

2001 Elections Underscore Need for Reform Legislation

Highlights From Forthcoming Century Foundation Reports

A series of state and local elections that have taken place since the 2000 debacle have underscored the need for the swift enactment of the provisions in election reform legislation that the Senate is set to pass in the coming weeks. Over the past several months, The Century Foundation has examined the recent gubernatorial races in New Jersey and Virginia and mayoral races in New York City and Los Angeles to assess what progress has been made since system's flaw's were revealed in the past presidential contest.

This series of reports is a follow-up to the work of the Commission on Federal Election Reform, a project cosponsored by The Century Foundation and the University of Virginia's Miller Center of Public Affairs and chaired by former Presidents Jimmy Carter and Gerald Ford. Many of the commission's recommendations are reflected in the Equal Protection of Voting Rights Act of 2001.

The legislation requires states to:

- establish statewide voter registration systems
- provide provisional ballots for people who claim to be eligible voters but are not found on the voter registration list;
- ensure that voting systems allow voters to check and change their ballot before casting it; and
- ensure that polls and ballots are accessible to the disabled and language minority voters.

It also provides federal grants for poll worker training and voter education, among other activities.

Equal Protection Voting Rights Act of 2001

Federal Funding and Grants Program

The Bill

The bill provides a total of \$3 billion from FY 2003 through FY 2006 for states and localities to meet three federal requirements—that the voting systems meet certain standards, including being accessible to disabled and minority language speakers; that provisional balloting be provided; and that a computerized, statewide voter registration list and requirements for voters who vote by mail be established.

The bill also establishes a grant program whereby states can receive federal grants to (1) improve or get new voting systems and improve accessibility of polling places, (2) take measures to increase voter participation, (3) engage in voter education and poll worker training, (4) take fraud prevention measures, and (5) meet current requirements of federal election law.

Century Foundation Reports

Los Angeles

“Preceding and during the 2001 mayoral race, Los Angeles engaged in a voter education campaign specifically to combat the high error rate inherent in the punch card voting technology. The voter education guide that all voters received before the election had a section on how to vote with the Votomatic and the importance of checking ballots for chads. There were also new signs in polling places, and on every ballot box, admonishing voters to check for chads before they put their ballot in the ballot box. Short of replacing its voting technology, the “Got Chad?” education campaign was the only solution Los Angeles employed to combat over votes and under votes in the mayoral election.

The results of the 2000 presidential election and the 2001 mayoral election show that voter education was effective in reducing over votes and under votes, especially among minority voters. The over vote rate in the mayoral race was approximately half the rate in the 2000 presidential election, and the under vote rate was approximately 43 percent lower. According to data collected by Michael Alvarez and Betsy Sinclair at the California Institute of Technology, more than 90 percent of predominantly black and Latino voting precincts saw their over and under vote rates decline between the 2000 election and the 2001 election.

Miami

In the last election in Florida ever to use punch card ballots, election officials took extra measures in its Miami mayoral election to ensure there was no repeat of the 2000 debacle. One of these was that each polling site had a “tutor” to demonstrate to voters how to use the punch card machine properly. Yet the November 7 election was again marred by punch card problems. Overall, Miami voters were more successful with their punch card technique in 2001 than 2000; only 2.7 percent of the mayoral vote was thrown out as spoiled, half of what the rate was the previous year. However, undervoting and overvoting remained pervasive in the same counties that had the biggest problems in 2000. In these counties there was up to a 15 percent ballot spoilage rate.

A runoff was held and therefore election officials had another opportunity to improve. This time, every poll worker was 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.

That one added measure – a measure that increased the amount of information provided to voters -- made a huge difference. This time, only 1.28 percent of ballots were discarded because of overvoting or undervoting, citywide. Even more encouraging was that in the five precincts with the highest number of uncounted ballots in the November 7 election, where spoilage rates were between 9 percent and 15 percent, the rates plummeted to between .29 percent and 2.7 percent.

New Jersey

As a result of past irregularities, a federal election monitor oversees elections in Passaic County, N.J. In his seventh report, the monitor described the extensive new efforts undertaken to train voters, poll workers, and challengers, and the difference that made in improving the election's administration.

Increased education for voters in Passaic included putting new machines in community centers and supermarkets so voters could see and touch the machines in advance of the elections. For workers, newly designed interactive training programs began in September. Emphasis was on proper use of provisional ballots, handling of challengers, voter assistance, and the role of bilingual board workers. A separate group of experienced poll workers were trained as master board workers who traveled to polling places to assist with emergencies.

The result of training was encouraging, since fewer problems at the polls were reported. The monitor said: "It was gratifying to see the improved use of the provisional ballots of the Board workers. Not only did we see an increase in numbers but also more properly prepared provisional ballots. There is a direct correlation between the redesigned teaching program and the actions of the Board workers."

New York City

Especially given the dire financial straits, the need for federal assistance for election reform measures – an area that is likely to be neglected in the current fiscal climate – is greater than ever in New York.

"Among the biggest problems is New York's nearly forty year-old fleet of aging voting machines. All too frequently voters face broken voting machines, which can lead to 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. The city relies heavily on outside contractors to repair voting machines due to the fact that many of the city's own technicians are not prepared for the job. The city was forced to use more outside contractors this past election year because there had been numerous firings, resignations, and poor performance ratings for technicians.

Due to a decrease in the total number of poll sites, the shortage of voting machines, the high incidence of broken voting machines, and the shortage of technicians and poll workers, voters often find long lines that discourage voting. These conditions are

particularly acute during the crunch times before and after working hours, when most voters vote. The wait can be over an hour in many busy jurisdictions. In 2001, the evidence indicates that this was less of a problem than in years past, particularly for presidential elections. 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 in too many locations.”

“...[T]he Board of Elections had been violating election law that requires it to send an extra or double machine to each large election district with more than 800 registered voters in an election district. 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.”¹

Provisional Ballots

The Bill

All jurisdictions must provide provisional balloting to voters who come to the polling site and believe they are registered and eligible to vote, but do not appear on the voter list.

(“If an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual does not appear on the official list of eligible voters for the polling place, or an election official asserts that the individual is not eligible to vote, such individual shall be permitted to cast a provisional ballot.”)

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Even in places where there is a statewide voter registration system in place, there are widespread complaints of voters who believe they are eligible to vote being turned away from the polling site. For example, in hearings held in Virginia by Congressman Bobby Scott, voters complained of being turned away or prevented from voting. In New York City and Los Angeles, where such systems do not exist, the need for provisional ballots is demonstrated by the sheer number of such ballots that are cast in elections in these jurisdictions. In Los Angeles, 15,000 provisional ballots were cast in the 2001 election and more than 100,000 provisional ballots were cast in the 2000 election. In New York City, the percentage of voters casting affidavit ballots (which are similar to provisional ballots) in recent years has been between 1.1 percent and 4.4 percent of all voters, which translates into tens of thousands of votes.

¹Saul, Stephanie. “City Comes Up Short On voting Machines” Newsday, 8/2/01.

Vote verification

The Bill

The bill requires that voting systems allow the voter to check and change the ballot if desired before it is cast and counted.

(Section 101 of substitute bill S.565 provides that voting systems “shall— (i) permit the voter to verify the votes selected by the voter on the ballot before the ballot is cast and counted; (ii) provide the voter with the opportunity to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and (iii) if the voter selects votes for more than 1 candidate for a single office, the voting system shall (I) notify the voter that the voter has selected more than 1 candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted.”)

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New York City

Voters in New York City can have their votes lost as a result of the disabling of a feature of the lever machine all voters in New York City use to vote. If enabled, the feature prevents the voter from pulling the handle to end their voting session unless they pull down at least one lever – that is, cast a vote for at least one item on the ballot. In other words, it alerts them to a potential undervote. In 2000, of the 2.2 million who made the effort to vote in New York City, 88,835 of them, or 3.9 percent, left without picking a choice for president. In Albany and Philadelphia, where similar machines are used, but where the feature is not disabled, the undervote was only 1.3 percent and 0.5 percent respectively, in the November 2000 elections.² While researchers acknowledge that some voters may well have intentionally cast protest votes, evidence suggests that the overwhelming majority of undervoters tried to vote for a president but failed.

Virginia

In a jurisdiction in which the voting system was switched to one with voter verification and correction technology, the overvote count plummeted.

²Saul, Stephanie. “Disabled Latch Cause Loss of Some City Prez Votes” Newsday. July 22, 2001.

The “Virginia Legislature amended the Commonwealth’s election laws in 2001 to permit voting machines to note and initially refuse an overvoted ballot. The change primarily affects jurisdictions that use punch card or optical-scan machines, where a voter places a paper ballot into a vote tabulator. With the law now changed, the machines can be programmed to notify the voter when he has overmarked his ballot, at which point poll workers can offer him the opportunity to discard his old ballot and mark a new one. Although the State Board of Elections has not yet studied the effects of this change, the informal results in one optical-scan jurisdiction suggest that the ramifications are enormous. Speaking on the condition of anonymity, an election official estimated that this jurisdiction invalidated over six hundred ballots for president in 2000 as overvotes. However, one year after the law had been changed, the jurisdiction lost only one ballot in the 2001 gubernatorial election as an overvote. The official is quick to note other potential bases for the large decline in overvotes. Being an “off-year” race, the gubernatorial contest attracted about 60 percent as many voters as in a presidential year, individuals who arguably were more familiar with the balloting process and thus were less likely to cast an overvote than would voters who only participate in a presidential election year. In addition, this jurisdiction invested substantially in voter education throughout 2001, which the election official says may have reduced the tendency of some voters to cast an erroneous ballot. Nevertheless, as the official acknowledges, the drop from more than six hundred overvotes to only one is too great an improvement to be explained primarily by experienced or newly educated voters. The more likely explanation is that computer technology permitted poll workers to notify voters when they had cast an erroneous ballot and offer them an opportunity to discard the faulty ballot and mark a new one. Although the election official could not estimate how many voters were notified of an overmarked ballot in 2001 (the reports being largely word of mouth from poll workers in this jurisdiction), he said that only one ballot in over thirty thousand cast had been rejected by the tabulating machines as overvoted.”

Minority Language and Disabled Persons Accessibility

The Bill

The bill requires voting systems provide “alternative language accessibility” for non-English speakers in certain jurisdictions (those jurisdictions where at least 5 percent of voting-age citizens speak that alternative language as their first language; or there are at least ten thousand voting-age citizens who speak that language as their first language and are limited English proficient; and the illiteracy rate of the citizens who reside in that jurisdiction who speak that language is higher than the national illiteracy rate).

The bill also requires that voting systems be accessible to the disabled and that grant funding available for improving accessibility of polling sites.

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Los Angeles

Los Angeles's experience with minority language voters in the 2001 election is an indicator of what elections will be like throughout the country in the near future as the country's demographics continue to shift to mirror that of Los Angeles.

"The mayor of Los Angeles represents more people than twenty-four state governors and has the most ethnically diverse population of any American city. Because of its size and diversity, Los Angeles currently faces challenges in election administration that many other jurisdictions will be facing in the near future."

"Los Angeles County and the City of Los Angeles provide sample ballots and election support to voters who speak English, Chinese, Japanese, Korean, Spanish, Tagalog, and Vietnamese. In Los Angeles County, there are 1,100 precincts (22 percent of all precincts) in which most voters need language assistance at the polls. In the City of Los Angeles, 18.5 percent of all precincts (327 out of 1,763) have similar language assistance needs. For these polls to operate effectively, the county or city elections administrators have to find bilingual poll workers or translators to assist voters in the voting process.

Throughout the city, and especially in these targeted precincts, many citizens, especially first generation immigrants and elderly foreign-born voters, do not speak fluent English. For them to communicate with poll workers is very difficult, unless there is a voter at the precinct who speaks their native language."

"The U.S. Bureau of the Census projects that, between 2001 and 2030, the demographics of the U.S. population are anticipated to change dramatically. The White, non-Hispanic population is expected to decline from 71 percent of the population to 60 percent. The Hispanic population will increase to almost 20 percent of the population, the Asian population will approach 10 percent, and the black population will stabilize at 12 percent. These changes will bring the U.S. population close to the diversity now seen in Los Angeles."

New Jersey

At a forum at the Eagleton Institute of Politics on December 5, Ann Wilson of the Arc of New Jersey, estimated that at least a third of the polling places in New Jersey are not accessible to people with disabilities. The usual barriers are steps at entrances, the lack of curb cuts, and the lack of signage indicating accessible entrances if not the main entrance.

In addition to physical barriers, the lack of a system of confidential ballot casting at the polls puts individuals with disabilities at a disadvantage. The over-reliance on the use of absentee ballots for people with disabilities is also a problem in part because the ballot itself is not available in alternative accessible formats. While about half the N.J. counties use electronic voting machines, it is not required that they are accessible to individuals with disabilities.

At the same forum, the representative of the AARP of New Jersey points out that many of its members report problems with standing at the polls and reaching the levers on the mechanical systems as well in reading sample ballots printed in small type.