

THE 2001 ELECTIONS IN NEW YORK CITY

RONALD HAYDUK

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.

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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 City⁵ 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 thirty-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. Caltech/MIT 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 ELECTIONS IN NEW YORK CITY

RONALD HAYDUK

EXECUTIVE SUMMARY

The controversial 2000 election in Florida exposed flaws in election processes across the country and raised troubling questions about our democracy. Exposing the underbelly of election practices in the United States gave democracy reformers an opportunity to press for changes in election systems across the country. In New York, voting rights and civic organizations took advantage of this opening and successfully won several sorely needed improvements to New York City's election administration. Thankfully, these changes facilitated smoother functioning elections in 2001. Yet, unfortunately, many problems continue to plague New York City's Board of Elections—and its voters. This report tells that story.

New York City's 2001 elections exhibited many of the same problems seen in Florida's 2000 presidential election debacle, albeit on a smaller scale and with less media attention. In New York City, tens of thousands of votes were "lost"; thousands of other voters were wrongly turned away at the polls or did not have their votes properly counted; hundreds of voting machines broke down, poll workers made errors, long lines deterred voters in some jurisdictions, and a host of other obstacles beset would-be voters—all leading to the disenfranchisement of thousands of eligible voters. Significantly, a disproportionate number of low-income and minority voters were adversely affected by such problems and, in some neighborhoods, were disenfranchised at higher rates. Most importantly, disparate

voter disenfranchisement patterns may have affected the outcomes of some races.

Like Florida, New York City's elections saw similar dynamics play out among candidates. Ironically, as the *Orlando Sentinel Tribune* reported, New York City's 2001 elections may have rivaled some of the election follies seen in Florida. During the Democratic primary runoff election for mayor, a *Sentinel Tribune* editorial described a familiar scenario: "a candidate rescinds his election-concession speech, poll workers start recounting ballots, and political supporters threaten to sue over the election results."¹ In fact, in several hotly contested City Council races, the vote margin between the winner and loser was less than the 567 official votes that separated President Bush from Al Gore in Florida. Moreover, the partisan nature of election administration in New York revealed striking similarities to Florida's, despite different election laws, structures, and technologies.

From the outset—partly due to Florida's election debacle, coupled with the city Board of Elections' troubled track record and new term limits that led more candidates to run for more open seats than at any time on record—public scrutiny ran high. However, several important differences characterized New York's 2001 elections. First, a host of players mobilized to prevent a repeat performance: the media, voting rights and civic organizations, the state's and city's highest elected and elections officials alike worried that Florida-like problems might occur in New York's 2001 elections. A broad coalition of over sixty nonpartisan voting rights and civic organizations—along with elected and elections officials—successfully lobbied to obtain greatly needed new funding for the New York City Board of Elections. As a result, between \$8 million and \$9 million was appropriated by the City Council and mayor's office. These groups also produced a second important change: critical reforms to the board's operations before and during the

elections. These reforms improved the performance of the New York City Board of Elections and helped prevent potentially worse election scenarios that some had predicted and feared.

The city also placed \$1 million dollars into a reserve fund for the board that was used to restore previous cuts as well as for technical upgrades. Finally, the Federal Emergency Management Agency will pay an undetermined amount of money to the board for damage and costs due to the September 11 devastation, which aborted the scheduled primary elections.

Specific increases in funding and procedural changes to the Board of Elections included:

- ◆ increase in pay for poll workers from \$125 to \$200 per day—a sixteen-hour election day shift—which boosted recruitment and quality of poll workers (approximately \$5,200,000);
- ◆ expansion of efforts to recruit poll workers and multilingual translators, especially from outside regular party channels—civic groups recruited thousands of new poll workers who filled vacant slots, as well as increased the numbers of bilingual translators;
- ◆ improvement of training materials, procedures, and instructions for poll workers;
- ◆ hiring of additional outside voting machine technicians and maintenance workers;
- ◆ purchase of additional voting machines, parts, and seven paper ballot scanners;

- ◆ expansion of telephone voter information services by increasing the number of callers who can be in queue in the automated system from forty to sixty (\$569,692).

The funding increases improved the performance of the board in these critical areas, thus reducing the number of election problems and rate of voter disenfranchisement in the 2001 elections. Still, as this report and other studies show,² significant problems continue to plague New York City's elections, and long overdue reforms remain sorely needed.

This study of the 2001 New York City elections aims to shed light on election administration in Florida's wake. The report documents the consequences of particular election practices on voter registration and participation, how they affect distinct constituencies differently and, possibly, impact certain electoral outcomes. It examines closely three general election problems—all of which had disenfranchising effects:

1. voting machine failures and breakdowns,
2. poll worker and poll site problems, and
3. administrative problems.

Low-income and minority voters were disproportionately affected by these problems. These groups were, therefore, disenfranchised at higher rates. Significantly, these disparate patterns of election problems and voter disenfranchisement may have affected the outcomes of some races, particularly certain City Council races, the Democratic primary runoff election for mayor and public advocate, and the mayoral

race in the general election. While it is not possible to determine the precise levels or numbers of voter disenfranchisement or the specific impacts on electoral outcomes, we were able to establish the direction and extent of these problems and their general effects.

Information about previous elections in New York is also presented for comparative purposes. Essentially, this study shows that significant improvements in voting processes have been made over time—reducing the rate of voter disenfranchisement in these areas—but that much more change is needed to remedy failures of New York’s election system. This report concludes with a discussion of implications for contemporary policy debate and proposes a set of recommendations for reform.

The findings of this report—and other studies of New York’s election system—point to a common set of recommendations. First, the city should institutionalize and expand on the improvements made in 2001 (such as the increase in pay for poll workers, recruitment of elections personnel, establishment of uniform standards and procedures). In addition, a set of additional recommended reforms over the short, medium, and long term would vastly advance the performance of New York’s election system and democracy more generally, including:

- ◆ Institutionalize increased funding for poll workers and board operations.
- ◆ Expand recruitment of election personnel outside the political parties.
- ◆ Improve training methods and materials for election workers (poll workers, interpreters, poll site coordinators, machine technicians and mechanics, clerks, and managers).

- ◆ Reinstate the voting machine sensor (the disabled latch) to prevent “lost” votes.
- ◆ Establish an outside monitoring agency to assist the New York City Board of Elections modernize and professionalize; consider a nonpartisan structure and staff; establish rigorous, measurable performance measures and reporting requirements—and implement statewide.
- ◆ Expand language assistance programs, including translation of materials and assistance in other languages (Korean, Russian, and as many as possible); and improve programs to assure full access for people with disabilities.
- ◆ Adopt a statewide voter registration system.
- ◆ Establish a process and structure to purchase new voting technology, with broad input by voting rights and civic organizations.
- ◆ Expand the number of poll sites and equalize the number of voters per election district and poll site.
- ◆ Improve and expand voter education materials and outreach programs.
- ◆ Move toward election day registration by shortening the registration deadline and implement a system that provides easy access and security.

- ◆ Create a nonpartisan election administration system.
- ◆ Improve New York City’s campaign finance law and enact a corresponding state law.
- ◆ Relax ballot access requirements (move toward a modest fee system).

Despite these administrative problems, the New York City Board of Elections must be commended for successfully carrying out the 2001 elections, particularly in light of the September 11 tragedy. New York’s primary elections began at 6 A.M. that day, but were aborted after the attack on the World Trade Center. The Board of Elections—like many agencies in the area—was severely affected by the wreckage. Board personnel were locked out of their offices and were left without functioning computers for many days before the primary elections could be rescheduled two weeks later. The fact that many hardworking election officials and workers were able to pull their operations back together in time to allow the elections to go forward—within a truncated timeframe—is testimony to their success.

In sum, the 2001 elections seriously tested New York’s election system. While some election experts predicted an electoral “melt-down” with possible Florida-like scenarios, no one predicted September 11. Thankfully, while New York City’s Board of Elections was stretched to its limit, it did not break. It may have buckled in places, but it held up remarkably well, especially given its previous track record and the extraordinary conditions that September 11 created. While the report identifies election problems that beset New York voters, we would be remiss not to acknowledge the good work many board officials perform on a regular basis.

PART I

PERFORMANCE OF NEW YORK CITY'S ELECTION ADMINISTRATION IN THE 2001 ELECTIONS

In 2001, New York City was scheduled to have two elections: a primary election to determine the candidates for each party for each office and a general election. A third election—a runoff—of the two top primary vote-getters would be held after the primary for any citywide race in which no single candidate won 40 percent or more of the vote.

In the end, New York City actually held four elections due to the fateful events of September 11, the day originally scheduled for the primary elections. The election began at 6 A.M. but was called off by 11 A.M. The primary elections were rescheduled and held on September 25. A runoff election was held two weeks after that for two of the Democratic Party candidates who ran for mayor and two of the Democratic Party candidates who ran for public advocate (both Republican candidates for these offices reached the threshold, winning their primary election). The general election was held as originally scheduled, on November 6. In between those dates, on September 25, the rescheduled primary election was held and, on October 9, the runoffs for mayor and public advocate.

New York faced three primary problems in the 2001 elections—all of which had disenfranchising effects: (1) voting machine failures

and breakdowns; (2) poll worker and poll site problems; and (3) administrative problems.

An analysis based on data collected from one-quarter of the city's election districts examined the relationship between the three kinds of election problem—machine problems, poll site problems, and administrative problems—and the total votes for the mayoral candidates. Statistically, the number of poll site and administrative problems affected 2.3 percent of the votes for the mayoral candidates. (Machine problems were not found to be statistically significant.)³

Therefore, given there were a number of races that were at least that close—such as when Michael Bloomberg defeated Mark Green in the general election by approximately 40,000 votes out of nearly 1.5 million cast (or 2.6 percent) and when Green defeated Fernando Ferrer in the Democratic Party primary runoff election by about 15,000 votes out of 787,000 (1.9 percent)—these two election problems could have determined the outcomes of these close elections, if there was a large enough bias in which one candidate disproportionately lost votes.

In short, while New York did not manifest as many Florida-like scenarios as had been feared by many participants and observers, there were, nevertheless, significant problems that occurred and led to the disenfranchisement of thousands of voters. As one election watchdog group summarized it, “Thousands of New Yorkers were unable to vote in 2001, not because of any fault of their own, but because they are victims of an antiquated and under-funded election system.”⁴

1. VOTING MACHINE FAILURES AND BREAKDOWNS

THE “UNDERCOUNT” OR “LOST VOTES”

Despite statements by election officials to the contrary, thousands of votes are routinely “lost” by eligible voters in New York City elections. According to several studies, New York City had more uncounted, unmarked, and lost votes than did Florida—and the nation as a whole—in the 2000 elections.⁵ The average undercount or lost vote rate in the 2000 elections for New York City was 3.9 percent, which is significantly higher than the national average of 2.8 percent and Florida’s 2.9 percent.⁶ Moreover, studies reveal New York had a similar pattern of racial and ethnic bias in the 2000 elections, as bad or worse than Florida’s pattern of discrimination. More affluent white suburban districts, such as Nassau and Suffolk counties, had fewer lost votes, as did the state as a whole compared to New York City. Within the city, there were also disparities. In the Bronx, for example, where there is the highest number of low-income and minority individuals, the rate of lost votes was 4.7 percent of all votes cast, compared to 1.6 percent in Staten Island.⁷ In the Greenpoint–Williamsburg section of Brooklyn (a largely poor and minority area), the rate of lost votes was three times the national average.⁸ As we shall see shortly, data on lost votes in the 2001 elections in New York City reveal similar results.

Research assistance in data gathering and analysis was provided by, in alphabetical order, Jennifer Heettner, Jillian Jonas, Josh Klein, John Mollenkopf, Troy Wass, and Cindy Young.

The undercount is usually defined as the number or percentage of voters who went to the polls but did not cast a vote—or have their vote recorded properly—for the highest-level office (such as president or mayor). Some of these are simply voters who actively decided to not vote for any of these candidates. But more often than not, the undercount reflects voters who attempted to cast ballots for candidates but who “lost” their votes, often because of a failure of voting technology.⁹ This is especially true in elections where there are only one or two offices up for grabs, as was the case in the New York City 2001 Democratic primary runoff election (or in special elections). Florida’s infamous punch card ballots—as well as New York’s lever voting machines—may not have accurately recorded a voter’s intent when she attempted to cast a ballot.¹⁰

According to the CalTech/MIT study nearly six million votes were lost nationally in the 2000 elections. The study concludes with the following figures of lost votes: “1.5 to 2 million lost because of faulty equipment and confusing ballots; 1.5 million to 3 million lost because of registration mix-ups; up to 1 million lost because of polling place operations; and an unknown number of losses because of absentee ballot problems.”¹¹ Again, this report and other studies show that the rate of lost votes in low-income and minority neighborhoods is much higher than in more affluent white districts.

**LOST VOTES IN THE 2001 ELECTIONS:
THE DEMOCRATIC PARTY PRIMARY RUNOFF,
FERRER VERSUS GREEN**

The Democratic Party primary runoff election was an incredibly close race between two candidates for mayor: Fernando Ferrer and Mark Green. In the end, Green won by 15,981 out of 790,019 total

votes cast. But controversial and pointed questions were raised about the voting process and the vote count, including uncounted or lost votes.

The number of lost votes in the runoff election between Ferrer and Green is significant (see Table 1.1, page 16). First, these are more likely to be “real” lost votes. That is, the likelihood that a voter purposely did not vote for one of the two candidates is very low.¹² Mark Herman, a commissioner of elections from Staten Island, stated, “The truest numbers of an undervote you would get are in a runoff.”¹³ Second, the proportion of lost votes was not distributed evenly. Voters in low-income and minority districts, who voted at a higher rate for Ferrer, lost more votes proportionally than did voters for Green who tended to be higher income and white voters.¹⁴

Thus, while Green may have ultimately won the election, the data suggests that the margin of victory would have been smaller—if not very close—had it not been for all of the lost votes. In fact, a *New York Newsday* report suggested, “the number of uncounted or ‘lost’ votes citywide may have exceeded Green’s 15,981-vote margin of victory.”¹⁵ Moreover, because the rate of undercounted votes was higher in low-income and minority districts that were Ferrer strongholds than in wealthier and white districts that were Green strongholds, Ferrer’s contention that the election results are questionable is made more plausible. Yet, the *Newsday* article continues, “the lost votes presumably would have been split between Green and Ferrer, roughly along the lines of the counted votes in each district. If so, the analysis indicates that Green still would have won had the lost votes been counted.” Unfortunately, precise analysis of this question is not possible because data for about one-third of the election districts is missing.

TABLE 1.1
LOST VOTES FOR FERRER VERSUS GREEN
IN THE DEMOCRATIC PRIMARY RUNOFF ELECTION IN
SELECTED ASSEMBLY DISTRICTS AND BOROUGH, 2001

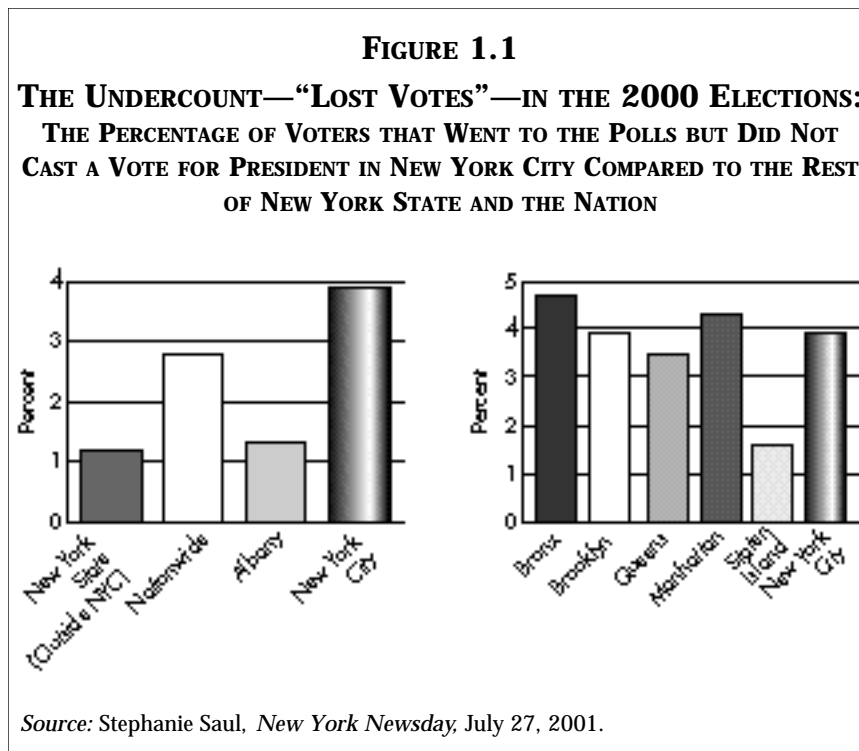
BOROUGH	ESTIMATED LOST	OFFICIAL VOTE COUNT FOR MARK GREEN	OFFICIAL VOTE COUNT FOR FERNANDO FERRER	PERCENT OF VOTE
Bronx	4,158	38,256	144,342	2.80
Manhattan	4,281	131,438	86,579	1.90
Queens	3,244	94,342	77,330	1.80
TOTAL	11,683	254,036	308,251	
BOROUGH	ASSEMBLY DISTRICT	NUMBER OF LOST VOTES	PERCENTAGE LOST VOTES	
GREEN STRONGHOLDS				
Manhattan	73	220	1.40	
Bronx	81	330	1.90	
FERRER STRONGHOLDS				
Manhattan	68	481	2.50	
Bronx	79	513	2.90	
<p><i>Source:</i> Stephanie Saul, "Runoff's Lost Votes," <i>New York Newsday</i>, November 18, 2001. Only three of New York City's five boroughs are listed here because data was not available for all election districts (about one-third of such data is missing). Saul's method for calculating lost votes in 2001 elections was as follows: "We looked at all the election night reports of canvass from the three boroughs mentioned. Those reports list the total public counter. We calculated the difference between the total public counter and the total vote, then divided the total vote into that number. The resulting number is a percentage undervote" (E-mail correspondence with the author, January 22, 2002).</p>				

These findings and conclusions are similar to those found in several close City Council races and in the general election for mayor. While probably not comprising enough votes to overturn any election (though no one knows for sure), the undercount or lost vote problem is a major issue that leaves too many voters disenfranchised and candidates and the public wondering about the true winners.¹⁶

THE CULPRIT: A DISABLED LATCH

“Uncounted” or “lost” votes in New York City often occur because a “sensor latch” or “locking” device—which prevents a voter from inadvertently pulling the handle to end his voting session unless he has pulled down at least one lever to cast a vote—was disabled in the 1970s.¹⁷ Voters sometimes mistakenly move a big red handle in the voting machine to cast a ballot, which begins and ends the voting session, without pulling down levers to select candidates. This error ends up leaving them exiting the voting booth without casting a vote. Another way people lose votes is by pushing back up the levers they move down to select candidates (perhaps in the process of making up their minds or correcting errors) and then ending the voting session by pulling the big red handle back but not casting votes for all their choices. According to Commissioner Herman, “People who’ve voted many times eventually get the message that they lose their votes when they put the buttons back up.”¹⁸ These kinds of errors cause a voter to lose her vote. The sensor latch device would prevent these occurrences. The latch device ensures voters don’t leave the voting booth without properly casting a ballot. And for voters who intend not to cast a ballot after they enter the voting booth, there is a special button they can push to leave the booth.

While it is unclear why the New York City Board of Elections disabled the sensor latches that would prevent most of these lost votes, what is clear was the adverse effect to city voters. In other parts of New York State, such as in Albany where similar machines are used but where the sensor is not disabled, the undervote is far less—only 1.3 percent (see Figure 1.1). Similarly, Nassau or Suffolk counties, wealthier suburban areas of Long Island, New York, also have lower vote loss rates because their machines have functioning sensor devices. Nassau County’s undervote was 1.2 percent, and Suffolk County’s was only 0.7 percent. In fact, all New York counties outside of New York City had a 1.2 percent vote loss rate, far less than the city’s 3.9 percent rate. In Philadelphia, which uses the same kinds of voting machines but has the sensor device enabled, only 0.5 percent of the voters lost their vote during 2000 elections.¹⁹



If enabled, this device would prevent many voters from improperly using a voting machine and thus losing their vote. But the board rejected the idea to replace the sensor latch earlier this year saying it would be too costly and time-consuming.²⁰ The Board of Elections estimates it would cost \$275,000 to replace the sensor device/latch. Clearly, fixing this sensor latch device would be a short-term solution, or stop-gap measure, to the high lost-vote rate in New York City. Of course, a middle- to longer-term solution lies in obtaining new voting technology. Thankfully, these issues are priorities for voting rights organizations and many elected and elections officials. According to one Board of Elections commissioner, Douglas Kellner, Democrat from Manhattan, the lost vote is “a serious problem that the Board of Elections must address.”²¹ Thus, the forgoing analysis suggests that the undercount or lost votes due to this inoperable, disabled sensor device led to a precarious situation where, arguably, the problem produced Florida-like scenarios in New York City in 2001.

CONSOLIDATED ELECTION DISTRICTS

The Board of Elections further complicated the Democratic primary runoff election in 2001 when it consolidated election districts to save money and time in the runoff.²² The board combined more than one election district in some areas onto one voting machine. When results from some of those machines were reported on election night for an unofficial tally conducted by the Associated Press, tens of thousands of votes were counted twice. Finger-pointing ensued. Officials for the Associated Press suggested it was police officers that misinterpreted the data when they supplied the raw numbers.²³ The police argued that Board of Elections poll workers read them wrong numbers.

Equally important, consolidating election districts appears also to have disenfranchised eligible voters. Election districts are the smallest election units in New York's system, which are usually comprised of approximately 800 voters each. Disenfranchisement can result because of one of several foul-ups: (1) A voter may enter the correct polling place but end up at the wrong table or election district because a poll worker may not properly direct them to the correct voting table. As one voting rights advocate put it, "it's like being in the right church but wrong pew."²⁴ (2) A voter's name will not appear on the poll list. In some cases, the voter will be offered an affidavit ballot to cast his vote; in other cases the voter is incorrectly told that he is not registered and therefore ineligible to vote. (3) In some of these instances, poll workers wrongfully sent voters out of the poll site without casting votes or affidavit ballots. (4) Even voters who are offered affidavit ballots may have their votes voided because they may not complete the affidavit ballot properly or election workers may not process them properly. In addition, delays and long lines may develop because of these problems, and voters may leave without voting out of frustration or necessity to get to work, attend to children or family needs, and the like. In general, the consolidation of election districts contributes to greater confusion at poll sites and a host of these kinds of scenarios. Voter disenfranchisement is the result, which occurred all too frequently in the 2001 elections in New York.

SHORTAGE OF VOTING MACHINES

New York maintains a fleet of roughly 6,400 mechanical voting machines, over thirty-eight years old, each weighing nearly 700 pounds and containing thousands of parts.²⁵ "While the Board of

Elections reports that these machines have become more reliable in recent years, over 6.5 percent of them still broke down last election day [in November, 2000].”²⁶ It is important to note that nearly half of the machine breakdowns that occurred in the 2000 elections manifested in two assembly districts in Brooklyn. (Two machine technicians associated with these breakdowns were subsequently fired.) The 2001 elections also exhibited a similarly large number of machine breakdowns. Curiously, a high percentage of the breakdowns in the 2001 New York City elections were concentrated in several—but different—assembly districts in Brooklyn.

All too frequently voters face broken voting machines, which can lead to their disenfranchisement. These lever machines are no longer manufactured and therefore replacement parts must be recycled from other machines. Furthermore, technicians capable of fixing these machines are difficult to come by and hold on to.²⁷ Thus the Board of Elections must rely on outside contractors to repair voting machines. In the 2001 elections, the Board of Elections was forced to use more outside contractors because there were shortages of machine technicians.

Due to a high incidence of broken voting machines, a shortage of voting machines and machine technicians, a decrease in the total number of poll sites, and chronic shortages of poll workers, voters often find long lines that are ultimately discouraging. These conditions are particularly acute during the crunch times before and after working hours when most individuals vote. The wait can be over an hour in many busy jurisdictions. In 2001, the evidence indicates this was less of a problem than in years past, particularly in presidential elections. Still, even Mayor Giuliani had to wait nearly thirty minutes to cast his vote. Again, the efforts to stave off Florida-like disaster—along with a total lower voter turnout—led to improvements

that prevented this problem from occurring more severely and in too many locations.

The Board of Elections had sought to purchase additional machines to prevent these conditions and to comply with state law in 2001. The law requires that election districts of 800 or more registered voters have two machines.²⁸ However, this is often not the case and this law is not enforced. The Board of Elections has long been violating election law that requires it to send an extra or double machine to each large election district. In the 2000 elections, the City Board of Elections used 641 fewer voting machines than required by law.²⁹ In an attempt to correct the problem for the 2001 elections, the city purchased 273 used machines. Still, in reality the city actually needed to purchase about 260 more machines to meet state law.³⁰ As a result, in 2001 Manhattan was about 113 machines short of the 1,659 it needed to fully comply with the law; Queens was about 111 short of the 1,908 it needed; and Brooklyn was about 143 short.³¹ While the board does not deny it allocates fewer voting machines than required by law—largely because the manufacturer of these machines has long since ceased producing them³²—the board nevertheless claims that it allocates fewer machines to those districts (or boroughs such as the Bronx) that have historically low voter turnout. However, since the number of registered voters has grown over the past decade, due in part to the influx of immigrants and their attainment of citizenship, the board has been violating election law and probably discouraging voter turnout. For example, before 2001 the Bronx received no double machines in any election districts. Therefore, the board's failure to provide "extra" voting machines in districts as required by law may have discriminatory impacts.³³

The city has attempted to replace its voting machines in the past. In fact, the city began a process of purchasing electronic voting

machines in the late 1980s. However, the Board of Elections was unable to come to consensus on the bidding process to select new machine technology, select a vendor, and proceed to purchase. Some contend this was partly due to partisan deadlock on the bipartisan Board of Elections.³⁴ Others raised questions about security and safeguards.³⁵ Still other reformers, such as the New York Public Interest Research Group (NYPIRG), raised concerns about the closed nature of the process of purchasing new voting machines.

The issue of obtaining new voting machines in the future is a primary concern for all stakeholders in New York. The city and state Boards of Elections are actively looking into options; the governor's task force is exploring several possible options and presenting demonstrations of new technologies at public sites. Mayor Giuliani's task force recommended that the Board of Elections acquire new voting technology, and Mayor Bloomberg is on record as supporting this initiative. The voting rights community is currently strongly pressing for this change (see the Recommendations section below for more discussion of this issue).

SHORTAGE OF VOTING MACHINE TECHNICIANS

Due to pressure brought to bear on the city and its Board of Elections in 2001 (by Florida's wake, mobilization by a coalition of voting rights groups, media scrutiny, and state and city task forces), the board was able to purchase more voting machines and recruit and hire a larger number of technicians—all aimed to cut down on the number of machine breakdowns. The board generally employs sixty full-time salaried voting machine technicians to maintain and fix machines. In the months leading up to the 2001 elections, however, the board had several vacancies. "The Board of Elections, with

the assistance of the [Mayor's Election] Task Force, combed the country and recruited temporary" machine technicians.³⁶

Workers were recruited from as far as Chicago, as well as from Suffolk, Dutchess, Rockland, and Orange counties, and from the City University of New York's (CUNY) work experience program and the Central Labor Council, in order to make sure the elections could be conducted, particularly following the September 11 tragedy.³⁷ Roughly thirty extra voting machine technicians were recruited by New York City, including eight paid workers from the Chicago Board of Elections. Although these improvements were helpful, there was still a shortage of technicians for the 2001 elections, which led to a significant number of machine breakdowns and related problems.

MACHINE BREAKDOWNS

A problem that occurred in the Democratic primary runoff election for mayor was machines that malfunctioned, or whose security might have been compromised. For example, a Ferrer lawyer, Thomas Garry, said that one machine at a Brooklyn warehouse showed 143 votes for Green but none for Ferrer. "The lever for Ferrer had to be broken," Garry said.³⁸ "These machines were supposed to be . . . locked away where no one could touch them. When we arrived, the machines were already opened," said Linda Stanch, a lawyer for Ferrer who monitored the count from machines in the Board of Elections' Manhattan warehouse. "There's absolutely no security," she said. "This makes Florida look like it's run by NASA."³⁹ Officials at the Board of Elections said they were unaware of any such problems and defended the security of the machines. Administrative manager Jon Del Giorno said the board's "machine-

by-machine count” and vote certification process is designed to pick up any errors that might have occurred during the election.

Despite such charges and other evidence of election problems that may have affected the outcome, Ferrer stated that he did not want to file a lawsuit at the time because he did not want to “plunge the city into chaos” when it already had enough to deal with after the events of September 11, 2001.

However, the Reverend Al Sharpton did threaten to file a complaint to the Justice Department about how the election was conducted. He contended that a number of election problems may have affected the outcome, particularly when the consolidation of certain election districts forced minorities to fill out a disproportionate number of paper ballots. The Board of Elections used only 58 percent of its machines for the runoff because it combined two or more election districts into one. The districts were combined to keep the machines in warehouses and prepare them for the general election. However, Sharpton argued that the consolidation should have received the approval of the U.S. Department of Justice (DOJ) under the federal Voting Rights Act. The Board of Elections claimed it used this procedure in order to save money. It also allowed the board to keep the voting machines in warehouses for the general election in November, which would give their technicians and mechanics time to prepare the machines properly.⁴⁰ The Voting Rights Act, which prohibits election practices that have a discriminatory effect, requires federal approval for voting changes in the Bronx, Brooklyn, and Manhattan. According to Board of Elections commissioner Douglas Kellner, district consolidation is common and does not require Justice Department approval.⁴¹ But the Justice Department had notified the Board of Elections that it was investigating whether decisions the Board of Elections made had a disproportionate

impact on nonwhite and minority voters.⁴² As this report is being written, the outcome of the DOJ investigation remains pending.

In the general election, the Board of Elections data on machine breakdowns in Manhattan showed that white and Latino election districts had a very similar pattern of machine problems. There was a higher proportion of machine problems among black and Asian districts. They both more often had one problem, and Asian districts more often had three or more problems (see Table 1.2).

Thus, the data indicate the total number of machine problems voters experienced in Manhattan was 22.2 percent of all monitored election districts.

The Coalition for Voter Participation mobilized a massive election day monitoring operation for the general election, spearheaded by NYPIRG and Common Cause.⁴³ The groups deployed 853 surveyors to 415 of New York City's 1,268 polling sites (one-third) to document election day conditions and operations, including documenting any problems they observed. The NYPIRG/NYU Center for

TABLE 1.2
MACHINE PROBLEMS BY ELECTION
DISTRICT AND ETHNICITY (PERCENT)

	WHITE	LATINO	BLACK	ASIAN	TOTAL
No Problems	79.7	79.7	76.0	60.7	78.8
One Problem	9.0	8.1	15.8	25.0	10.1
Two Problems	4.6	4.5	6.2	3.6	4.7
Three or More Problems	6.8	7.7	2.1	10.7	6.4

Source: Author's calculations from Board of Elections Data.

Excellence in New York City Governance study covered nearly 30 percent of the city’s polling sites. Importantly, the survey covered every assembly district in the city (nearly every neighborhood was surveyed).⁴⁴

NYPIRG found fewer machine problems than did the reports from the Manhattan Board of Elections. The NYPRIG study shows that only about 10 percent of all monitored election districts experienced poll site problems. Moreover, they found that black districts they monitored had fewer machine problems than other districts (see Table 1.3).

	WHITE	LATINO	BLACK	ASIAN	TOTAL
No Problems Reported	87.9	89.2	94.7	83.3	90.2
One Problem	3.9	3.6	1.9	6.7	3.3
Two Problems	5.0	2.4	1.9	6.7	3.6
Three or More Problems	3.2	.8	1.4	3.3	2.8

Source: NYPIRG Survey Reports, “Report from the Polls: Election Survey by New York City Voters, General Election, November 6, 2001.”

2. POLL WORKER AND POLL SITE PROBLEMS

It is the job of the poll worker to facilitate voting, not to hamper it. In past elections this has all too often not been the case. In fact, the many problems stemming from poll worker actions or inactions—and chaotic or confusing poll site conditions—are some of the biggest hurdles voters face. According to Commissioner Kellner, our “biggest single problem is inspector training.” When poll workers give improper information, voters may not properly cast their ballot and lose their vote. Similarly, when poll sites open late, are not fully staffed, are missing necessary materials (or run out), and are not set up properly and functional, delays, long lines, frustration (for voters and poll workers alike) can manifest—all of which can discourage and disenfranchise eligible voters. When a registered voter moves within the city, she is permitted to vote at her new polling place. (The motor voter law made this permissible to cut down on the high number of invalidated affidavit ballots and voter disenfranchisement.) Election Commissioner Herman attributes much of the city’s undervote to failures of poll inspectors to fully explain to voters how to use voting machines.⁴⁵ Thus, it is necessary for poll workers to know basic election laws and proper procedures so they can correctly direct or redirect voters.

The Board of Elections recruits and trains thousands of part-time workers to staff polling sites during elections. The 312 full-time

staff of the board grows to nearly 30,000 on election day. Often, however, the board is short the necessary number of poll workers that are needed to properly conduct an election.

ELECTION WORKER SHORTAGES AND POLL SITE CONDITIONS

Insufficient staffing at the polls can cause delays, long lines, and frustrated and overworked poll workers—each of which can lead to voter disenfranchisement. In 2001, the Board of Elections was short 3,371 poll inspectors (or 15 percent) of the 22,410 inspector positions needed to fully staff all polling sites, despite the extraordinarily successful efforts by the Citizens Union, CUNY, and several other schools and organizations that recruited nearly 4,000 new poll workers for the Board of Elections.⁴⁶ An additional number of other critical poll worker positions went unfilled in 2001. According to data from the Board of Elections, the following figures reveal inadequate staffing:

- ◆ Poll site coordinators: 99 (8 percent) out of a total of 1,198 positions
- ◆ Information clerks: 207 (18 percent) out of a total of 1,146 positions
- ◆ Poll clerks: 3,092 (49 percent) out of a total of 6,276 positions
- ◆ Door clerks: 6 (1 percent) out of a total of 729 positions
- ◆ Chinese interpreters: 122 (25 percent) out of a total of 483 positions

- ◆ Spanish interpreters: 256 (33 percent) out of a total of 779 positions
- ◆ Korean interpreters: 19 (59 percent) out of a total of 32 positions

A range of problems stemming from election worker shortages—and poor training—manifested in the 2001 elections, as documented in survey data from three large and unprecedented election monitoring surveys: the NYPIRG/NYU Center for Excellence in New York City Governance; the Asian American Legal Defense and Education Fund's (AALDEF) surveys; and the Citizen's Union survey. The result from each survey amply demonstrates that significant problems continue to plague New York's elections, even while we must acknowledge the significant improvements the Board of Elections and city have made from previous years.

Similarly, poll site conditions can vary significantly and impact on voter participation. First, the number of poll sites has been reduced over time. The board lost approximately one hundred poll sites over the past decade due to the need to obtain poll sites that are handicap accessible, the rising costs of real estate, changes in schools, and the like. Second, the location—and convenience—of poll sites is uneven in some districts. Poll sites in some areas are more conveniently located for voters than in others locales. Third, some poll sites contain a fewer number of election districts, which are comprised of approximately 800 registered voters per election district. The number of election districts per poll site can make a poll site more or less smooth running or chaotic. Fourth, election districts can vary in size. Some election districts contain a few hundred voters, while others contain up to one thousand registrants.

Therefore, smaller poll sites with fewer election districts may have shorter waiting lines and potentially fewer poll site problems while other poll sites with more election districts may have longer lines and more problems. These patterns were borne out in the surveys cited below.

For example, the lower east side of Manhattan (to take one area) contains some poll sites that are located inside apartment buildings where residents live, such as the Grand Street apartment complexes, which house mostly middle-income and Jewish voters. This allows these residents to vote more conveniently, in their lobby. By contrast, nearby housing projects—public housing complexes that contain a high proportion of low-income and minority populations—often are not designated as poll sites and require voters to travel greater distances to their poll sites. Some have argued that these patterns reflect the influence of dominant politicians on the Board of Elections. In the case of the Lower East Side of Manhattan, Sheldon Silver, the State Assembly member for the district, who is also the Democratic majority leader of the Assembly, is currently one of New York's most powerful elected officials and exerts greater influence over such poll site conditions than do other leaders or constituencies.⁴⁷

The variation in poll site conditions is also borne out by a review of documents of the Board of Elections in Manhattan. The data on polling site problems indicate that Asian districts experienced the greatest incidence of problems, followed by white, Latino, and black districts (see Table 2.1). Asian districts were more likely to have three or more problems than the other districts. This indicates that problems were clustered. Moreover, the overwhelming majority of monitored election districts in Manhattan experienced poll site problems, nearly three out of four.

TABLE 2.1
POLLING SITE PROBLEMS BY ELECTION
DISTRICT ETHNICITY (PERCENT)

	WHITE	LATINO	BLACK	ASIAN	TOTAL
No Problems Reported	21.1	35.6	43.8	14.3	26.8
One Problem	49.9	44.6	39.0	25.0	46.8
Two Problems	17.8	10.8	13.0	17.9	15.8
Three or More Problems	11.2	9.0	4.1	42.9	10.6
Count	724	222	146	28	1120

Source: Author's calculations from Board of Elections Data.

FINDINGS FROM NYPIRG/NYU CENTER FOR EXCELLENCE MONITORING PROJECT

One of the biggest recurring problems found in the NYPIRG/NYU Center for Excellence in New York City Governance survey was that many poll workers were unable to correctly answer questions posed by surveyors. One question posed to poll workers was in reference to the proper procedures regarding a registered voter who has moved.⁴⁸ Another question asked was whether voters were allowed to bring another person with them into the voting booth for assistance.⁴⁹ Although most poll workers correctly answered the first part of the questions (83 percent and 89 percent respectively), the majority of poll workers in both cases gave false information to

related follow-up questions. In the first instance—about registrants who had moved—57 percent of the poll workers said *incorrectly* that the voter should vote at his old poll location instead of at his new poll site (the latter is the correct answer). Similarly, regarding voter assistance, 53 percent of the poll workers *incorrectly* stated that only poll workers could assist voters instead of the correct answer, which is anyone except a voter’s employer or union representative.

Additional poll worker and poll site problems identified in the NYPIRG/NYU Center for Excellence in New York City Governance study included:

- ◆ More than half of those surveyed were not asked if they needed help using the voting machine, even though poll workers are required to do so.
- ◆ More than one-fifth (20 percent) of the surveyors were unable to see a ballot poster displayed in polling stations, as required.
- ◆ Seventeen percent of the surveyors were not provided a “voter rights flyer” when they requested one, as required.
- ◆ Thirty percent of poll workers did not wear name tags, as required.
- ◆ Nearly half of those surveyed found the ballot “slightly” or “very confusing.”

The NYPIRG/NYU Center for Excellence in New York City Governance study found that these problems were not evenly distributed

throughout the city. Manhattan scored worst on several fronts: poll workers in Manhattan were least likely to follow the proper procedures in asking voters if they needed assistance with voting machines (compared with poll workers in Staten Island, for example, who scored the highest); it had the longest waiting times to vote (an average of 7.1 minutes); and was worst on poll workers wearing name tags, as required. Manhattan was best on visibility of ballot posters. The Bronx ranked the lowest on providing voter rights flyers but better on poll time waiting lines (an average of 3.2 minutes). The latter difference, however, may be due to lower overall voter turnout in the general election. Yet, Brooklyn's average wait time was 5.4 minutes even though it had roughly the same voter turnout rate as did the Bronx (223 voters per election district compared with 216 voters per election district for the Bronx).

To poll workers' credit—and to the Board of Elections more generally—the NYPIRG/NYU Center for Excellence in New York City Governance surveyors found poll sites mostly “calm and quiet” or “busy but orderly” rather than “confusing or chaotic,” and few experienced machine problems. Moreover, according to NYPIRG's data, white districts had the most polling site problems and black districts the fewest (see Table 2.2, page 36). However, like the Board of Elections, NYPIRG found a high proportion of monitored election districts experienced poll site problems, almost one out of four.

The findings of this and other monitoring projects—including the results of surveys conducted by the Asian American Legal Defense and Education Fund (AALDEF), which surveyed nearly 4,000 Asian voters (over 1,500 in the primary elections and more than 2,300 voters in the general elections), and by the Citizens Union, which surveyed 225 poll workers they recruited to work the elections (as well as information from the New York City Board of

TABLE 2.2
POLLING SITE PROBLEMS BY ELECTION
DISTRICT ETHNICITY (PERCENT)

	WHITE	LATINO	BLACK	ASIAN	TOTAL
No Problems Reported	68.1	73.5	95.2	76.7	78.6
One Problem	22.7	13.3	3.3	10.0	14.1
Two Problems	5.3	7.2	.5	3.6	
Three or More Problems	3.9	6.0	1.0	13.3	3.6

Source: NYPIRG Survey Reports, "Report from the Polls: Election Survey by New York City Voters, General Election, November 6, 2001."

Elections itself)—all show that many significant poll worker and poll site problems persist. In fact, data from these surveys corroborate the finding that problems in all three focus areas of this report (machine failures, poll worker and poll site problems, and administrative foul-ups) continue to pose significant obstacles to thousands of eligible voters at significant rates in New York elections.

LANGUAGE MINORITIES

As they have done in several past elections, AALDEF placed attorneys and volunteers to monitor polling sites throughout New York City that had a large number of Asian-American voters for the September 25 primary elections, the October 11 runoff elections, and the November 6 general elections in 2001. Their purpose is simple: to ensure

that the New York City Board of Elections complies with Section 203 of the federal Voting Rights Act, which mandates that Chinese bilingual ballots and assistance are available to the voters.⁵⁰ In addition, they seek to record any problems that Asian Americans encountered during voting, including monitoring of both Chinese-American and Korean-American voting sites. AALDEF monitored polling sites in Chinatown, Flushing, Elmhurst, Floral Park, Richmond Hill, Sunset Park, and Homecrest, places with high concentrations of Asian-American voters. While their surveys documented all three kinds of problems that this report focuses on, their surveys primarily revealed problems with poll workers and poll sites. (The complete survey results can be found in Appendix 1 of this report.)

THE PRIMARY ELECTIONS

In the primary and runoff elections, AALDEF observed thirty-one polling sites, twenty-eight of which were required to provide bilingual language assistance as per the Voting Rights Act. They surveyed more than 1,500 Asian-American voters (one-quarter were first-time voters). More than three hundred voters complained of some kind of problem.

During the primary elections, AALDEF found the following major problems:

- ◆ Many voters were registered but their names were omitted from the registration lists.
- ◆ Poll workers were inconsistently notified of training sessions; also, trainers gave improper information to Chinese interpreters.

- ◆ Poll workers interfered with the voters who were receiving language assistance; also, poll workers did not provide Chinese language materials.
- ◆ Poll workers who demanded identification from the voters, did not follow election procedures, and/or were hostile toward voters—all violations of election law.
- ◆ Confusion over polling site changes.
- ◆ Poll inspectors at some locations did not seem to understand the rules regarding the use of affidavit ballots.
- ◆ There were not enough Korean interpreters in Flushing and other locales.

AALDEF reported many occasions where poll workers interfered with Asian voters who sought language assistance. Poll workers did not allow bilingual poll workers to assist voters and/or kept Chinese language materials hidden in some instances. Apparently, the poll inspectors at these sites did not trust the interpreters and prevented them from translating, or were rude and even hostile to Asian voters. Other problems reported include poll workers who provided various kinds of misinformation. For example, many voters were misdirected—told to go to another polling site only to be told at the second site that they could not vote there and were sent back to the original site or a third site.⁵¹ Finally, some poll inspectors insisted that Asian voters provide identification before voting, which is illegal. AALDEF reported that during the primary elections approximately 250 Asian voters were asked to show identification.

THE GENERAL ELECTIONS

During the November 6 general elections, AALDEF monitored thirty polling sites. They observed twenty-seven sites that were required to provide Chinese language assistance and six sites where Korean interpreters were voluntarily provided. AALDEF reported surveying more than 2,300 Asian-American voters, over 700 of whom reported having some type of problem.

There were six major problems that voters encountered:

- ◆ Many voters in Flushing did not receive language assistance and were subject to various kinds of improper treatment by poll workers.
- ◆ Some poll workers demanded identification from voters and interfered with Chinese interpreters.
- ◆ Chinese characters on machine ballots were too small to read, and magnifiers, which were supposed to be provided, were not.
- ◆ Voter names were missing from registration lists, which at times resulted in some voters being turned away without being given the option to cast an affidavit ballot (that is, they were not permitted to vote).
- ◆ Required materials translated into Chinese were missing, Chinese interpreters were unhelpful, and in some cases police officers unjustly interfered with election disputes.
- ◆ Broken machines and confusion regarding polling site changes.

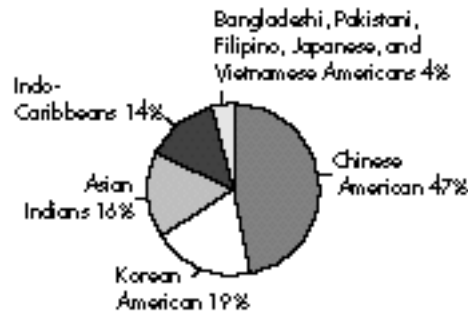
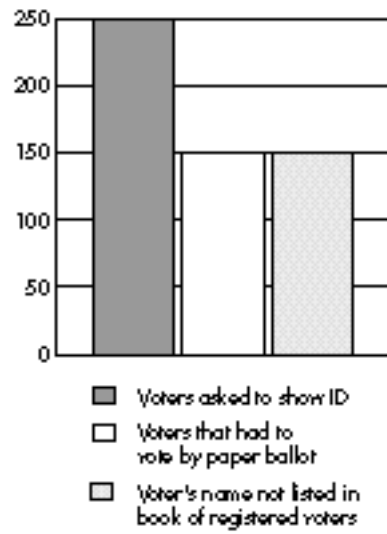
AALDEF reported that approximately 375 Asian voters were asked to show identification, which is illegal. More than a third of all Korean voters needed assistance from an interpreter but did not receive any. Moreover, AALDEF reported that Chinese and Korean voters experienced discrimination from poll workers and police officers. AALDEF reported that about sixty-five voters complained of poorly trained workers who did not provide proper instructions to voters. Other voters reported rude treatment by poll workers. Chinese characters on machine ballots were frequently reported to be too small and hard to read—135 Chinese voters complained of this problem. AALDEF reported that ninety voters had claimed to be registered but were not on registration lists. Voters who are not listed are supposed to be given affidavit ballots but at several sites were not. All of these problems have obvious potential to disenfranchise voters.

AALDEF's survey results from the 2001 elections indicate that particular poll worker and poll site problems frequently occur and negatively and disproportionately affect racial and ethnic minorities. Unfortunately, these problems are not particular to the 2001 elections. According to surveys conducted by AALDEF during the 2000 election, similar or worse problems were found and in as great or greater frequency (see Figure 2.1). For example, one glaring example in the 2000 elections is that at six polling sites in Chinese-American neighborhoods, the ballot reversed the Chinese translation of "Democrat" and "Republican."⁵² In another instance, a Spanish sign instructed voters to choose three candidates, when in fact, they were supposed to choose one.

Although occurrences of the range of problems discussed above were not previously as thoroughly and systematically documented as the 2001 NYPIRG/NYU Center for Excellence in New York City

Governance study and the 2001 AALDEF study, there is, nevertheless, ample evidence that such problems marked many previous elections.⁵³

FIGURE 2.1
ELECTION PROBLEMS EXPERIENCED BY ASIAN AMERICANS
IN THE NOVEMBER 2000 ELECTIONS



Source: Asian American Legal Defense and Education Fund, "November 2000: Asian American Exit Poll," 2000, a report based on exit poll surveys of over 5,000 voters.

POLL WORKER RECRUITMENT AND TRAINING DEFICIENCIES

There are several reasons New York voters experience such problems with poll workers at poll sites. Poor working conditions and the patronage system of appointing workers are at the root of these problems. The leaders of the political parties—county chairmen, district leaders, and election commissioners—maintain control over the recruitment and training process. Democratic and Republican officials select poll inspectors, clerks, translators, and supervisors based on party loyalty rather than on competence or intelligence (which is true of nearly the entire staff of the Board of Elections).

For example, in New York City, a poll worker can fail the test required to work an election but still end up working on election day. These tests are administered at the end of a training session. Even after failing a test, thus proving their incompetence to perform the necessary tasks, the board routinely hires such workers. Illiteracy can pose a problem, making it difficult for such a poll worker to fulfill basic needs, such as finding a name in alphabetical order. Others are not sure when to use “affidavit” ballots versus “emergency” ballots, or how to direct a voter to the correct voting table.⁵⁴

The salary for a sixteen-hour day to work the polls was only \$125 until 2001, when it was raised to \$200 after a successful lobbying effort by the Coalition for Voter Participation and other elected and election officials. Before this, poll worker pay was a paltry \$65 during the 1980s, raised to \$85 per day in 1996. Obviously, poor pay makes working the polls less appealing to more competent individuals and creates little incentive for enrolling to work an election, let alone for the hiring of workers to do it efficiently. Each

instance when the pay increased, it was due, in part, to pressure that voting rights groups in conjunction with election officials brought to bear on the city's administration. In 2001, the coalition and Mayor Giuliani's Election Task Force were critical in succeeding to increase the stipend to \$200 per day for the 2001 elections.⁵⁵ The increased stipend helped recruit more poll workers and fill shortages.

In addition, several groups teamed up to recruit prospective workers for the New York City Board of Elections.

THE CITIZENS UNION FOUNDATION (CUF) SURVEY AND REPORT⁵⁶

In 2001, the Citizens Union Foundation (CUF) recruited over 2,500 poll workers for the New York City Board of Elections.⁵⁷

The results from the CUF report, however, were not encouraging. They found that, out of the 252 people surveyed, only "49 (19%) respondents were assigned to a training session and 195 (or 77%) were not. 183 (or 73%) survey respondents were never assigned to work and 62 or (25%) respondents were assigned to work at a poll site."⁵⁸ The CUF received many phone calls and e-mails expressing frustration "because they were not notified one way or the other by the Board of Elections. In fact, for many applicants the only notice they received after they submitted their application form was our survey."

TRAINING SESSION PROBLEMS

The CUF report stated that many respondents who attended the Board of Elections training sessions, which are approximately three hours long, felt "more hands-on work with voting machines or role-playing" should be incorporated. Many said the trainer told trainees to refer to their training manuals for answers to questions instead of

being given answers or by demonstration. Members of the Woman's City Club and the League of Women Voters who attended training sessions reported similar shortcomings of the board's training workshops.⁵⁹

3. ADMINISTRATIVE PROBLEMS

PAPER BALLOTS: AFFIDAVIT, EMERGENCY, AND ABSENTEE

As has occurred in previous elections, the large number of paper ballots used in the 2001 elections appears to have led to a significant number of eligible voters being disenfranchised, particularly in the Democratic Party's runoff election. There are three kinds of paper ballots used in New York elections: *affidavit ballots* are used when a voter's name does not appear on the registration rolls; *emergency ballots* are used when a voting machine breaks down; and *absentee* (and *military* ballots) are used by voters who are unable to vote on election day in person (due to illness, disability, being out of town, and the like).

Such paper ballots are invalidated because of a variety of reasons. A voter may not have registered to begin with, or he may not have registered in a party (to qualify for voting in a party's primary election), or she may have failed to update her address if she moved.⁶⁰ In other cases, a voter's registration application may not have been properly processed, or the voter rolls were not updated and are missing names or digitized signatures; sometimes poll workers do not issue these paper ballots to voters who are eligible to cast such ballots, or make mistakes in processing paper ballots. Similarly, voters themselves may make mistakes in completing paper ballots.

The main point to be made here is that the greater the use of manual, paper-intensive procedures (that is, use of paper ballots), the greater the likelihood and degree of potential error, and thus, voter disenfranchisement.

For example, Fernando Ferrer believed the outcome of the Democratic primary runoff election was far from certain because of the thousands of paper ballots that had to be counted. More than 50,000 absentee ballots and paper ballots were filed by people who had trouble with their machines (emergency ballots) or were not listed as registered voters (affidavit ballots). In total, the board had 51,245 affidavit ballots to deem valid or invalid and to tally. They also had 5,764 absentee ballots to count. For days, the outcome of the election was in question. As time went on, board officials and campaign aides who were monitoring the counting process said that many paper ballots were ruled invalid and Green was declared the winner.

In the end, over 40,000 paper ballots were invalidated in the 2001 Democratic primary runoff election for various reasons. As data presented below demonstrates, more of Ferrer's ballots were disproportionately invalidated than Green's ballots. While many such voters may not have properly registered in the first place, Ferrer claimed that many voters were disenfranchised in the runoff election. Ferrer claimed that voters were "turned away in droves" from the polls.⁶¹

Ferrer supporters claimed there were two main problems in the runoff election. The first was the differences they noted in the public counter number on the voting machines—which record the number of people who enter the machines—and the total vote for Green and Ferrer ("lost votes"). Additionally, they accused Green's advisers of pressuring the Board of Elections to invalidate paper ballots.⁶² Green supporters also accused Ferrer operatives of challenging ballots.

A representative of the New York City Board of Elections said other campaigns, in fact, challenged many of each other's ballots.

In the 2001 general election, the rate of paper ballots varied among the boroughs (see Table 3.1), raising questions about why such differences existed, and suggesting possible disparate impacts and outcomes.

BOROUGH	PERCENT EMERGENCY BALLOTS OF ALL VOTES CAST	PERCENT VALID AFFIDAVIT BALLOTS
Bronx	0.21 (400)	54.3
Brooklyn	1.09 (4,639)	55.7
Manhattan	0.49 (1,954)	55.1
Queens	0.12 (453)	65.1
Staten Island	0.08 (95)	61.7

Source: NYPIRG Survey Reports, "Report from the Polls: Election Survey by New York City Voters, General Election, November 6, 2001."

AFFIDAVIT BALLOTS

In general, the New York City Board of Elections claims that the large number of affidavit ballots that is regularly cast in each election does not necessarily indicate an equally large number of errors on the board's part. The board's current perspective regarding affidavit ballots is that "valid" affidavit ballots indicate that the board

committed administrative errors, and “invalid” affidavit ballots suggest that provisions of the election law, or individual voters, are responsible for their vote being invalidated.⁶³

The normal procedure is that after a voter completes an affidavit ballot at a poll site, the board then verifies that the voter’s information (name, address, and signature) matches the board’s registration records. This is to prevent fraudulently cast affidavit ballots. If no registration is found, or if the information on the affidavit ballot does not accurately match the registration record at the board, the affidavit is invalid and not counted. Conversely, if a voter’s registration record is located and the information on the affidavit ballot accurately matches the board’s registration record, the vote is counted.

While it is true that the large number of affidavit ballots cast does not necessarily indicate an equally large number of errors on the board’s part, other actions (or inactions) by the board may cause legitimate voters’ affidavit ballots to be invalidated. Voting rights advocates have demonstrated that numerous affidavit ballots are regularly invalidated by the board that should not be. Moreover, not all affidavits that are subsequently “validated” by the board are properly reconciled. Indeed, even when affidavit ballots are correctly counted, they may still reflect clerical errors committed by board personnel that invalidate votes, indicating breakdowns in the board’s procedures (such as in initially processing registration applications).

As documented by this report and in the 2001 monitoring survey projects—as well as in analyses of past elections conducted by voting rights advocates, investigations by the New York State Assembly Election Law Committee, and the Board of Elections own self study—board errors have led to a significant number of affidavit ballots being incorrectly invalidated.⁶⁴

PART II
PRELUDE TO 2001—AVOIDING
FLORIDA 2000

4. TERM LIMITS AND CAMPAIGN FINANCE: SETTING THE STAGE FOR CLOSE RACES

First, because new term limits took effect in 2001, New York had an unprecedented number of candidates running for more offices than ever before. More than 600 people announced their intention to run for office, with over 400 eventually filing petitions with the Board of Elections for sixty-one open seats.⁶⁵ All the highest-level offices were up for grabs: mayor, public advocate, comptroller, four of the five borough presidents, and thirty-six out of the fifty-one City Council members.

The total number of candidates who ended up running for office was reduced, however, in part due to New York's stringent ballot access requirements. Many candidates were knocked off the ballot before the primary elections because their petitions were improperly filed or flawed. Before the September 11 primary election, sixty-one candidates were knocked off the ballot by challenges from their election opponents. More were knocked off for technicalities such as misspellings, forgetting to attach cover letters, or the signatures of voters who used nicknames instead of their legal names. Despite these casualties of New York's onerous ballot access laws and sometimes still-formidable political organizations, New York City government was diversified further after the election—

particularly in the City Council. Queens elected the first Asian-American City Council member from Flushing; Corona elected its first Hispanic City Council member; and Queens elected its first black borough president. However, other races, which could have produced greater diversity, did not, such as in District 1 where three Asian candidates split the Chinatown vote and lost to a candidate from Greenwich Village.⁶⁶

In addition, many races were highly competitive because of a new campaign finance law. The law provides funds based on any contributions candidates obtain by a four-to-one ratio, and thus enables many cash-poor candidates and political novices to run for office.⁶⁷ In some council races, for example, six or more candidates vied for the same seat. Thus, with so many candidates running for so few offices, it was inevitable that many races would be decided by a small number of votes. Just as in Florida, the electoral margin between winners and losers was projected to be quite small. Such scenarios in fact did occur in over a dozen races.

As expected, most of the City Council races were decided in the Democratic primary. However, because dozens of City Council races contained numerous candidates who ran for the same seat (six or more in some instances), many of these races were decided by narrow margins. The margin of victory was razor thin in over a dozen races. In some cases, the difference between candidates for first and second place was less than 100 votes. In District 49 in Staten Island, for example, Michael E. McMahon defeated Deborah L. Rose by 170 votes. In District 28 in Queens, Anthony D. Andrews received 31 percent of the vote, while Allan W. Jennings received 34 percent of the vote, a 446-vote margin. In District 10 in Washington Heights, Robert Lizardo lost to Miguel Martinez by 343 votes. In Flushing, Ethel Chen lost to John Lui by 202 votes.

Many of these City Council races were not decided quickly because of the thousands of absentee and affidavit (or provisional) ballots that must be counted in each election, which become particularly relevant in close contests.⁶⁸ Similarly, the runoff elections in the Democratic primary for public advocate and for mayor were also held in limbo for nearly a week in each case.

VOTE TABULATION AND REPORTING PROBLEMS

On the evening of the Democratic primary runoff election, Green appeared to have won handily—by 40,000 votes as initially reported—and Ferrer conceded defeat. However, this was based on flawed and unofficial reports by the police, the media and the Board of Elections. Roughly 42,000 votes had been counted twice. After these revelations surfaced, Ferrer rescinded his concession and stated that “we don’t know who won,” and he called for a “fair, complete, and accurate final count.” As further reports came in from the Board of Elections, Green’s margin narrowed, from 40,000 to 21,056 votes, to 18,000, and ultimately down to 15,981.

We learned from Florida that reporting unofficial tallies on election night can wreak havoc. New York’s confusion was caused by a similarly faulty system, particularly on the part of the media who rushed to report unofficial results, which is part of a complicated system that is error prone. Poll workers, who have already worked a sixteen-hour day, read numbers off the voting machines to police officials who write down totals and bring the results to police headquarters. There, the tallies are entered into a computer system and relayed to the media. At each juncture errors can easily be made.⁶⁹

As was evident in Florida, candidates and election officials in New York have sparred—and did so even more in 2001—about which standards (if any) to apply in cases of disputed ballots. Paper

ballots—and a lack of clear guidelines for administering and counting them—were recurring issues. They were hotly debated at countless meetings of candidates and board personnel, at the board’s commissioners meetings, and by the mayor’s task force.

For example, optical scanners were used to read some paper ballots. The scanners can read six pixels or more of a possible sixteen pixels in an oval where a voter marks a ballot, much as on standardized tests in educational institutions. However, as in Florida, manual recounts by officials in contested races use a broader, more liberal standard to determine voter intent. Some of the “liberal” Democratic Board of Elections commissioners wanted this broader standard to determine disputed cases that would include almost anything hitting the oval on a ballot (such as a check mark). More conservative Republican commissioners wanted a stricter standard that would throw out any ballot not achieving at least six pixels in an oval (which is called for in the state’s election law).

Given the roiled waters left in the wake of Florida’s debacle, the majority of the commissioners on the Board of Elections ruled to adopt a relatively liberal and more extensive standard than in previous races, although the courts would ultimately decide the fate of disputed ballots (as in Florida) if push came to shove. Similarly, the fact that partisan employees of the board are counting ballots and validating or invalidating them—even if “watched” by a member of the opposite party—does not guarantee an accurate count. For years, candidates and voting rights groups have complained that both parties have interests in marginalizing insurgents within their ranks (aside from challenges from third parties). Thus, where candidates can afford it, they often take their case to court.

Hence, some candidates in 2001 pushed for more uniform standards and practices to avoid such costly disputes and delays in

ballot counts. They wanted to ensure that the determination of winners and losers would be made in a timely manner. Even after numerous meetings to iron out such differences and to agree on guidelines, the four major Democratic candidates for mayor still filed a lawsuit three days before the scheduled primary election to guarantee the establishment of uniform standards for counting disputed ballots. Former mayor Giuliani also supported the suit, not wanting to be “the next Jeb Bush.”⁷⁰

The main contention revolved around exactly who would preside over the counting and have authority to determine final outcomes—aside from the worry of finishing the counting in a timely manner, which could greatly impact on the dynamics of electoral races. The candidates met with the chief administrative judge, Jonathan Lippman, to request the court to ensure that the board use a uniform and more liberal standard to count votes. A spokesperson for Judge Lippman said, “We really want, to be honest, to avoid another situation like what happened in Florida in the last presidential election.”⁷¹ Ultimately, the Board of Elections observed and implemented the above standard and regular practices. Fortunately, these issues did not become widespread problems in the elections. Indeed, many observers were surprised at the scarcity of such disputes and drawn-out races. Regardless, clearly the preparation on the front end was crucial to help lay the groundwork for establishing uniform procedures, which need to be further clarified, standardized, and tested.

Additionally, provisional (or affidavit) and absentee ballots are validated by Board of Elections officials. When candidates dispute ballots, these too are settled by board inspectors. Candidates have often complained that board inspectors are poorly trained and make errors in such counts—and the 2001 election was no exception.

However, candidates do have recourse through the courts, if they have resources of money and time. In fact, the courts have generally interpreted the laws, and ruled more liberally in cases of disputed ballots, than the Board of Elections, which gives office seekers with resources the incentive to challenge results.

Because of the uniquely crowded field of candidates in 2001, election officials and candidates alike expected numerous cases of disputed ballots. This was especially of concern in City Council races that are determined by the primary election—there are no runoff elections. The potential problem of counting disputed ballots would also impact on the timely determination of winners, which many feared would also replicate a Florida dynamic. These problems stem from the plethora of paper ballots that is used in every election in New York City—primarily the tens of thousands of provisional ballots and absentee ballots—all of which would be subject to dispute about whether a vote was accurately cast and counted, much as with Florida’s infamous fight over “hanging chads” and “pregnant dimples.” Indeed, in one New York City race in 2000—Kruger versus Goodman—the recount went on for nearly eight weeks, several weeks after the Supreme Court settled the Bush versus Gore election. As discussed, the preparation on the front end was crucial to help lay the groundwork for establishing uniform procedures, which remain to be further clarified, standardized, and tested.

5. NEW YORK'S ANTIQUATED ELECTION ADMINISTRATION: A TROUBLED RECORD

New York's election administration has had a troubled track record. This history has ranged from frequent occurrences of broken voting machines and botched processing of voter registration applications to the improper purging of the voter rolls and missteps by poll workers—all of which can lead to eligible voters being disenfranchised.⁷²

Worries ran high in nearly all quarters, including the state and city's elected and election officials. No one wanted another Florida, or to be the next Kathleen Harris or Jeb Bush. This concern—along with pressure from voting rights and civic groups⁷³ and the microscope of the media's attention—led the state and city's highest elected officials (governor, attorney general, State Assembly and Senate members, and mayor of New York City) to establish task forces to avoid a repeat of past problems. In fact, this broad mobilization of such diverse players led to several key developments that have been previously discussed.

The Election Law Committees of both houses of the New York State Legislature (Assembly and Senate) established separate task forces following the November 2000 elections. Each task force held a series of public hearings across the state during the winter and

spring and made recommendations for legislative action and administrative improvements.

The state attorney general, Elliot Spitzer, issued one of the earliest and most extensive reports.⁷⁴ The report detailed obstacles voters encounter and challenges New York would face in the 2001 elections:

While New York State does not confront precisely the same problems as did Florida, other challenges do exist here that cannot be ignored. . . . Most New Yorkers vote on 40-year-old lever voting machines, no longer in production. While these machines may be reliable upstate, in New York City, they frequently malfunction on election day. Voters complain about long lines and inadequate voting hours. . . . Numerous polling places are not accessible to the disabled. Many voters report that they arrive at polling sites intending to vote, only to learn that the registration records do not include their names. . . . At some polling sites, election-day workers lacking adequate training provide insufficient or incorrect information to voters on registration matters and emergency and affidavit ballots. Some absentee or military ballots are not counted even though the voter's intent is clear because they lack postmarks or because they include miscellaneous marks or tears. To date, these challenges have not triggered serious consequences on a large scale. However, that tenuous record could change this fall, when the electoral system in New York City will face unprecedented stress. As a result of recently adopted term limits, most races for municipal office will engender serious competition. In this new context, the vulnerabilities of New York's election infrastructure, if unaddressed, could have significant ramifications.⁷⁵

The report included a series of detailed recommendations (both short term and long term).

A week later, the governor issued an executive order (#108) that established a bipartisan Task Force on Election Modernization. “The mission of the Task Force is to examine the methods by which elections are conducted in New York State and to recommend ways to improve and modernize our electoral system so that every New Yorker’s right to vote is honored, respected and upheld.” The governor’s task force held public hearings in the spring and issued an interim report in May 2001 and a final report in April 2002, entitled “Voting in New York City in the 21st Century.”

Perhaps most telling are the worries held by election officials themselves. Their concerns about the 2001 elections ran high, as expressed in documents and statements issued by senior New York City Board of Elections personnel. One statement by a high-ranking official summed up these anxieties: At a forum held in the winter of 2001, “Richard Wagner, the head of the union representing election workers, said that before every election, ‘election workers all say the same prayer—please let it be a landslide.’”⁷⁶

Before and during the public hearings—and other hearings before the New York City Council and the New York City Voter Assistance Commission—dozens of voting rights and civic organizations warned of a repeat performance of Florida in New York’s 2001 elections. Many civic and voting rights groups presented data about problems in the 2000 elections and expressed grave concerns about how well the New York City Board of Elections could manage the 2001 elections. A broad mobilization led by the New York City Coalition for Voter Participation—a nonpartisan umbrella group of over sixty organizations, including the Asian American Legal Defense and Education Fund (AALDEF), the Citizens Union, the

League of Women Voters, the National Association for the Advancement of Colored People (NAACP), the New York Immigration Coalition, and many others—which provided information about past failures of New York’s election administration and a host of recommendations, acted as the impetus for many changes in the 2001 elections. Although these groups were not united on all issues, they generated dozens of joint letters for both short-term and long-term solutions. These groups also worked with the state and city boards of elections to provide information about election problems they uncovered. Thankfully, many of the short-term recommendations were adopted by the New York City Board of Elections and by the City of New York (that is, the City Council and mayor’s office). As we have seen, the impact of specific board election practices can be significant.

6. PUBLIC SCRUTINY: MOBILIZATION TO “PREVENT ANOTHER FLORIDA” BY VOTING RIGHTS GROUPS, THE MEDIA, AND PUBLIC OFFICIALS

Scrutiny of New York’s 2001 elections was unparalleled. Aside from the government task forces, public hearings, and reports, many of the hundreds of candidates, armed with campaign consultants and lawyers, played a critical role in pressing for changes as they prepared to contest close election outcomes.

In addition, the media geared up its coverage and braced for another election fiasco. Indeed, investigative journalists and media reports played a pivotal role in pressing for needed changes by highlighting past and potential problems in numerous news articles and editorials. All the major dailies and television stations carried stories on the potential pitfalls of the 2001 elections in New York. It is hard to calculate the impact these reports had in producing pressure for changes, but equally hard to underestimate the media’s role.

The aforementioned nonpartisan coalition of voting rights and civic organizations—the Coalition for Voter Participation—mobilized a massive election day monitoring operation. The findings of this monitoring project—as well as the results of surveys by other voting rights groups, such as the Asian American Legal Defense and Education Fund (AALDEF)—had an important cumulative effect: they brought significant pressure to bear on public officials and the New York City Board of Elections and successfully won important

changes—such as increased funding and improvements in election practices—that produced better performance of the city’s election administration than in previous years and reduced voter disenfranchisement. New York’s 2001 elections, therefore, present a story that contains valuable lessons. It shows how combined reform efforts staved off an election disaster analogous to Florida’s infamous 2000 elections, while at the same time documenting continuing shortcomings of New York’s election system—all of which points to potential remedies and reform, for short- and long-term improvement to our elections.

7. THE CITY RESPONDS— FUNDING INCREASES

One way the Board of Elections has attempted to address its shortcomings was by requesting funds to make technological and personnel improvements. Unfortunately, such requests fell on deaf ears during the 1990s. For example, Joe Gentilli, deputy executive director of the New York City Board of Elections, rightly blames budget cuts to the board for some of its performance problems: “During the fiscal crisis of the mid 1990s, the permanent staff of Board of Elections was reduced from 363 to 312, a 14% reduction. We now have 51 less people to attack any problem that we are faced with. Quite candidly, we probably provide the public with 14% less service than we did just several years ago.”⁷⁷

Indeed, the Giuliani administration not only cut the Board of Elections funding in fiscal hard times, but also repeatedly denied the board’s requests for budget restorations in fiscal good times. In fact, every year the board would submit a “new needs package,” which contained requests ranging from personnel to new technology items, each of which carry specific fiscal expenditure amounts. But every year the Giuliani administration would propose the board’s budget be cut, which in Gentilli’s words, “really means a service cut.” For example, according to Gentilli, in 1998 (fiscal year 1999) the board requested \$5,280,810 in new needs, which included money for information technology systems upgrades. Mayor Giuliani’s Office

of Management and Budget (OMB) instead proposed a budget cut of \$540,000 and to reduce the board's full-time staff from 316 to 50—a massive 63 percent reduction—that included voting machine technicians who are critical to maintain New York's aging and error-prone machines.⁷⁸ The outcome, based on intervention and negotiations with the City Council, was that no budget cuts were made, but no additional funds were given. Similarly, in 1999 (fiscal year 2000), the board requested \$150,000 for making more poll sites accessible for people with disabilities and another \$140,000 for a paper ballot tally system. OMB again responded by requesting to cut the board's voting machine technicians. Final outcome repeated: no cuts made, but no new needs funding appropriated. In 2000 (fiscal year 2001), the board requested funding for ten computer technicians; OMB responded by calling for fourteen positions cut. Final outcome: no cuts but no new spending either.

This cat and mouse game where the board's new needs package went unmet continued to hobble the board—until 2001 (fiscal year 2002). As aforementioned, a palatable fear that New York could be another Florida prompted a broad mobilization of elected and election officials and voting rights and civic organizations that successfully convinced the Giuliani administration to reverse its stance toward the Board of Elections and meet many of the Board's fiscal needs and requests. The city spent an additional approximately \$8 million to \$9 million—appropriated to the Board of Elections—for the 2001 elections. The list of expenditures included many of the recommendations made by the Coalition for Voter Participation, by the state and city's ranking officials and their task forces (that is, the attorney general, the governor, state assembly and senate members, the city council, and the mayor), and by several of the candidates who ran for office in 2001.

Specific funding increases to the New York City Board of Elections included:

- ◆ an increase in pay for poll workers from \$125 to \$200 per day—a sixteen-hour election day shift—to boost recruitment and quality of poll workers (approximately \$5,200,000);
- ◆ expansion of efforts to recruit poll workers, including from outside party channels (a program promoted by and conducted with assistance from the Citizens Union and the City University of New York);
- ◆ improvement of training materials and procedures for poll workers;
- ◆ hiring of additional voting machine technicians and maintenance workers and an increase in their pay to attract better quality workers;
- ◆ purchase of additional voting machines and parts;
- ◆ funding for seven additional ballot scanners (on top of the eight the board owned);
- ◆ expansion of the board's telephone voter information services from forty phone lines with live operators and an increase in the number of callers who can be in the queue to use the automated system from forty to sixty (\$569,692).

The city also placed \$1 million into a reserve fund for the board that would be used to restore previous cuts as well as for upgrades.

Finally, the Federal Emergency Management Agency (FEMA) will pay an as yet undetermined amount of money to the city—which will go to the board—for damage and costs due to the September 11 devastation, which aborted the primary election (including for relocating of poll sites, trucking of machines, printing ballots, mailings, and so on). Thus, the expansion of city expenditures allowed the city's Board of Elections to fund these improvements, which improved the performance of the board in these critical areas and thereby reduced election problems and voter disenfranchisement.

PART III
CONCLUSION

8. RECOMMENDATIONS

INSTITUTIONALIZE INCREASED FUNDING FOR POLL WORKERS AND BOARD OF ELECTIONS OPERATIONS

The increased funds provided to the New York City Board of Elections should be maintained, if not increased. The increase in the stipend for poll workers helps to attract not only more workers to fill slots but also better qualified workers. Similarly, the extra expenditures on machine technicians helped reduce machine breakdowns and ensured that the board would be able to hold all four elections in a shortened timeframe. The expanded phone lines improved access by voters to critical election information on and around election day. This should be expanded even further. Greater logistical support for the board (transporting workers, mechanics) also smoothed election day operations.

There are additional funding needs the board has requested in the past several years, which deserve funding. For example, a training video would be a very effective and cost-efficient way of ensuring that poll workers get critical information. (The cost of a training video has been estimated at between \$250,000 and \$400,000.) Funds for improving training materials and increasing the pay of trainers are desperately needed to attract better-qualified personnel. The board's website should be upgraded to provide similar information. Lastly, the board's staff, which was cut by 15 percent during the

Giuliani administration years, should be restored. Many critical staff positions remain unfilled, which translates into existing workers being overburdened and dissatisfied.

EXPAND RECRUITMENT OF ELECTION PERSONNEL OUTSIDE POLITICAL PARTIES

The board is currently staffed by appointments from dominant factions within each of the two main political parties. Not only does this exclude minor party members and independents (there are six such parties in New York), it also makes the staff more responsive and accountable to party leadership rather than to the voters of New York. If staff positions were filled on the basis of nonpartisan and civil service mechanisms, the board could base hiring and firing on technical expertise and job skills rather than party loyalty. These basic features are so integral to most other governmental agencies that the current partisan arrangements are strikingly anachronistic and archaic. Indeed, they are a relic of the bygone era of political machines. Most importantly, more efficient and effective election administration would be the likely outcome of such a shift (see below).

IMPROVE TRAINING METHODS AND MATERIALS FOR ELECTION WORKERS

The board should adopt new standards and materials to ensure workers are adequately prepared to serve the voting public. Such steps should include:

- ♦ improving the application and communication processes for poll workers and multilingual translators;

- ◆ creating split shifts so poll workers are not required to work a sixteen-plus hour day, which would increase the pool of workers as well as the quality of applicants;
- ◆ developing a training video;
- ◆ increasing the length of training classes (currently three hours) and the quality of trainers;
- ◆ more hands-on training should be implemented, including practice in opening and closing machines, affidavit ballot procedures, and all critical facets of election law and voter rights;
- ◆ focusing training sessions on special situations (such as when machines break down and emergency ballots are needed) and implementing role play;
- ◆ reducing class size and expanding the number of locations;
- ◆ rewriting the training manual in clearer language, covering more procedures and situations, and posting it on the board's website;
- ◆ raising the standards for the poll worker examination and requiring examinees to pass the test in order to work an election; and
- ◆ creating more standby poll worker positions and utilizing them more readily.

**REINSTATE THE VOTING MACHINE SENSOR DEVICE—
THE DISABLED LATCH—TO PREVENT LOST VOTES**

This device would save tens of thousands of voters from losing their votes. At the estimated cost of \$275,000, it is a bargain.

**ESTABLISH AN OUTSIDE MONITOR TO
PROFESSIONALIZE NEW YORK'S
ELECTION ADMINISTRATION AND/OR
SET UP A MAYORAL TASK FORCE**

Whether initiated and undertaken by Mayor Bloomberg and/or the City Council, the City of New York should establish an outside oversight monitor of the New York City Board of Elections, much like the New York City Elections Project that was set up in the mid-1980s to help the board modernize its operations. The Elections Project's well-regarded work should be replicated today. The Elections Project helped automate and computerize the board, as well as implement technological improvements. It helped the board move into the twentieth century. It is time now—especially given contemporary reform initiatives at the federal level and in other states—for the Board of Elections to move into the new millennium. A host of new technologies, management techniques, and client-centered practices should be adopted as soon as possible. An outside monitor, such as the Elections Project, would ensure the board moves in this direction successfully. Such an agency, staffed by technical experts outside the board and party apparatus, is the best way to ensure a more effective and efficient election administration.

Mayor Giuliani's Election Task Force proved helpful in addressing recurring and potential problems the board faced in the 2001

elections. At the very least, the city should appoint another task force for 2002.

ADOPT A STATEWIDE VOTER REGISTRATION SYSTEM

Establishing a statewide registration system is a critical step in safeguarding the franchise while at the same time providing a basis for moving toward election day registration, which would ultimately be the best way to eliminate problems with affidavit and emergency paper ballots and reduce racial and income disparities. Moreover, establishing a statewide voter registration system would permit local jurisdictions to verify a voter's status more rapidly, and thus allow the state to shorten its registration deadline, with the ultimate goal of providing election day registration. Election day registration has proven to be the most effective system to facilitate voter participation and reduce racial and class disparities. This is also true of other election innovations some states are experimenting with and have used effectively, such as early voting, mail voting, and internet voting—all of which New York should explore.

ESTABLISH A PROCESS AND STRUCTURE TO PURCHASE NEW VOTING TECHNOLOGY WITH BROAD INPUT BY VOTING RIGHTS AND CIVIC ORGANIZATIONS

New York needs new voting technology. How will it move toward obtaining it? This is a question many other states (and the federal government) are addressing. New York should adopt a process that can serve as a model for other states. The process should ensure that voter concerns and needs are central. This can only happen if representatives from voting rights and civic groups are intimately involved

in the process from the start. The acquisition of new voting machines should not be contracted out to private vendors without public input.

New voting machines should be accessible to New York's diverse population, including people with disabilities and foreign language speakers. Machines must be able to handle a variety of election systems, including proportional voting that is used in school board elections and write-in balloting (and future options such as instant runoff voting).

New voting machines must be secure. Independent experts should review the possibilities for tampering, whether by computer programmers, election personnel, or voters. Technological failures should be considered and back-up plans integrated into the planning. Building in means for audits—especially in contested races—is critical. Finally, a machine that can provide a receipt to voters would also ensure them a way to verify if their vote was properly counted, and if not, a means to rectify it.

**MOVE TOWARD ELECTION DAY REGISTRATION
BY SHORTENING THE REGISTRATION DEADLINE,
AND IMPLEMENT A SYSTEM THAT PROVIDES
EASY ACCESS AND SECURITY**

Election day registration has proven to be the most effective system to facilitate voter participation and to reduce racial and income disparities.⁷⁹

**IMPROVE AND EXPAND VOTER EDUCATION
MATERIALS AND OUTREACH PROGRAMS**

Voter education needs to be vastly expanded. Critical information—from who is running for office, to responsibilities of offices, to how

to register to vote and cast a ballot/use a voting machine—should be widely disseminated. Voter guides and pamphlets should be printed and mailed to every household; materials should be available at government offices and integrated into procedures, much like the motor voter program; all media—print, radio, television, and the Internet—should be used more extensively to convey critical voting information.

**CONSIDER A NONPARTISAN ELECTION ADMINISTRATION:
DECREASE THE POLITICAL AND PARTISAN DIMENSIONS TO
ELECTION PROCEDURES**

There always has been considerable debate and political conflict over the rules and procedures governing how elections are conducted—and for good reason. Shaping the rules of the game often influences the electoral outcome. If you can manipulate election practices, you can often determine the winners and losers. Because the stakes can be so high, the battles over these electoral changes can be quite bitter and are almost always highly partisan. While scholars have debated the degree to which election rules can affect the participation of particular constituents, politicians clearly believe that election rules can shape outcomes as evidenced in the pitched battles they wage over election law and practice. Because the administration of elections in New York (like most of the United States) is decentralized, with effectively little or no federal or state oversight, there is considerable latitude for the discretionary actions of local board officials and the influence of dominant politicians.

Moreover, election practices of New York's boards of elections tend to reflect the influence of the leaders of the two parties.⁸⁰ All the boards of elections in New York State are bipartisan from top to bottom (one Republican for every Democrat) in accordance with

state constitutional law and election statutes. Party leaders hire and fire board staff, from commissioners on down to poll workers. Both elected officials and election officials from both parties tend to have incumbency interests in maintaining a stable electorate and party system; they mutually resist outsiders, whether as new and unpredictable voters or insurgent candidates.⁸¹

New York City saw political and partisan factors manifest in the 2001 elections. Such partisan differences are evident in an array of areas: from establishing standards and practices for processing registration applications and absentee ballots, to recruiting and training poll workers, and locating poll sites and counting ballots. Despite the bipartisan structure, one party can dominate critical areas of election administration. In New York City, the Democrats have the upper hand in party registration (at a five-to-one rate) and more elected offices. They can exert greater capacity to affect some election practices—where poll sites are located, which workers are hired and fired, which companies receive contracts for services, and so on—through their pride of place in the administrative apparatus. Nevertheless, each party can shape particular election practices, and partisan gridlock is all too often the operating principle for New York’s bipartisan boards of elections where one party can cancel out another party’s wishes. Doing away with this vestige of machine politics would free up election administration to be more responsive to voters and voting rights and civic organizations in New York. (This reform could benefit other similar jurisdictions.)

IMPROVE NEW YORK CITY’S CAMPAIGN FINANCE LAW AND ENACT A STATE LAW

Mayor Bloomberg spent more money to win office than any candidate on record (except for president), nearly \$100 per vote. New

York City has a good campaign finance law, compared to other jurisdictions. But it is voluntary. Examination of the feasibility of requiring candidates to participate in the program should be explored. Each year, elections cost more and more, with the unfortunate and discriminatory consequence that candidates with moderate resources are priced out. Leveling the playing field is necessary in a democracy. Similarly, the state should explore enacting a campaign finance law, perhaps based on the successful “clean money” laws in effect in several other states.

RELAX BALLOT ACCESS REQUIREMENTS

Although New York has made important improvements in this area, eliminating the cumbersome and discriminatory ballot access requirements and replacing them with a modest filing fee (as is done in many other states) would level the playing field further for potential candidates.⁸²

APPENDIX 1
AALDEF VOTER SURVEY RESULTS FOR THE 2001 PRIMARY AND
GENERAL ELECTIONS BY BOROUGH AND LOCATION (PART 1)

POLLING SITE	PROBLEM									
	VOTERS NOT LISTED (PRIMARY)	VOTERS NOT LISTED (GENERAL)	POLL WORKER HOSTILITY (PRIMARY)	POLL WORKER HOSTILITY (GENERAL)	IDENTIFICATION REQUIRED (PRIMARY)	IDENTIFICATION REQUIRED (GENERAL)	HAD TO VOTE ON PAPER BALLOT (PRIMARY)	HAD TO VOTE ON PAPER BALLOT (GENERAL)	POLL WORKERS POORLY TRAINED (GENERAL)	
CHINATOWN, MANHATTAN										
PS 130/ IS 131	18	3	8	3	20	23	0	8	3	
Confucius Plaza	11	4	10	3	15	23	2	7	1	
FLUSHING, QUEENS										
PS 20	22	10	37	6	25	39	0	19	6	
JHS 189	12	16	23	6	22	48	0	16	11	
PS 22	x	10	X	3	x	49	X	14	1	
Senior Center	18	18	23	12	59	47	0	12	12	
ELMHURST, QUEENS										
Newtown HS (General Only)	x	9	X	10	x	56	x	14	17	

PROBLEM

POLLING SITE	VOTERS NOT LISTED		POLL WORKER HOSTILITY		IDENTIFICATION REQUIRED		HAD TO VOTE ON PAPER BALLOT		POLL WORKERS POORLY TRAINED	
	(PRIMARY)	(GENERAL)	(PRIMARY)	(GENERAL)	(PRIMARY)	(GENERAL)	(PRIMARY)	(GENERAL)	(PRIMARY)	(GENERAL)
SUNSET PARK, BROOKLYN										
PS 314 (General Only)	x	5	X	3	x	14	x	11		4
RICHMOND HILL, QUEENS										
PS 55 (General Only)	x	5	X	5	x	25	x	3		7
St. Paul's Church (Prim. Only)	22	X	18	X	20	x	0	x		
FLORAL PARK, QUEENS										
PS 115	14	5	16	9	27	24	4	4		3
IS 172 (Primary Only)	8	X	4	X	12	x	0	x		
TOTAL	125	85	139	60	200	348	6	108	6	65

PROBLEM

POLLING SITE	PROBLEM												
	VOTERS NOT LISTED	VOTERS TURNED AWAY	POLL WORKER HOSTILITY	ID REQUIRED	INEFFECTIVE CHINESE INTERPRETERS	POLL WORKER INTERFERED WITH CHINESE INTERPRETERS	CHINESE MATERIALS MISSING	POOR POSTING OF CHINESE SIGNS	SHORTAGE OF KOREAN INTERPRETERS	POLL WORKER INTERFERED WITH KOREAN INTERPRETERS	POLL SITE CONFUSION	BROKEN VOTING MACHINES	
FLUSHING, QUEENS													
PS 20	X	X	X		X		X	X	X	X		X	
JHS 189	X	X	X		X		X	X	X	X			
PS 22								X					
JHS 185							X	X	X				
Senior Center				X			X	X	X	X		X	
Flushing HS							X	X	X				
Leifmer Gardens							X	X	X				
Flushing Hse.													
Res. for Adults	X							X					
ELMHURST, QUEENS													
Newtown HS	X	X	X				X						
SUNSET PARK, BROOKLYN													
PS 94	X		X			X	X	X					
PS 314	X	X			X		X	X					

**AALDEF VOTER SURVEY RESULTS FOR THE 2001 PRIMARY AND
GENERAL ELECTIONS BY BOROUGH AND LOCATION (PART 2) [CONT'D.]**

POLLING SITE	PROBLEM												
	VOTERS NOT LISTED	VOTERS TURNED AWAY	POLL WORKER HOSTILITY	ID REQUIRED	INEFFECTIVE CHINESE INTERPRETERS	POLL WORKER INTERFERED WITH CHINESE INTERPRETERS	CHINESE MATERIALS MISSING	POOR POSTING OF CHINESE SIGNS	SHORTAGE OF KOREAN INTERPRETERS	POLL WORKER INTERFERED WITH KOREAN INTERPRETERS	POLL SITE CONFUSION	BROKEN VOTING MACHINES	
HOMECREST, BROOKLYN													
IS 228						X							
RICHMOND HILL, QUEENS													
PS 55	X			X									
BAYSIDE, QUEENS													
Cardozo HS	X												
FLORAL PARK, QUEENS													
PS 115	X		X								X		
IS 172	X										X		

APPENDIX 2

RESEARCH METHODOLOGY, DATA SOURCES, AND PERFORMANCE MEASURES

This report analyzes a wide set of data gathered from numerous sources, which was compiled into a large database.⁸³ It examined data about three main problems voters faced: machine breakdowns, poll worker and poll site problems, and administrative foul-ups. The study employed the use of information at the election district level, which comprises the smallest political unit in New York (containing approximately 800 registered voters per election district), which allows a finer grained analysis. Data about the three main election problems were combined into one database. We examined approximately one-quarter of all the election districts in the entire city (each election district is comprised of about 800 voters). Specifically, approximately one-quarter of the city's election districts (1,237) of the total of all city election districts (5,797) were monitored, a sizable sample. Moreover, the monitored election districts are fairly similar to all election districts in the City of New York.

The database we constructed consists of data combined from three primary sources at the election district and assembly district levels:

1. Surveys by voters from NYPIRG for the general election city-wide (853 voters filled out survey forms covering every assembly district, which roughly corresponds to neighborhoods; additional survey data from the primary election also are included;

2. election data from the New York City Board of Elections (BOE) for the general election from Manhattan only; and
3. surveys of nearly 4,000 voters from AALDEF for all three elections (primarily concentrated in Asian districts in Manhattan's Chinatown and in several neighborhoods in Queens).

Findings about the extent and distribution of election problems were combined with *election data*—voter registration and turnout information—and with *census data* into a larger data set to determine which constituencies (by race, ethnicity, and income) were affected by particular problems and election practices. The report assessed those close elections that might have been affected by these election problems, given particular demographic patterns of affected constituencies and their geographic distributions.

DATA SOURCES

Data source material included: memoranda and reports from the New York City Board of Elections as well as analysis of “raw” data (such as calls received by Board of Elections offices; “trouble calls” and machine technician reports; the number and disposition of affidavit and emergency ballots validated and invalidated and reasons why; poll worker information, and other data as specified within the report); data from a report by the New York Public Research Interest Group (NYPIRG) and the NYU Center for Excellence in Government that examined poll sites and conditions in every assembly district in the city (which drew upon members of the New York City Coalition for Voter Participation; see endnote 43); and surveys and reports from the Asian American Legal Defense and

Education Fund (AALDEF), who surveyed nearly 4,000 voters in the primary, runoff, and general elections. In addition, the report draws upon reports from several other voting rights and civic organizations—including the Citizens Union, the League of Women Voters, the NAACP Voter Fund, and the New York Immigration Coalition—from 2001 and previous years; information gathered by these and other organizations from election day phone hotlines (that is, from thousands of surveyors and observers); analysis of testimony, transcripts, and reports from state and city task forces, agencies, and elected officials, including Attorney General Eliot Spitzer’s 2001 report; transcripts from the New York State Assembly 2001 Task Force hearings (as well as from hearings and reports from previous years); the New York City Council and the NYC Voter Assistance Commission Reports and testimony from public hearings from 2001 (and over the past decade); Governor Pataki and Mayor Giuliani’s 2001 task forces and their reports; documents from candidates and their campaign staff; court documents; news articles and editorials; and dozens of semi-structured interviews with elected officials, election officials, and other personnel in the above organizations and agencies (see also About the Author, page 99) .

PERFORMANCE MEASURES/INDICATORS

Analysis of this election information provided a basis on which to gauge the impacts of specific election rules and practices through a host of performance measures and indicators, including:

- ◆ the nature and the number of recorded poll site problems, such as:

- a) when poll sites open late;
 - b) where election worker staffing is inadequate;
 - c) where poll workers are poorly trained or not trained at all;
 - d) when poll sites change without proper notification to voters;
 - e) the level of accessibility for people with disabilities;
 - f) the number of voting “breakdowns” (whether by machine or paper ballots);
 - g) where there are missing or incorrect supplies and materials for voters and/or for poll workers;
 - h) where there are the required bilingual materials and assistance in communities covered by the Voting Rights Act, or in diverse communities more generally;
 - i) where there are poll worker actions and inactions that disenfranchise eligible voters, such as providing misinformation, not offering affidavit ballots to eligible voters, committing one of several possible errors, producing delays or disruption, or “harassment” of voters;
 - j) the accuracy of vote tabulation.
- ◆ the number of affidavit ballots cast, validated, and invalidated, as a percentage of the total number of votes cast;
 - ◆ the number of registration forms printed, distributed, and processed by the Board of Elections;
 - ◆ estimates of the accuracy of processing registration applications;
 - ◆ the timing and accuracy of mail voter notifications;

- ◆ voter telephone hotline availability and capacity of the Board of Elections to handle the volume of inquiries, whether by voters or poll workers or poll watchers;
- ◆ evidence of any effects of particular election technologies on voter registration, voting, and vote tabulation.

NOTES

1. “Election Follies: As a New York City Primary Election Shows, Chaos Isn’t Exclusive to Florida,” *Orlando Sentinel Tribune*, October 17, 2001, p. A12.

2. Several studies, including those by the Asian American Legal Defense and Education Fund, the Citizens Union, the New York Public Research Interest Group, and Stephanie Saul, an investigative journalist from *New York Newsday*, as well as national studies by Caltech/MIT and the House of Representatives, are discussed below, and their data is incorporated into this report’s analysis and findings.

3. The database constructed is a combination of data from three primary sources: surveys of voters by the New York Public Interest Research Group for the general election citywide (853 voters filled out survey forms covering every assembly district, which roughly corresponds to neighborhoods) and some survey data from the primary election; election data from the New York City Board of Elections for the general election from Manhattan only; surveys of voters (4,000) from Asian American Legal Defense and Education Fund for all three elections (primarily concentrated in Asian districts in Manhattan’s Chinatown and several neighborhoods in Queens). See Appendix 2 for a further explication of the research design and data sources.

4. Gene Russianoff and David Palmer, “Don’t Mourn, Monitor,” *Gotham Gazette*, September 4, 2001, available at www.Gothamgazette.com.

5. Caltech/MIT Voting Technology Project, “Voting: What Is, What Could Be,” 2001, available at www.vote.caltech.edu; House of Representatives Committee on Government Reform, Minority Office, April 5, 2001, available at <http://www.house.gov/reform/min/elections.html>; House Committee on the Judiciary, Democratic Investigative Staff, “How to Make Over One Million Votes Disappear: Electoral Sleight of Hand in the 2000

Presidential Election,” August 20, 2001, available at http://www.house.gov/judiciary_democrats/electionreport.pdf; Advancement Project, “America’s Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy” 2001, available at http://www.advancementproject.org/americas_poll.htm.

6. Caltech/MIT Voting Technology Project, “Voting”; Stephanie Saul, “Disabled Latch Could Skew Election Results,” *New York Newsday*, July 22, 2001.

7. Ibid. According to Stephanie Saul’s analysis as reported in *New York Newsday*, the rate of lost votes by borough is as follows: Bronx, 4.7 percent; Manhattan, 4.3 percent; Brooklyn, 3.9 percent; Queens, 3.5 percent; Staten Island, 1.2 percent. Similar disparities exist between New York City and more affluent white suburban districts: Nassau County, 1.2 percent, and Suffolk County, 0.7 percent.

8. Ibid. See also Gene Russianoff and David Palmer, “Don’t Mourn, Monitor,” *Gotham Gazette*, September 4, 2001, available at www.gothamgazette.com.

9. Caltech/MIT Voting Technology Project, “Voting”; House Committee on Government Reform, 2001.

10. Caltech/MIT Voting Technology Project, “Voting.”

11. Ibid, p. 9.

12. The only other race in this election was for candidates running for public advocate. Moreover, the vote total for all these candidates was lower than in the race for mayor.

13. Stephanie Saul, “Many Ballots Not Counted in Runoff,” *New York Newsday*, November 18, 2001.

14. Stephanie Saul, “Ferrer: Voting Rights Act Violated,” *New York Newsday*, November 18, 2001.

15. Saul, “Many Ballots Not Counted in Runoff”; see also Saul, “Ferrer: Voting Rights Act Violated.”

16. Michael Cooper and Diane Cardwell, “Ferrer Doubts Green Victory After Miscount,” *New York Times*, October 15, 2001.

17. Although no one seems to know exactly when or why the device was disabled, as late as 1976 inspector training materials contained information about how to set and use the device, according to Douglas Kellner (D), Manhattan commissioner of the Board of Elections (interview with the author). A review of the board’s archives was recently ordered by the

commissioners of the Board of Elections to determine who, when, and why the latch was disabled/removed, but did not indicate when the device was disabled.

18. Saul, "Many Ballots Not Counted in Runoff." See also Cooper and Cardwell, "Ferrer Doubts Green Victory after Miscount."

19. Ibid.

20. Ibid.

21. Ibid. See Recommendations.

22. Mayor Giuliani's Election Task Force Report "2001 Board of Elections: Executive Director's Report," December 21, 2001, p. 22. See also Cooper and Cardwell, "Ferrer Doubts Green Victory After Miscount."

23. Cooper and Cardwell, "Ferrer Doubts Green Victory After Miscount." See also Celeste Katz and Michael R. Blood, "Green Leads by 18,000 Votes in Runoff Count," *Daily News*, October 18, 2001.

24. Neal Rosenstein, NYPIRG (interview with the author). Until just a couple of years ago, the policy and practice of the Board of Elections was to invalidate such affidavit ballots (cast in the right polling place but at the wrong election table or election district), as per New York State election law. However, New York State changed this law in 1995, due to the National Voter Registration Act (popularly known as "Motor Voter") and now counts as valid affidavit ballots cast in the correct polling place, regardless of whether voters are at the wrong table or election district. Still, according to Commissioner Kellner, "Board mistakes still persist" (interview with the author). The rate of voters disenfranchised in this way was as high as 22 percent to 13.5 percent in the 1980s to the early 1990s before the board automated its highly paper-intensive and manual operations, including the computerization of its registration records and the digitization of its poll lists, along with additional management improvements. The rate of disenfranchisement from these sorts of errors and problems dropped to approximately 5 percent after such improvements, and is now down to about 1 percent today, due to this policy change and further improvements. (These problems and improvements are more fully detailed in the discussion about paper ballots below.)

25. The voting machines are "based on a machine first designed by Thomas Edison in 1869 to record votes in Congress (it was his first patent)." Testimony of Arthur J. Fried, executive director of the Center for Excellence in New York City Governance, Robert F. Wagner Graduate

School for Public Service, New York University, before the New York City Council, February 8, 2001.

26. Ibid.

27. The board employs sixty full-time, salaried voting machine technicians to maintain and fix machines, but ran short in 2001. Mayor Giuliani's Election Task Force, "2001 Board of Elections," p. 7.

28. New York State Election Law, section 7-203(2), 2000.

29. Stephanie Saul, "City Comes Up Short on Voting Machines," *New York Newsday*, August 2, 2001.

30. The total figure for 2001 is fewer than the total figure for 2000.

31. Ibid.

32. Moreover, the board rightly claims it needs more money to acquire machines from other jurisdictions where possible, as well as parts and technicians to maintain its dwindling fleet.

33. Stephanie Saul, "Vote Machine Shortage Left Long Lines at Polls," *New York Newsday*, April 2, 2001. See also a memo to the Board of Elections and to the Department of Justice from the Puerto Rican Legal Defense and Education Fund (PRLDEF). Memos on file with the author.

34. Linda Stone Davidoff, "NYC Issues 2001: The Voting Process," *Gothamgazette.com*.

35. See Ronnie Dugger, "Boss Tweed, Hacker," *New York Times*, January 23, 1995, p. A15; "Counting Votes," *New Yorker*, November 7, 1988, p. 40.

36. Mayor Giuliani's Election Task Force Report, "2001 Board of Elections," p. 7.

37. Ibid., page 8. See also Stephanie Saul, "Suffolk Lends a Hand in Election," *New York Newsday*, October 24, 2001.

38. Katz and Blood "Green Leads by 18,000 Votes in Runoff Count."

39. Ibid.

40. Stephanie Saul and Graham Rayman, "Mayoral Voting Machine Tally Begins; Sharpton Files Complaint," *New York Newsday*, October 17, 2001.

41. Ibid.

42. Stephanie Saul, "Ferrer: Voting Rights Act Violated," *New York Newsday*, November 18, 2001.

43. The Citywide Coalition on Voter Participation, which is comprised of over sixty member organizations, describes itself as "a nonpartisan New York

City based good government coalition consisting of a wide array of civic, civil rights and community groups” (<http://www.nycelectionwatch.org/coalition.html>).

44. The September 11 tragedy overwhelmed the efforts by voting rights groups—especially the Coalition for Voter Participation—to more extensively monitor the elections. The coalition had lined up over 4,000 surveyors to monitor the primary elections scheduled for September 11. But the tragedy overwhelmed more than just the coalition’s monitoring operation. The primary was postponed for two weeks, and in those two weeks electoral politics took the back burner to questions of terrorism, war, and international politics. Voters had been evacuated from their homes, damaged polling sites had to be relocated, and the board’s central office, which was only six blocks from the World Trade Center site, had unreliable telephone service and power for weeks. Similarly, NYPIRG, the lead organization in the coalition, lost its offices and website (which was to be used to submit survey results) for over three weeks. It is a testimony to their commitment that both the board and the coalition were able to reestablish themselves and carry out their respective operations.

45. Stephanie Saul, “Many Ballots Not Counted in Runoff,” *New York Newday*, November 18, 2001.

46. By comparison, in 2000 the board was short over 4,000 poll workers.

47. Interviews with election officials, city council members, district leaders and poll workers, and voting rights groups.

48. “If someone is registered and recently moved from one place within New York City to another, can they vote today even if they haven’t re-registered?” The correct answer is yes.

49. “If a voter needs assistance, can someone come into the booth with them?” The correct answer is yes.

50. Section 203 provides, “A) Generally A State or political subdivision is a covered State or political subdivision for the purposes of this subsection if the Director of the Census determines, based on census data, that— (i)(I) more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient; (II) more than 10,000 of the citizens of voting age of such political subdivision are members of a single language minority and are limited- English proficient; or (III) in the case of a political subdivision that contains all or any part of an Indian reservation, more than 5 percent of the American Indian or Alaska Native citizens of voting age within the

Indian reservation are members of a single language minority and are limited-English proficient; and (ii) the illiteracy rate of the citizens in the language minority as a group is higher than the national illiteracy rate.”

51. Many voters at IS 131 were instructed to go to PS 130, but then at PS 130 several voters were told to go to Confucius Plaza. At PS 2, voters were told to go to other sites only to be told to return to PS 2 to vote. This also occurred at St. Margaret’s House and Southbridge Towers.

52. Asian American Legal Defense and Education Fund. Testimony before the New York City Voter Assistance Commission, 2001.

53. Numerous such instances are described and documented in testimony during public hearings held by the New York City Voter Assistance Commission, the City Council, the State Assembly, and mentioned in the attorney general’s report, and both the governor’s and mayor’s task force reports.

54. Linda Stone Davidoff, “NYC Issues 2001: Polling Places,” *Gothamgazette.com*.

55. After much pressure, Mayor Giuliani announced on August 8, 2001, the city would provide funding for an increase in pay for poll workers, only a month before the primary elections. (Mayor Giuliani’s Election Task Force, “2001 Board of Elections,” December 26, 2001, p. 10.) The task force facilitated meetings between the board and the Office of Management and Budget to iron out the pay increase. While the Board of Elections has been calling for a pay increase for years, pressure from the City Council and voting rights organizations and the media also helped make the case to the city to increase the stipend for poll workers. In July of 2001, in testimony before the City Council, the board estimated it might be short up to 4,000 poll workers if pay was not increased. The issue of low poll worker pay was complicated, however, in light of the large amount of overtime pay received by several high-ranking full-time Board of Elections officials. Two election commissioners called into question the legitimacy of such overtime costs, demanding a review. See Stephanie Saul, “Election Overtime: 20 Election Workers Got More than \$20,000 Extra Last Year,” *New York Newsday*, June 11, 2001.

56. I served as a member of the Citizens Union “Select Committee on ‘Making Votes Count,’” which was established in the winter of 2001 to help avoid election problems that have plagued New York and that occurred in Florida.

57. “Making Votes Count: Citizens Union Foundation’s Election Reform Project Report,” February 7, 2002, pp. 10–11. The CUF “believes this is the first time an independent agency has examined the Board’s Poll Worker Department.” While 1,505 sent their applications to the board, 995 poll workers sent their applications to work directly to the CUF. In an attempt to find out what happened with these poll workers, the CUF mailed 995 surveys to the applicants the CUF had addresses for; 252 people replied. Thus, while the survey sample was not based on a large random sample, with only a 25 percent response rate, it does provide useful information about the experiences of poll worker applicants and poll workers.

58. *Ibid.*, p. 11.

59. Interviews and correspondence with the author.

60. In these instances, the “fault” lies on the voter’s shoulders. But, voting rights advocates argue, this lack of effective action on the part of the voter can be viewed—indirectly—as a result of our retrograde election rules, or at the very least as a failure of our system to properly educate voters to ensure their votes are counted. The United States still places the onus to register to vote on the voter rather than the other way around, as in many other advanced democracies (such as in Canada), where the government conducts a canvass much like the census to register its citizens; or as in Western Europe, where voters are given ID cards that allow them to readily vote on election day; or in six states in the United States where voters can show up on election day with ID and register and vote there and then. Further discussion of these different election practices and their impacts are presented in the policy recommendations section below.

61. Saul, “Ferrer: Voting Rights Act Violated”; see also Saul, “Many Ballots not Counted in Runoff.”

62. *Ibid.* See also Cooper and Cardwell, “Ferrer Doubts Green Victory after Miscount” and Katz and Blood, “Green Leads by 18,000 Votes in Runoff Count.”

63. Interviews with board officials.

64. In the past, the New York State Network for Voter Registration (Norman Adler, coordinator) examined affidavit ballots cast in the 1984 presidential general election; Human SERVE conducted a study of the 1985 Democratic mayoral primary; and the Assembly Election Law Committee, chaired by Steven Sanders, conducted an in-depth study of the 1988

Democratic presidential primary. In each case, they found that from 22 percent to 12 percent of affidavit ballots examined were wrongly invalidated. Due to changes in election law (such as Motor Voter) and automation of key administrative functions, the data we analyzed led us to estimate that the rate fell to 5 percent in the 1990s and is down to approximately 1 percent to 2 percent today. This was confirmed in interviews with election officials and experts.

65. If one includes lower level elected positions—such as judgeships and county committees—over a thousand candidates were on the ballot in the September primary elections. Jonathan Hicks, “What Term Limits Have Wrought: A Multitude of Candidates,” *New York Times*, September 9, 2001.

66. Mark Berkey-Gerard, “How The Promise of Campaign 2001 Played Out,” *Gotham Gazette*, http://www.gothamgazette.com/searchlight2001/promises_problems.html.

67. However, the campaign finance law’s limitations were made evident in the 2001 elections. Michael Bloomberg (R), the eventual winner, spent the highest amount of money in U.S. history to win an office (other than president). He spent \$92.60 per vote, or a total of nearly \$70 million (\$69,855,263). Although Mark Green, the winner of the Democratic primary runoff election, eventually spent \$15 million, which is well over the amount spent by most mayoral candidates, Bloomberg outspent him by nearly five to one. While reform advocates tout New York as a place with an excellent campaign finance law, this election revealed its flaws. This issue is taken up in the recommendations section below.

68. Jonathan P. Hicks, “City Council Races Are Over, But the Vote Counts Go On,” *New York Times*, September 28, 2001.

69. A similar situation occurred in 1997 during the Democratic primary election between Ruth Messinger and Reverend Sharpton, where the initial numbers changed. Initially the results showed that Messinger won, only to have Sharpton gain votes in the counting of paper ballots, which left the outcome uncertain and the possibility of a runoff election open while ballots were counted over many days. Ultimately, Messinger gained the most votes but she lost valuable time and momentum in the process, as well as cast doubt on the part of some minority voters, all of which affected the electoral dynamics of the general election. These episodes show that such electoral problems and dynamics are not new to New York, nor particular to Florida.

70. This quote is from an elections official who wished to remain anonymous. Members of voting rights organizations and investigative journalists also echoed this sentiment.

71. Stephanie Saul, "Counting on Success," *New York Newsday*, September 4, 2001.

72. Ronald Hayduk, "Gatekeepers to the Franchise: Election Administration and Voter Participation in New York," Ph.D. dissertation, City University of New York Graduate Center, 1996; Deborah Hastings, *Broken Machines, Long Lines, Not Allowed to Vote: No, Not Florida*, Associated Press, November 10, 2000; Russianoff and Palmer, "Don't Mourn, Monitor"; Saul, "Uncounted Votes."

73. Much of the impetus for change came from the Coalition for Voter Participation, the aforementioned coalition of over sixty groups that is spearheaded and cochaired by the New York Public Interest Research Group (NYPIRG) and Common Cause.

74. The report, "Voting Matters in New York: Participation, Choice, Action, Integrity," was issued on February 12, 2001.

75. *Ibid.*, pp. i–ii.

76. The quote is from testimony given by Robert Abrams, president of the Board of the Citizens Union Foundation (and former attorney general of the State of New York) before the City Council Committee on Governmental Operations, February 8, 2001. The forum where Richard Wagner made the statement was held by the Center for Excellence in New York City Governance at New York University and was called "Pulling the Lever: Is New York City Ready for the 2001 Election?"

77. "Remarks of Joseph L. Gentilli at a public hearing of the New York City Council Committee on Government Operations, February 8, 2001."

78. *Ibid.*

79. See "Expanding the Vote: The Practice and Promise of Election Day Registration," a report by Demos, 2001, available at <http://www.demos-usa.org>.

80. Walter P. Loughlin, "Election Administration in New York City: Pruning the Political Thicket," *Yale Law Review Journal* 84, no. 1 (November, 1974): 61–85; Ronald Hayduk and Kevin Mattson, *Democracy's Moment: Reforming the American Political System in the 21st Century* (Colorado: Roman and Littlefield, 2002); David Barstow and Don Van Natta, Jr., "How Bush Took Florida: Mining the Overseas Absentee Vote," *New York Times*, July 15, 2001 .

81. Loughlin, "Election Administration in New York City"; Martin Shefter, *Political Parties and the State: The American Historical Experience* (Princeton: Princeton University Press, 1994); Hayduk, "Gatekeepers to the Franchise."

82. See "Ballot Access News," <http://www.ballot-access.org>.

ABOUT THE AUTHOR

RONALD HAYDUK teaches political science at the Borough of Manhattan Community College of the City University of New York (CUNY). He received his doctorate from the Graduate School of CUNY in 1996. He was the director of the New York City Voter Assistance Commission from 1993 to 1996 and consults to research and policy organizations, including the Aspen Institute and Demos, and was a legal expert witness for the NAACP Legal Defense and Education Fund in *NAACP v. Harris*. He is currently a member of the Coalition for Voter Participation, a member of the NYU Center for Excellence in New York City Governance's Election Dialogue Task Force, and a member of The Citizens Union Foundation's Select Committee on Making Votes Count. As the Coordinator of the New York City Voter Assistance Commission (VAC), a nonpartisan city charter agency mandated to facilitate voter participation of under-represented groups, he designed, implemented and monitored voter registration and education programs for New York City agencies and a broad range of community based organizations. He has written about political participation, immigration, regionalism and social movements, including coeditor and contributing author of *Democracy's Moment: Reforming the American Political System for the 21st Century* (Rowman & Littlefield Publishers, 2002); coeditor and contribution author for *From ACT UP to the WTO: Urban Activism and Community Building in the Era of Globalization*

(Verso, 2002). Hayduk is currently finishing a book, *Gatekeepers to the Franchise: Election Administration and Voter Participation*, on the impacts of election practices politics. He continues to engage in democracy building efforts in New York and at the state and national levels.