

REMARKS AT PRINCETON UNIVERSITY

APRIL 26, 2004

My name is Tova Andrea Wang, and I am Senior Program Officer and Democracy Fellow at The Century Foundation. TCF has done a great deal of work over the years on issues relating to democracy. Notably, we were co-sponsor of the National Commission on Federal Election Reform, better known as the Carter-Ford Commission. We continue to do a tremendous amount of work on the important issue of voting and election reform.

There will be much discussion at the conference this evening about the potential and the pitfalls of changing voting technology. However, there are many other important election reform issues at stake this year. While I will discuss the current status of voting machines as a way of setting the stage for the rest of the evening, I want to be sure to spend some time highlighting some of the other important election reform issues and controversies that have arisen as a result of the Help America Vote Act.

In general, the Help America Vote Act is designed to improve our election system in two ways: by requiring the states make certain voting reforms and by providing the states with ample cash to do that and more.

MACHINES

HAVA Requirements

The law requires that, beginning January 1, 2006, all voting systems used in federal elections MUST

Permit voters to verify their selections on the ballot, notify them of overvotes, and permit them to change their votes and correct any errors before casting the ballot. This requirement does not mean punch cards are banned -- jurisdictions using paper ballot, punchcard, or central-count voting systems may instead use voter education for notification of overvotes;

Produce a permanent paper record for the voting system that can be manually audited and is available as an official record for recounts (this is not to be confused with the voter verified paper audit trail -- this is not a requirement that the voter see a paper copy of his or her vote);

Provide to individuals with disabilities, including the blind and visually impaired, the same accessibility to voting as other voters, through use of at least one DRE or other accessible voting system at each polling place;

Provide alternative language accessibility as required by law; and

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Comply with the error rate standards (the percentage of votes lost by the voting system) in the federal voting system standards in effect on the date of enactment.

\$325 million is available to states that want to replace their punch card or lever machines.

The potential security problems of computerized voting systems have received tremendous attention of late. To give you some context for the remarks of those following me, I will just give you a sense of where we stand from a national perspective on voting machines.

Current Status

In 2000:

1 percent of registered voters used a hand-counted paper ballot;

28 percent used a punch card;

30 percent used an optical scan;

17 percent used a mechanical lever machine; and

13 percent used an electronic voting system.

In 2004, the estimated proportion of voters using electronic equipment will surge from 13 percent to 29 percent. At the same time, only 4% fewer voters will use lever machines than did in 2000 – 13% down from 17%. 0.6 percent may use hand-counted paper ballots, down from 1% in 2000. All together, 28 percent of counties will still use punch card, lever machine, or hand-counted ballots in 2004.

Translated into numbers of voters, in the 2004 elections more than 50 million voters are in jurisdictions using electronic voting equipment, 55 million are in optical scan areas, and 32 million voters live in places punch cards are used. Up to 1 million voters nationwide will use old-fashioned pen and paper. About 22 million voters may use lever machines.¹

You will hear much tonight about the security, or lack of security, of new voting technologies. I, however, would like to point out the peril of maintaining some of the old machinery. We all know about the problems punch cards caused in 2000. We should also remember that numerous reports showed that punch card machines lost the votes of minority voters at a disproportionate rate.

The continuing problems punch cards cause was demonstrated most recently in the California recall election last year. You probably know that the ACLU was unsuccessful in its lawsuit to delay the election because punch card ballot machines were to be used. What is less well known is that studies after the election was held showed that 384,000 votes were lost in that election. A majority of those “missing” votes came from counties using the punch card ballot machines. Almost half –

¹ States that used punch cards in 2000, but will no longer include Arizona, Florida, Georgia, Minnesota, Montana, Nevada, New Jersey, North Dakota, Oregon, South Dakota, and Wisconsin. Among the states in which a large number of jurisdictions have replaced punch card systems are California, Illinois, and Ohio. Punch card technology has generally been replaced by electronic or optical scan technology throughout these jurisdictions.

over 175,000 – came from Los Angeles County alone. Fully nine percent of voters in Los Angeles, where punch cards are still used, had no vote recorded on the question of whether the Governor should be recalled.²

Similarly, there are security concerns with respect to paper based voting systems too. For example, in the Texas primary last month, Representative Rodriguez initially led Secretary of State Cuellar by 145 votes out of 48,000 cast. When there was a recount, hundreds of previously uncounted votes appeared. Cuellar took 80 percent of those “new” votes to tip the balance in the other direction. In his home county, 177 new votes were found for Cuellar, zero for Rodriguez. Now Rodriguez is comparing this to the “Box 13” scandal in Texas when Lyndon Johnson was alleged to have stolen the 1948 election for senate, saying “What was found in Zapata and Webb counties is similar to what they found in Box 13 – magical mysterious votes that were just enough to put Cuellar over the top.”

VOTER ID

The major stumbling block in getting the Help America Vote Act passed involved the question of whether to require voters to present identification at the polls. Many Republicans wanted all voters to have to show identification when voting. They argued that if you need to show identification to buy alcohol, take an airplane or even rent a video, you ought to have to show ID to vote.

Civil liberties advocates and many Democrats adamantly opposed such a requirement, saying it would make it more difficult for Latinos, minorities, the elderly, the disabled and others to vote. They said it was less likely that members of such groups have the various documents required under the provision. They also pointed out that federal courts have recognized that the use of a photo I.D. causes a disparate impact on ethnic and racial minority communities.

There was a compromise. Only people who are registering for the first time in a given jurisdiction and who register to vote by mail must present identification either when registering or voting. Moreover, the identification need not be a photo ID, but can be a utility bill, bank statement, or government document that shows the name and address of the voter.

Despite the deal made, a number of concerns have continued to be raised about it. For example, Many voters and poll workers may have the misperception that ID is required for all voters

Some voters may not have the requisite identification. For example, the type of documentation provided for in HAVA may not adequately take the poor or married people into account. It is not unusual that only one spouse is listed on household bills or for low-income people, senior citizens, people with disabilities, and students not to have driver’s licenses, bank accounts, paychecks or other forms of identification. States can spell out in their implementation rules the many types of documents that can be construed to meet this requirement. In California, the secretary of state has said this includes such items as a student ID card, public housing document, drug prescription or tax

² LA County registrar Connie McCormack argued the missing votes resulted from substantial numbers of voters choosing to skip the recall question, voting only on candidates to replace Gov. Gray Davis or on the two ballot propositions

return. If states interpret the types of acceptable identification more narrowly, some voters could simply find themselves unable to cast a vote that will be counted.

If there is insufficient voter education, voters who must bring ID may not do so or may bring the wrong form of identification

Poll workers might intentionally selectively enforce the ID requirement, and ask only certain types of people for identification

Poll workers may incorrectly implement the provision by requiring ID from people not required to produce it and/or requiring voters to produce forms of ID that are not required, such as one with a photo.

These concerns are not just conjecture. There is now concrete data that lack of training and education on the ID issue are likely to cause problems. A recent Brennan Center survey of Election Commissioners and Deputy Commissioners across New York State found that only 18 out of 45 counties surveyed (40%) correctly responded that only first-time voters who registered by mail are subject to the new identification requirements. In a NYPIRG survey, only 9 of New York's 58 local Boards of Elections (16%) gave substantially complete and correct information to surveyors calling to ask what types of identification would be accepted at the polls. I don't think it's a leap to say a similar set of circumstances likely exists in many other states.

Moreover, since last month, the fear of intentional discrimination is no longer just based on speculation. It happened in Cleveland during Ohio's March primary.

According to the Cuyahoga County Board of Elections, a total of only 185 voters in that jurisdiction were required under 2002 Help America Vote Act to present identification in order to vote. Yet the Cleveland Plain Dealer reported that the voter empowerment coordinator for the NAACP received at least 50 phone calls from black voters who were required to present identification. A leader of the Greater Cleveland Voter Registration Coalition said she also got such calls from black voters.

CURRENT STATUS

Despite the limited application of the federal rules, lawmakers in several states have chosen to take this as an opportunity to require all voters show ID when voting. During the 2000 elections, 11 states required all voters to present verification at the polls before voting. In 2003, six additional states (Alabama, Colorado, Montana, North Dakota, South Dakota, and Tennessee) passed universal voter identification rules requiring every voter to present identification before receiving a ballot, bringing the total to 17 states.

Notably, in Mississippi, a state with a long history of creating hurdles for minority voters, a bitterly partisan dispute over enacting such a universal voter ID requirement rekindled conflicts from the not-to-distant past about racial discrimination at the polls.

Most white legislators argued this is a sensible anti-fraud measure. African-American legislators compared it to poll taxes and literacy tests. The voter identification requirement, they said, represents a new obstacle that is likely to fall disproportionately on minority voters. The state passed

HAVA legislation without a universal ID requirement, but legislators are continuing to introduce bills that would impose such a requirement.

Here in New Jersey, voter identification legislation has been controversial as well. The State Senate is currently considering S.701, which would eliminate HAVA's ID requirements for voters whose registration applications were delivered to authorities by groups doing voter registration. The issue is whether these should be deemed by mail. Republicans are resisting the change.

OTHER IMPORTANT PROVISIONS OF HAVA ARE AS FOLLOWS:

Beginning January 1, 2004 (with a possible waiver until 2006) States must have an interactive and centralized Statewide computerized voter registration list accessible to all election officials in the State. The system must share information between voter registration and motor vehicle authority databases.

States have moved ahead with development of statewide voter registration databases, but persistent uncertainty about the availability of federal funding led 41 states to take advantage of a HAVA-granted waiver to postpone implementation until 2006. Only 10 states have a fully unified system, according to electionline.org. Eleven have essentially no system at all. At least eight states are moving quickly toward a statewide system, including Pennsylvania, which passed a HAVA compliance bill in December.

There are concerns about the database as well. For example, it is possible that many voters will be wrongfully removed from statewide voter databases if states fail to ensure the accuracy of the data they use to determine who has a felony conviction, fail to use accurate data regarding persons whose voting rights have been restored, or fail to use appropriately strict matching criteria so that different people with similar names are not mistakenly identified as the same person.

Beginning January 1, 2004, people who claim to be registered to vote but are not on the official list of registered voters must be able to cast a provisional ballot and the voter must be able to find out what happened to his or her vote after the election.

As of December 2003, 40 states were compliant with this requirement, and two states had legislation pending. Another six states are exempt from this requirement either because they allow Election Day registration or have no registration at all. Iowa, Kansas, and Mississippi have yet to pass state legislation for provisional voting. However, these states will comply with HAVA through state directives if no legislation is passed.

The concern raised about provisional voting is, what are the standards by which election officials will determine whether those provisional votes should count or not? (e.g., if voters are at the wrong polling sites or election districts, but they are still in the congressional district in which they reside, will their votes for Congress be counted? If someone votes provisionally because they did not bring ID, will that vote be counted?)

The law establishes the Election Assistance Commission, which is responsible for the distribution of the funding, conducting studies, and generally administering the program.

The Election Assistance Commission was supposed to be established and acting independently within 120 days of HAVA's passage (that is, by February 26, 2003). However, it was not until December 2003—nearly 10 months behind schedule—that its members were confirmed by Congress. EAC has an operating budget of only \$1.2 million for 2004. The EAC is just now hiring staff and moving into its own offices.

FUNDING

The “Help America Vote Act” authorized a total of \$3.9 billion over three fiscal years, including \$2.16 billion in FY03 and \$1.045 billion in FY04.

Congress ended up appropriating \$1.5 billion for FY03. That represented a funding level of approximately 70% of the original authorization. By mid-June 2003, GSA had disbursed almost all of the \$650 million in early money and for punch card and lever machine replacement. But to this date, the remaining \$830 million appropriated in 2003 for “requirements payments” has not been distributed because of the delays in setting up the EAC.

In 2004, the White House's FY04 budget included only \$500 million for HAVA grants – less than half of the \$1.045 billion authorized for the fiscal year. After much outcry, the Senate agreed to add an additional \$1 billion for election reform and the funds were included in the FY04 omnibus appropriations bill. Again, this money has not yet reached the states, but should within the next few weeks.

In his FY 05 budget, the president allocates a grand total of \$65 million for election reform: \$10 million for the Election Assistance Commission's administrative costs, \$40 million in additional requirements payments, \$10 million for Health and Human Services grants and \$5 million for Protection and Advocacy Grants. The Help America Vote Act authorized \$600 million for fiscal year 2005. This means the president is proposing to spend about *ten percent* of what the Congress envisioned.

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