

## ELECTRONIC VOTING: THE 2004 ELECTION AND BEYOND

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Today, I want to talk briefly about the racial disparities that appear among different types of voting machines. In making my observations, I do not intend to necessarily endorse a particular system, and I certainly do not suggest that the findings bear on the question of a need for a voter verified paper trail.

Having said that, so much focus has been placed on the issue of the paper trail that other machine issues have become obscured. Somehow lost in the debate over the paper trail are all the negative impacts of less advanced technologies that were such the center of attention right after Florida 2000. Today, fewer and fewer people trust electronic voting. Four years ago, nobody trusted punch card ballot machines.

There was a good reason for that: as we know, and Professor Brady will tell you more about later this afternoon, punch card machines don't work well. They lose a lot of votes.

What I want to talk to you about is another very troubling aspect of punch cards that has been mostly overlooked. Punch card machines are much more likely to lose your vote if you are a person of color than if you are a white voter.

Simply stated, after conducting a wide-ranging survey of the research on this topic, it is fairly clear that African-American votes disproportionately go uncounted when punch card and to some extent "central count" optical scan machines are used. In contrast, the racial disparity nearly disappears with electronic voting machines are used. "Precinct-based" optical scan machines also reduce the gap.

With optical scan voting systems, voters record their choices by filling in boxes or ovals, or completing an arrow next to the candidate's name or the issue. The ballot is then scanned into a computer and the vote recorded. Optical scan equipment based in precincts can be programmed to detect and reject both overvoting and undervoting. This allows voters to fix their mistakes before leaving the polling place. If ballots are tabulated centrally, voters do not have the opportunity to correct mistakes that may have been made.

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32 million voters throughout the country, including many in key battleground states, still live in jurisdictions that will use punch card ballots. Here in Ohio—which originally planned on replacing all punch card voting machines in time for this November’s election—just four of thirty-one Ohio counties eligible to replace punch card machines are actually doing so. This means that once again, in 2004, in Ohio and throughout the country, African Americans are at particular risk of not having their votes counted.

There have been studies conducted by newspaper reporters and academics focusing on particular jurisdictions such as Florida and Chicago, studies of national voting patterns, and studies of elections from 1988, 1996, and 2000, and virtually all come to the same conclusion: punch card machines mean that far fewer African American votes will count relative to uncounted votes by white citizens. The evidence is overwhelming.

## NATIONAL

Stephen Knack from the University of Maryland and Martha Kropf from the University of Missouri did a study of voting back in the 1996 election. They came to the conclusion that minorities are more likely to have their votes tossed out and that this is exacerbated by the use of punch card ballot machines. They say that an analysis of the 1996 election “shows that higher percentages of African Americans and Hispanics are associated with higher rates of invalidated ballots. These differences are absent, however, in counties using types of voting equipment that can be programmed to eliminate over-voting.”

Knack and Kropf go on to state that the pattern of racial and ethnic disparity in invalidated ballots:

...is particularly strong in counties using punch cards, central count optically scanned ballots, and hand counted paper ballots. There is no link between ethnicity and invalidated ballots among counties using voting technology that can be programmed to prevent overvoting, namely lever machines, electronic voting systems, and precinct-count optical scan systems.

Moreover, Knack and Kropf found that optical scan machines where votes are counted in-precinct are *favorable* in terms of counting minority votes:

Among the 78 counties with this [optical scan] ‘second chance’ technology, percent black is actually negatively related to roll-off. Among the remaining 483 optical scan counties [with central counting], we observe the usual positive relationship between percent black and roll-off. This result strengthens the conclusion that voting systems more resistant to overvoting can reduce discrepancies in the roll-off rate between heavily-black and mostly- white counties.

This is a critical finding: technology that allows the voter to fix mistakes is more fair and equitable in counting of votes.

After the 2000 presidential election, the United States House Committee on Government Reform launched a study of racial disparities in the vote. In low-income, high-minority districts, the undercount rate was 7.7% on punch-card machines, 4.7% on centrally counted optiscan machines,

4.5% on lever machines, 2.4% on electronic voting systems, and 1.1% on precinct-counted optiscan machines.

When voters used punch-card machines, the rate of uncounted votes was 7.7% in low-income, high-minority districts and 2.0% in affluent, low-minority districts, a disparity of 5.7 percentage points. But when precinct-counted optiscan machines were used, the size of the disparity dropped to only 0.6 percentage points.

Again, precinct count optical scan machines are singled out as performing in a more equitable fashion.

## **JURISDICTIONAL**

### ***Los Angeles***

Betsy Sinclair and Michael Alvarez from USC Law School and the California Institute of Technology undertook an examination of ballots in Los Angeles cast in 2000. LA is a jurisdiction that used only punch card ballot machines made by one manufacturer. In examining a jurisdiction where all voters, white and of color, used the same technology throughout, they also found that the punch card ballot machines disproportionately discarded minority votes.

### ***Chicago***

Also in 2000, while all eyes were on Florida, it was actually Chicago that had the worst racial disparity in spoiled ballots. In Cook County, voters used punch card ballot machines. In a *Washington Post* survey, reporters found that:

The rate of disqualified ballots in Cook County ranged from one of every 20 ballots in precincts that are less than 30 percent African American to one of every 12 in precincts that are more than 70 percent African American...In Chicago, there were 51 precincts where at least one of every six ballots lacked a valid presidential vote. Ninety percent of the residents in those precincts are black or Latino, and they voted 94 percent for Gore.

Interestingly, Chicagoans already knew about this racial disparity. As the articles relates:

Ten years ago a candidate for Cook County clerk, Joanne Alter, released a detailed 48-page study showing how disproportionate numbers of votes cast by black voters were being discarded [in the 1988 presidential election].

### ***Louisiana and South Carolina***

Michael Tomz from Stanford and Robert Van Houweling from the University of Michigan took a look at voting in Louisiana and South Carolina. Through studying precincts in those states in the 2000 election, the researchers found that the black-white gap in voided ballots was substantially lower with DRE and lever machines than with punch card and optical scanners. (10 of 13 central count)

As they state:

In South Carolina, the estimated racial gap is 4.2 percentage points in precincts that use punch cards and 6.2 percentage points in those with optical scanning devices... On the other hand, we estimate a difference of only 0.3 percentage points... between nonwhite and white invalidation rates in precincts with DREs. For Louisiana, the regressions suggest only a mild relationship between invalidation and race... We find a racial gap of only 0.7 percentage points for lever machines and 0.5 percentage points for DREs.

### ***California***

Michael Alvarez, Betsy Sinclair, and Catherine Wilson took a look at the entire state of California. These researchers state flat out in their findings that

We provided substantial evidence, examined from a number of methodological perspectives, documenting that there are higher rates of uncounted ballots in counties with large nonwhite populations in the 2000 presidential election in California. We also showed that this effect is particularly noticeable in California counties that employ punchcard voting systems, especially counties with high populations of nonwhites...

### ***Ohio***

Professor Dan Tokaji has been involved in the lawsuit brought by the ACLU of Ohio after the 2000 election alleging that the use of punch card ballot machines in that state violated the Equal Protection Clause of the Fourteenth Amendment and the Voting Rights Act. According to the complaint, punch card precincts and counties with a majority of African American voters had much higher ballot spoilage rates than white areas that similarly used punch card ballot machines. As with other studies, a researcher hired for the plaintiffs found that such disparities were reduced when electronic voting machines were used.

### ***Florida***

Allan Lichtman, a professor of history at American University, conducted a study of ballot rejection rates in Florida for the United States Commission on Civil Rights. He found that overall, there was enormous difference in the rate of white votes and African American votes counted in Florida. For the entire state, the rate of spoiled ballots for African Americans was 14.4 % while it was 1.6% for non-African Americans. More to the point, Lichtman found that this disparity was far more egregious where punch card ballot machines were used. "Within the counties using punch card or optical scan machines with central recording, not only is the relationship between race and rejected ballots strong, but is even stronger than the relationship for all Florida counties combined."

In another analysis, *Washington Post* reporters focused on punch card machines in Miami. They found that "In Miami-Dade County [where punch card machines are used] precincts where fewer than 30 percent of the voters are black, about 3 percent of ballots did not register a vote for president. In precincts where more than 70 percent of the voters are African American, it was nearly 10 percent."

## EXPLANATIONS AND IMPLICATIONS

Why does the racial disparity exist? Many of these studies controlled for income and education and come up with the same results. Beyond that, no one seems to really know.

Some have suggested that the disparity is due to the number of new African American voters who cast ballots in the 2000 election. Is this true? According to Knack and Kropf, it isn't:

Turnout increases in Florida and elsewhere, coupled with complicated punch card voting equipment, were blamed for high voter error in the 2000 election. However, the coefficient on turnout change is negative and significant in the 475 punch card counties. . . . Only in DRE counties is there any indication that turnout increases might increase roll-off, and even then it is significant only at the .11 level.

In addition, the studies from 1996 and 1988 showed the same division.

Is the discrepancy caused by a larger number of African American voters intentionally not casting a vote? Again, Knack and Kropf say no:

Previous studies have found that African Americans are not much more likely than whites to deliberately undervote in presidential elections...and are no more likely to live in counties using punch card equipment...These findings suggest that racial disparities in roll-off are attributable to differences in the frequency of mistakes using a given type of equipment.

Clearly some questions and further study are needed. We must examine other aspects of the voting process to answer this critical question. For example,

- Is government sponsored voter education inferior in minority jurisdictions?
- Is there a difference in the quality, training, and experience of poll workers in minority versus those in nonminority areas?
- Do poll workers in minority districts interact with voters differently than in majority white areas?
- Are fewer poll workers assigned to minority areas?
- Are there differences in the method or personnel assigned to count votes in minority areas?
- Are there any differences in ballot design in majority minority areas that might contribute to the disparity?
- Are instructions, such as sample ballots, less consistently delivered to minority voters? Are public exhibitions of voting machines less frequent in minority areas?

An obvious response to the problem is to simply stop using punch card and central count optical scan machines. Since that won't happen right away, on November 2, election monitors,

administrators and voters in those places using these inferior technologies must be at least as alert to potential problems as those dealing with electronic voting machines.

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