THE 2001 NEW JERSEY ELECTION

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A CENTURY FOUNDATION REPORT

THE CENTURY FOUNDATION

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PREFACE

In the aftermath of the disputed presidential election of 2000, The Century Foundation and the Miller Center of Public Affairs at the University of Virginia organized a distinguished commission, the National Commission on Federal Election Reform, to analyze how the nation's voting systems could be improved. Cochaired by former presidents Jimmy Carter and Gerald R. Ford, the Commission released its report at a Rose Garden ceremony in July 2001. Many of the report's recommendations have been adopted in legislation that both the Senate and House of Representatives passed decisively.

The Commission's report was made public during an "off year" for national elections, when the only major campaigns under way across the United States were the governor's races in Virginia and New Jersey and the mayoral elections in Los Angeles and New York City. The Century Foundation thought it would be instructive to follow up on the Commission's work by looking at the voting process in those four elections to analyze the extent to which they experienced the kinds of problems evident in Florida a year earlier. Our hope was that the four reports on the major elections of 2001 would shed further light on the extent to which the voting systems around the country need repair and on lessons that may have been learned about how to do it right.

The Century Foundation would like to thank the William and Flora Hewlett Foundation, the David and Lucile Packard Foundation, and the John S. and James L. Knight Foundation for making

our work on the important issue of election reform possible. Without their generous support, our efforts never could have had the impact that they did.

For more information on our projects regarding election reform, please visit our website at www.tcf.org or the website of the National Commission on Federal Election Reform at www.reform-elections.org.

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OVERVIEW OF THE 2001 ELECTIONS

The presidential election of 2000 laid bare egregious flaws in the U.S. electoral system, precipitating a constitutional and political crisis. In a country that has long served as a model for democracy to the rest of the world, the experience raised fundamental questions about the validity and fairness of its own voting process. The American public demanded that the government respond.

As a result, in the wake of the 2000 election, state legislatures considered more than 1,800 voting reform bills. Roughly 250 of these passed, but only Florida, Georgia, and Maryland enacted any sort of comprehensive approach to election reform.[1] Most of the reforms in other states were scattershot, focused on a particular voting rule here, a narrow process there. Many of those reforms will not take effect until the 2002 or 2004 elections.

At the federal level, too, initially there was a great flurry of activity. At least thirty-four bills were introduced in the House of Representatives and twenty-two in the Senate. A single measure was enacted: a change in voting procedures for military voters, included in the National Defense Authorization Act for Fiscal Year 2002.[2] One other bill passed the House, H.R. 3295, the Help America Vote Act, and one passed the Senate, S. 565, the Equal Protection Voting Rights Act of 2001.

In 2001, at the same time that election reform debates were percolating, many local elections and two statewide elections took place. For example, mayors were chosen in Los Angeles, New York City, Miami, Cleveland, Atlanta, Detroit, Seattle, and Houston, and governors were selected in New Jersey and Virginia.

To assess the extent to which the problems evident in Florida and elsewhere in 2000 persisted in the absence of fundamental reform throughout most of the country, The Century Foundation commissioned four reports examining the major elections that took place in 2001: the Virginia and New Jersey gubernatorial elections and the New York City and Los Angeles mayoral votes.

Overall, these reports show that election problems were much less pervasive in Virginia and Los Angeles than in New Jersey and New York City. Not coincidentally, Virginia and Los Angeles have long-standing voting laws and practices that parallel reforms that the U.S. Congress and many states have been considering in the wake of the 2000 election. Those jurisdictions also instituted additional reforms after 2000 that worked well in 2001. In contrast, the election systems in New York City and New Jersey have not been adequately improved.

While the stories of these four jurisdictions are very different from one another and demonstrate a wide variety of problems, the reports assess how they performed by looking, to varying degrees, at the following criteria:

- How many legitimate votes were lost or discarded?

- What problems at the polling sites might have contributed to disenfranchisement?

- Were adequate measures undertaken for language minority voters?

- What efforts were made to strengthen and increase voter education?

VOTES LOST BY THE VOTING SYSTEM

Perhaps the most widely publicized problem in the 2000 election was the number of votes that were not counted because of voting system errors (often called "spoiled" or "residual" ballots). As researchers at the California Institute of Technology and the Massachusetts Institute of Technology (Caltech/MIT) found, "two million ballots, or two percent of the 100 million ballots cast for president in 2000, were not counted because they were unmarked, spoiled, or ambiguous. Of this two percent it is estimated that 0.5 percent did not intend to vote for president, so 1.5 percent (or 1.5 million people) thought they voted for president but their votes were not counted."[3] As widely reported in numerous articles and reports, certain technologies seemed consistently to perform better than others, with punch card ballot machines singled out as the worst culprit when it came to lost votes. Studies also showed that more votes were lost in poor and minority jurisdictions, and some reports found that inferior voting systems were disproportionately located in poor and minority jurisdictions.[4]

In the elections analyzed in our reports, Los Angeles and Virginia fared considerably better than New Jersey and New York City with respect to spoiled ballots. Although Los Angeles widely used the notorious punch card ballots, the city initiated an intensive voter education program in the wake of the 2000 experience and succeeded in reducing the number of residual ballots in the 2001 mayoral election to about 1 percent, down from the national average of about 2 percent the previous year. Virginia, which already had an uncounted ballot rate below the national average in 2000, also cut its level in half in 2001, largely by instituting new technology that enabled voters to verify and correct their ballot choices if necessary, even if they used punch card systems.

New Jersey's residual ballot rate, which was around the national average in 2000, actually increased slightly in 2001, despite the elimination of the few punch card ballot machines remaining in the state. In fact, the residual ballot rate actually went up in one of the two counties that eliminated punch card ballot machines. New York City[5] had a significantly higher than average spoiled ballot rate in 2000, which improved marginally in 2001. But as in 2000, the rate of residual votes remained significantly worse in areas with high shares of minorities and low-income families. The only reform that might have contributed to this slight improvement was an effort to recruit and train poll workers to instruct voters better. Specifically, poll worker pay was increased, recruitment efforts extended beyond the political parties (the traditional source), and more resources were allocated to training.

Thus, the 2001 elections reinforce evidence that the type of voting machinery employed is not necessarily the most significant factor affecting the rate of spoiled ballots. Even the alleged main culprit of the 2000 debacle, punch card ballots, performed well when voter education efforts were undertaken in Los Angeles and when they included technology that allowed a voter to double check and correct his or her vote, as in Virginia. By contrast, only New Jersey replaced punch card machines with little apparent effect. New York City was able to improve the performance of its thrity-eight-year-old lever machines to some extent by investing in poll workers.

The success of these efforts, however, does not mean that old machines should be left in place eternally. Evidence suggests that optical scan and Direct Recording Electronic systems (DREs) perform better than other methods when technologies are assessed overall.[6] More advanced technologies generally do produce better results. Moreover, electronic forms of voting have the potential to

make it easier for the disabled and citizens who have difficulty reading English to vote. For example, such technology can include ballots in unlimited numbers of languages and facilitate private polling place voting by the blind. The main lesson, though, is that replacement of machinery is not enough; it should be part of a menu of reforms.

POLLING SITE PROBLEMS

Another major problem highlighted during the 2000 election was the large number of people who for one reason or another were unable to cast a vote when they arrived at polling stations. For some, it was because their names were not on the voter registration list. According to a study by the organization Demos, "In at least 25 states, inaccurate or purged lists prevented some eligible voters from casting ballots."[7] For voters in jurisdictions that do not allow for provisional ballots in lieu of voting on the machines, this meant they had no opportunity to vote regardless of whether the error was theirs or that of the election administrators. According to the Caltech/MIT report, "We lost between one-and-a-half and three million votes because of the registration process in 2000. According to the U.S. Census, Current Population Survey, 7.4 percent of the forty million registered voters who did not vote stated that they did not vote because of registration problems."[8]

Other voters were discouraged because their polling sites were moved, poll workers gave out faulty information, or lines were too long. Again, according to Caltech/MIT, "We lost between 500,000 and 1.2 million votes because of polling place operations. According to the U.S. Census, Current Population Survey, 2.8 percent of the forty million registered voters who did not vote in 2000 stated that

they did not vote because of problems with polling place operations such as lines, hours, or locations."[9]

All four jurisdictions in this report had polling site problems in 2001, but the extent of those problems varied considerably. In Virginia, hearings following the 2000 election revealed many voters, especially African Americans, confronted polling site problems. Some voters who thought they had registered to vote were turned away at the polls. More disturbing were complaints voiced at the hearings about heavy police presence in high minority polling sites, possibly aimed at deterring voting. However, the problems in this respect seemed relatively minimal in 2001. The only noted difficulty was that redistricting led a small number of voters to show up at the wrong sites because they were mailed erroneous information. Similarly, in Los Angeles the poll site problems were scattered, with relocation of poll sites a particular problem.[10]

In New York City, there were still many problems at voting sites, but due to new funding, fewer than in previous years. Among the major problems were poll worker shortages, consolidated—and thus fewer—polling sites, a shortage of voting machines, and machine breakdowns, all leading to inadvertent but wrongful disenfranchisement. The worst problem may have been poorly informed poll workers.

Although New Jersey's complex and decentralized system makes it difficult to assess poll site problems, there clearly were some. By far the most troubling were incidents of outright voter intimidation aimed at minority voters. In the very jurisdiction being monitored by the Department of Justice because of past problems, many Latino voters received a threatening postcard warning them about election laws and claiming that there would be armed monitors at the polls. In addition, county administrators reported problems with poll workers who withheld information about the availability of

provisional ballots. When provisional ballots were made available, poll workers failed to give voters instructions on how to cast those ballots. On the positive side, an increase in poll worker pay greatly increased the number of available poll workers.

The wide variety of problems experienced at poll sites makes it difficult to offer a simple solution. There is, however, an effective way to deal with voters who show up at the polls believing they are registered but are missing from the rolls. The solution is to establish statewide voter registration lists, particularly computerized ones. Through such systems, lists can be constantly updated, linked to other government records, and used to determine whether someone is eligible to vote in the state regardless of the poll site he or she appears at. However, Demos notes, "less than half of all states either have state-of-the-art voter registration lists or have plans to create them."[11] Virginia, whose system runs relatively smoothly, has a statewide voter registration system; New Jersey does not. Fortunately, all four of the election sites studied have some sort of provisional balloting system, which helps to at least cover some of the pitfalls.

Cases of outright voter intimidation need to be addressed through federal law enforcement. The United States Department of Justice (DOJ) does an admirable job of trying to monitor elections and pursue violations of the voting rights laws. Yet, intimidation occurred in a federally monitored jurisdiction in New Jersey in 2001. It may well be, therefore, that the federal government needs to bolster its commitment to monitoring elections and pursuing enforcement actions. Other possibilities in this regard include:[12]

- allowing private individuals, not just the DOJ, to bring private actions for voting rights violations;

- eliminating restrictions on attorneys' fees that make it more difficult for aggrieved voters to find capable lawyers and experts;

- providing grants to state attorneys general to support new efforts to enforce antidiscrimination laws in registration and voting; and

- providing grants to community-based organizations to investigate and if necessary litigate possible violations.

The problems of too few poll sites and sites that move at the last minute, which all jurisdictions confront to some degree, are also difficult to remedy. The National Commission on Federal Election Reform suggested making Election Day a national holiday, which would allow more public spaces, such as schools, to be made available for polling.[13] Other scholars and organizations have advocated such an approach, notably the U.S. Commission on Civil Rights and Professor Burt Neuborne of NYU School of Law and the Brennan Center for Justice, but it remains controversial.

LANGUAGE MINORITY VOTERS

One of the most serious though under-reported problems with the American election system is the lack of accessibility to the polls for language minority voters. It is difficult to quantify the number of minority language voters who are wrongfully and often illegally disenfranchised because required measures are not taken to assist them in voting.[14] However, there was plenty of anecdotal evidence of such disenfranchisement in the 2000 election. For example, the U.S. Commission on Civil Rights found that several thousand Spanish-

speaking voters were disenfranchised in Florida, as well as a large number of French-speaking Haitian voters. The commission reported, "Many poll workers were not properly trained to handle language assistance issues. Some voters found that even when volunteers were available to provide assistance, the volunteers or precinct workers were prevented from providing language assistance. In some instances, bilingual poll workers were directed to not provide language assistance to voters who were in need of that assistance."[15]

As the two most diverse cities in the country, Los Angeles and New York City both face enormous challenges with respect to language minority voters: each has more minority voters than the states of New Jersey and Virginia combined.

Congressman Xavier Becerra testified before a Senate committee that fourteen poll sites in Los Angeles did not display or make available bilingual materials provided to them.[16] At the same time, Los Angeles does a great deal to prepare for the complexities involved in administering an election that requires it to provide voting materials in seven different languages. The city works directly with the communities and ensures there are sufficient bilingual poll workers and translators at voting sites. The ongoing challenges Los Angeles faces are cultural ones—helping new immigrants understand the system politically and administratively. As a result, this and other similarly situated jurisdictions must focus their voter education efforts particularly on new immigrant voters. In addition, Los Angeles was hindered by its use of punch card ballots, which cannot provide ballot choices in a large number of languages as easily as other technologies.[17]

New York City has had problems in the past, particularly with respect to districts requiring Chinese translation. For example, the Asian American Legal Defense and Education Fund reported that in

the 2000 election Chinese language ballots were incorrectly translated at six New York voting sites—"Democrat" was translated as "Republican" and "Republican" was translated as "Democrat." Problems occurred again in 2001. Some poll workers prevented bilingual poll workers from assisting voters or failed to provide translated materials. The Asian American Legal Defense and Education Fund further reported that their monitors observed some 250 Asian voters being asked for identification in the primary election and 375 Asian voters being asked to show identification in the general election, even though identification is not required to vote in New York.

Not only are many poll workers unprepared to provide adequate services to language minority voters, particularly Asian Americans, but New York City also continues to experience a dearth of bilingual workers at the polls, despite increased efforts at recruitment. In 2001, the city was short 122 Chinese interpreters out of a total of 483 positions, 256 Spanish interpreters out of a total of 779 positions, and 19 Korean interpreters out of a total of 32 positions. New Jersey encountered a similar problem in 2001. In one county that must provide materials in Spanish, instructions in Spanish on the absentee ballots were reversed, so that voters were told to place their mark below (*abajo*) their preferred candidate rather than the correct way, above (*sobre*). Many of those ballots were counted when the votes were tallied, thus potentially distorting the result.

VOTER EDUCATION

After the 2000 election, there was broad consensus among administrators, voting rights advocates, elected officials, and elections scholars that the country needs more voter education. This includes not

only education about the candidates and the issues, but information on how to register, how to cast a ballot, provisional balloting, and how to use the voting system machinery. Voters need education, too, on their voting rights under the law (especially the disabled and minority language voters). As the National Commission on Federal Election Reform Report noted, "Some administrators believe, with cause, that they can get more improvements, dollar for dollar, from voter education and poll worker training than they can from investments in new equipment."[18] The Democratic Caucus Special Committee on Election Reform report also urged increased voter education efforts, especially targeted to new voters.[19] The Caltech/MIT report supports increased voter education, including the publication of sample ballots and establishment of instructional areas at polling places to reduce the number of lost votes.[20] Other organizations that called for additional voter education included the League of Women Voters, the Constitution Project, and the NAACP.

There is much evidence to suggest that giving voters proper instructions, through education and well-trained poll workers, is one of the most effective ways to protect the integrity of the vote. As an analyst for the Florida Division of Elections said, "'Human error is the biggest threat to the integrity of any voting system. Even with your crudest systems, if the human does everything they're supposed to, that system will work.'"[21]

This conclusion is demonstrated by the reports we commissioned. For example, Los Angeles still uses the punch card ballot system, just like Florida. Yet at the same time, Los Angeles invests a great deal in a comprehensive voter education process—it is one of the best in the country. Moreover, it stepped up its voter education activities even more for the 2001 election, undertaking a public

campaign called "Got Chad?" As a result, Los Angeles' record of lost votes was much better than Florida's and many other states that used punch card machines in 2000.

Miami also used punch card ballots again in its mayoral election in 2001. In the 2001 primary, however, in addition to regular poll workers, each polling site had a "tutor" to demonstrate how to use the punch card machine properly. The residual ballot rate was greatly improved over 2000. Then, in the runoff, every poll worker was also given a script to read to voters telling them they could not vote for more than one candidate and reminding them to check their ballots for hanging chads. Citywide, only 1.28 percent of ballots were discarded because of overvoting or undervoting. In the five precincts with the highest number of uncounted ballots in the primary election, where spoilage rates had been between 9 percent and 15 percent, in 2000, the rates plummeted to between 0.29 percent and 2.7 percent.[22]

New Jersey's official efforts to educate voters with respect to registering to vote and voting is totally scattershot, but in 2001, grassroots organizations moved to fill the void. The NAACP not only had a voter registration drive but also sent three separate mailings to the new voters prior to election day about both the issues and the need to vote. The organization reported that a majority of the districts targeted for this activity showed an improvement in voter turnout.

In light of what transpired during the 2001 elections, it will certainly be interesting to observe how the country fares in the elections of 2002 and 2004. Except perhaps among activists involved in the issue, there seems to have been quite a lull in public interest or worry about the topic of election reform, especially with the advent of the nation's war on terrorism. Perhaps that is the reason why the

jurisdictions that performed relatively well on Election Day 2001 were ones that already had progressive systems in place and had made some further improvements immediately after the 2000 election, such as Los Angeles and Virginia. Jurisdictions such as New York City and New Jersey, operating with somewhat retrograde systems to begin with and stymied by both politics and budget shortfalls—especially after September 11—continue to be at a distinct disadvantage. Numerous other states and cities throughout the country find themselves in a position similar to that of New York City and New Jersey: they had faulty systems prior to the election of 2000, and then after that election made it clear how severe the problems were, they lacked the political wherewithal and/or the funding to take any strong measures to fix the problems.

The prospect of further controversy regarding electoral reform in 2002 and 2004 is likely. Ongoing issues—the disturbingly low voter turnout in the country, the debate over registration rules and requirements, racial and ethnic discrimination, and disagreements about voter fraud—also will continue to be discussed, as they should be.

Perhaps the 2002 nationwide elections will rekindle interest in election reform. Perhaps, then, the states will again see it in their best interests to act to improve their systems.

We are left, however, with the question of whether the states and localities should be the ones ultimately to decide how to guarantee all citizens their fundamental right to vote and participate in our democracy. This report demonstrates the degree to which the ability to fully engage in the electoral system is a matter of geography. Should equal access to voting be dictated by the serendipity of where one happens to live in this country? After all, the right to vote is the foundation of our democratic system, the right upon which all other rights rely.

THE 2001 NEW YORK CITY ELECTIONS

In 2001, New York City held municipal elections that included primaries, primary runoff elections, and general elections for mayor and several other citywide offices, as well as most of the seats on the City Council. Complicating an already complex scenario, the attacks on the World Trade Center occurred right in the midst of the election. Although the city had taken a few effective steps to improve the election system, they did not go far enough. New York City's largely antiquated and still flawed system resulted in many of the same types of problems that occurred in Florida in the much criticized 2000 presidential election.

VOTING MACHINES AND LOST VOTES

In the 2001 primary runoff election for mayor, as always in New York City, a large number of votes were lost because of problems with the voting machines, and a disproportionate number of the losses were in low-income and minority districts. For example, the lost vote rate in the Bronx in the primary runoff was 2.8 percent. A variety of problems caused difficulties for voters.

- New York State uses old-fashioned lever machines, which are no longer manufactured. Unlike other parts of the state, the sensor latches of New York City machines, which prevent a voter from knowingly failing to cast a vote, are disabled. Largely as a result of this, other parts of the state have a lower lost vote rate than the city does.

- Although the city bought more machines in 2001 from other jurisdictions that are phasing out the use of the lever machines,

it still had a shortage of voting machines. In 2001, Manhattan was 113 machines short of the number needed to comply with state law, Queens was 111 machines short, and Brooklyn was 143 machines short.

- Although the city was able to recruit more voting machine technicians in 2001, there was still a shortage.

- As in every New York City election, there were a large number of voting machine breakdowns. For example, in Manhattan there were voting machine problems in 22.2 percent of the election districts.

POLL WORKER AND POLL SITE PROBLEMS

Efficient and informed poll workers are key to a smooth election day operation. Organizing poll worker and poll site activities is a major undertaking in a city as large and complex as New York City, and there were many problems in this area of election administration in 2001.

- There was a tremendous shortage in election workers. The city needed another 3,371 poll inspectors to fully staff polling sites, and there were major shortages in poll site coordinators, information clerks, poll clerks, and language interpreters as well.

- Many poll workers were found to be inadequately trained and informed.

- Language minority voters experienced many problems. In one survey of Asian-American voters, more than 300 of 1,500 voters complained of voting problems in the 2001 primaries. In the general election, 700 of 2,300 Asian-American voters surveyed had a problem in voting, including 375 who said they were illegally asked for identification.

- There was a wide variation in the quality of polling sites throughout the city, in terms of such indicators as convenience of location and length of the lines to vote.

- Poll worker recruitment and training in New York City is deficient. For example, the Board of Elections routinely hired workers who failed the training test, many recruited were not assigned to a training session, and some workers were never assigned to a position on election day.

ADMINISTRATIVE PROBLEMS

Elections in New York City include the use of many types of paper ballots, including affidavit ballots, emergency ballots, and absentee ballots. All of these paper ballots must be judged to be valid or invalid and then counted. This process can lead to a number of question marks during and after an election, which was the case in 2001.

- At the end of the primary election, the Board of Elections invalidated over 40,000 paper ballots for various reasons. When the number of invalidated votes were disproportionate to one candidate, that candidate raised questions about the process by which the casting and counting of such votes took place.

- Given the number of paper ballots that had to be counted, many days passed before the final outcome of the race was determined, leading to uncertainty among the candidates, administrators, and the public.

- The rate of use of paper ballots varied among the boroughs, raising questions about why such differences existed and suggesting possible disparate impacts and outcomes.

IMPROVEMENTS MADE BY NEW YORK CITY

In the aftermath of the 2000 election crisis, New York City did take a few meaningful steps to improve its election process.

- The Board of Elections established standards for what constitutes a valid vote on paper ballots and the process by which they are counted.

- Civic organizations in the city mobilized to recruit poll workers and monitor elections.

- The city increased funding for the election by between $8 million and $9 million. New funding went to increasing poll worker pay from $125 to $200, improving poll worker training and training materials, hiring more technicians, buying more machines and ballot scanners, expanding the board's phone information services, and hiring four language translators.

RECOMMENDATIONS

Clearly, although New York City has taken some steps to improve the system, many more reforms are required. Recommendations include the following:

- Funding to the Board of Elections should be increased so it can continue improving its procedures.

- Recruitment of Board of Elections' staff should expand beyond the political parties.

- Election worker training methods and materials need to be improved.

- The voting machine sensor device should be activated to prevent lost votes.

- There should be an outside monitor of election administration.

- The state should adopt a statewide voter registration system.

- The state should establish a process for purchasing new voting technology that includes input from voting rights and civic organizations, and new machines should be accessible for the disabled and language minority voters.

- Voter registration deadlines should be moved closer to election day.

- The city should improve and expand voter education and outreach activities.

THE 2001 LOS ANGELES ELECTION

Los Angeles is the most ethnically diverse city in the nation. As such, in the 2001 mayoral election, the city had to provide ballots and voting information in seven different languages. Moreover, Los Angeles is the largest election jurisdiction in the nation to use punch card ballot machines—the scourge of the 2000 presidential election, blamed as the primary reason for the large number of lost votes in Florida. Los Angeles was also in the national spotlight because the election was seen as the first major opportunity for a Latino candidate in a city whose demographics have changed dramatically over the past several years. Yet the 2001 election proceeded with few problems or complaints.

Given its success, Los Angeles provides a model for many American cities that are likely to become increasingly diverse in the future. Los Angeles took three important steps to avoid the potential problems created by language barriers and less than modern voting technology.

- It had previously adopted many of the election system reforms that have been advocated since the 2000 election, such as provisional voting and establishing state definitions of what constitutes a vote on various types of voting machines. It had also adopted procedures for election certification and candidate challenges.

- It invested heavily in voter education.

- It worked with minority communities to ensure that language minority voters' needs were met.

SUCCEEDING WITH PUNCH CARD BALLOTS

While the residual vote rate (the combined overvote and undervote) for the type of punch card ballot machine Los Angeles uses was 3 percent nationally in 2000, in Los Angeles the rate was only 2.4 percent. Moreover, in the 2001 mayoral election, the city dramatically reduced the lost vote rate of the punch card ballot machines, especially among minority voters.

- The overvote rate in the mayoral race was approximately half the rate of the 2000 presidential election.

- The undervote rate in the mayoral race was 43 percent lower than the rate in the 2000 presidential election.

Ninety percent of predominantly Black and Latino voting precincts saw their residual ballot rate decline between the 2000 presidential election and the 2001 mayoral election.

ACHIEVING SUCCESS WITH VOTER EDUCATION

California already had in place a comprehensive voter education program that required administrators to mail voters sample ballots and detailed voting information. Los Angeles went beyond this in 2001 specifically to address how to vote on punch card ballot machines.

- The voting guide provided a new section explaining how to vote on the machines properly.

- New signs about punch card ballots were put up in polling places.

- The city undertook a “Got Chad?” public education campaign.

MEETING THE CHALLENGE OF LANGUAGE DIVERSITY

In addition to Los Angeles being the most ethnically diverse city in the nation, 25 percent of the city's voters do not speak English well. Due to its diversity, the city must provide election materials in English, Chinese, Japanese, Korean, Spanish, Tagalog, and Vietnamese. In 22 percent of precincts, most voters need language assistance.

Los Angeles has been able to address the needs of these language minority voters largely by working in partnership with the affected populations through the Community Voter Outreach Committee. The committee helped administrators identify needs among language minority voters. The committee pinpointed which voting sites were most likely to have voters in need of assistance.

REMAINING PROBLEMS

Of course, problems did occur in the 2001 mayoral election.

- Some poll workers illegally asked for voter identification.
- Some poll workers did not allow provisional voting.
- Some polling sites were moved shortly before the election, leaving little opportunity to alert voters to the change and causing some voters to arrive at the wrong polling site. Some voters never received information as to where their new polling site was located.

LESSONS FROM LOS ANGELES

In terms of the language diversity that complicated its administration, the Los Angeles election is a portent of things to come for many American cities in the near future. As such, its successes and failures should be examined to see what lessons they provide.

Moreover, although Los Angeles was able to achieve success with the punch card ballot machines, they have been de-certified by the state and will no longer be in use within the next few years. This will be an especially welcome change for language minority voters. Voting systems with touch screen technology, which are expected to replace the punch card ballot machines, can be programmed to ensure voters receive ballots in their native languages.

Finally, the experience in Los Angeles demonstrates that an effective election system can be developed through voter education efforts, along with provisional balloting, having clearly set standards and procedures, and addressing the needs of language minority voters by soliciting their active involvement.

THE 2001 VIRGINIA GUBERNATORIAL ELECTION

Virginia was one of just two states to hold a gubernatorial election in 2001. Although the election did not proceed flawlessly, the system performed extremely well, in part because the state already had in place such things as a statewide voter registration system and provisional voting, which were among the reforms advocated in the aftermath of the 2000 election.

The state took a number of additional steps between the 2000 and 2001 elections that proved effective. As a result, although there is still room for improvement, Virginia in 2001 provided a valuable lesson for the rest of the country.

REDUCING LOST VOTES THROUGH VOTER NOTIFICATION AND VERIFICATION TECHNOLOGY

After the 2000 election, the Virginia General Assembly amended the election law to permit all types of voting machines, which at

the moment includes the optical scan system, paper ballots, Direct Recording Electronic systems (DREs), and punch card ballots, to initially refuse a ballot on which the voter marked more than one selection for the same office—an "overvote." The voter would then be given the option to correct the ballot before submitting it. Some jurisdictions, primarily those using optical scan and punch card ballot systems, changed the software on their voting machines to do this with dramatic results.

- Whereas 1.59 percent of ballots for governor went uncounted in 1997, and 1.8 percent of presidential ballots went uncounted in 2000, only 0.97 percent of ballots for governor went uncounted in 2001.

- In one jurisdiction that employed the new software, the drop in uncounted votes was even more striking. While in 2000, this jurisdiction invalidated between 600 and 700 ballots as overvotes, in 2001 the jurisdiction invalidated only one ballot.

PUNCH CARD MACHINE PERFORMANCE

Punch card ballot machines have come to be seen as the symbol of the Florida 2000 election fiasco. Most studies conducted after that election reported that punch card machines have the highest number of votes lost of any voting system. Yet in 2001, Virginia was able to achieve great success in the seven jurisdictions using punch card ballots by incorporating the new software described above.

In 2000, jurisdictions using punch card ballot machines had a 2.07 percent uncounted ballot rate. In 2001, punch card jurisdictions

had a 0.73 percent uncounted ballot rate. Punch card ballot machines performed slightly better than DRE machines (machines with a user interface), which some advocate as the ideal replacement for the punch card ballots. In 2001, jurisdictions using DRE machines had a 0.74 percent lost vote rate.

While other factors may well have contributed to these remarkable results, such as greater voter awareness of voting processes after 2000 and voter education efforts, this small improvement in the voting machines clearly had a tremendous positive impact on the performance of the system.

In addition, Virginia tested several other potential reforms in 2001. For example, four jurisdictions used touch screen technology—ATM-like machines—for the first time. Voters responded extremely positively to these systems. As a result, the machines are expected to be the first new voting machines to be certified in Virginia in seven years.

ELECTION SYSTEM PROBLEMS

As indicated, the 2001 Virginia election was not completely error-free.

- The optical scanner for absentee ballots in Arlington County could not read 51 of 690 ballots, representing 7.39 percent of such ballots.

- Due to redistricting, voters had to be notified of new districts and, in some cases, changed polling sites. In Fairfax County, 18,000 residents were mailed voter registration cards instructing them to go to the wrong location.

Moreover, voters voiced a good number of complaints after the 2000 election. At hearings convened by Congressman Bobby Scott, voters cited many problems they had encountered, including:

- difficulties faced in registering to vote through the Department of Motor Vehicles and citizen voter registration drives;

- poor poll worker performance; and

- election administration problems that were more serious in African-American areas and included late receipt of registration cards, too few or poorly operating voting machines, and long lines. One witness complained that there were heavy police presences in African-American precincts.

State Actions between the 2000 and 2001 Elections

Although the state already had a largely efficient election system, since voters did encounter problems in 2000, the government did not stand pat. The legislature created a Joint Subcommittee to Study Election Process and Voting Technologies, which split into two task forces—one on technology and voting equipment, and another on voter registration and election day processes. Both task forces made proposals for the General Assembly to consider.

The General Assembly already had passed a law in 2001 establishing standards for hand-counting punch card ballots when a recount is necessary. However, it did not establish standards for initial hand counts of paper ballots. It required the State Board of Elections to promulgate standards for resolutions of recounts. The State Board also created standards for manually recounting ballots for systems other than punch card ballot machines.

The Future

Virginia's election system works well, and the progress it has made should be continued. The state should focus on three areas with respect to upcoming elections:

- establishing standards for hand counts of paper ballots;
- providing adequate funding for upgrading and replacing voting machines; and
- requiring all machines to have software that notifies the voter of an overvote and provides the opportunity for correction of the ballot, and providing funding for such software.

THE 2001 NEW JERSEY ELECTIONS

The 2001 election in New Jersey, which included a contentious gubernatorial race, was especially challenging because of both the psychological and practical effects of the World Trade Center attack and the anthrax scare, both of which took place just prior to the election. This may have played a role in New Jersey having its lowest voter turnout since the state's new constitution was adopted in 1947. However, the problems that occurred in the 2001 election were more the result of long-standing flaws, including structural flaws in the state's system, than about the unique circumstances of this particular election year.

STRUCTURAL FLAWS

The structural flaws in the system reduce responsibility for carrying out elections effectively and leave local and county administrators unaccountable. These flaws make it almost impossible for the public, the press, and even government officials to know how the administration of elections is progressing or to respond to problems that may occur.

For example, New Jersey has an extremely decentralized system whereby local and county officials are responsible for most election tasks, and there is very limited state authority or responsibility for carrying out elections. This means that each locality is carrying out its election duties in different ways and with varying degrees of success. The state does not have many specific standards that the counties must achieve, leaving the level of performance geographically disparate.

The localities and counties are not even asked to reveal the outcomes of their various performances. Counties are not required to report on most aspects of their election performance, and thus they are not held accountable by the state or the public.

General Outcomes

These structural flaws make it difficult to make an over-arching assessment of the election system during the 2001 election. However, we can make some general statements about how the election system performed in 2001.

- The rate at which votes go uncounted in New Jersey hovers around the national average. However, the number of uncounted votes in the 2001 elections actually rose slightly, despite the fact that one of the few actions the state took after the 2000 election was to replace punch card ballot machines.

- The counties in New Jersey use a wide variety of voting machines, with a corresponding variety in the number of problems that occur.

- Despite official reports that indicate otherwise, election observers and voting advocates in New Jersey report that many polling sites and systems remain inaccessible for the disabled.

COUNTY-SPECIFIC OUTCOMES

A closer look at four particular counties through interviews and media reports indicate that there were a broad assortment of problems that occurred in these counties that should be troubling to both voters and elected officials in New Jersey.

- In Passaic County, a county already subject to a federal monitor for past voting rights violations, Hispanic voters received postcards that not only were designed to intimidate but contained fraudulent information on voting.

- In this same county, voters received phone calls on election day telling them to bring identification to the polls. Since there is no such requirement in New Jersey, this can be seen as a clear voter suppression tactic.

- In Cumberland County, Spanish absentee ballots had a major translation error.

- In Atlantic City in Atlantic County, there were disputes over voter registration of the homeless.

- In Lawrence Township, Mercer County, there were major battles over absentee ballot counts and recounts.

OUTCOMES REPORTED BY ELECTION ADMINISTRATORS

Interviews with local election administrators also aided in filling out the picture of what occurred in New Jersey's 2001 election. Many of the responses indicated favorable attitudes toward reforms that have been undertaken. Findings included the following:

- Voters responded positively to a change in the law requiring poll sites to open at 6:00 A.M. instead of 7:00 A.M.

- Administrators strongly endorsed the legislature's act of doubling of the pay rate of poll workers to $200.

- Administrators favor use of provisional ballots, which have been employed in New Jersey since 1999, but some have difficulty with poll workers who fail to offer them.

Yet the changes put in place, which amount to tinkering with individual components of the system, are not enough. The system must undergo comprehensive reform; the issues most in need of redress include increasing the standards counties are held to, improving bilingual services, establishing statewide standards for voting equipment, and promoting elections to increase voter participation.

NOTES

1. Anya Sostek, "The Immortal Chad," *Governing Magazine*, January 2002, p. 26.

2. The Constitution Project, "Pending Legislation," www.constitution-project.org/eri/legislation.htm.

3. MIT/CalTech Voting Technology Project, "Voting, What Is, What Could Be," July 2001, p. 10.

4. See The National Commission on Federal Election Reform, "To Assure Pride and Confidence in the Electoral Process," August 2001; General Accounting Office, "Statistical Analysis of Factors that Affected Uncounted Votes in the 2000 Presidential Election," GAO-02-122, October 2001; Democratic Investigative Staff, House Committee on the Judiciary, U.S. House of Representatives, "How to Make Over One Million Votes Disappear," report prepared for Rep. John Conyers, Jr., August 2001; Minority Staff, Special Investigations Division, Committee on Government Reform, U.S. House of Representatives, "Income and Racial Disparities in the Undercount in the 2000 Presidential Election," July 9, 2001; Ford Fessenden, "Ballots Case by Blacks and Older Voters Were Tossed in Far Greater Numbers," *New York Times*, November 12, 2001, p. A17; John Mintz and Dan Keating, "A Racial Gap in Voided Votes Precinct Analysis Finds Stark Inequity in Polling Problems," *Washington Post*, December 27, 2000, p. A1.

5. In New York City, due to the use of lever machines, lost votes only include "undervotes" or ballot entries in which no vote is marked.

6. When using the optical scan system the voter must indicate his or her choice by filling in a circle or completing an arrow. Optical scanners then read the marks made on the ballots. DREs have an interface that is either a set of physical buttons or a touch screen upon which the voter casts his or her vote. These machines simultaneously record the voter's choices.

7. Demos, "An Overdue Reform: The Need for Statewide Computerized Registration Systems," January 2002, p. 3.

8. Caltech/MIT Voting Technology Project, "Voting, What Is, What Could Be," July 2001, p. 10.

9.Ibid.

10. It should be noted, however, that, as the postscript to the Los Angeles report details, there were some serious poll site problems in the 2002 primary election in Los Angeles.

11. Demos, "An Overdue Reform: The Need for Statewide Computerized Voter Registration Systems," January 2002, p. 3.

12. Suggested by Professor Christopher Edley, Harvard University School of Law, in his additional statement in the report of the National Commission on Federal Election Reform, "To Assure Pride and Confidence in the Electoral Process," August 2001.

13. National Commission on Federal Election Reform, "To Assure Pride and Confidence in the Electoral Process."

14. The bilingual voting materials requirements of the amendments to the Voting Rights Act mandate that bilingual voting materials must be provided by states or localities that have more than 10,000 voting age citizens or more than 5 percent of voting age citizens who are members of a single language minority. See 42 U.S.C. 1973b(f)(4), 1973aa–1a.

15. U.S. Commission on Civil Rights, "Voting Irregularities in Florida during the 2000 Presidential Election," 2001, Chapter 6.

16. *Election Reform Issues: Hearing before the Senate Committee on Rules and Administration,* 107th Congress (2001)(statement of Honorable Xavier Becerra, Representative in Congress from the State of California, Congressional Asian Pacific American Caucus), June 28, 2001.

17. A few months after the 2001 primary, the secretary of state of California decertified punch card voting technology and ordered that such machines be replaced by 2005. Thereafter, a judge in U.S. District Court ordered the state to replace all punch card ballot machines by the 2004 election. The state is considering an appeal, claiming that does not give it enough time to make the necessary changes.

18. The National Commission on Federal Election Reform, "To Assure Pride and Confidence in the Electoral Process," August 2001, p. 49.

19. Democratic Caucus Special Committee on Election Reform, "Revitalizing our Nation's Election System," 2001, pp. 11–23.

20. Caltech/MIT Voting Technology Project, "Voting, What Is, What Could Be," July 2001, p. 33.

21. Jim Drinkard and Peter Eisler, "Weakest Part of Any Voting Machine: People," *USA Today,* March 1, 2001, p. 13A.

22. See on-line report at www.tcf.org

THE 2001 NEW JERSEY ELECTION

INGRID W. REED

1. INTRODUCTION

In 2001, New Jersey held an election to replace a term-limited governor and select a new state legislature that was overshadowed by the World Trade Center attacks and the anthrax scare. These two unforeseen occurrences profoundly affected the election for a number of reasons, including communities preoccupied with mourning losses in the tragedy and mail disruptions that resulted from the recognition that anthrax-laced letters had been sent from central New Jersey post offices delayed the distribution of absentee and sample ballots. Those factors undoubtedly contributed to the lowest turnout on November 6—49 percent of registered voters—since the state's present constitution was adopted in 1947.

New Jersey's election system is almost entirely conducted by each of its twenty-one counties. The counties are responsible for, among other matters, selection of polling places; ensuring access for the disabled; appointing challengers; appointing and training board workers; handling absentee ballots; counting, investigating, and certifying provisional ballots; voter registration; and design and printing of ballots. The counties are also responsible for covering the costs of these activities. At the state level, the attorney general is responsible for implementing the National Voter Registration Act of 1993 ("Motor Voter") but has no direct responsibility for managing elections. The state Division of Elections within the Department of Law and Public Safety handles petitions for offices; advertises and certifies ballot questions

and bond issues; assists county administrators; certifies and publishes election results; and certifies voting machines.

Because the state does not centrally compile data about its elections, and because the counties themselves provide little information, this paper relies mainly on an informal survey of county administrators, post-election interviews, and newspaper reports to piece together problems that arose during the 2001 vote. To illustrate the issues, this paper focuses on four counties—Atlantic, Cumberland, Mercer, and Passaic—to assess issues related to voter registration, training of poll workers, performance of voting equipment, absentee ballots, services for Spanish-speaking voters, accessibility for disabled voters, and the management of elections.

The Florida 2000 election problems induced only minimal change in New Jersey's voting processes, even though its decentralized, county-based election system is very similar to Florida's. The state's counties continued to be responsible for elections in a fragmented management structure lacking transparency and without mechanisms for holding them accountable to the state—or the public, for that matter.

One reform measure former governor Christine Todd Whitman took before leaving office to join the Bush administration early in 2001 was to appropriate funds to replace punch card equipment, still in use in two rural counties, with a new electronic system. This initiative was the first time the state provided funding for the acquisition of voting equipment, which had always been the exclusive responsibility of the counties.

In addition, the state legislature enacted measures providing state support to increase the pay of poll workers and to open the polls an hour earlier. A three-week delay in the 2001 primary election date attributable to late release of the official 2000 Census

data, which in turn held up the start of the legislative redistricting process, also prompted support for the additional costs of managing the postponed election and communicating the new date to the electorate.

2. THE CONTEXT FOR THE 2001 NEW JERSEY ELECTION

The 2001 New Jersey gubernatorial election was of considerable national interest. One reason was that it was one of only two gubernatorial races held during an "off year." In addition, it was a hotly contested race for a seat that had been held by a national figure, Christie Whitman, who resigned to join the Bush administration. The two candidates were Democrat James McGreevey, the mayor of Woodbridge who had also run for governor in 1997, and Republican Bret Schundler, the mayor of Jersey City. But a race that was widely expected to be rancorous dramatically softened in tone in the wake of the September 11 attacks, which killed more than eight hundred of the state's residents.

That calamity was compounded when the anthrax scare that shocked the nation was found to have its origin in central New Jersey, several miles from the state capital of Trenton. On October 18, the Trenton Main Post Office, a gigantic mail distribution center, was closed, leaving about a half-million pieces of mail in limbo.[1] Subsequently, other central mail facilities in the areas of Princeton and Bellmawr in southern New Jersey were affected, causing a ripple effect of mail hold-ups. By the beginning of November, arrangements had been made to irradiate mail that might have come in contact with anthrax at the southern New Jersey facility, causing even more delays in delivery.

All of this not only transformed the tone of the gubernatorial campaign and attention of the state's voters, but also more mundanely undercut routine preparations for the election. Unknown numbers of sample ballots, absentee ballot applications, and absentee ballots themselves were included in the impounded mail. Some election officials tried to respond. For example, the county clerk in Mercer County, where the Trenton Main Post Office is located, alerted voters that duplicate ballots could be requested if they feared theirs had been held up in a post office. But the impact of the mail problems ultimately proved to be significant. By election day, the Mercer County Election Board found that only about two-thirds of the absentee ballots requested were returned, in contrast to the usual rate of 90 percent.

Ultimately, McGreevey won handily, sustaining his double-digit advantage over Schundler that polls showed since September. But clearly the electorate was distracted. Surveys showed that only 9 percent of registered voters were following the election closely in mid-October, while 17 percent had said they were doing so in the beginning of September. The first televised debate between the two gubernatorial candidates failed to generate interest. Only half as many voters—14 percent—said they had watched as watched similar gubernatorial debates in previous elections.[2]

Another indication that voters weren't energized was the number of calls coming into the League of Women Voters' 800 hotline number. From June to November 2001, only three thousand calls were placed, a poor showing in comparison to other years. The volunteers who provide this pro bono service were particularly disappointed with the number of calls they received just before and on election day.[3]

The events of October—Afghanistan, anthrax, and continuing stories related to September 11—kept the election out of the news.

The 2001 Eagleton Election Study showed that the front pages of three major newspapers carried news of the campaign on only one-third of the thirty days before the election. New York television stations, on which New Jerseyans north of Trenton depend for news, were preoccupied with the New York City mayoral election. Of the total campaign coverage of the three network affiliates for the thirty days before the election, only about 20 percent of the stories were devoted to the New Jersey gubernatorial election.[4]

There was a record-low 49 percent of voters who cast a ballot on November 6, compared with 65 percent in 1993, when Christine Whitman defeated one-term governor Jim Florio, and 55 percent in 1997, when Whitman beat McGreevey.

3. THE 2001 NEW JERSEY ELECTION: HOW THE PROCESS WORKED

A wide range of problems occurred during the 2001 election in New Jersey, many of which mirrored the 2000 presidential election pattern. These included issues with vote counts and voting machines; accessibility for the disabled; voter intimidation, especially of minority voters; poll workers and poll worker training; provisional ballots; and fulfilling the requirements for providing assistance for language minority voters. There were also disputes, often in court, over recounts, absentee ballots, and voter registration tactics.

UNCOUNTED BALLOTS

When voters go to the polls to cast ballots in an election, they expect their ballots to be counted. However, as the 2000 election showed, voting equipment often fails to record correctly the intent of voters. In their landmark study of election administration, the Caltech/MIT Voting Technology Project (VTP) developed a method for measuring the number of votes that were not counted in an election. The "residual votes" are the sum of all ballots that were uncounted, unmarked, or otherwise problematic. Uncounted ballots are ballots cast by voters but uncounted by election officials—for any reason. Unmarked ballots occur either because the voter intentionally or accidentally abstained from voting for that office, or because no

mark was registered by the voting system. Over-voted ballots occur when the voter votes for more than one candidate for an office where only one vote is allowed. The VTP found that, over the past four presidential elections, the number of residual votes nationally has totaled just over two million ballots, or 2 percent of all votes cast. In the typical gubernatorial and senate races the residual vote rate has exceeded 5 percent, or five million ballots.

One method of calculating residual votes is to compare the total number of ballots cast with the total number of votes for the first race on the ballot. Using this method, in the 2000 presidential election, there were 95,172 ballots that were cast but did not include a valid vote for the presidential race, which is a residual vote rate of 1.9 percent. However, a closer examination of the data county by county, as is shown in Table 3.1, shows that the residual vote rates for Cumberland and Monmouth counties in the 2000 presidential race are probably not accurate. In Cumberland County, the number is negative, which is not logically possible (the number of votes counted cannot exceed the number of votes cast). In Monmouth County, the number is exceedingly high, which is the result either of an exceedingly high error rate in the election due to voter confusion, or an inaccurate number of cast ballots reported by the county.

If the data from these two counties are excluded, the residual vote rate for New Jersey in 2000 is 0.9 percent, which was half the national average of 2 percent. The gubernatorial race was a test of how well New Jersey would perform in an off-year election, and the state did not fare as well. In the 2001 general election, 48,488 ballots that were cast were not counted in the race for governor, which equals a 2.25 percent residual vote rate. This represents more than a doubling of the residual error rate in New Jersey. Moreover, the table shows that an increase in residual votes occurred across all

counties; it is not a matter of a few especially poor performing counties skewing the overall rate. In several counties—especially Burlington, Camden, and Cape May—the residual vote rate was worse than in the 2000 presidential election. This deterioration in the number of votes counted occurred despite the fact that the state immediately replaced whatever punch card ballot machines remained in use after the 2000 election.

TABLE 3.1
RESIDUAL ERROR RATES, BY COUNTY, 2000 AND 2001
(PERCENT OF TOTAL VOTE)

	Residual Error Rates			Residual Error Rates	
COUNTY	2001	2000	COUNTY	2001	2000
Atlantic	3.03	2.15	Middlesex	2.46	1.09
Bergen	1.32	0.68	Monmouth	1.14	22.80
Burlington	3.54	0.54	Morris	2.86	0.68
Camden	6.18	0.86	Ocean	1.17	1.25
Cape May	7.22	1.33	Passaic	2.75	1.26
Cumberland	1.93	-3.96	Salem	2.33	1.74
Essex	0.93	0.35	Somerset	1.22	0.96
Gloucester	1.10	0.58	Sussex	0.99	1.20
Hudson	2.30	3.16	Union	1.32	1.53
Hunterdon	0.60	0.54	Warren	0.91	0.86
Mercer	1.89	0.65	Total	2.25	1.92

Source: Author's calculations from data from the New Jersey Department of Law and Public Safety, Division of Elections.

VOTING MACHINES

In New Jersey, counties purchase voting equipment, decide what equipment they want to use, and maintain it. However, in early 2001 the state broke with practice and with quick action, in response to Florida election problems, provided nearly $2 million to replace punch card equipment in use in two rural counties. Salem County in the southern part of the state has less than 40,000 registered voters, and Sussex County in the northern part of the state has about 80,000. Each purchased a different system, which added to the wide diversity of systems in use within the state, although the system must be on the list of approved equipment maintained by the Division of Elections.

According to the survey of 2001 voting equipment prepared by this division, fourteen of the twenty-one counties use some form of electronic equipment—five different types. Eight counties use mechanical systems introduced in the postwar period (although one county has electronic systems assigned to part of the county). The problems with the mechanical systems were reported in a *Times of Trenton* story several days before the election, as the heavy but fragile Mercer County machines were prepared for their cumbersome move to local polling places, where officials expressed concern about the damage they might inflict on new carpets.

But that was not the only damage they were likely to inflict. According to the chair of the County Election Board, the possible damage includes a chance that ballots go untallied because the machines are outdated and inaccurate. He is quoted as saying, "Counting your vote should never be this difficult. . . . We know there's a chance someone's vote won't be recorded." Mercer is looking forward to the next round of state support for replacing outdated

voting equipment because county officials say they can't afford the $3 million it would take to acquire new equipment.[5] The eight counties still using mechanical equipment account for more than a third of New Jersey voters, largely concentrated in the counties with the highest percentage of poor and minority voters. These counties also have a greater demand on their tax dollars for social services. As Lionel Leach of the NAACP National Voter Fund observed, problems with equipment are more likely to be problems for voters who already face barriers to voting.[6]

While the state's willingness to fund voting equipment in 2001 is raising expectations that it will do so again, the fourteen counties that purchased electronic equipment over the past ten years are likely to question the fairness of state funding for those who waited and have made do with less than reliable systems. If additional state funds become available, it makes sense for the state to assume leadership for the standardization of equipment rather than to perpetuate the decentralized and uncoordinated approach to voting equipment used in New Jersey.

POLLING PLACE ACCESSIBILITY

The New Jersey statutes require every poll place to be accessible for disabled and elderly voters. County Boards of Elections are required to report to the attorney general about the accessibility of polling places in their jurisdiction and to designate alternative sites when an accessible site does not exist. If an alternate cannot be found, a waiver request must be filed (New Jersey Statutes 19:8–3.1).

The attorney general's report for 2001 showed that 97 percent of polling places were accessible. From 2000 to 2001, a net increase of twenty-seven polling places and a net decrease of eleven

inaccessible polling places were reported. In cases where waivers were requested, the report states that the polling places were inaccessible due to stairways, which could not be made temporarily accessible.[7]

While the official numbers in the attorney general's report are impressive, observations from organizations working with individuals who have disabilities continue to find impediments to their full participation in voting. According to Ann Wilson of the Arc of New Jersey (formerly the Association of Retarded Citizens), at least a third of the polling places in New Jersey are not accessible to people with disabilities. The more obvious barriers are steps at entrances as cited in the attorney general's report, but they also include problems such as no curb cuts, no nearby parking, and no signage pointing to usable entrances if the main entrance is not accessible.[8]

Wilson stressed that accessibility for disabled people is not limited to removing physical barriers. Two other aspects of accessibility are extremely important. One is the attitude toward the disabled voter at the polls. Poll workers need better training in what the law requires for disabled persons to have access to voting and how to work with individuals with disabilities at the polls. The second is the ballot itself. New Jersey does not provide for large-type or Braille ballots nor has it explored the possibility of using alternatives such as telephones and talking ballots. While more than half the New Jersey counties now use electronic voting machines, which are easier for individuals with disabilities to use than the old mechanical machines, there are no requirements that they have features that make them accessible to individuals with disabilities, such as large-print format. The mechanical voting machines present a number of obstacles for the disabled, given the height of the machine and the levers that are out of reach for those in wheelchairs.[9]

A representative of the AARP of New Jersey, Doug Johnson, agreed with Wilson's critique and pointed out that many of its members report problems with standing at the polls and reaching the levers on the mechanical systems. He noted that sample ballots and materials at the polls are difficult to read due to the size of type, the language used, and the layout of information, but he also observed that many problems faced by AARP members are those they have in common with the general public, such as lack of familiarity with voting machines and knowing where to vote.

In New Jersey, access to voting for disabled persons needs to be defined more broadly than simply the physical features of the place where the polls are located, and the needs of individuals with disabilities must be understood more broadly to include physical, mental, and sensory impairments.

4. A Closer Look at the Process in Four Counties

Newspaper stories about four elections in different parts of the state provide a view of the complexities involved when there are contentious issues, unforeseen problems, and close elections that must be resolved at the county level but often with the involvement of the state attorney general and the courts. Because county election administrations are not required to provide reports other than the numbers of votes cast in an election, newspaper stories become the source of information about problems and challenges faced by election officials and voters.

Passaic City and Passaic County

Voter Intimidation

The Passaic County election in 2001 might be described in Yogi Berra's oft-quoted phrase "*deja vu* all over again." In 1999, in a north-central part of New Jersey where urban and suburban, poor and wealthy, people of color and whites coexist—but in distinct residential neighborhoods—incidents occurred that brought back images of the South in the 1960s. Hispanic voters were intimidated at the polls and denied bilingual service. Some were beaten up and others were harassed by poll workers. The federal government sued

the County and City of Passaic. In a settlement with the county, a U.S. district judge, Nicholas H. Politano, was assigned to oversee the county election system, and he appointed a federal monitor, Walter Timpone, to implement changes in the administration of elections.[10]

For two years, Timpone worked with the Board of Elections on all aspects of elections in order to eliminate the "culture of fear," a term he used in his seventh report as election monitor, filed in 2001.[11] His training of workers emphasized what he called the "new mantra"—no voter turned away. Specifically, he focused on sensitizing workers to linguistic differences and the law requiring equal treatment for non-English voters. A voting rights pamphlet was developed and mailed. Outreach activities in communities were designed to assure voters they would be encouraged at the polls and protected.[12]

By the early fall of 2001, the judge moved to put some of the specific tasks back in the hands of county officials and the newly hired administrator of the Board of Elections. Apparently, the involvement of Timpone was not popular because the judge was quoted as saying: "Whether you agree or disagree with what Mr. Timpone has done, whether you agree or disagree with his methodology, whether or not you think it's been successful is totally unimportant. . . . You're just going to do what I tell you to do."[13]

Given that some reform had been achieved and the expectation by Judge Politano that Passaic County would administer a fair election, it is easy to understand the disappointment and anger Timpone felt when on the Saturday before the election, postcards arrived at the homes of Hispanic voters in Passaic City (see Box 4.1).

Box 4.1

IMPORTANT INFORMATION FOR REGISTERED VOTERS OF PASSAIC

The court appointed election monitor is concerned about fair and honest elections. Please do not attempt to vote fraudulently. The election committee reminds you when you registered you swore to the following:

- You live at the address at which you are registered
- You will be at least 18 years old on or before the next election
- You are not on PAROLE, PROBATION, or SERVING SENTENCE due to a CONVICTION for an INDICTABLE OFFENSE under any FEDERAL OR STATE LAWS
- You understand that any false or fraudulent registration may subject you to a FINE up to $1,000, IMPRISONMENT UP TO 5 YEARS OR BOTH pursuant to R.S.19:34–1

Further, the election monitor reminds you that **ARMED LAW ENFORCEMENT OFFICERS** will be present at the polling station.

Paid for by the Democrats for Democracy[14]

Not only was the official-looking postcard fraudulent, misrepresenting the role of the court-appointed monitor, it also contributed to precisely what he was fighting—vote suppression. This masquerade of official action had been preceded by calls to board workers who had been signed up for jobs at the polls telling them they were no longer needed on election day. Because little was known about how widespread the bogus notice was, all 1,368 workers were recontacted in order to make sure the polls were adequately staffed—if not, there was a risk that voters would not be served promptly and thus would leave, resulting in another form of voter suppression.

On election day, reports filtered in that voters had received telephone calls reminding them to bring valid identification to the polls in order to vote.[15] No such requirement exists, however. In New Jersey, the match between the voter's signature in the poll book and the voter's sign-in is the only validation required. The 2001 incidents are now under federal investigation. For now, the revelations serve as a humbling experience for those who think the vote is secure without eternal vigilance in a state that ranks at the top in wealth and level of education.

VOTER AND POLL WORKER EDUCATION EFFORTS

Timpone's report also deserves attention for the candid way in which it reveals flaws in the management of the election process. His experiences may be more challenging than most, but they do provide details that are difficult to uncover under current New Jersey election procedures.

Timpone took a pragmatic approach to trying to address potential problems. For example, when new voting machines were introduced, he placed them in community centers and supermarkets several weeks before the election, in places recommended by board

workers so voters could see and touch the equipment to practice what they would do at the polls.

For the training program, Timpone hired teachers and municipal clerks to revamp the board worker curriculum, emphasizing interactivity, role-playing, and humor to keep the attention of the board workers. Since large classes did not permit hands-on training on the new machines, he increased the number of sessions offered in order to reduce class size. He commissioned an interactive video so that sessions could be held without a master teacher and with consistency in presentation of information. The curriculum covered use of provisional ballots, handling challengers (described below), providing voter assistance, and the role of the bilingual worker.

He also introduced two innovations. One involved expert assistance on election day in the form of a Master Board Worker (MBW), in part to reduce the reliance on special federal and state observers. Drawn from experienced board workers, the MBW team members traveled from polling district to polling district with cell phones to handle emergencies and act as a rapid response team encouraging fairness and efficiency. Timpone pointed out that MBWs are respected, because they are seen by poll workers as being one of them.

Timpone also organized a seminar for candidates in order to explain the role of "challengers," the two individuals who are formally appointed, one by each of the political parties, to serve in a "watch dog" role at a polling place. The authorized challengers have the right to question every person who they "know, suspect or believe not to be qualified or entitled to vote" (N.J. Statutes 19:15–18). Potentially a very powerful position, it is important that challengers understand their role and how it is carried out. The seminar addressed these points and was useful in explaining the functions of poll workers and the importance of the provisional ballot as an alternative way

to vote if a voter does not meet all the requirements for casting a ballot at the polling place.

Other topics covered included restructuring the bilingual coordinators position, resolving problems with new electronic machines used in half of the county in anticipation of their installation in the other part, addressing absentee ballot "tribulations," emergency ballots, and recounts, and highlighting "bright spots" that included the state initiative increasing pay for poll workers and the decrease in problems due to better training.

Timpone's report has been submitted to the court, which has the authority to evaluate it and act on it. If the state required all counties to report to the state in such a fashion, and the state was responsible for defining acceptable standards and practices, the counties would be held responsible for their performance.

CUMBERLAND COUNTY

LANGUAGE TRANSLATION PROBLEMS AND ANTHRAX MAIL PROBLEMS

On the Thursday before election day, the county clerk of Cumberland County, a large rural county in the south-central part of the state, was informed that the instructions in Spanish on the absentee ballots contained an error. Spanish-speaking voters were told to place their mark below (*abajo*) their preferred candidate rather the correct way, above (*sobre*).[16] The translation had been provided by the printer who printed the ballots rather than an independent, designated interpreter. The county counsel brought the problem to the attention of the state attorney general. The attorney general advised the clerk to mail out corrected instructions with a duplicate ballot to all voters who were previously sent absentee ballots and lived in

those districts where 10 percent or more of the residents speak Spanish.[17] Under New Jersey law, a bilingual sample ballot instruction is required in those districts (N.J. Statutes 19:49–4). Because the anthrax problems had closed the local post office distribution center, the county clerk also was told to send out the corrected ballot instructions by Federal Express in order to have them returned by 8 P.M. election day. The timeframe clearly was very tight. The new ballots were printed, duplicate return envelopes were marked "duplicate," prepared envelopes were addressed and stuffed on Saturday. What was missing was a deadline date by which the ballot had to be returned, an important detail because the deputy attorney general had rejected extending the deadline beyond election day.

By election night, 129 duplicate ballots had been returned to the Board of Elections and were counted if the voter had sent in an earlier one. For those voters who did not return a duplicate, the ones received were counted—even though the voters might not have marked the ballot for the candidate they preferred. The forty-seven ballots returned after election day were not counted. The Democratic candidate for the state senate from the First District challenged that decision in county superior court. The judge refused to extend the deadline, but he did say that the county clerk's actions were "inexcusable neglect."[18] This was a disappointment for the Democrats. The contest in the First District was a very close one and its outcome would determine if the Democrats took control of the state senate or power would be evenly split between the two parties. In addition, the county freeholder race in Cumberland County was tight and its outcome also would determine which party would be in control in the county.

When recounts were completed, the incumbent Republican was reelected by 430 votes out of 61,000 cast. The absentee ballots in

Cumberland County probably would not have made up the difference, but it is not known how many votes went uncounted and whether or not they would have changed the outcome of the election. On the issue of assuring accurate translation of the ballot, the county clerk in her report to the freeholders recommended that in the future the freeholders designate an interpreter to prepare documents in sections required to be in Spanish, rather than allow the printer to do it.[19]

LAWRENCE TOWNSHIP, MERCER COUNTY

RECOUNT

Until the first report from the polls came in on election night, it appeared to be an ordinary election among four young men for Lawrence Township Council. In this central New Jersey municipality of mixed urban-suburban-rural development and a population of around 27,000 people, elections usually are quite close. At the local level, people tend to vote more for the person than the party, while at the state and federal level, Democrats seem to have the edge.

According to the accounts in the *Lawrence Ledger*, a semi-weekly newspaper that covered the post-election saga, on election night it appeared that the Democratic challengers were ahead of the Republican incumbents by less than a hundred votes.[25] The next day, on a court order from the superior court judge, the vote total in one district appeared to be inconsistent with the vote for other offices and was therefore checked. One hundred votes were found for the Republicans. The Democrats' total remained the same.

After counting the absentee ballots and provisional ballots, the vote was tied for the second seat between an incumbent and a challenger. Two provisional ballots were sent to a judge because the

Board of Elections could not decide whether to accept them. With the continuing closeness of the election, all four candidates petitioned for a recheck of thirty-six voting machines. The recheck was granted by the superior court judge and resulted in two additional votes for one of the Democrats.

While the judge let the recheck proceed, she did not grant a petition filed by the Republican candidates to include absentee ballots that arrived after election day, which they alleged were held up because of the post office closure caused by the anthrax problems. She argued it was impossible to be certain that the ballots were delayed for that reason.

The issue was taken to the appellate court where the acting postmaster general was called to testify before a panel of three judges about the post office closure and its effect on mail distribution. At the end of December, the panel ruled that nineteen ballots bearing a postmark before November 6 and arriving by November 7 could be counted as well as any irradiated ballots. Finally, after the lengthy disputed process wound its way through the court system—taking twice as long Bush–Gore contested election—both incumbents were returned to office. Only five voters out of not quite seventeen thousand votes cast made the difference between winning and losing.

Atlantic City in Atlantic County

Voter Registration

A number of problems plagued the mayoral election in Atlantic City. First, the challenger, a Democratic member of the city council, had announced earlier in the summer that an ambitious registration drive was part of his campaign to win the city's first partisan election

for mayor.[20] The first controversy grew out of the effort to register homeless individuals. The state attorney general in previous elections had addressed related issues such as establishing residency, sending absentee ballots to the homeless, and assignment of polling sites for homeless individuals. The attorney general had furthermore affirmed the right of a person without a permanent address to register to vote. Yet this did not prevent the conflict that was to ensue.[21]

During the registration drive, the superintendent of elections questioned a registration without a return address and asked that the person register in person. The group registering the homeless contended this had a chilling effect on the person registering. The superintendent requested guidance from the attorney general, who advised setting up signs near the boardwalk to explain to homeless people how to register and where to get sample ballots. When the registration applications of 310 homeless voters were filed, the Republican county executive challenged them.

After a Board of Elections investigation, the registrations were found to be legal and all were accepted. Within a week, the local NAACP president and Citizens for Good Government organization presented a list of fourteen voters who they charged did not live in a ward largely supportive of the incumbent, a Republican running as an Independent. The protesters said they were doing so in response to the county executive's efforts to prevent homeless individuals from voting. The Board of Elections investigated and for a second time found no wrongdoing.

Several weeks before the close of registration, the county freeholders (known as commissioners in other states) responded to the controversy by authorizing the hiring of four full-time investigators, which the Democratic challengers "cautiously endorsed," if they were impartial. Within a week, the state Democratic chair said he

wanted to work with the superintendent and the state attorney general to end the "heavy handed tactics" of investigators who targeted minority voters.[22] When registration closed with no finding of irregularities, out of a total of 5,000 new registrants, about 350 were listed as homeless.

Absentee Ballots

A new issue arose when the team of the challenger to the incumbent discovered an error on the absentee ballot. The county clerk, who was running for reelection on the same ticket, quickly ordered a reprinting of the ballot to correct the placement of a "bubble," the area to be filled in by pencil to indicate a vote.

The next issue was not so easily resolved. The campaign team of the challenger requested duplicate absentee ballots for 140 voters who had not received the one they applied for. Since requests for absentee ballots are normally made by the individual voter, the request for a group of voters—especially one so large—was unusual. The county clerk said that a signed affidavit by each voter would be required. The campaign committee protested this action as voter intimidation, pointing out that under the process for absentee voting it is impossible to vote twice. The incumbent's team countered with evidence that voters were being visited in their homes by the challenger's associates who demanded their ballots to make sure they voted for the challenger. These charges and countercharges about possible fraud in relation to absentee ballots were brought to the Atlantic County Court. However, when the Board of Elections called for its own investigation, the case was not continued in court.[23]

In the final week of the campaign, 5,000 absentee ballots were received, about 2,300 from Atlantic City. The Board of Elections decided to begin to count the ballots on the Friday before the election

and immediately rejected the first eighty-five because signatures on those applications did not match those on the ballots. Two Republicans and one Democrat made the decisions. Upon the arrival of the second Democrat, who protested the action, the second Democrat was persuaded to leave, effectively stopping the counting. Partisan bickering and accusations about obstructing justice were heard from both sides. Copies of the questioned ballots were publicly distributed by one of the members of the board. A series of actions ensued. The attorney general's office sent a representative to observe the counting, the court impounded the ballots, and State Troopers were assigned to guard them. Both sides commented on the similarities with the Florida election.

Nonetheless, the process continued. By Friday night after the election, the absentee ballot count was completed—and determined the outcome of the election. The incumbent mayor had been ahead by 57 voters when the polls closed. He lost by 953 votes after the 1,860 absentee ballots were tallied in the new Oscan absentee ballot voting system. Of those, 331 were rejected because they did not meet the requirements for a complete ballot, such as a signature, or were contested by the members of the Board of Elections. Also included in the count were 39 provisional ballots. A week earlier there were charges of flagrant voter fraud. Yet the superintendent reported after the election that there was no fraud.[24]

5. Results of an Informal Survey of County Election Administrators

Newspaper articles and critiques by advocates for better election procedures are the only publicly available information regarding what happened in the 2001 election. The state does not require election administrators to file any reports regarding the performance of the election. Therefore, in order to get a more balanced perspective, the people who have responsibility for administering the election process were surveyed for this report (see Table 5.1, page 32).

Two researchers who conducted the survey contacted an election administrator in each of New Jersey's twenty-one counties. Each respondent was told that no one person or county would be identified and that the purpose of the survey was to get perspectives from the county level on key aspects of the election.[26]

Earlier opening of the polls. Two-thirds of the counties said the response to opening at 6:00 A.M. (it had previously been 7:00 A.M.) was positive. The others said that voter turnout was very low during the early hour. When asked about filing a formal report for the state as required in the enabling legislation, sixteen counties of the twenty-one had actual numbers of voters or a percentage of the total voters who came to the polls—but they were not certain where the report was supposed to go. Several respondents suggested that the polls should stay open an hour later in addition to opening earlier.

TABLE 5.1
INFORMAL SURVEY OF COUNTY ELECTION ADMINISTRATORS

	POSITIVE RESPONSE (# OF COUNTIES)	NEGATIVE RESPONSE (# OF COUNTIES)	NO COMMENT/ UNSURE ISSUES (# OF COUNTIES)
Perception of voters' response to earlier opening of polls (6 A.M.)	14 (67%)	7 (33%)	0
Collected data on turnout of voters who came to polls between 6:00 A.M. and 7:00 A.M.	16 (76%)	4 (19%)	1 (5%)
Perception of impact on increased pay for poll workers (from $100 to $200)	21 (100%)	0	0
Provided poll worker training	21 (100%)	0	0
Polling places accessible to handicapped	8 (38%)	5 (24%) [a]	8 (38%)
Perceived increase in absentee ballot usage	6 (29%)	6 (29%)	9 (42%)
Informed voters about provisional ballot usage	21 (100%)	0	0
Complaint forms were available	11 (52%)	5 (24%)	5 (24%)
Provided translated sample ballot for Spanish-speaking voters in districts with 10% or more Spanish-speaking residents	13 (62%)	0	8 (38%) [b]
Held formal post-election review	11 (52%)	8 (38%)	2 (10%)

[a] Reported that most polling places in the county are accessible.
[b] County's population does not meet the language requirement.

INCREASED PAY FOR POLL WORKERS. All twenty-one counties endorsed the doubling of the daily rate from $100 to $200. Many were enthusiastic and offered comments about how much easier it was to staff the polls and to attract more qualified poll workers. Some counties now have a waiting list of fifty to one hundred applicants for work at the polls, a new and welcome experience.

POLL WORKER TRAINING. Poll worker training is required by state law for all new poll workers and every other year for experienced workers. Beyond requiring that poll workers generally be instructed about the conduct of their elections and their duties, the law has no guidelines that must be met to ensure this is done properly. All the respondents offered comments that confirmed their awareness of the responsibility. However, few volunteered information about any particular efforts or creative approaches they took to carry out the task. Without giving details, a few expressed pride in what they offered, such as the person who provided a multiple choice questionnaire as a teaching tool.

ACCESSIBILITY OF POLLING PLACES. State law requires polling places to be accessible to disabled people (N.J. Statutes 19:8–3.1). One-third of the respondents said that in their counties all polling places are accessible, while another third were unsure or did not respond. The remaining five indicated that most polling places are accessible. Respondents from counties with older cities reported that they knew of the requirement but had difficulty locating buildings that were suitably accessible.

ABSENTEE BALLOTS. Since absentee ballots were promoted in this election by both political parties, the county contacts were asked if their use had increased in 2001. About a third reported an increase,

mainly those in more suburban counties. About a third thought the use had decreased, and slightly more than a third were not sure or did not know. Comments were made about the amount of effort and time required to process absentee ballots and how frequently the lack of a signature is cause for rejecting a ballot.

PROVISIONAL BALLOTS AND COMPLAINT FORMS. All counties responded positively about the use of provisional ballots, which have been in use in New Jersey since 1999. However, several added that it was hard to get poll workers to comply with the rules that require them to offer a provisional ballot to a voter if his or her registration information is missing from the rolls or if the voter has moved to a different election district. Furthermore, they said that poll workers often failed to explain how to fill out and cast the ballot. About half the respondents said that they have a formal complaint process. Most of these reported that complaints are taken seriously and are directed to an appropriate office. Several said that voters are contacted about the determination regarding the complaint.

SERVICES FOR SPANISH-SPEAKING VOTERS. State election law requires that bilingual sample ballots and instructions must be provided in districts with 10 percent or more Spanish-speaking residents. Twelve of the twenty-one counties reported that they have districts requiring bilingual ballots and of those, three provide them to all districts in the county. A handful of counties indicated that it was difficult to recruit Spanish-speaking poll workers as required for districts that qualify for bilingual ballots.

FORMAL REVIEW OF ELECTIONS. While reports other than the final vote tally are not required, the respondents were asked if a meeting

was held to discuss administrative issues and problems after an election. Half the counties said meetings were held generally for that purpose. The other half either did not know or did not respond. Some pointed out that the Board of Elections meetings served that purpose and were open to the public. The pattern of board meetings appears to vary from monthly to as needed.

MISCELLANEOUS COMMENTS FROM THE SURVEY. After the respondents answered the questions, many offered their own comments and recommendations. While the statements summarized here represent the thoughts of individuals involved in the process, none of whom are members of a Board of Elections, they provide additional insights that might be useful to explore further.

A number of the officials observed that there should be uniformity in the way county elections are administered and how voters are informed about elections. Referring specifically to the split in responsibilities between the county clerk and the Board of Elections, several administrators said that coordinating functions under "one roof," as one respondent described it, would make elections administration more efficient and less expensive. Another observed that the office of county clerk, who is an elected official, has the potential for the appearance of partiality in a disputed election. However, in making these recommendations, the respondents also recognized that New Jersey has a tradition of home rule so that preference for local practice might be strong and resistant to change.

Several respondents volunteered that improvements should be made in voter education, particularly in helping the public understand voting procedures and how to use voting machines, as well as in promoting voter registration, including addressing shortcomings in

Motor Voter registration. Others said attention should be paid to handling challengers (party representatives) causing problems at the polls, and more broadly simplifying how the voting process works in general because the current system is too hard for the poll workers to learn.

Overall, the survey revealed that the system is confusing for those who work in the system and those who try to participate in it. The majority of the counties have three separate offices that deal with different facets of elections. Within these offices, there is a wide range of professionalism. Some people appear to be knowledgeable and to be performing their jobs with enthusiasm, while others do not give that impression. The lack of a centralized office at the state level with responsibility for overseeing elections conducted by the counties compounds the confusion and leaves accountability in a web of complexity. Thus, the current system leaves open the possibility that voters in New Jersey are not assured of equal treatment, that their opportunity to vote may depend on where they live, and that their votes may be counted differently depending on where they are cast.

6. Future Elections in New Jersey

The Fund for New Jersey, a foundation that organizes its grants around furthering an effective democracy in the state, issued a series of reports at the end of 2001 and beginning of 2002 under the theme of "An Agenda for New Jersey," one of which was on campaign reform. The report makes recommendations about the election process, focusing on creating opportunities for voters but without addressing related implementation issues. The recommendations are:

- Extend the closing time of the polls an hour, from 8:00 P.M. to 9:00 P.M. (note: also recommended was the earlier opening, which has been adopted).

- Consider adopting mail voting and early voting as ways to encourage broader participation. Oregon's mail ballot and the early voting systems in Florida and Texas were given as examples.

- Permit registration as close to election day as many other states allow and consider same-day registration. The report points out that more than twenty states have less restrictive laws than New Jersey, which requires registration twenty-nine days before the election.

- Expand potential for participation in voting by individuals in prison or at least those on parole or probation. New Jersey is

among the states with the most restrictive rules about voting by those in the criminal justice system.[27]

At the legislative level, renewed energy for election reform may come from an official body created by the legislature in 1985. The New Jersey Law Revision Commission is responsible for conducting a continuous examination of the laws of the state. After the 2000 election, the commission decided to focus its attention on revising Title 19A, the laws that guide elections in the state. In September 2001, it held hearings to solicit ideas for what should be included in a new approach to this law. An article in the *New Jersey Law Journal* covering the hearings said the goal of the effort is to "reduce politics and local quirkiness in the process."[28]

According to the commission's executive director, the process is still in a fact-finding mode to be continued through the spring of 2002. Subsequently, the commission recommended a comprehensive revision of Title 19, the statute covering election administration, including a six-member Commission on Elections with supervisory responsibility over streamlined county boards of election, statewide registration, a selection process for voting machinery, and a change of absentee ballots to pre-election day ballots.[29] Since the commission is a creature of the legislature, its recommendations may carry more weight than those coming from public service and advocacy groups.

Meanwhile, fifteen bills related to elections were posted on January 8, 2002, the first day of the new session for the Assembly State Government Committee. All holdovers from the previous session, they include bills to establish a nine-member Title 19 Revision Committee, obviously similar to the Law Revision Commission's current effort. Among the other bills posted are those that require

electronic voting machines in all parts of the state, allow persons on probation and parole to vote, permit absentee ballots to be issued for any reason, require an automatic recount of the vote in certain elections, and require photo identification when voting. The challenge before the legislature is to find a way to address the systemic issues about election administration in order to assure that the more specific issues are implemented fairly and efficiently and not simply added on to an already complex, overburdened structure. So far, advocates for change of any kind have not been visibly active.

Addressing individual problems is important in order to improve component parts of the system. However, that will not be sufficient to achieve the larger goals of assuring citizens of their right to participate in selecting their representatives and making certain that their vote is respected. The biggest challenge facing the state is to create a fair and participatory system that defines accountability for its successful implementation and provides transparency for how it functions.

To accomplish the larger goal, leadership from the governor and the legislature will be required to define the expectations for reform and to engage, not ignore, the many individuals and entities already involved in the election process to craft a new system. A task force should be established—even if that kind of body is viewed skeptically—in order to move expeditiously with expert and practical advice on achieving better elections in New Jersey.

The following actions should be taken to improve New Jersey's election process:

STATE ACTIONS. Implement Law Revision Commission recommendations or ask the attorney general working with an advisory group in the Department of Public Law and Safety and its Division of Elections to define a leadership role for the state in administering elections and

resolving disputes. Currently, the responsibilities of the Division of Elections are not defined in the statutes. The attorney general's office acts as counsel only to county boards of elections but not clerks. It plays a coordinating role among counties in encouraging change but does not require action from them to improve performance and protect rights of voters. The continuation of state support, such as the recent reimbursement for poll worker pay and funding for voting machines, should be complemented with performance requirements.

County standards; streamlined administration. Election officials must detail the component elements of the election process and assess how to make management more coordinated and efficient. Counties should develop standards for performance based on the best practices that can be used statewide. The state should assemble the counties and ask them to present their initiatives in key areas such as training of poll workers, promotion of registration, orientation programs for using voting machines, and collaboration with advocacy groups to solve problems, with the goal of adopting the best for state standards.

Needs of citizens with disabilities. Appoint a special working group of county election officials and representatives of organizations concerned with election issues of disabled persons, to address specific solutions to these issues—broadly conceived, not just physical access—of individuals with disabilities.

Absentee voting. Appoint a special working group of county officials and advocates for voters to examine problems with absentee voting, from who can vote absentee to how absentee votes are counted. The working group should make recommendations for resolving these problems that would form the basis for a new law.

The same group or a different one should address provisional ballots in order to streamline processing and promote their use.

BILINGUAL SERVICES. Appoint a special working group of state and county officials and representatives of the Hispanic community and other groups to review implementation of the requirement to provide ballot instructions in Spanish for districts with 10 percent Spanish-speaking voters. Identify the issues and recommend how to resolve them and consider whether and how the state should provide services in other languages.

VOTING EQUIPMENT. Seek expert advice on establishing standards for voting equipment to be applied statewide. Based on these standards, replace mechanical voting machines at state expense as was done for punch card equipment. Plan for a systematic replacement and upgrading of electronic equipment that meets any standards that may be promoted under election reform at the federal level.

The Task Force also should encourage the consideration of new ways to improve a statewide system and to encourage participation in voting.

PRACTICES OF OTHER STATES. Organize learning conferences to hear how and why other states have implemented initiatives such as statewide voter lists in order to evaluate what would work in New Jersey. Other initiatives that could be explored are multi-day elections (in non-federal elections), mail ballots, and registration deadlines closer to election day.

ELECTION PROMOTION. Appoint a team of public relations specialists and election officials to design a state-led campaign to communicate imaginatively about registration and voting by employing sophisticated

marketing techniques now common in the public sector, such as in the promoting of tourism, the lottery, use of food stamps, the availability of health insurance for children, and New Jersey fresh produce. Using all media, develop engaging ads about how and when to register, how to go to the polls, use voting equipment, and get an absentee ballot. Consider endorsements for voting from well-known New Jersey celebrities. Apply modern design standards to sample ballots, signs at polling places, and state and county web sites carrying voting information. Set up an 800 number for election inquiries and complaints or provide a grant to the League of Women Voters to expand the services they voluntarily provide.

RECOGNITION OF ACHIEVEMENT. Elections are complicated and not easy to administer. Focus on making voting in New Jersey better, without dwelling on the shortcomings. Highlight all the successful experiences that could be even better if modern management and ingenuity are applied to future elections. Current practices will be improved by setting visible examples of what works well and by publicly expecting more from everyone. Set targets for increasing registration and voter turnout and publicize results. Create an awards program for exemplary public service on behalf of voting.

Finally, in an era of tight budgets, list all initiatives that can be addressed without additional funds and do them. However, also keep an up-to-date list of items that require additional expenditures so that those initiatives are first in line for appropriations when the fiscal picture turns around.

Overall, election administration and election promotion must be changed from a neglected, passive function of state government to an active, state-led comprehensive management effort providing standards and oversight for county and local election administration.

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