouri recounted in an editorial how Missouri's U.S. Senator Christopher Bond found that he was not listed on the active voter rolls when he went to vote in the state's primary election last year. n66

Voter roll purges will remain politically controversial. Recently, complaints came from Alaskan Republicans who

had concerns following a purge of voting rolls that reflected a decline in application numbers for all political parties except for the Republican Moderate Party, which actually reflected an increase in their numbers. n67

B. Uncertainty About Voter Registration Status

Voters in many states faced the prospects of being denied the right to vote because they were unsure if their voter registration efforts had been successful. Several callers with voter registration questions or problems recorded in the EIRS system indicated that they had registered, but had not received voter registration documents. On Election Day, many who had voted in the past and assumed that their registration was still valid, learned that it was not due to a lack of voting activity. n68

Many college and university students who intended to participate in last year's presidential election were blocked by local and state administration rules from registering to vote. Students at Prairie View A&M University, a historically black college, had their right to vote challenged. n69 They were eventually successful in having their right to register and vote restored, but other students were not as fortunate. Some students at the College of William and Mary discovered on Election Day that their voter registration applications had not been processed and they were barred from voting. n70

A survey of college voter registration policies sponsored by Harvard's Institute of Politics and the Chronicle of Higher Education found that only a sixth of the 249 responding institutions were in full compliance with the [*194] voter-registration provision of the Higher Education Act. n71 Two educational associations, the National Association of Independent Colleges and Universities and American Association of Collegiate Registrars and Admissions Officers, criticized the study and one asked for a second survey. The survey director countered that the second survey would be inaccurate because at that point the colleges knew what was required to be in compliance with the Higher Education Act and thus would respond differently to the survey. n72 A follow-up to the question of whether institutions did in fact conduct effective student registration efforts and a survey of student voting experiences may be in order.

Some election administrators used their office to make decisions that favored voters' rights. Secretary of State for Colorado, Donetta Davidson, allowed voters who believed that they had registered, but could not be found on voter registration rolls, to vote once they completed an emergency voter registration. n73 The power to provide a remedy to the millions of voters who face disenfranchisement is in the hands of state election officials. If exercised in a timely and prudent way it could end much of the second-guessing done by Election Day workers in deciding who may or may not vote.

C. Third Party Voter Registration Efforts

The 2004 election brought numerous third party voter registration efforts. n74 These included many registrations where voters did not go directly to a state or local voter registrars' office to file an application to participate in last year's primaries or general election. Millions of voters went to the polls on Election Day, confident that their voter registration through churches, mosques, synagogues and community and civic groups was valid. n75

The EIRS, however, collected many reports of voters who had fallen victim to third party voter registration errors. Recorded registration problems include voter registrations not being processed and no voting registration document being sent to voters by state and local election officials. n76

[*195] There were also reports of groups that paid for each completed voter registration application, resulting in bogus registrations by individuals seeking compensation from the sponsors of the registration effort. n77 In Colorado, this practice prompted the prosecution of a former employee of a voter registration drive. The employee was paid \$ 3 for every Democrat or unaffiliated voter he registered, and was found to have forged nearly fifty voter registration cards. n78 Some county and state voter registration administration officials require that all completed voter registration forms obtained by groups be turned into their offices, including forms that may clearly be invalid. n79

A former employee of Voter Outreach of America - a group "hired" by the Republican National Committee to conduct voter registration in Nevada, West Virginia and Colorado - told the authorities and the media that he discarded voter registration forms signed by Democrats. n80 In another case, a Minnesota employee of the Association of Community Organizations for Reform Now (ACORN) was found with approximately 300 completed voter registration forms that had not been sent in to the government. n81

Another source of invalid registration efforts on Election Day was the collective efforts of state Departments of Motor Vehicles ("DMV"). Voters registered complaints about the poor performance of DMV offices in seeing that voter registration applications were processed properly. n82 Disenfranchisement on Election Day can be attributed to the vagaries of voter registration deadlines, mismanagement of paid voter registration efforts, and improper processing at state motor vehicle department voter registration applications.

[*196]

D. The Federal Government's Two Cents on Voter Registration

Voter registration efforts attracted the attention of several federal agencies. The Department of Homeland Security found its mission stretched to include securing the exterior of new citizen swearing-in events from non-partisan voter registration efforts. n83 The agency was pressed into service again when the Sheriff of Alamance County, North Carolina, submitted a list of registered Latino voters to the Department of Homeland Security's Immigration and Customs Enforcement office to cross check their immigration status. n84 The U.S. Office of Special Counsel issued a warning to labor unions and other groups that they would "have a hard time legally conducting voter registration activities on federal grounds once they endorsed a candidate for partisan political office." n85

Congress was not silent on the issue of voter registration efforts target the poor or marginalized citizens in the United States. U.S. Senator Christopher Bond was reported to have allowed an amendment onto a Senate appropriations bill that would ban nonpartisan voter registration efforts at public housing developments throughout the United States. n86

Some federally sponsored voter registration projects were encouraged. The Department of Defense was reported to have engaged in an aggressive grassroots voter registration effort targeting men and women in the armed forces. The Army reported taking "extra steps" to reach and encourage the participation of active duty personnel in last year's election. n87 One U.S. forces Korea commander was noted to have incorporated voter registration programs into the existing "Personal Asset Inventory" program, a global census of soldiers stationed worldwide, ensuring that each soldier would have the opportunity to vote. n88

If state and federal government agencies engage in policies that enfranchise certain citizens while other government agency decisions disenfranchise certain other groups of citizens this is in conflict with the principles of democracy and popular self-governance. The aggregate effect [*197] of the actions taken by local, state, and national government agencies on the surface may give the impression that their efforts were intended to be partisan. This impression, if not justified by impartial and unbiased impacts in the overall skew of benefits and detriments to each party or candidate's participation, then they have injured democracy by raising the specter of machine politics to a new level never experience in this nation.

E. Invalid Voter Registrations

Local and state election administration officials were faced with a strain on their limited resources when they had to determine which voter registration applications were authentic from those that were bogus. The Chicago Board of Elections used handwriting analysis to determine that between 1,000 and 2,000 voter registrations from one ward were from nonexistent people or addresses, or vacant lots. n89 Hiring a handwriting analyst, however, is not a normal voter registration budget item.

One dilemma faced by election officials occurs when a legitimate voter has the same name as a celebrity, a person of notoriety, or a fictional character. However, sometimes it is obvious that a name is fake, such as when the name "Jive Turkey, Sr.," was given to Cuyahoga County Ohio election officials. n90

Another problem that local and state election officials struggle with is the residency requirement of voter registration. Most major, midsize, and small cities have a homeless population, and there should be a means of ensuring their eligibility to vote even though they have no fixed permanent address. Some homeless individuals will select an area where they feel safe and may live within that limited geographic area for years. The State of Tennessee provides one model for homeless voter enrollment. Tennessee's voting law does not require that a person have a fixed building as an address as a requirement to register to vote. "However, a homeless person must give a description of the location of his habitation which is sufficient for the registrar to determine the voter's precinct, as voters may vote only in the precincts in which they reside." n91

There should be appropriate oversight of efforts to register the homeless when done in conjunction with providing them vital services. [*198] There should be no condition of benefits associated with the act of registering to vote. The choice to register and participate in a public election should clearly be that of the individual. There should also be adequate oversight to ensure that homeless people who wish to participate in the election process are free from intimidation and harm as they exercise their constitutional rights.

F. Voter Registration and Privacy

According to the report "Voter Privacy in the Digital Age," prepared by the California Voter Foundation, there are approximately 215 million eligible voters in the United States and only 144 million of them are registered to vote. n92 It is commonly known that voter registration rolls are used to select jury pools for local, state and federal court cases. However, most voters do not know that the voter registration data is also considered public information in most states and is routinely shared with political parties, candidates and for non-election related purposes.

Unfortunately, in 2004 it was made very evident that not all solicitations for registration information are to seek out votes. Registered voters reported getting unsolicited calls from individuals who said that they needed their social security numbers to confirm their registration. n93 The information already publicly available on voter registration records coupled with divulging social security numbers presented a ready source for identity thieves.

Others may have used publicly available voter registration information to target voters for suppression and intimidation activities. Reports out of Florida just prior to the November 2 election indicated that voters had to contend with their party affiliation being changed from Democrat to Republican and strangers offering to pick up completed absentee ballots. n94

States are now hiring private companies to build their state's central voter registration database. n95 This move to computerize voter registration lists has further eroded the privacy of voters; hundreds of millions of [*199] personally identifiable election records now can be placed on disk or sent via electronic communication to distant locations within seconds. One data broker, Accenture, is making progress in picking up contracts. The States of Florida, Pennsylvania, Colorado, Wisconsin, and Wyoming have hired Accenture to manage or assist them in developing their statewide-centralized voter registration databases. n96 Several states, including Alabama, Kansas (former Accenture client), Mississippi, Maryland, Missouri, New Hampshire, New Jersey, and Virginia, have issued requests for proposals or are in the final stages of selecting a vendor to manage their statewide voter registration databases. n97 Arkansas, Nebraska, New Mexico, and Texas have elected to select voting equipment vendors to manage the development of their statewide-centralized voter registration databases. n98 Arizona, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Oklahoma, South Carolina, South Dakota, Utah, Vermont, Washington, and West Virginia have existing databases or have decided to develop their centralized voter registration databases in-house. n99 The few states not mentioned have selected companies, which are not major contractors in any of the mentioned categories to manage their systems. n100

In 2000, the state of Florida purchased a list of 8,000 names from a data broker acquired by ChoicePoint prior to the election. This list incorrectly identified legal voters as having felony convictions in the state of Texas. n101 Before the adoption of any centralized voter registration rolls, the media, policymakers and the public should carefully investigate its implementation. Observations of how states and local governments adopt e-voting technology indicate a strong likelihood that any centralization of voter registration will be outsourced to third party non-government entities. If this prediction proves true, data management companies like ChoicePoint and Accenture may be the vendors of choice to manage voting records. n102

Another consideration that voters, public policymakers and the media [*200] should consider is how these centralized lists are used and who will have access to them. It was reported that outgoing Attorney General John Ashcroft, following the attacks on September 11, 2001, ordered that all government records, including voter registration lists, be checked for links to terrorism. He specifically prohibited the FBI, however, from examining background checks on gun purchasers. n103 Historically, there is little resistance or sensitivity to how voter registration lists are managed or who might have access to the lists for non-voting related purposes.

Regardless of the means for developing and maintaining voter registration rolls, it is important that state and local governments follow the rules of the Fair Credit Reporting Act (FCRA), "enacted in 1970 to promote accuracy, fairness, and the privacy of personal information assembled by Credit Reporting Agencies (CRAs)." n104 These rules flow directly from the principles of fair information practices, which are intended to ensure privacy and fairness to consumers.

Some states are already looking at the threat posed by identity theft due to public access to voting records. A task force formed by California's Secretary of State urged the state legislature to strengthen the laws that protect voter privacy. n105 Also, Senator Hugh Farley of New York introduced legislation that would direct state election officials not to share access to voter registration records. n106

G. What Lays Ahead for Voter Registration

Misinformation and disinformation efforts continued to be waged against minority and immigrant communities. In 2004 they were presented in the form of leaflets that advertised that the election was to be held on November 3, 2004. n107

We are at a point in American history when people are not sure that their vote counts. Whether the candidate wins or loses, the victor, as a rule, looks at the numbers of voters who did not vote for them, but today we are looking at a political era that will end this practice. If the voter registration [*201] process continues to self-select who will be allowed to register, then democracy does not exist.

If local and state governments continue to allow public access to voting records with the application of computing technology and data-mining, these efforts will be more strategically employed to exclude unwanted voters. The privacy of voters should not be compromised for political expedience or convenience. The single greatest problem challenging the privacy of voters exists in states that have or are in the process of moving to a statewide-centralized voter registration list. How it will affect the ability of voters to participate in the public election process is not clear, nor is it apparent that states will be able to manage these databases without contractors. Will voters be given sufficient due process to correct inaccurate voter registration information? Will someone be accountable for the accuracy of voter rolls even those managed by third parties or contractors? Will voters be protected from identity theft? Will their registration information be used for purposes other than for which it was collected? The answers to these and many other questions should and must be answered prior to the transition of the maintenance of voting roles to third parties.

Accomplishing voter registration reform is fundamental to the improvement of the entire election system. This reform should not be done as a means of enfranchising certain populations of voters while disenfranchising others.

H. Reform Voter Registration Recommendations

Taking into account the various intricacies of the registration system can help guard against unfair voting and registration processes. The following are a list of recommended reforms to the voter registration process:

- . Create uniform voter registration rules, including the Fair Information Practices Act.
- . Implement uniform privacy protection for registered voters with strict opt-in rules for the sharing of a limited amount of information on voter registration with third parties.
- . Block the use of centralized voter registration databases until they can be managed and maintained solely by county and state resources, with priority to sufficient security measures to protect the privacy of registered voters.
- . Provide a DMV voter registration receipt that can be used as proof of registration to be used on Election Day as a registration [*202] document.
- . Prevent an expansion in ID requirements for voter registration and voting.
- . Institute national same day voter registration.
- . Create a lifetime right to vote once voter registration is accomplished.
- . Restore full voting rights to those convicted of felonies that have completed their sentence.
- . Allow homeless people to provide a general description of the geographic area that defines their residence, allowing a mail address of their choosing.

III. The Final Step in the Voting Process for Voters: Casting a Ballot

A. The Secret Ballot

Federal and state courts and legislatures have historically taken measures to protect the right of voters to vote their conscience without fear of retaliation. United States law requires "All votes for Representatives in Congress must be by written or printed ballot, or voting machine, the use of which has been duly authorized by the State law; and all votes received or recorded contrary to this section shall be of no effect." n108 The statute defines "ballot" in election provisions to mean "a method which would insure, so far as possible, the secrecy and the integrity of the popular vote," and interprets the Congressional requirement that elections be conducted by written or printed ballots or by machine to include the notion that ballots must be secret. n109

As further support for the requirement of secret ballots, the statute cites *Johnson v. Clark*. n110 In *Johnson*, the District Court for the Northern District of Texas emphasized the "secrecy and integrity" of votes. Other courts have also found the concept of secrecy and privacy inherent in the meaning of ballots. In *Brisbin v. Cleary*, n111 the Supreme Court of Minnesota interpreted voting by ballot to mean:

A mode of designating an elector's choice of a person for an office by the deposit of a ticket, bearing the name of such person, in a receptacle provided for the purpose, in such a way as to secure to the elector the privilege of complete and inviolable secrecy in regard to the person [*203] voted for. This privilege of secrecy may properly be regarded as the distinguishing feature of ballot voting, as compared with open voting, as, for instance, voting viva voce. The object of the privilege is the independence of the voter.

In *Burson v. Freeman*, n112 the U.S. Supreme Court outlined the importance of the development of the secret ballot as a means of ensuring the integrity of elections.

In sum, an examination of the history of election regulation in this country reveals a persistent battle against two evils: voter intimidation and election fraud. After an unsuccessful experiment with an unofficial ballot system, all 50 States, together with numerous other Western democracies, settled on the same solution: a secret ballot secured in part by a restricted zone around the voting compartments. We find that this widespread and time-tested consensus demonstrates that some restricted zone is necessary in order to serve the States' compelling interests in preventing voter intimidation and election fraud.

Thus, the concept of voting cannot be separated from the concept of privacy, for the latter gives meaning to the former. Any legislation that would impact the voting process must always honor this marriage of privacy and integrity as central components of voting ballots. If steps are taken to undermine the secret ballot, i.e., by linking a voter's identity to his vote, then by extension the integrity of the election itself is compromised because this opens the door to the potential for coercive tactics to influence how individuals vote.

B. Electronic Voting

1. The History of Computers and Voting: Problems at the Start

Computers and public elections began their pairing in the 1960's after IBM's invention of the pre-scored punchcard was adapted and sold by the Harris Votomatic Company. n113 The voting system was first used in primaries conducted in Fulton and DeKalb Counties in the State of Georgia. n114 Other jurisdictions quickly followed this modern means of collecting and tabulating voter choices. The punch card fundamentally changed how votes were cast and counted in public elections. The punch card, once removed from the voting machine, completely disassociated the voter's intent from the ballot that would ultimately be counted. The [*204] tabulation of punch card ballots is an automated centralized process. Ballot cards are typically taken to a facility and read by an automated card reader, and then the information is transferred to a computer storage device where the tabulations are done.

It soon became apparent that the Votomatic punch card voting system had flaws associated with the tiny pieces of paper called "chads" that were detached from the pre-scored punch cards during the voting process itself. n115 During the counting process, which used automated sorting technology and computers to tabulate results, ballots with partially detached bits of chad resulted in incomplete action by voters, failure of the voting machine or the counting process itself. n116 Additional problems identified with the technology included machine failures, punch card jams, and errors resulting from tabulation software. n117

Nonetheless, election officials embraced punchcard technology and did not bother to point out problems with the technology to unsuspecting voters. n118 This approach worked for the election administration and thus problems were overlooked until November 7, 2000, when the terms "hanging chad," "pregnant chad" and "dimpled chad" became part of the American voting lexicon. Yet, the notion of equal opportunity disenfranchisement did not sit well with voters. After the 2000 Presidential election, many questions were raised about our nation's election system. One point became clear about the punchcard technology: those most likely to not have their votes counted were low-income, non-native English speakers, physically disabled, or elderly voters. n119

Most lost votes cast on this voting system were caused by unintended overvotes or undervotes, i.e. casting too many votes or not casting any vote in an election. The incidence of under or overvotes may have been a result of ballot design, voter choice, or voter confusion. n120 The dexterity and land level of vision needed to load a ballot into the voting machine to cast a vote may have been increased by the poor design of ballots; such was the case with the infamous Miami-Dade butterfly ballot. n121 In addition, the [*205] design of the punchcard obscured the voted ballot itself, thereby preventing the voter from identifying errors they could correct. n122 The elderly and language minority voters were far more likely not to call attention to their confusion over the votes reflected on their ballot or to request

another ballot. n123 An additional problem associated with the punchcard voting system was the impact poor voting machine condition played on the ability of votes to be recorded and captured as intended by voters. In one case, election workers in a Florida precinct during the 2000 election identified that certain punchcard voting machines were not recording any votes during the pre-election test, but the machines were placed in use any way. n124

2. Electronic Voting Technology and Privacy

Congress passed the Help America Vote Act (HAVA) of 2002, n125 in response to the breakdown in vote tabulation during Florida's recount process conducted at the conclusion of the 2000 presidential election. The Florida debacle illustrated numerous problems in our election process and prompted an interest in using computing technology to solve those problems. HAVA expands the federal government's role in regulating voter registration and election processes, and it provides funds to states to upgrade their election systems. States may use the funds to replace lever or punchcard election systems with new electronic systems, to pay for election official training, to make voting locations handicapped accessible, or for other voting related expenses. Under HAVA, states retain control of the election process, but they must meet minimum standards set forth in HAVA. n126

HAVA was generally popular among members of Congress, yet received some criticism because it required more stringent voter identification procedures. HAVA passed 92 to 2 in the Senate and 357 to 48 in the House with bi-partisan support. n127 Dissenters objected to HAVA because it required voters to provide either a state driver's license number [*206] or the last four digits of their Social Security Number (SSN) if they did not have a driver's license. n128 HAVA also required election officials to verify voters' identification with administrative agencies (i.e., comparing driver's licenses with local Departments of Motor Vehicles and SSNs with the Social Security Administration.) n129 The fear was that the new requirements would raise hurdles to registration and voting by poor people and members of minority groups, especially Hispanics. In particular, Senator Hillary Rodham Clinton remarked that HAVA "would probably 'repress voter participation' by recently naturalized American citizens, homeless people and millions of New Yorkers who have no driver's license." n130 Supporters of the stricter identification requirements countered that the measures were important because "illegal votes dilute the value of legally cast votes." According to Senator Bond of Missouri, "If your vote is canceled by the vote of a dog or a dead person, it's as if you did not have a right to vote." n131

While attempting to strengthen the integrity of the electoral process by requiring stronger voter identification requirements, HAVA did little to address the potential problems of skewed election outcomes if the electronic voting machines were faulty or rigged. David Dill, a professor of Computer Science at Stanford University, as well as a member of the National Committee for Voting Integrity, stated that the use of electronic voting machines raised significant integrity and privacy issues that must be resolved to ensure the integrity of any election. Current electronic voting machines "pose an unacceptable risk that errors or deliberate election-rigging will go undetected, since they do not provide a way for the voters to [*207] verify independently that the machine correctly records and counts the votes they have cast. Moreover, if problems are detected after an election, there is no way to determine the correct outcome of the election short of a revote." n132 According to Dill, electronic voting machines are particularly vulnerable to election fraud stemming from undetectable hacking attacks, subversive programming, and accidents:

Computer scientists, as well as voters, are upset by paperless direct recording electronic (DRE) voting systems because we know that even a beginning programmer can write code that displays votes one way on a screen, records them another way, and tallies them yet another way. This can happen for a variety of reasons, including software and hardware errors, or "hacks" installed into the voting machines. These problems can occur even when voting machines have been thoroughly inspected and tested. DRE systems experienced a number of problems already in the 2002 elections, and we see this only as the tip of the iceberg. n133

According to exit interviews of voters, the reaction to DRE voting technology was positive. n134 Voters' comments regarding their experience with DRE voting machines were reported as being "easier to use than the old-style paper ballots," "Just like the ATM," and "marvelous." n135 Unfortunately, the voter is the last one to recognize problems

associated with voting technology. The controversy over the Florida 2000 presidential election may have come as a shock to the average voter, but it was a well-known problem among elections administrators and equipment manufacturers. The reality was that not all votes were accurately recorded or counted in the typical local, state, or national election using punch card, optical scan, and DRE voting technology. What is most disturbing is that this fact may not have worried election officials very much. They could comfort themselves by saying that the votes not counted would not have changed the outcome of an election, and if it did most people would never know.

With the implementation of new voting technology, voters of all descriptions have had a multitude of experiences in recent elections. In an [*208] election held in Louisiana on Saturday, September 18, 2004, it was reported that 59 precincts did not have voting machines when polls opened at 6:00 AM. n136 Unfortunately, there is no uniform mechanism for collecting the voters' feedback of their Election Day experiences. The body of evidence is growing that voting on DRE un-auditable paperless voting technology presents hazards for votes being counted as cast by voters. We must not ignore, however, the potential threats to privacy while investigating the benefits or detriments presented. Application of DRE paperless voting technology in US public elections address some issues of voter privacy while potentially creating others. n137 Dr. Doug Jones, of the University of Iowa's Computer Science Department and a member of the National Committee for Voting Integrity, advised that DREs should separate the time-stamp on the cast ballot event from the actual record of the cast ballot. n138

The typical scheme for avoiding exposure of how people voted when using DREs is to use a pseudorandom number generator to store "ballots" at random in the electronic "ballot box." The trouble, according to Dr. Jones, was that some vendors might use a constant seed for this generator, so you could trivially determine the order of cast ballots. Others may seed the generator better, but if you have 100 ballots in pseudorandom locations in a ballot box with 1000 entries, and if the pseudorandom number generator is known, it may be a trivial matter to recover the seed by knowing which slots were used.

Dr. Jones recommended, "It would be beneficial to privacy if DRE machines broke up the e-ballots so that the different parts, signifying votes in different races on the ballot, are stored independently. As a result, it would not be possible to sign a ballot using a pre-arranged pattern of votes in minor offices such as judicial retention races or by using a pre-arranged write-in vote in some office." n139

The only voting technologies that prevent this particular form of ballot [*209] signature are lever voting machines and the use of a separate ballot for each office. This is the technology some Swiss cantons use. They print the ballots on perforated paper, and before counting, separate the ballot sections into sub-ballots, thus leaving one section for each race.

What pseudorandom number generator used by DRE voting equipment vendors is not known, nor is it known how they are seeding it, since the source code remains proprietary, even if the seed is now changed for each election. This process is not sufficient to guarantee ballot secrecy unless they have also changed to a cryptographically secure pseudorandom number generator or injected additional sources of randomness into their ballot storage algorithm.

If this has not been done, it would be a trivial matter for someone with the right computer skills to recover the seed that was used if only a small number of ballots are distributed by this generator over the slots in a much larger ballot box. For example, if there are 100 ballots in a ballot box with 1000 slots, there are well over 4 billion possible arrangements, so if a 32-bit seed is used for the pseudorandom number generator is used, the actual arrangement of ballots in ballot-box slots will uniquely identify the seed, allowing the exact order of those ballots to be inferred, and the actual votes of individual voters to be made known. It is possible to enhance ballot secrecy if all voting machines in the same county for the same election use a different pseudorandom number generator to produce different settings for distributing e-ballots.

The greatest privacy benefits of DRE voting machines accrue to those who are visually disabled, language minorities, or have literacy challenges. n140 Critics of paperless DRE voting technology acknowledge the apparent

usability benefits to some voters, but point to a critical vulnerability in their design. n141 The implementation of the voter interface, which on some machines is done at nearly a 75-80-degree angle to the horizontal, presents another privacy concern. Current machine set up in polling locations requires that the machines be in full view of the poll workers. This may be done in such a manner that the display screen is exposed to those present in the polling location, including other voters. If the restricted space around DRE voting machines were too small, this [*210] would also threaten voter privacy. n142

In addition to these concerns, the suggestion of applying wireless access technology to voting machines may also present privacy challenges. If misapplied, wireless access that allows remote activation could allow observation of activity on a number of voting units inside of a polling location by someone on the outside of the facility with the appropriate technology and skills. n143 Caution should be taken when considering the implications of using wireless technology with voting systems.

Finally, the lack of a clear definition of rights for voters using DRE paperless voting technology presents an interesting dilemma. The transactions associated with voting, unlike other exchanges in society, require privacy for individual voters and transparency of the overall voting system. n144 The conundrum presented by paperless DRE voting technology further complicates this transaction of voter choice and privacy in a populous self-governing matrix of nearly 200 million potential participants by not producing a physical audit instrument that is verified by each voter at his or her choice. It appears to be a daunting challenge, which will require strong federal support for research and development as new generations of voting technology emerge. There is also an important role that voters must fill by aggressively advocating on their behalf for assured self-governance.

C. Poll Workers and Voter Privacy

According to the Caltech MIT Study "Voting: What Is What Could Be," between 4 and 6 million votes were lost in the 2000 election. n145 The study attributed the loss to problems with voter registration or polling place practices and problems with ballots. An additional election problem that deserves attention are those associated with polling place practices.

Elections systems rely on voluntary participation of poll workers and voters. The major challenge presented by election systems is to create ease of use in a process that is done relatively infrequently. Greatest voter participation is seen during presidential election years, occurring once every four years. Recent reports of poll workers struggling to deal with malfunctioning voting technology find that malfunction is not restricted to [*211] paperless DRE voting machines. In the Florida 2000 presidential election, poll workers did not take malfunctioning punchcard voting machines out of service. It was reported that "13 of 20 voting machines at two Miami-Dade County precincts with the highest rate of discarded punchcard ballots did not show votes for at least some candidates during a test-vote minutes before polls opened on Nov 7." n146

Poll workers provide the human judgment used in a gatekeeper function to determine who may vote in public elections. There is very little, if any, due process accorded to voters who are judged to be invalid. Unfortunately, the experience for voters who are in the "out group" - who often are minorities, new citizens, language minorities, and disabled voters - are most at risk of being disenfranchised. The subjective nature of the polling operation meant that some poll workers were able to recognize the errors on the list and allowed voters to vote, while others could or would not allow these individuals to vote. n147 As little as possible, we should rely upon the subjective judgment of poll workers as gatekeepers to the ballot box and the focus instead should be on facilitating participation in the election process.

According to a report about the 2003 elections in New York City by the Asian American Legal Defense and Education Fund, minority language speakers reported that they were subjected to poll workers who were rude, hostile, or made disparaging remarks about language assistance and improperly demanded identification. In addition, translation signs and materials were often hidden or unavailable to voters, and some poll workers were reportedly unaware of their

responsibilities or improperly refused to make language assistance available to voters. n148

Election challengers are persons placed by a candidate or party within the poll location to challenge the right of any voter to cast a ballot. They were widely used during the general election in 2004 and present another problem for poll workers and voter privacy. n149 In Minnesota, Native Americans reported problems with poll challengers in Beltrami County and throughout the Twin Cities who appeared to concentrate their efforts on [*212] specific groups. n150 In Ohio, a 1953 ordinance was used to place challengers at polls to challenge newly registered voters. The ordinance required that parties seeking to place challengers in poll locations had to file their names with the county election boards by Oct 22, 2004. n151 In Detroit, the heavy deployment of poll challengers in that city lead to conditions that intimidated poll workers, while challengers charge that they were harassed. n152

Most of the problems mentioned above could be addressed by adequate training of poll workers and a better screening process, as well as an affidavit requirement for poll observers that provides adequate instruction regarding their conduct inside voting locations during elections. Poll workers should be selected for their ability to meet the requirements of the positions they are intended to fill. Monetary incentives may be a means of increasing the numbers of those willing to work at polling locations on Election Day.

An adaptation of the jury pool system currently used to satisfy the legal requirements of jury trials, which relies upon voter registration lists, could be modified for a new poll worker pool program. Those participating in any poll worker pool will receive monetary compensation for two days, including one day of training and Election Day. In addition, poll workers should receive three years of exemption from both jury service and poll duty. As an incentive, those who volunteer could receive five years of exemption from jury service or poll duty. Employers should be encouraged to pay employees their regular wage, when they are absent due to service as poll workers.

An alternate means of increasing voluntary poll worker participation may be an effective public relations campaign to increase the desire of registered voters to work at polling places on Election Day. Recently, Oprah Winfrey served on jury duty and the media coverage of that decision was positive. Taking a similar approach to recruit athletes, musicians, actors, and others to enlist them as Election Day workers can be a great motivating tool for election worker recruitment. The public awareness campaign theme could be, "You never know who you might see working at the polls on Election Day." An added benefit may also be higher voter [*213] participation by younger voters. A pilot project would be effective in testing out ways to improve the response to the community need of poll workers to service in local elections.

D. Recommendations

Steps must be taken to protect voters from identity theft, coercion, misinformation, harassment, and threats by protecting the privacy of voters at every stage of the process, from registration to the casting of ballots.

1. Recommendation #1: Improve Voting Technology

a. Develop Tough National E-Voting Standards and Security Protocols

The need to greatly improve the standards for voting technology and a reliable certification process to assure voters, policymakers and the media that the standards are being enforced is imperative. The certification process for approving voting technology for use in public elections should not exclude non-profits, government laboratories, or those run by academic institutions.

b. Improve Voting Technology Standards

The standards for voting technology should include:

- . Voter-Verifiable Audit Capacity

- . Registration of all voting software, and firmware in NIST's reference library
- . Establishment of a national system for reporting voting technology problems
- . Require Background Checks of Key Voting Technology Vendor Staff
- . Security Clearance for development and technical staff
- . Certification and training of support and technical staff

It is nearly impossible to safeguard the administration of elections if the polling locations are understaffed or poll workers receive inadequate training. The need for better working conditions, training, and resources to assist the millions of volunteers and government employees who contribute to the administration of elections is just as important as the technology used.

[*214]

2. Recommendation #2: Improve Election Administration

- a. Increase the Pool of Election Day Workers
- . Training programs for clients to foster independence from the vendor for routine maintenance and upgrades
 - . Severing all support functions from contracting agreements with vendors
- b. Increase Integrity in the Administration of Elections

For decades, the work of election administrators has been hidden from public view. This is a direct result of the low priority with which it has been historically viewed. Election administration is rarely discussed and Election Day for the majority of voters occurs only once every four years, while in reality elections occur one or more times a year within many states. Unlike other democracies, the citizens of this country select a wide array of public offices through direct popular election. For this reason, the challenge of fitting multiple races onto the ballot format provided has led to complications and confusion for voters. Many items are added to the ballot during presidential election years, which will only impact the state or a locality within the state because of the large numbers of voters who will participate in that election. The length and complexity of the presidential ballot is also faulted for the many problems associated with voter errors. The first step should be to join the efforts of academics and election officials to develop academic programs to provide education in the specific skills needed to administer elections in the United States.

3. Recommendation #3: Simplify Ballots and Support Professionalism Election Administration

- . Federal only election ballots to shorten the ballot
 - a. Election Administration Must be Raised to the Level of a Profession
- . Aggressive local, state and federal election administration civil service reform
 - . Restrict public partisan political activity
 - . Develop a code of professional conduct
 - . Oath of Office should include a statement to conduct fair and impartial elections
 - . Barring the acceptance of gifts or gratuities from [*215] vendors

- . State registration of all vendors and lobbying activity
- . Transparency in voting equipment purchase decisions and contracting
- . Develop core curriculum standards for training election administrators
- . Masters Degree and professional boards for state election administrators and key staff

The academic community can take a leading role in developing the core curriculum for the academic training of local and state election officials. Currently there is no generally accepted degree program that will address all of the skills needed by Election Administrators. The need for training in statistics, management, marketing, political science, federal and state constitutional law, computer science, psychology, sociology and human resource management are only a few of the areas that should be considered when developing a core curriculum for election administration. The level of training should be suited to the role that the person intends to fill; election administration staff may find it suitable to have a two-year degree. A deputy chief election official should have an undergraduate degree from a four year institution and the county chief elections official should have the equivalent of a Masters Degree, while a State Election Administrator should have a doctorate.

In addition to tougher voting technology standards and an excellent certification process to test the validity of voting systems being offered for use in public elections, it is also important that the dependent relationship between vendors and Election Administrators be severed. Fair and impartial judges, umpires, and referees are essential to settling matters under contention. It should not be necessary to remind election administrators that to fulfill their public trust requires that they refrain from active public partisan participation in contests that they, in their official capacity, will conduct. This limit on partisan participation in elections conducted with states and localities must be universal.

4. Recommendation #4: Promote Accountability

The adoption of better e-voting security and standards must begin with transparency and accountability. Transparency is needed in a process that uses proprietary products to conduct public elections. Transparency is needed due to the questions raised by voting rights activists regarding the security and reliability of voting technology.

- . Open the election system process to public view, from testing to the tabulation of results
- [*216] . Public access to operations manuals and pre-testing and certification of voting equipment
- . Open observation of testing, preparation and tabulation to directly viewing screens and processes
- . Access to all log files and internal operations of e-voting technology
- . National Statistical Election Day Reporting System to record problems and statistical data on election participation rates and results from the polling location from county and state

5. Recommendation #5: Safeguard Voter Privacy

The idea of a secret ballot is assured by rules that conduct the process of counting all ballots, whether they are cast as absentee, early voting or on Election Day. Further, the idea of secrecy must extend to voter registration records as well. Too often, public access to voter registration information has led to challenges to the rights of voters to cast an absentee ballot or a ballot on Election Day.

- a. Secure the Secrecy of Domestic and Overseas Ballots
- . Create a process that is streamlined and efficient in order to enable equal access to voting that is on a par with

domestic voters

- . Reform absentee ballot rules to create greater secrecy of ballots cast

6. Recommendation #6: Guarantee Equal Voting Rights in Federal Elections

HAVA, through the provisional ballot, attempted to uniformly address the issue of legally registered voters being denied the right to vote on Election Day due to questions regarding voter registration. This effort failed in large part because the Election Assistance Commission, charged with administering HAVA, was not in place to give direction to states. In addition, the Justice Department's Civil Rights Division gave wide latitude to states, whose elections fall under their oversight, to conduct the changes as they saw fit.

- . Uniform access to early voting, Election Day voting, and provisional ballots

- . Establish national standards for polling locations and methods of changing locations

- . Universal same day registration

[*217] . Define rules for the appropriate use and counting of provisional ballots

- . Ensure early voting in all federal elections

IV. Conclusion

In the next year, the United States Congress and state election officials will return to the question of whether voting technology in the United States accurately records votes and whether other obstacles limit public participation in the democratic process. Many groups will push proposals for reform, but the voices of sound reason, that also seek bipartisan efforts at all levels of election reform, will present the best opportunities for success.

The goals of organizations like the Electronic Privacy Information Center will be to work toward the resolution of ongoing concerns about voter privacy, voting technology, and to promote the right of universal voter participation. It is important that groups, organizations, policy makers, and activists continue to collaborate with traditional voting rights leaders in the civil rights community. In addition, close ties to the technical experts familiar with the specific problems that accompany electronic voting, systems database management, security challenges, and privacy will help to achieve success in the effort to reform the United States election system.

Legal Topics:

For related research and practice materials, see the following legal topics:

Civil Rights Law Voting Rights Voting Rights Act Multiple Votes Civil Rights Law Voting Rights Voting Rights Act Payment for Votes Governments Local Governments Elections

FOOTNOTES:

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IN GENERAL. - Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes - (I) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver license number; or (II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant's social security number.

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REQUIREMENTS FOR STATE OFFICIALS. - (i) SHARING INFORMATION IN DATABASES. - The chief State election official and the official responsible for the State motor vehicle authority of a State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle voter authority to the extent required to enable each such official to verify the accuracy of the information provided on applications for voter registration. (ii) AGREEMENTS WITH COMMISSIONER OF SOCIAL SECURITY. - The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under section

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