

## IV. A Democratic Process *that Encourages Every Eligible Voter to Participate Effectively*

An especially infuriating barrier eligible voters can face is to show up on Election Day, believing (perhaps rightly) that they are qualified to vote, and then be turned away because the poll worker cannot find their name on the list of qualified voters. In every recent national election there are certainly hundreds of thousands, and possibly millions, of such frustrating encounters.

Sometimes it is the voter's fault. Americans change their residence often, and often they forget to re-register or do not know they need to do it. This mobility has the effect of taking much of the population back to the requirements of temporary,

periodic registration that were so widespread early in the 20th century. A reform movement starting in the 1920s and 1930s eventually led to adoption of permanent voter registration in every state. That reform now needs to be adapted to our still more mobile society. A statewide voter registration system can capture most of this social mobility.

Sometimes voters are turned away because of administrative errors. Poll workers may overlook their names or not match them up with a different spelling. The poll workers usually still work from printed lists of voters produced for each precinct—a process that must begin weeks before Election Day. Staff in the offices that produce those lists can make clerical errors. Motor vehicle departments or social service agencies that receive registration applications may fail to get them, get them in the wrong form, or fail to forward them quickly enough.

The NVRA has also had the unanticipated effect of causing the disfranchisement of many thousands of the very people it sought to bring into the political process. Although the act does not require it, most states allow practically anyone to go out and register voters by taking and transmitting their mail-in applications. These people thus act in effect as deputy registrars. Election administrators we have encountered in every part of the country tell us of numerous cases where these unofficial registrars, often meaning well, mishandle or lose such applications.<sup>25</sup> The applicants, of course, rightly believe they have registered. Then they show up on Election Day and find out they are not on the list.<sup>26</sup>



Encouraging motorists to vote, Savannah, GA, November 7, 2000.

## Provisional Voting

The NVRA tried to tackle the problem of frustrated voters who are not found on voter lists with a set of mandates on “fail-safe” voting. Though these provisions are complicated enough to confuse experts, our best summary of what the NVRA requires is this: let us suppose a voter does not show up on a voter list because the voter has moved, or perhaps the registrar erroneously thinks the voter had moved. The state must still let the voter cast some sort of ballot if the voter is registered in that jurisdiction and claims to have stayed in the same registrar’s jurisdiction (usually a county). Such a fail-safe ballot must be made available whether or not the registrar has sent a mailing to confirm the voter’s new address and whether or not the voter has replied to such a mailing, if the voter is willing to swear to or (in special circumstances) present evidence to verify the claim. States can decide whether the person should vote at their old or new polling place.<sup>27</sup>

State practice follows no set pattern. Some states have very broad provision for fail-safe voting. A provisional ballot was pioneered more than ten years ago by California and Washington state (where it is called a special ballot). Nineteen states use provisional ballots to comply with NVRA. Florida has just adopted the provisional ballot in its new election law. These states include a majority of the voting-age population of the United States. Other states have a wide variety of procedures to comply with NVRA. Several states do not appear to comply with the “fail-safe” provisions of the Act at all.<sup>28</sup>

The NVRA’s fail-safe provisions are oriented to voter files held by counties and cities. We have recommended adoption of statewide voter registration systems that are networked to local election jurisdictions. Our vision of provisional balloting is connected to this different world in which there are more accurate state voter files. In both we are motivated by a consistent goal: No American qualified to vote anywhere in her or his state should be turned away from a polling place in that state.

**Every state should permit provisional voting by any voter who claims to be qualified to vote in that state.**

1. Provisional voting authorizes any person whose name does not appear on the list of registered voters, but who wishes to vote, to be issued a ballot. The ballot shall be counted only upon verification by election officials that the provisional voter is eligible and qualified to vote within the state and only for the offices for which the voter is qualified to vote.
  2. Another option, for states with statewide computerized voting lists, would be to let a voter who is not on the list submit proof of identification and swear to or affirm an appropriate affidavit of eligibility to vote in that jurisdiction. This information could then be used as an application for voter registration and the voter list would be amended accordingly. If qualified, the voter could either be issued a regular ballot or, if the state preferred, be allowed to vote provisionally pending confirmation of the voter's eligibility.
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The model for this recommendation is the provisional voting system used in the state of Washington. A provisional ballot is offered to defer resolution of arguments about eligibility, whether because people have moved, or claim they have no criminal record, or claim not to have received their absentee ballot, or because of other disputes. Washington also issues a “special ballot” to voters who have moved into a new county or have moved from another state. After the election, officials research the eligibility issue. If the voter is eligible to vote in another jurisdiction within the state, they mail the ballot there to be tallied. We think such an effort to relay ballots may not be possible in every state. That is why, instead, we have suggested counting such ballots as limited ballots, valid only for those races in which the voter was qualified to vote. California applies a similar law, but does so only within the counties.

In Washington's King County (with the city of Seattle) about 17,000 such special ballots were cast, about 2% of the total, and 78% were eventually found valid and tallied. In California's Los Angeles County more than 100,000 provisional ballots were cast, about 4% of the total, of which 61% were ultimately tallied either fully or in part (depending on the contests in which the voter was entitled to vote).

Provisional voting has three key advantages:

- Eligible voters are no longer turned away at the polls.
- Election administration is easier and more efficient. Poll workers have an easier option to handle angry, frustrated voters. These often ill-trained and low-paid temporary workers do not have to research or resolve cases on the spot, while other voters impatiently wait in line. Nor are more senior election officials tied down in resolving such questions during Election Day.
- Voter registration becomes more accurate. The process becomes another way to amend registrations for people who evidently wish to vote. Officials can catch and correct mistakes and the research process, by helping senior administrators notice which problems are causing the mistakes, thus can help many other current and potential voters.

Some caveats about this policy recommendation are in order, however. We certainly support county-wide provisional voting procedures. Our more ambitious recommendation of statewide provisional voting is linked to establishment of a statewide computerized voter file, networked to local jurisdictions, as we have also recommended. That networking can help local officials check voter eligibility and note whether and where the voter has voted.

Our recommendation also would penalize voter error. If a voter turns up in the wrong jurisdiction within the state, states should not have to require local jurisdictions to somehow provide a ballot tailored for the voter's proper home jurisdiction. In such cases the voter would, in effect, be receiving a limited ballot, in that officials would only count the choices the voter can mark and is eligible to make on the ballot that is offered in the place he or she has chosen to vote.<sup>30</sup>

Post-election research does take time and money, similar to the staff resources required for processing absentee ballots. Handling the 17,000 "special ballots" in Washington's King County occupied 15 staff for nine days. Commission staff directly observed how the process worked in the counting rooms of Los Angeles County, which included individual verification of signatures. There the easy ballots took 5–10 minutes, the hard ones up to an hour to reconcile, so that administrators estimate it takes 30 staff two weeks to count 12,000 provisional ballots.

Since provisional ballots can mean additional work, like absentee and overseas military ballots, some officials are reluctant to count them. In at least some local jurisdictions, such ballots are not even counted in a national election if they are not numerous enough to make any predictable difference in the outcome of the presidential race, or whatever race is at the top of the ballot. This little noticed practice is disturbing, partly because every vote should count and partly because those ballots might still make a difference in some of the less publicized 'down-ballot' contests. This is one reason why the Commission recommends that any provisional voting plan should require that all provisional ballots be counted and included in the certified results.

Like the growing use of absentee ballots, use of provisional ballots slows official election counts. Although jurisdictions that receive many such ballots have not yet encountered major problems, growing use of provisional ballots may oblige some states to extend their current deadlines for certification of elections.

*No person should be denied the right to vote in a federal election just because that person has changed his or her residence shortly before an election.*

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### **“Same Day” Registration?**

Election day, or “same day” voter registration has been proposed as a way of making it easier for citizens to register and vote (or as a way to get an exemption from the strictures of the NVRA). As a result of court rulings and legislation, no state has either a registration deadline or a residency requirement that extends more than 30 days before an election. But “same day” voter registration, already the law in six smaller states, is being considered by others—even California.

We make no recommendation on the appropriate deadline for voter registration. There is some evidence that “same day” voter registration might have a modest (5–8%) effect in improving voter turnout. But that evidence was largely gathered in elections before voter registration was simplified around the country by adoption of NVRA. In 1996, the next presidential election after passage of NVRA, voter registration was up but voter turnout was down.<sup>31</sup> Nor is there much evidence on how durable such an added effect may be.

Even if there is a slight turnout benefit in allowing “same day” registration, that benefit must be substantial enough to outweigh the added administrative burden election officials would have to shoulder in states, especially large states, that strongly prefer to register voters in advance of Election Day so that they will not have to confront a deluge of new registrants at thousands of polling places. Another disadvantage of “same day” registration is the lost opportunity for voter education. Voters registered weeks before Election Day are often mailed information such as sample ballots, the location of their polling place, and a voter manual.

As a practical matter, large jurisdictions need a few weeks before Election Day in order to prepare and distribute the lists of voters to all the polling places. If registration deadlines are set shortly before an election, many voters will not be included in the printed lists. Their omission will thus dramatically increase the number of provisional votes to be counted on and after Election Day which, as we mentioned, takes time. This is one reason why veteran administrators believe that citizens can have “same day” voter registration in large states, or they can have “same day” election results, but they are unlikely to be able to have both.

Although we have not adopted a recommendation for “same day” registration, we do agree that states requiring advance registration need to make some allowance for citizens who have just moved to their new home. We have already noted repeatedly how mobile our population is, and a large number of these moves occurs in the month or two before a November election. No person should be denied the right to vote in a federal election just because that person has changed his or her residence shortly before an election.

This goal can be recognized within the allowance for provisional voting that we have recommended above. If a voter does not show up on the voter lists because the

voter has moved to the jurisdiction shortly before Election Day, we recommend that states allow such voters to cast a provisional ballot, especially if the voter is prepared to offer some type of proof that they have established such a new residence. In such cases, as in Michigan, the provisional or affidavit ballot can then also become a tool for registering a new voter and amending the statewide voter list accordingly.

### Improving Voter Participation

If we want to encourage eligible voters to turn out, a good place to start is to ask those citizens who did not vote, “Why?” After the 2000 election the Census Bureau posed this question to thousands of non-voters. Here are the top ten reasons that non-voters gave for not voting:

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1	Too busy, conflicting work or school schedule	22.6%
2	Illness or disability	16.0%
3	Not interested, felt my vote wouldn't matter	13.2%
4	Out of town or away from home	11.0%
5	Didn't like candidates or campaign issues	8.3%
6	Registration problems	7.4%
7	Forgot	4.3%
8	Inconvenient polling place or hours or lines too long	2.8%
9	Transportation problems	2.6%
10	Bad weather conditions	0.7%

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Registration problems are relatively low on the list, and concerns about convenient access to polling places or the hours they are open are lower still.

We are concerned about whether our system does enough to welcome eligible, disabled voters to the polls. Allowing absentee voting is not a sufficient solution. We believe Americans with disabilities should have the same right as their fellow citizens to be able to vote at the polls on Election Day. Poll workers should be trained to respect this right.

This concern is not new. In 1984 Congress enacted the Voting Accessibility for the Elderly and Handicapped Act. Broader protections were adopted in 1990 in the Americans with Disabilities Act of 1990 (ADA). Courts have held that Title II of that Act applies to all elections and requires election jurisdictions to make adequate numbers of polling places accessible to voters with physical disabilities.<sup>32</sup> The General Accounting Office is completing a substantial study of voting and the disabled, to be published later in 2001, that we expect will shed much more light on the extent of compliance and noncompliance with the ADA. That law does create a right of private action to enforce its provisions, so pressure on governments to provide the required physical access may grow.

As that pressure grows, state and local officials face a difficult tradeoff. On the one hand they want to expand or maintain a large number of polling places. On the other hand, the only polling places they can often rely on to be accessible to Americans with disabilities are those in a relatively small number of public buildings, particularly in public schools. Rebuilding requirements should not be mandatorily

imposed on private buildings, like churches, just as a cost of being able to borrow them from time to time as polling places. So this issue seems to require very particular state and local assessments of what can be done, especially as more and more private buildings around the country become ADA-compliant. But we think the laws on the books are sufficient to encourage continued progress.

### Election Day Holiday

One way of addressing the shortage of accessible polling places, low voter turnout, and the challenge of recruiting poll workers is to move or redefine Election Day. There are calls to establish a national holiday on Election Day. Others have suggested turning Election Day into an Election Weekend or opening the polls for much longer portions of the day. However, many local jurisdictions already have difficulty finding qualified poll workers to staff current polling hours. There is also little evidence that longer hours would have much effect on voter turnout.

The idea of a national holiday is better founded. It would help working people vote without having to hire poll workers to staff added or longer shifts. Skeptics counter that many Americans will find other things to do with a holiday than go to the polls. Some election administrators who have experience with local elections held on weekends observe no particular benefit in voter turnout. Putting aside those clashing speculations about turnout, a holiday has other advantages for election administration. More public buildings, especially schools, would be available for use as polling places.<sup>33</sup> More, and better trained, poll workers might be available to staff polling places. Several encouraging programs have been created around the nation to engage civic-minded high school and college students to work at the polls on Election Day and a holiday from classes may release more students into the pool of potential candidates. Notably, at our Ann Arbor hearing we heard testimony

Political campaign workers, Pullman, WA, November 7, 2000.



from Congressman Steny Hoyer about his proposed ‘Help America Vote’ (HAV). HAV will make money available to colleges and universities across the United States to recruit and train students to be poll workers, helping to solve the poll worker shortage and, at the same time, helping to spark young people’s interest and participation in elections. Similarly the nonpartisan effort to create a Youth Voter Corps is a promising idea for how to encourage and train school and election administrators to recruit and energize high school students as poll workers and poll watchers.

True, national holidays are very expensive, mainly to employers.<sup>34</sup> But these employers have already assumed the cost of a national holiday every year during the second week of November—Veterans Day. That leads us to an idea with considerable civic virtue as well as practical merit.

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**Congress should enact legislation to hold presidential and congressional elections on a national holiday.**

1. Holding national elections on a national holiday will increase availability of poll workers and suitable polling places and might make voting easier for some workers.
  2. One approach, which this Commission favors, would be to specify that in even-numbered years the Veterans Day national holiday be held on the Tuesday next after the first Monday in November and serve also as our Election Day.
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Veterans Day honors those who have served in the armed forces and those who died in the service of this country. It originated as Armistice Day, set aside to commemorate the end of the First World War on November 11, 1918. After World War II it became a day of tribute to the veterans and those who lost their lives in that conflict as well. In 1954, after the Korean War, the date was officially designated as Veterans Day to honor those who served in all the nation’s wars.<sup>35</sup> After being moved into October for several years, Veterans Day was moved back to November 11, but is generally observed on the second Monday of November.

Could Congress establish a national holiday on which elections were held? The Constitution grants Congress the power to set the date of congressional elections and the time at which presidential electors are chosen. A federal statute now places Election Day on the “Tuesday next after the first Monday in November.”<sup>36</sup> And it would be a reasonable corollary to this power for Congress to declare Election Day a national holiday.

Whenever this proposal is mentioned, politicians tell us, almost as a reflex, that veterans groups may not like it. Certainly veterans groups will have a decisive say in any adjustment in the Veterans Day national holiday, and well they should. But such an automatic assumption about their views may underestimate the people who lead these groups, and the men and women who belong to them. Starting with our chairmen, we understand the perspectives of veterans. Gerald Ford is a combat veteran who served with the Navy in the Pacific Theater in World War II. Jimmy Carter is a graduate of Annapolis who served as a naval officer from 1946 to 1953. Bob Michel is a decorated combat veteran who served with the Army in the European Theater in World War II. Lloyd Cutler served during that conflict as well. So we would not endorse any idea that would dilute the significance of Veterans Day, and what it represents.

For many Americans, Veterans Day is a day for ceremony and remembrance, ceremonies often held at the gravesites of soldiers, sailors, and airmen. That is fitting. We reflected on the notion of holding the supreme national exercise of our freedom on the day we honor those who preserved it. On reflection, we found something very fitting about that too. There is time enough to do both these things, once every two years. Perhaps some veterans organizations may even encourage some of their members to serve again, at the nation's polling places, as one way to start or finish this day. We certainly hope that the private sector will permit and even encourage their employees to volunteer in this way. Many businesses are already setting a good example.

### Military and Overseas Voting

It is in this context that we turn to the problems encountered by servicemen and women when they try to cast their own votes. Understandably, voter turnout among members of the armed forces is very high. So too is the level of frustration when their votes cannot be counted through no fault of their own. The most serious problems are:



Absentee ballots, Indianapolis, IN, October 26, 2000.

- The time needed to apply for an absentee ballot, receive one, and return it, especially when each of these three steps requires a mailing to and from someone stationed overseas. This is not a new problem. One of our co-chairs, Bob Michel, recalls applying for an absentee ballot while moving with his unit across France well before the election of 1944, but not receiving it until he was trying to fight into Germany well after the election was over. He mailed it in anyway, sure that he wanted to vote though he was not so sure that anyone would count it.
- Numerous and varying local requirements for ballot return, registration deadlines, and ballot format.

In 1986 Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to help eligible members of the armed services and their families, and other citizens overseas, to vote. The GAO estimates that UOCAVA covers more than six million U.S. citizens, including 2.7 million active military personnel and their relatives.<sup>37</sup>

We have already recommended adoption of statewide voter registration systems and new procedures for provisional voting. Those innovations can yield a further payoff here, allowing a more streamlined process for getting and voting absentee ballots from citizens living overseas. Overseas and military ballots should also be counted according to uniform statewide rules. We emphasize later, in Chapter VI, the importance of having foreseeable, objective, statewide standards for defining what constitutes a vote. That applies to absentee ballots too.

**Congress should adopt legislation that simplifies and facilitates absentee voting by uniformed and overseas citizens.**

1. Each state should designate a responsible official for absentee voting by uniformed and overseas citizens who are residents of that state. That official should become the single point of contact for the citizens of that state who are served by the Federal Voting Assistance Program, which helps such uniformed and overseas citizens.<sup>38</sup>
2. In 1986 Congress passed the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to help eligible members of the armed services and their families, and other citizens overseas, to vote. Utilizing standardized forms for voter registration and absentee ballot requests, all UOCAVA-covered residents from a home state should be authorized to mail these applications to the designated official for their state.<sup>39</sup> If that state uses a statewide voter registration system networked to local jurisdictions, as we have recommended, the state official should be authorized to act directly on these applications or to forward them for action by the appropriate local jurisdiction. States should accept one absentee ballot application as a valid application for all subsequent elections being held by that state in that year.
3. The designated state official should be authorized to accept either a voted ballot being returned for any jurisdiction of that state or a standardized Federal Write-In Absentee Ballot that is an option for a UOCAVA-covered citizen. States should be obliged to accept and tally a Federal Write-In Absentee Ballot for those contests in which they determine the voter was eligible to vote.<sup>40</sup>
4. Properly filed absentee ballots should be accepted if they have been received by the time the polls of that state have closed on Election Day. States and the Federal Voting Assistance Program should develop common standards for validation of ballots that have been voted and mailed on or before Election Day, even if they are received after that date.

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**Early, Remote, and Internet Voting**

We wish to comment on one final trend to encourage eligible voters to participate. It is a trend that troubles us, however. This is the increasing adoption of procedures that encourage “no excuse” absentee voting, early voting, and voting-by-mail. Though this trend is justified as promoting voter turnout, the evidence for this effect is thin.<sup>41</sup> Analysts have even noted the possibility that voter turnout in such states may eventually decline, as the civic significance of Election Day loses its meaning.

This trend is adopted in the name of voter turnout, but often seems to be motivated at least as much by considerations of administrative convenience and saving money. More votes by mail mean less need for polling places and poll workers.

The benefits of the new remote and early voting schemes should be weighed against some important costs and dangers:

- Federal law states that presidential elections should be held on the same day throughout the nation.<sup>42</sup> Courts nonetheless have understandably been reluctant to invalidate state laws on this basis. But we believe the statutory plan offers wise guidance.

- Citizens should vote with a common base of information about candidates. If they vote over a period of weeks before Election Day, they vote based on the knowledge available on a scattering of different dates.
- Wherever possible, citizens should vote alone and in secret. The United States adopted the secret ballot a century ago in order to help voters resist pressure to disclose their choices, whether to relatives or to interested “friends.” Permissive early voting threatens the hard won right to a secret ballot.
- The institution of a national Election Day is one of the only remaining occasions in which Americans come together as a nation to perform a collective civic duty. We think rituals and ceremonies do have a part in forming a nation’s traditions and habits. We think this one should not be discarded lightly.
- Growing use of absentee voting has turned this area of voting into the most likely opportunity for election fraud now encountered by law enforcement officials. These cases are especially difficult to prosecute, since the misuse of a voter’s ballot or the pressure on voters occurs away from the polling place or any other outside scrutiny.<sup>43</sup> These opportunities for abuse should be contained, not enlarged.
- Absentee ballots are often counted last. As their numbers rise, timely reporting of election results is more difficult. After Election Day 2000 California alone had more than a million absentee ballots waiting to be tallied over the following weeks.



Stuffing absentee ballots, county clerk's office, Omaha, NE, October 23, 2000.

We know how difficult it will be for states that have already adopted such practices to roll them back. We do hope to do what we can to undermine the hitherto largely uncritical acceptance of this “convenient” trend and discourage states that have not yet traveled down this problematical path.

Our concerns about early and remote voting plans are even stronger as we contemplate the possibility of Internet voting. In addition to the more general objections, the Commission has heard persuasive testimony that Internet voting brings a fresh set of technical and security dangers all its own.<sup>44</sup> This is an idea whose time most certainly has not yet come.

### Citizens with Criminal Records

We also considered the issue of felon disfranchisement. Almost all the states provide that citizens lose their right to vote, at least temporarily, if they are convicted of a felony. States vary in the crimes that trigger this disfranchisement. Also, in some states felons only lose the right to vote while they are in prison. In others they can petition for restoration of their voting rights. In others the loss of the franchise is permanent

and irrevocable. In states that enact a permanent loss of the right to vote, this feature combined with the demographics of the criminal justice system produces a significant and disproportionate effect on black citizens, to the extent that as many as one-sixth of the black population is permanently disfranchised in some states.

The practice of denying the vote to individuals convicted of certain crimes is a very old one that existed under English law, in the colonies, and in the earliest suffrage laws of the states. But these laws have evolved. Over the last forty years the most significant trends in the treatment of felons and voting have been that states have narrowed the list of relevant crimes, and more than 15 states have eliminated lifetime disfranchisement, making the loss temporary or creating some procedure that could allow restoration.<sup>45</sup>

Except in the rare case where a felon disfranchisement law was provably passed with the intent of disfranchising black voters, the courts have held that such laws are constitutional. The U.S. Supreme Court has specifically ruled that these laws do not violate the Equal Protection Clause, as there is language in Section 2 of the Fourteenth Amendment that appears to carve out a specific exception allowing denial of the right to vote “for participation in rebellion, or other crime.” Taken together with the Qualifications Clause’s grant to state governments of responsibility for determining eligibility to vote, we doubt that Congress has the constitutional power to legislate a federal prescription on this subject.<sup>46</sup>

We believe the question of whether felons should lose the right to vote is one that requires a moral judgment by the citizens of each state. In this realm we have no special advantage of experience or wisdom that entitles us to instruct them. We can say, however, that we are equally modest about our ability to judge the individual circumstances of all the citizens convicted of felonies.

Therefore, since the judicial process attempts to tailor the punishment to the individual crime, we think a strong case can be made in favor of restoration of voting rights when an individual has completed the full sentence the process chose to impose, including any period of probation or parole. In those states that disagree with our recommendation and choose to disfranchise felons for life, we recommend that they at least include some provision that will grant some scope for reconsidering this edict in particular cases, just as the sovereign reserves some power of clemency even for those convicted of the most serious crimes.

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**Each state should allow for restoration of voting rights to otherwise eligible citizens who have been convicted of a felony once they have fully served their sentence, including any term of probation or parole.**

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## Ensuring the Voting Rights of All Citizens

Voting rights in the United States have come a long way since the bloodshed and political strife of the 1960s. The Voting Rights Act and related legislation have outlawed and dramatically reduced most forms of voter discrimination and disenfranchisement. There are still instances, however, where these laws are violated and not enforced. The Commission has heard testimony—as have Congress and others studying election reform—of instances where the election system did not work equally for all citizens or groups of citizens. In response to court decisions, Congress amended the Voting Rights Act to make clear that proof of racial animus or intent to discriminate is not necessary to find a violation of law. Practices that have a racially disparate impact can suffice if, based on the totality of circumstances, equal opportunity to participate in the political process has been abridged.

Moreover, it is critical that all Americans have confidence in our electoral system, and we should strive to eliminate any reasonable perception that the basic mechanisms of democratic participation favor some citizens over others. No voter should ever feel that the process of voting was intimidating or that there were improper barriers, either intentional or unintentional, that prevented the exercise of their right to vote.

A number of civil rights organizations have alleged that minority voters are discriminated against because of the greater use of inferior voting technologies in

heavily minority and low-income districts, perhaps in combination with such other factors as inadequate numbers of well trained poll workers in those same districts. For example, several studies and news accounts in the last several months point to poor technologies and other factors as possible explanations for the very troubling observation that the proportions of uncounted ballots are often higher, sometimes dramatically so, in precincts and counties with heavily minority populations. Nor is this just an issue of race. Elsewhere in this report we address the difficulties, some of them illegal, faced by voters with disabilities.

Voters and election administrators also told us that the provisions of the NVRA are not being followed or enforced as Congress intended. For example, in our task force work we heard many stories of public agencies that are responsible for offering and processing voter registration but do not offer registration as required, or do not complete the paperwork accurately, or do not transmit the applications in a timely manner to election administrators. When such agencies make these mistakes, voters often show up to the polls to find they are not on the voting list, and hence are denied the ability to vote. Some have alleged that such failures by these public entities have had a discriminatory impact. (Our recommendations concerning provisional ballots and state-wide voter lists will only help with some of these problems.)

Finally, one other area that should be closely watched is the level of service provided to language minority voters. Data from the 2000 Census show that our nation's ethnic minority populations have grown dramatically over the past decade, and the growth can be expected to continue. Many of our new citizens are not yet fluent in English and need ballots written in their native language. Many of them also come from countries that do not have a democratic tradition of voting, and they are unfamiliar with our election processes. They may also be unaccustomed to questioning or challenging a poll worker who has the trappings of official authority. Election administrators must ensure that language minority voters receive the assistance at the polls that is legally required—and wherever feasible go beyond that to provide what the voter actually needs—such as translators, bilingual poll workers, translated voter education materials, and assistance in the voting booth. Interest groups that represent language minority voters should work with their local elections administrators to assist in recruiting translators and bilingual poll workers to assist in polling places. Voter education is especially important for these citizens. Los Angeles, for example, tries to prevent many problems at the polls by providing translated sample ballots to voters before every election.

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**The state and federal governments should take additional steps to assure the voting rights of all citizens and to enforce the principle of one person, one vote.**

1. Federal and state governments should intensify efforts to enforce compliance with the several statutes guaranteeing the right to vote and prohibiting various forms of discrimination in voting and registration.
  2. The methods for funding and administering elections—from investments in equipment through voter education to procedures at the polling place—should seek to ensure that every qualified citizen has an equal opportunity to vote and that every individual's vote is equally effective. No individual, group, or community should be left with a justified belief that the electoral process works less well for some than for others.
  3. Federal and state governments should consider uses of technology, for example when developing voting equipment system standards, that will make it feasible to provide greater assistance to language minorities.
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There are important opportunities to lower barriers by using emerging technologies, as we discuss in the next chapter. Specifically the newer, programmable ATM-like machines, can make translated ballots more readily available for a wider range of language minorities, on demand. The Commission saw a demonstration of equipment used in some southern California voting places that allows voters to choose a ballot in English, Cantonese, Japanese, Korean, Spanish, Tagalog and Vietnamese. The Voting Rights Act requires jurisdictions to provide various forms of language assistance when that language group exceeds a threshold population in the country. The statutory thresholds reflect a balancing of voter need and administrative burden. With shifting technology and accelerating demographic change, jurisdictions will have opportunities to consider, on a voluntary basis, striking a different balance. The same technologies offer potential advantages to people who are blind or visually impaired, because audio equipment can be readily incorporated.

Many of the problems that occur in elections are caused or exacerbated by poll workers who were not fully educated about the rights of voters. We heard testimony that the electoral system works most effectively when poll workers are

well educated about the rights of voters and the procedures for handling voters with special needs. Additionally, when all states implement the provisional balloting recommendation made by the Commission, no voter will ever need to be turned away from a polling place again.

Of course, administration of elections is likely to be more effective, and the effectuation of voting rights more complete, if voters understand both their rights and their obligations. The Commission heard witnesses describe the importance of educating voters about how the process works. We heard about the lack of effective civics education in our schools, which should be providing the bedrock of citizens' knowledge about the electoral process, as well as providing some inoculation against the civic cynicism that leads too many citizens to opt out of democratic participation. Election officials should continue their efforts to educate voters through the use of sample ballots, voter pamphlets, demonstration equipment, and public outreach in a broad and diverse range of settings.

No one should believe, however, that poll worker training and voter education alone will eliminate the disparities in the performance of election systems across communities. Nor can campaigns to promote voter awareness, especially when framed as obligations of the individual voter, substitute for concerted efforts by officials to obey the law.