

**VOTING IN 2004:  
A REPORT TO THE NATION ON  
AMERICA'S ELECTION PROCESS**

DECEMBER 7, 2004  
WASHINGTON, D.C.

THE  
CENTURY  
FOUNDATION



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Common Cause is a non-partisan non-profit advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and hold their elected leaders accountable to the public interest. Now with nearly 300,000 members and supporters and 38 state organizations, Common Cause remains committed to honest, open, and accountable government, as well as encouraging citizen participation in democracy. The Common Cause Education Fund supports this mission through research and education. [www.CommonCause.org](http://www.CommonCause.org)

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**EXECUTIVE SUMMARY**

On December 7, 2004, The Century Foundation, Common Cause, and The Leadership Conference on Civil Rights sponsored a historic daylong forum entitled "Voting in 2004: A Report to the Nation on America's Election Process."

This event was truly unique: its focus was not on having a partisan fight over the election or the election results. Its mandate rather was to gather together all of the organizations and experts who were actually on the ground monitoring the process during the election to report concrete data and information they collected, and in this manner get a realistic portrait of what actually transpired in the presidential election of 2004.

Held in the Dirksen Senate Office Building on Capitol Hill, the nine-hour event drew more than 500 concerned citizens, activists, members of Congress, and congressional staff who packed the large hearing room. It was standing room only for many of the sessions that featured nearly three dozen panelists—election administrators, voting experts, advocates and voting monitors—who spoke about their Election Day observations.

Conference participants included election administrators from Illinois and Nevada, academics individually involved in vote monitoring, and panelists from organizations including the Lawyers' Committee for Civil Rights Under Law, the National Coalition on Black Civic Participation, the People for the American Way, the Brennan Center, Redeem the Vote, Rock the Vote, Verified Voting.org, the Advancement Project, the Native American Bar Association of DC, the National Association of Latino Elected and Appointed Officials, the NAACP, the National Asian Pacific American Legal Consortium, Electionline.org, and the Voting Rights Project of the American Civil Liberties Union of Florida.

Due to widespread media coverage the important discussion held that day was not limited to the live audience. C-SPAN covered the entire day, and broadcast parts of the conference repeatedly over the ensuing days. C-SPAN radio broadcast the event live. The *Los Angeles Times*, the Associated Press, the *Miami Herald*, the *Cleveland Plain Dealer* and National Public Radio were among the media that covered the event.

The "Report to the Nation" featured seven panels of experts and voting rights advocates who spoke in detail about problems experienced before and on Election Day, including problems with registration, absentee ballots, provisional ballots, voter suppression and intimidation, and voting machine issues. Through the course of our discussion, several themes emerged; major election problems were identified; and some ideas for future reform were suggested.

## THEMES

**The Role of Nonpartisan Organizations Was Central to Ensuring That Voters Rights Were Protected** Voter protection programs run by nonprofit, nonpartisan organizations, using thousands of volunteers across the country, played a huge role in this election.

- The Election Protection Coalition, a collaboration involving more than 100 national, state, and local public interest groups, was formed to help voters with questions about registration and voting, preserve access to the polls, expose and prevent voter intimidation, identify and solve problems with new voting machines, technology and ballot forms, and protect voter rights. The group recruited and deployed over 8,000 legal volunteers, 25,000 community volunteers and hundreds of pro bono law firms. Election Protection volunteers fielded over 200,000 telephone calls from voters, while the NAACP alone recorded more than 38,000 formal complaints from voters.
  
- Common Cause joined with other organizations to establish a voter alert line, 866-MYVOTE1 which was featured in NBC news coverage on and before election day. Nearly 210,000 people called the 866-MYVOTE1 voter alert line to seek information about their polling place, make a statement about their voting experience, and/or connect to their local elections boards. The other organizations that sponsored the voter alert line included the Fels Institute for Government at the University of Pennsylvania, the Reform Institute, the Hispanic Voter Project at Johns Hopkins University and the National Constitution Center.

Even more organizations, including faith groups and student groups, worked like never before to register new voters. Given the successes the groups had in protecting voter rights and documenting voting problems both in the lead up to and on Election Day, we are likely to see the continued and perhaps expanded involvement of such groups in our voting process.

**There Were Serious Problems in 2004** Despite the successes of voting rights advocates, contrary to media reports, the 2004 election was beset by a wide variety of problems caused by systemic flaws, administrative incompetence, and intentional acts of voter disenfranchisement.

**Voters Were Not the Problem** Problems in the voting process were most often the fault of elections officials—not voters. For example, studies show now that most of the problems incurred with respect to provisional ballots were caused by errors by elections administrators before the election, poorly trained poll workers on Election Day, and a

lack of diligence by elections officials in verifying the validity of provisional ballots after the election. The problems were not about misinformed or incompetent voters.

**There Were Likely Violations of the United States Constitution** According to many participants, there were numerous probable violations of the Voting Rights Act and the equal protection clause of the Constitution during this election, some of which continue to be litigated. These included disparate rules regarding provisional ballots, vote counting, and type and number of voting machines deployed.

**Voting Machines Remain a Problem** The security and accuracy of electronic voting machines is a major problem that has yet to be resolved to anyone's satisfaction. Although some argued that other methods would be more effective, most involved in the discussion believed that a voter-verified paper audit trail provides the best current option for ensuring computerized voting technologies are accurately recording and counting votes as the voter cast them.

**There Was a Silver Lining** All agreed that there was one very positive development in 2004: a surge in voter registration and voter turnout, especially among young people and people of color.

## PROBLEMS

Although the apparent margin of victory in this election and the way the media reported on it have led most people to believe the outcome is not in question, those who actually observed and were involved in this election believe it was highly flawed. The participants in the conference detailed numerous instances of voter disenfranchisement that need to be addressed. The most commonly cited problems were the following:

- Voter registration forms were rejected by administrators for overly technical reasons, with little opportunity for the voter to amend his or her form.
- Too many registered voters showed up at the polling place to find that due to administrative errors they were not on the voter registration list.
- Election administrators failed to mail absentee ballots in a timely manner, causing disenfranchisement, most notably in Florida.
- Rules and practices for providing and counting provisional ballots were arbitrary and overly restrictive.
- In many instances, voters were wrongfully and discriminatorily asked to present identification. This most often took place in African American and Native American jurisdictions.
- Voting machines broke down and inaccurately recorded votes in some instances. For example, machines in a few jurisdictions switched votes from candidate John Kerry to George Bush and vice-versa.
- Some poll workers were poorly trained and clearly misinformed, leading to disenfranchisement.

- There were a number of instances of overt attempts at vote suppression and intimidation, predominantly in African American and Native American jurisdictions.
- Many voters, particularly in minority and poor areas and college campuses, were subjected to unacceptable wait times to vote.
- Although early voting was popular, there were too few early voting sites, leading to long lines and a dearth of sites in minority areas.
- Although students are allowed to register and vote from their campus address by law, many students were nonetheless denied the right to vote.
- Wide variations in laws regarding voting rights for former felons caused there to be misinformation, mass confusion, and hence disenfranchisement of many ex-felons who had the right to vote.
- Election administrators abused heretofore little used state statutes to challenge the eligibility of some voters before the election as well as the voting rights of some voters at the polling sites. These efforts were particularly aimed at minority and urban communities.
- There were no language interpreters and/or minority language materials in some jurisdictions in which they are required under the Voting Rights Act.

### RECOMMENDATIONS

While the focus of the conference was on reporting what happened in the 2004 election, and not at this time suggesting policy reforms, a number of important ideas were raised that can serve to inform the political and legislative debate. The recommendations the panelists made include the following:

- Enact legislation providing a specific private right of action under the Help America Vote Act.
- Create uniform standards for counting provisional ballots that errs on the side of counting votes.
- Take steps to ensure that provisional ballots are truly a last resort. One way to achieve this is through a statewide public system by which voters can check their registration status prior to Election Day and supply any missing information and/or correct errors.
- Fully fund the Election Assistance Commission and give it greater powers.
- Get partisan elected officials out of the business of administering elections.
- Require voting machines to have voter-verifiable paper audit trail.
- Continue to file equal protection lawsuits in those places where voting rights were infringed and the problems occurred in disproportionately in minority jurisdictions.
- Persuade government to take responsibility for ensuring that every eligible citizen is registered to vote, instead of leaving that important job to nongovernmental organizations. .
- Persuade states to allow for Election Day registration.

- Allow states, when necessary, to move back the “safe harbor day”<sup>1</sup>, the date electors cast their vote, and the date when Congress counts the votes of the electoral college, in order to ensure that states have time to conduct needed recounts in the case of a close vote and/or allegations of malfeasance
- Ensure that identification requirements allow for a wide range of acceptable forms of identification.
- Ensure that formulas used to allocate voting machines be based on voter registration, not the less reliable standard of prior turnout. If necessary, elections officials must buy and deploy more machines to meet demand and prevent unacceptable wait times.
- Take steps to improve the system through pre-election activities; post-election litigation is less effective.

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<sup>1</sup> The date upon which all controversies regarding the appointment of electors should be resolved

## Voting in 2004: A Report to the Nation on America's Election Process

### SUMMARY AND HIGHLIGHTS OF THE PANELS

#### WELCOME AND OPENING STATEMENTS

*Tova Wang, Senior Program Officer and Democracy Fellow, The Century Foundation*

*Wade Henderson, Executive Director, Leadership Council on Civil Rights*

*Chellie Pingree, President, Common Cause*

*The Honorable Representative Steny Hoyer (D-MD)*

*The Honorable Representative Bob Ney (R-OH)*

*The Honorable Representative Rush Holt (D-NJ)*

Tova Wang welcomed everyone to the event and described the Century Foundation's role in election reform. The Foundation is involved in several issues, but "none has been more important than the issue of expanding access to democracy and expanding participation in the democratic process." The Foundation set up the National Commission on Federal Election Reform, co-chaired by former Presidents Carter and Ford.

Wade Henderson noted the Members of Congress who were key to efforts to fix our nation's troubled voting system. He went on to say:

The 2004 election represented the nation's first real chance to move beyond the nightmare we experienced in the 2000 election and today's conference will help us find out whether we actually did. Voting in 2004 is a look beyond the rumors and innuendo, to find out what voters really faced this year when they tried to register and when they tried to vote, both before and on Election Day. Did the Help America Vote Act, which was passed in 2002 as the answer to the problems in 2000, really help Americans to vote or do we need to go back to the drawing board for some fine tuning?

Chellie Pingree thanked "all of the participants who have been willing to come from across the country to report back on what they saw on Election Day and to all of you who are out there taking very seriously this important issue in our country." She observed that just because the election did not go to the courts did not mean all went well. Common Cause and the Election Protection Project received well over 400,000 calls between them. There were long lines, inadequate numbers of voting machines, and other problems. Today's event will provide information that will help activists push for further reforms in Congress and in the states.

Representative Robert Ney (R-OH) is chair of the House Administration Committee and one of the sponsors of HAVA. He noted that this election was the first federal general election conducted under the requirements and standards of HAVA. He said that despite widespread reports predicting our election system would collapse and despite a record

turnout the system held up remarkably well. It was not perfect and we have to continually and thoughtfully look for ways to improve it. Ney cautioned,

However while work remains to be done, I hope we would all think very carefully before calling for further changes on a massive scale in federal law. History shows that Congress has acted carefully and deliberately when considering significant electoral forums, as we should. ... We will not be serving our country well if we fall into the pattern of amending our nation's election laws every four years, based on perceptions of how one provision or another have harmed or benefited a particular group in a previous election.

Ney also cautioned that changes in HAVA might not please everyone or remedy all problems:

Nor should advocates of sweeping changes in our federal election statutes believe that the only changes made by such a process would be the ones that they would want. In other words, other changes could come, that you may not want. Or let's say the process results in compromise; that means no one gets everything they want, but we hope those compromises are always in the best interests of the citizens.

Ney said the committee will have a series of hearings in January on elections related issues and they want to hear from people what went wrong and what worked.

Representative Steny Hoyer (D-MD) was also a sponsor of HAVA. He opened by saying that "the premise of HAVA is that good elections are not a liberal or progressive issue, a moderate issue, or a conservative issue; they're an American issue." He went on to say, "We need to have elections that are honest and fair, inclusive, and that every American is encouraged and facilitated in registering and casting their vote, and insuring that every vote is accurately counted."

Hoyer said as a principal sponsor of HAVA he was eager for a status report on the new law. "Money has been used productively, not perfectly, but productively." He said that the EAC commissioners are working hard and will be very important over the years in efforts to improve our elections. Hoyer said that "there is anecdotal evidence that the 2004 elections represented a positive step forward, though not a perfect step forward." He noted there were disturbing reports that many people faced too many barriers at the ballot box, saying, "these problems are a blight on our democracy that no American should tolerate."

Hoyer said he intends to focus on four key issues:

- Further implementation of HAVA, much of which does not go into effect until 2006, particularly the key reform of statewide voter registration systems, which should include instantaneous access to correct registration in every precinct.

- Provisional ballots were not implemented as I had hoped. There should be uniform standards throughout the states, although that was very controversial and would not have passed the House.
- HAVA must be reauthorized next year and he intends to be very much involved in that effort and in oversight of HAVA.
- HAVA must be fully funded. \$800 million still remains in funding; Congress did less than \$25 million this year. In particular, we need to fund and make certain the program to get college students working in elections is implemented and effective.

Hoyer also discussed the problem of verifying the vote on electronic machines while making fully accessible the secret ballot to those with disabilities. That was a critical objective of HAVA.

Representative Rush Holt (D-NJ) was introduced by Wade Henderson as a “catalyst” for the event and helped bring together those participating in the event. Holt said, as a scientist, he asked students what was the greatest invention – they suggested various technologies, but he told them it was our Constitutional system of government. He thanked the panelists for coming and said “what we need is evidence, not rumors, not ideological jeremiads, not policy prescriptions, but a good account of how things worked, and didn’t work, this past November.” He said it was particularly important that his congressional colleagues were attending, so that they could learn and work to make our democracy an example for the world.

## **PANEL 1: ELECTION PROTECTION – AN OVERVIEW**

*Barbara Arnwine, Executive Director, Lawyers’ Committee for Civil Rights Under Law  
Melanie L. Campbell, Exec. Director & CEO, National Coalition on Black Civic Participation  
Ralph Neas, President, People For the American Way*

Barbara Arnwine opened by describing the Election Protection Project:

The Election Protection Project as it was known, was spearheaded by a coalition of civil rights and Voting Rights organizations across the country, and it consisted of more than 25,000 volunteers, including over 8,000 lawyers. Election Protection volunteers monitored the polls at more than 3,500 precincts nationwide, and manned a nationwide Election Protection hotline at the memorable 866 OurVote

She challenged reports that the election went smoothly, especially in minority communities:

Acts of voter intimidation and suppression aimed at minority communities were rampant throughout the election period and became even more

pervasive on Election Day. Dirty trick flyers were distributed in predominantly minority neighborhoods across the country, these malicious flyers, misidentified polling places, publicized Election Day as November 3<sup>rd</sup>, and threatened voters with legal repercussions for casting a ballot.

She said that we should focus on establishing a private right to action for citizens under HAVA, fix the provisional voting problems, better equip the EAC and address problems with HAVA's ID requirement. We must also address the partisan actions of elections officials.

Arnwine concluded with a call to action:

We have arrived, ladies and gentlemen, at a unique moment, when the failures of our system coincide with unprecedented activism and awareness about our process. I ask activists, citizens and policymakers, not to let this moment recede without action.

Ralph Neas continued with a discussion of the calls to the OUR VOTE hotline, saying they showed that "government failed us" in this election:

When Barbara Arnwine talks about 40,000 incidents, that's the tip of the iceberg, because each one of those incidents represents more than one person, sometimes can represent hundred or thousands of people ... We only covered 3500 precincts, two or three percent of the precincts in the country.

Based on the results of their OUR VOTE hot line, Neas questioned why some of the problems were skewed toward certain areas:

How come, if we turned out almost 120 million people, the long lines were always in the urban areas, in the poor areas, in the communities of color? If all these communities all across the country had record turnouts, why were there long lines? We found in Cleveland, in Columbus, Ohio, because we had hearings, three days of hearings, and precinct officials said, we had fewer voting machines on November 2<sup>nd</sup> than we did in the primary. We had fewer voting machines in 2004 than we had in 2000.

Neas also noted the failure of much of the progressive community to support Rep. Holt's verified voting legislation and said that must change. He echoed Arnwine's comments about the partisan activities of elections officials. He concluded by saying there is work to be done and "we are not going to give up."

Melanie Campbell described some of the problems they encountered at Atlanta University, which has more than 10,000 students, including poorly trained and inexperienced poll workers giving students misinformation about identification requirements, and provisional ballots. Campbell noted that students and young people

voted in record numbers in the 2004 election and described some of the specific efforts to register new voters in priority states.

Campbell noted that in many places there were not enough voting machines and questioned why elections officials did not anticipate the large turnout: “You would have to have been really comatose to not know ... that there was going to be increased turnout in 2004.”

Campbell said, “We celebrate the spirit of our democracy, where voters stood in line for hours, without being deterred, determined to have their vote and their voice heard.”

## PANEL 2: VOTER REGISTRATION

*Jessie Allen, Associate Counsel, Brennan Center for Justice at NYU School of Law*

*Dr. Randy Brinson, Chairman, Redeem the Vote*

*Lillie Coney, Senior Policy Analyst, Electronic Privacy Information Center*

*Jehmu Greene, Executive Director, Rock the Vote*

*Penda Hair, Director, Voter Protection Project of American Families United*

Randy Brinson described his organizations use of festivals and Christian music to attract young voters. One of the problems, however, was that many young people registered online, but the system for registering online is not complete. In order to register online, a voter has to print something out and mail it in. Complete online registration would improve the process and probably increase turnout.

According to Brinson: “One of the difficulties we encountered, I think there were a lot of what has been talked about here. We were doing a lot of registrations online, and what we found was, when you did it online, it wasn’t directly online, is that you could register online, but then you have to print off the forms, put a stamp on it, and send it in for registration ... And I think that’s something that needs to be refined, because obviously if you can send your taxes in online, you can do income tax online, why can’t you register fully online? That needs to be improved.”

Brinson listed several things that needed to be done to improve the process, including:

- Better civic education for young people, starting in high school
- Highlight local elections as well as national elections.
- More uniformity between states, as far as accepting registrations.
- Finding common ground on things that need to be changed.

Penda Hair briefly described her work at the America’s Families United (AFU) Voter Protection Project and the AFU’s database of about five million voter registration forms. The AFU collected the forms and then followed up to make sure the names actually appeared on the registration rolls. Part of their work was “to encourage voter registration groups to use what we called defensive voter registration practices to anticipate that there

would be problems and barriers and to undertake practices that would allow us to overcome those barriers and minimize the problems.”

One defensive task was to make hard copies of each registration form so that there would be a record of the registration if the government office were backed up because of a high number of registrations to be processed. Finally, Hair described their efforts to force the government in Florida to process registration forms of people who had mistakenly missed check-boxes on their registration form which stated they were mentally competent and a citizen (even though voters were required to sign a statement that they are eligible to vote in addition to these questions).

Lillie Coney described some of the historical barriers to voting and how some still exist today:

On Election Day in this year, we saw the same problems that have been experienced by voters every generation that has existed in this nation. Means and methods for closing the door, to raising the bar, to limiting access – whether it was because of a lack of information about the rules of registration, whether the time limit had been reached for a time for participation in this election year, whether those registrations were actually processed properly by the offices that are in charge of voter registration rolls.

Coney suggested several areas that should be studied for possible improvements to the registration process, including:

- Create uniform voter registration rules that should include Fair Information Practices Act (Public Law No. 91-508).
- Implement uniform privacy protection for registered voters with strict opt-in rules for the sharing of a limited amount of information on voter registration with third parties.
- Block the use of centralized voter registration databases until they can be managed and maintained solely by county and state resources, which must include sufficient security measures to protect the privacy of registered voters.
- DMV voter registration applications should provide a receipt that can be used as proof of registration, which can be used on Election Day as a registration document.
- Prevent an expansion in ID requirements for voter registration and voting
- Same day voter registration
- Once voter registration is accomplished it should be for the lifetime of the voter
- Restoration of full voting rights to those who have completed their sentence
- Allow homeless people to provide a general description of the geographic area that defines as their residence, which should allow a mail address of their choosing.

Jessie Allen discussed the laws in different states that disenfranchised people with felony convictions. According to Allen, “in this country we have 50 different laws that refer to the voting rights of people who were convicted of crimes,” and “there’s a group of people who remain categorically disenfranchised in different ways for different periods, and that’s people convicted of felonies.”

One of the biggest problems, said Allen, was the massive confusion “among electoral officials about what the voting rights are of people who have been convicted of felonies in different states, and in particular what the registration requirements are for people who have lost their rights because of a felony conviction and either have those rights restored either automatically or through some kind of clemency process.”

Allen said the first priority should be to get the correct information to people “as they come out of sentences, so that they know what their rights are, they know their rights to vote, to electoral officials so that they know what has to be done.”

Jehmu Greene, from Rock the Vote, pointed out that online registration of voters is the wave of the future, especially among young people. But, like other panelists, Greene stressed the need to have complete online registration. Some of the benefits of online registration, according to Greene: “It definitely reaches more people. It definitely is less expensive. It builds a cleaner database again for Get out the Vote efforts, state requirements are more likely to be followed.”

Despite increased turnout, however, Greene said there was a lot of problems for young people registering, especially on college campuses: “I think the most significant challenge for students who wanted to vote this year was bureaucracy, and the legal or administrative barriers that made it extremely difficult or impossible for them to vote in their college communities. Even though the United States Supreme Court passed in 1979 the right for students to register on their campuses, we saw on scores of college campuses students’ rights being denied.”

## **Q&A**

One audience member asked the panel if any groups were “looking at data about how effective various voter registration drives were in terms of actually getting people to vote.”

Penda Hair said that “in January, I believe we will start getting the voter files with voter history, and then we can match our database against that and tell directly who turned out, where did they turn out, who registered this voter.”

According to Randy Brinson, “We saw some of the areas where we did voter registration areas in those counties that the self-identified evangelicals that we were reaching out to,

there was a 20 percent increase in their voting participation in those counties between 2000 and 2004.”

The questioner followed up by asking if there were specific youth-targeted programs that were especially effective.

Jehmu Greene responded, “Traditionally voter registration efforts targeted towards young people that registered new voters, you see 70 percent of non-college young people actually turning out to vote and 76 percent of college students turning out to vote after they’ve been registered for the first time.”

### **PANEL 3: PROVISIONAL BALLOTS**

*Steve Carbo, Director of the Democracy Program, Demos*

*David Orr, Cook County Clerk, Cook County Illinois*

*Spencer Overton, Professor of Law, The George Washington University School of Law*

Steve Carbo said that because Congress did not approve a national standard, state and local standards were in force, and they varied widely.

A random sampling of incidents showed most were the result of errors by election officials. And he said that the largest single group of incidents was the failure of officials to offer provisional ballots at all, either because they had none or because they had run out of them before the polls had closed.

Carbo said that the fewest provisional ballot incidents were due to voter error.

He said one overall remedy was to allow Election Day registration, now the law in six states: if a potential voter is not on the registration list, he or she can register on the spot and cast a vote that will count.

David Orr said that in suburban Cook County provisional voting was pretty successful: of about one million voter, some 10,000 were provisional votes, and of those, about 5,000 were counted.

And he said that almost 90 percent of those rejected were simply not registered to vote and of the remaining ten percent, nearly half were turned away because of name. Often women married but did not re-register under their new, married names.

Orr said that of the provisional voters accepted, about half were able to vote the full ballot because they were in the correct jurisdiction, and the other half, who were out of jurisdiction, could vote on the federal part of the ballot only.

He said his area’s success was due in part to a vague state directive that allowed the law on provisional balloting to be interpreted in an inclusive manner.

Orr said the biggest problem was a lack of uniformity among states and counties, and if he had to cite the most important way to make provisional balloting work, it would be better training of election officials.

Spencer Overton said questions had arisen about the amount of research a provisional ballot judge should be required to do to determine, for instance, if a voter has been improperly purged from a voting list or one whose registration was challenged at the polls, and judged to be invalid. And what standards should be used to determine a signature match.

He said uniform standards were needed, but there was tension between the value of voter access and administration convenience and expense. And the question will be asked if more of the burden should be put on the state or on the voter.

## Q&A

A questioner said the Election Assistance Commission was working on advising states or issuing guidelines on accepting provisional ballots, and asked if this was useful. One panel member said he did not think that would help much, because such guidelines would not be law, and the issue would eventually wind up in court. To resolve the problem, he said, Congress would have to act.

Another panel member said the EAC could help, ultimately, it was an issue of national standards, and he asked if it was any sense for a country as large as the United States to judge the validity of votes on the basis of standards set by 50 states and even subdivisions within the states.

Another questioner asked if the issue might be resolved if Congress gave the EAC rule-making authority. One panel member said he did not think Congress would set uniform standards, the lawmakers seeing it as a states-rights issue. But he said he would support added authority for the EAC.

A questioner said she had been an election volunteer for years, and found that while volunteers could answer many queries from many potential voters, the questions of others could not be answered, and they were forced to call local county or state officials, but only to find telephone lines busy for hours.

In other jurisdictions, however, authorities sponsored central, automated answering services a potential voter could call, give information such as a social security number or birth date, and find out the location of his or her polling place. She recommended that all states do this. Orr, of Cook County, said his jurisdiction had a website that fielded some 25,000 calls on Election Day and that this was most helpful. Such a website should be installed at the state level as well.

Another questioner asked if a provisional ballot that was rejected in Cook County because the voter has not registered would serve as an automatic registration for the next election. Orr said that was the case in Cook County, but the problem remained that these people wanted to vote in the present election, but couldn't. He said to help resolve this, authorities have to look at same-day registration and early voting.

#### **PANEL 4: VOTING MACHINES**

*David Dill, Founder, VerifiedVoting.org;*

*Professor of Computer Science, Stanford University*

*Dean Heller, Nevada Secretary of State*

*David Jefferson, Chair of the California Secretary of State's Technical Oversight Committee and member of the state's Voting Systems and Procedures Panel; computer scientist*

*Ted Selker, Associate Professor, Massachusetts Institute of Technology*

Wade Henderson opened the discussion by noting that controversy over voting equipment have shifted from punch cards to newer technologies such as punch card machines:

Prior to the enactment of the Help America Vote Act, the widespread problems with punch card machines and hanging chads stood out perhaps more than any other issue in the minds of the public when it came to the topic of voting and election administration. In the two years since the enactment of HAVA, the topic of voting equipment continues to draw attention like no other issue. And once again there were widespread concerns in the 2004 election about whether voting equipment was working and counting votes properly. The only difference being that recently the focus of public attention has now shifted to newer types of machines such as touch screen and optical scan systems.

David Dill opened his presentation by observing that the election did not go as well as many media reports claimed. He described the election monitoring system VerifiedVoting.org had developed, Election Incident Reporting System:

Our goal from this was to capture the reports that we knew would be pouring into the election protection project so that we could learn from the election and be able to fix those problems in the future in addition to helping people dispatch lawyers and whatever more effectively on election day. We've collected something like forty thousand reports due to these efforts, and they're all available on the web for you to peruse at your leisure at [voteprotect.org](http://voteprotect.org), and I encourage you to go talk a look. You'll learn about what really happens in elections that way.

Dill related problems with non-working machines that were reported in New Orleans and Philadelphia, North Carolina, among others. He noted that other problems that were reported and need further investigation:

- Votes registering for the wrong candidate. Dill noted that “this is vary hard to study empirically because there’s no independent way to check what the machines did.”
- Contests missing from ballot.

Dill noted that, “As a computer scientist, given how little I can see about what’s actually happening inside these machines, we have to ask what other problems might be occurring.”

Dean Heller discussed how a close election in Nevada set the stage for his successful effort to introduce paper trails for electronic voting machines in the state. In a 1996 election, one county used paperless electronic voting machines and when asked to do a recount, simply printed out the results from the machine in a few seconds. Heller and the losing candidate were both uncomfortable with the lack of a capacity for a real recount.

Heller reported on the first full-scale trial of a paper-trail electronic voting machine in his state and brought a machine to demonstrate to the attendees. He recounted what he did in the state: First, decertified all punch card machines; second, required purchase of same electronic voting machines in all counties; third, required that they all had a voter verifiable receipt. Heller said,

I thought there was some equality issues and frankly some serious legal issues of states that have voting machines that have different margins of error from one county to the next.

Heller also noted that when he first asked vendors if they could produce a paper trail for electronic machines, he was told no, “because nobody’s ever asked.” He then asked other vendors and found one that was able to produce the machines now used in Nevada.

David Jefferson spoke about parallel testing of voting machines in California. Jefferson said the purpose of their testing was to “look for malicious code in the voting machines”. While this may not have ever happened, “I take this very seriously...I refer to it as a potential weapon of mass electoral destruction ... This is the kind of problem that keeps the computer security community sleepless at night.” Jefferson defined malicious code as “software that purports to record votes accurately but actually cheats sometimes and disguises the fact that it does so. It’s easy to write. It’s easy to hide.”

Jefferson said that one solution to the malicious code problem was a “truly independent, accessible voter verified paper trail, accompanied by a real serious audit.” He also noted that an extensive code review was necessary and that “it’s a disgrace that the code in all these voting systems is basically secret.” He went on to describe how rigorous testing of code should be done – a process he said, if done well, is “very difficult, very expensive.”

He noted that the full protocol is online at the California Secretary of State's website and concluded by saying that they did not find any malicious code, but that there are "many kinds of malicious codes that our tests would not detect."

(The following panelist's presentation included slides and his commentary – from the transcript, it was not possible to adequately describe Mr. Selker's interesting and entertaining presentation. You may purchase a CD of the entire event.)

Ted Selker showed a series of photos of polling places that he monitored on Election Day. He said preliminary data shows that residuals – errors caused by lack of voting for President or voting for too many candidates – was one half what it was in 2000, "an incredible improvement." Some reasons for this would include improved voter education in some areas, such as Los Angeles.

But Selker noted that there are many problems in polling places: "Process was watched and found wanting." He said everywhere he's been in the "last four years watching hundreds of polling places "I've seen terrible problems." But problems that could be easily fixed. One of his slides showed posted material required by law, but in an area not visible to poll workers and thus not protected from vandalism – and not easily available to voters. Others showed inadequate lighting, multiple machines plugged into one circuit and "going down", a poll worker going through initial machine checks even as voters begin to file in, unsealed ballot boxes for paper trail ballots, poll workers not being checked by another official. Selker said his organization has been working on ballot design, new ways of verifying votes and reducing some errors voters can too easily make.

He described a system for verifying votes using an audio device that reads your vote back to you. He said it is less expensive, more reliable than paper trail. Selker concluded his presentation by warning that while there is more vigilance about our voting systems, there is a need to keep moving forward because "fraud follows the technology."

## **Q&A**

The moderator asked the panel if the experience in this election with the two-thirds of the country using non-DRE machines was any better than in 2000. The answer from one panelist was that no, there was little improvement.

The moderator asked the panel if electronic machines with paper required additional auditing. Dean Heller answered at length that Nevada's machines with paper trail were audited after the election. He also mentioned some problems that were correctable because of the paper trail. He concluded by saying the system wasn't perfect, but was better than those states with paperless electronic machines.

The moderator also asked about the problems of access for disabled voters. A panelist noted that there are technologies becoming available that use optical scan systems that are accessible for blind voters and can translate the ballot into another language. He also

described another system that allows blind voters to use a touch screen to fill out a paper ballot. David Jefferson noted that while blind voters must trust someone to vote for them, every voter on electronic machine must trust the person who wrote the software in the machine. He noted that paper has important security properties.

An audience member asked the panel why elections officials seem so wedded to electronic voting machines. Dean Heller answered that, in part, “vendors have been telling election officials how to run elections.” He said that most elections officials oppose paper trail. Another panelist also noted that the “big industry for voting companies is running elections. And that can stop only if we give resources to the election workers to be able to stand on their own two feet.”

Another question was about the use of exit polls as a way to test the validity of election results. David Dill answered that exit polls are replete with errors and have a commercial interest inherent in them that makes them a poor metric against which to test the actual election. Another panelist noted that the exit poll companies have basically disavowed their own poll.

Another question noted reports in this election of electronic machines switching the voter’s choice from one candidate to another. David Dill answered that this seemed an unlikely method of fraud, since the voter could see it happen.

Another question was about the technicians fixing voting equipment in the polling place – which he had witnessed on Election Day. A panelist answered that the procedures differ in various jurisdictions, but generally the machine should be shut down if it’s malfunctioning and any technicians should be clearly identified to voters and elections officials.

An audience member also asked about whether software source code should be open and available for inspection (yes, said the panelists) and expressed concern about partisan elections officials (this was problem, said the panelists).

## **PANEL 5: VOTER SUPPRESSION AND INTIMIDATION**

*Brenda Wright, National Voting Rights Institute*

*Judith A. Browne, Senior Attorney, the Advancement Project*

*Heather Dawn Thompson, President, the Native American Bar Association of DC*

*Steven Lopez, National Assoc. of Latino Elected and Appointed Officials*

*Crystal Lander, Director of Campus Programs, the Feminist Majority Foundation*

*Hilary Shelton, Washington Bureau Director, NAACP*

Wade Henderson began the session by describing some of the barriers to voting, especially for minorities that have existed since the 1800’s. Henderson described efforts to drive down voter turnout through the use of misleading public information campaign, such as:

- Flyers distributed in minority neighborhoods reminding voters to get out and vote on some day other than the designated election day
- Suggesting to voters that if they have a misdemeanor criminal offense that they may nonetheless be subjected to hard time if they cast a vote
- So-called ballot integrity initiatives that use poll challengers, sometimes law enforcement officers to slow things down at polling places and drive potential voters away.

Brenda Wright described the efforts of her organization in the Ohio recount. In pressing for a recount, Wright explained, her organization has tried to keep the spotlight on irregularities and inequities that affected the results in Ohio. They have tried to promote other efforts to investigate the problems in Ohio and to highlight the ballots that were discarded in Ohio as spoiled because of over votes and under votes. Wright described in detail the legal wrangling over the recount in Ohio.

Judith Browne described some of the work of the Advancement Project in the 2004 elections. Browne described some of the efforts to suppress minority voters before and on elections day:

In Florida, the state Republican Party announced that it would use the infamous felon challenge purge list that was created by the state of Florida and withdrawn by the state of Florida to target challenges. Despite knowing that the state's list was tainted by racial discrimination, the state Republican Party decided to use it anyway. In Wisconsin, the GOP went even further to conduct background checks on newly registered voters. This is voter suppression in 2004.

Browne said the Advancement Project conducted an analysis of republican poll watcher assignments in Hamilton County and Ohio and Miami Dade Florida indicated that these poll watchers were disproportionately assigned to minority voting precincts. According to Browne:

In Hamilton County, for example, while fifty-five percent of the voting aides whites and sixty-two percent of voting age Hispanics live in areas covered by these republicans eighty-nine percent of voting age blacks lived in areas where republican poll watchers were assigned ... Our experts showed that in Hamilton County which Cincinnati is situated in voters in precincts with the highest concentration of black voters were eight times more likely to be challenge than voters in the most heavily non-black precincts.

Heather Thompson described the kinds of racial issues that Native Americans face in general and those specific to elections. Particularly, the cultural divide that exists between some of these communities and the officials sent to administer the elections:

... when you have predominantly non-natives running the electoral systems on the reservation communities you can imagine the tension that you have on election day particular in areas like a reservation in Idaho where their non-native community is actively suing the tribe to diminish their reservation. It's not a very welcoming and warm environment for Election Day. We had aggressive poll challengers just like the rest of the communities. Many of our tribal police had to escort the poll challengers off the reservations because they were causing such a commotion.

Thompson explained that some problems were felt more acutely by the Native American communities, such as the identification requirements:

Many of our elders within our community like I said are not comfortable registering in any way with the federal government and do not have any form of federal identification. If they do have identification it's tribal ID. It's from their tribal government. And many states worked with us beforehand to change that to accept tribal IDs but some states would not including very partisan states like the state of Minnesota which actively put a rule on the books that said if you live on the reservation you can use your tribal ID, but God forbid you try to move anywhere else and it's no longer valid.

Thompson made some recommendations based on problems in 2004:

- Encouraging parties and non-partisan organizations to meet before the election to do pre-election work
- Non-partisan watchers
- Changing some rules in the state that disproportionately affect minorities, such as the tribal ID requirements
- Same day voter registration

Steven Lopez described the efforts of National Association of Latino Elected and Appointed Officials to educate Latino voters on the voting process, which led to the creation of a voter hotline. Lopez described some of the problems reported on the hotline but added it did not indicate a widespread effort to suppress Latino voters. Some of the problems included:

- Poll trainers have not been able to communicate with voters in Spanish
- A lack of provisional ballot available at some polling places
- Voters not receiving information such as sample ballots, polling location or confirmation of their voter registration

Lopez summarized the problems on election day as: "not an issue of voter suppression in the Latino community but rather an administrative failure of the election officials and not being adequately prepared and failing to provide information in a timely manner to Latino community."

Crystal Lender described the efforts of the Feminist Majority during the 2004 elections. She described some of the problems they found registering young voters on college campuses, including misinformation given to students either intentionally or because of carelessness on the part of poll workers. Some specific examples included:

We had students being told that if you voted for, if you're an out of state student voting on your local campus that you could lose your financial aide. At the University of Arizona's main campus, we had one of our student groups there held a voter registration drive on campus. What they had come to them is a local Fox news cameraman came and said to the students who were registering students to vote hey do you know you could be committing an unintentional felony by registered out of state students to vote here on campus.

Other problems Lender encountered were long lines at campuses that, as in Ohio, were as long as 11 hours.

Hilary Shelton discussed some of the Election Day problems African Americans have faced in the past as well as new problems, such as unfamiliar voting machines, new voter identification requirements, erroneous voter purging and voter suppression activities. Some examples of the problems encountered by the NAACP, like other organizations, included flyers being distributed on official looking letterhead targeting African Americans and other racial ethnic minority communities telling voters:

- You are ineligible to vote in a presidential election if indeed you voted already in some other election this prior year.
- You cannot vote in the presidential election if you or any member of your family has ever been found guilty of anything including a traffic ticket.
- Voter registration deadlines had passed when indeed they had not.
- Republicans could vote on November 2<sup>nd</sup>, but democrats should vote on November 3<sup>rd</sup>.

Shelton also acknowledged that the true number of disenfranchised voters could not be estimated: "No one knows the real number of Americans who could not vote because these frustrations that impacted them may or may not have been the result of them simply leaving the polls and committing themselves never to come back and try it again."

## **PANEL 6: POLLING PLACE OPERATIONS AND POLL WORKERS**

*Terry Ao, Staff Attorney, National Asian Pacific American Legal Consortium*

*Alaina Beverly, Assistant Counsel, NAACP Legal Defense and Educational Fund, Inc.*

*Doug Chapin, Director, Electionline.org*

*Robert Pastor, Director, Center for Democracy & Election Management, American University*

Chellie Pingree began the panel session with a description of the work of Common Cause the Reform Institute, the Fels Institute at the University of Pennsylvania and the creation of the 1-866-MYVOTE1 voter alert line. The phone line received over two hundred thousand calls and more than fifty thousand voice recordings.

Dr. Robert Pastor, a member of the Common Cause national board, discussed his experience on Election Day with a team of international observers in Maryland, Virginia and DC and offered his views of the U.S. voting system compared to other nations. Some of his observations from Election Day:

We also saw election observers treated in a more restricted and a more defensive fashion by election workers in these three districts in the United States that I have seen anywhere that I've traveled in Liberia, in Palestine, in Nicaragua during the civil war. We were treated much more at arms length and with much more hostility in our own country.

Pastor went on to say that the election administration in the U.S. is poor compared to other democracies in the world: "We analyzed it according to a hundred and seventeen election democracies in the rest of the world and we come in near the bottom." One of the reasons, according to Pastor was that, "We insist on better standards and lower error rates for our washing machines than we do for our voting machines."

Pastor also pointed to the gap in civic education, "We have paid more in the 1990's for civic education abroad than we paid for civic education at home and the results show it." On that note, Pastor said the U.S. had a lot to learn from other countries when it came to elections administration.

Pastor concluded with some recommendations for how election administration in the U.S. could be improved:

We need to retrieve authority from our local levels to the state level, insist on national standards. We need to move from partisan election administration to national nonpartisan election administration.

Alaina Beverly highlighted some of the polling site and poll worker problems people reported to the election protection hot line, including:

- Problems of voting machine malfunctions and poll workers inability to operate the machines: "We only monitored one hundred of the highest trafficked polling sites. And out of those one hundred sites by four in the afternoon twenty nine precincts had reported machine malfunctions."
- Poll workers who were unfamiliar with provisional balloting procedures and HAVA's requirements: "In at least one precinct, all first time voters were told that they were required to cast their votes by provisional ballot."

She also gave an uplifting account of the perseverance of a group of citizens in New Orleans, who stayed to be trained as poll monitors despite a power outage that left them reading by candlelight and flashlights.

Terry Ao described her organization's two voting projects. The first was focused on increasing the civic engagement of the Southeast Asian community. The other was focused on compliance with Section 203 of the Voting Rights Act, the language assistance provision that was centered in most of the Asian language jurisdictions. She described some of the problems they found in the last election, including:

- Polling places ill equipped to handle the election day activities: "For example, in LA in some precincts some sample ballots had to actually be used instead of real ballots because the polling site had run out of the real ballots..."
- Inadequate amount of multilingual or bilingual materials at the polling sites: "Some places had some [bilingual materials] but had them in boxes, had them in shrink-wrap and basically assumed that if people wanted it they would ask for it."
- Inadequate amount of bilingual poll workers at polling sites: "Once again some of these sites have none. Some of these had some but not enough. And some had the foresights to schedule poll workers but unfortunately they didn't show up."
- Asian American voters routinely asked for identification: "One of our community based organizations in LA in fact characterized it as poll workers overzealously asking for identification from the Asian American voters."

Doug Chapin gave his assessment of what happened on Election Day:

I think that when I look around the country how I would characterize Election Day 2004 was system overload. In many places, in city precincts in Cleveland, in precincts in New Orleans, even in my home precinct in Northern Virginia, long lines and shortages were sort of the watchword of the day. We had an observer in Pennsylvania who had a poll worker asking what this pile of provisional ballots was for. We saw machines break down. We saw long lines. We've seen ratios in one Alabama County of ten thousand voters for two machines.

Chapin said high voter turnout showed there is a need for more resources for future elections so that election officials can be better prepared. Chapin also urged the audience to channel their anger into reform and said, "It's time to view the election process as if the voter mattered."

## Q&A

One member of the audience asked Bob Pastor, "do you think that the system in this country would be improved if we used the Virginia system which requires voters to show a picture ID to vote, but if they don't have a picture ID allows them to sign at that station in lieu of showing an ID?"

Pastors response: “I’m very much aware this is a very controversial issue. Let me start by saying of the hundred and seventeen democracies in the world almost all of them have both national registration lists and fraud proof photo identification... What I would propose would be that at the age of eighteen every American citizen gets a citizenship card which they also get when they naturalize.”

Other panelists questioned national identification cards because of the effect on minorities and specific groups disproportionately and acting as a barrier to voting for those groups.

Another questioner asked, “if the system is proven broken, shouldn’t we fix it and have a revote as Ukraine is rather than accept its questionable outcome?”

Bob Pastor responded: “Everybody’s talked about the long voter lines. McDonald’s has figured out a long time ago that during lunchtime they need to hire more workers. Somehow our election officials have not figured out that perhaps they should have more workers at the beginning of each day when the lines are the longest.”

## **PANEL 7: ABSENTEE BALLOTS**

*Cecelie Counts, Director of Civil Rights, AFL-CIO*

*Leslie Reynolds, Executive Director, National Association of Secretaries of State*

*Avi Rubin, Professor of Computer Science, Johns Hopkins University*

*Courtenay Strickland, Voting Rights Project Director, ACLU of Florida*

Wade Henderson introduced the subject by noting that there was a huge increase in the number of people using absentee ballots, including in many states that encouraged no excuse absentee balloting. But there were problems with voters not receiving absentee ballots and in some areas early absentee ballot centers had long lines.

Leslie Reynolds said NASS defined early voting as allowing voters to cast their ballot before election day with no excuse required. Thirty states allowed voters to cast their ballots early this year, some by mail, some in person, and in some both were allowed. According to early figures, about 6 million more voters voted early than in 2000. Michigan, Pennsylvania and Ohio have announced they will consider early voting in 2008.

Reynolds said NASS was committed to improving the process of early and absentee voting to make sure some of the problems in 2004, such as long lines, are not repeated. She also described some of the procedures used for military and overseas absentee voting.

Courtney Strickland described some of the election-related work of ACLU of Florida. They began this project after the 2000 election to address voting irregularities, particularly in minority communities, from felon purge list problems to inadequate

language assistance to provisional ballots to recounts on electronic machines. They were surprised at the extent of the problems with absentee ballots in Florida. Problems included rejecting ballots on hyper-technical grounds, partisan notations on ballot envelopes, confusing postage requirements and impractical deadlines for receipt of ballots.

Strickland spoke about the need to be constantly vigilant for new emerging problems. She noted that Florida is moving toward super-precincts (many combined in one central location) and more early voting. These may be good reforms, but they also are likely to create new problems.

Avi Rubin discussed his involvement as an advisor to the Secure Electronic Voting and Registration Experiment (SECURE), the military's effort to ease voting for overseas military personnel. He noted that this was not an experiment, but instead was planned to be used in several states. While it is important to make every effort to let soldiers vote, this "experiment" may have been trying too hard. The system was a good one, but it relied on the internet and Windows software that is inherently insecure. The system was cancelled. But the EAC has issued guidelines that encouraged use of email to send ballots to voters – Rubin said he does not believe email or the internet should play a critical role in voting. Finally, he said that another problem was that a private contractor would be used to handle emails and faxes of ballots.

Cecily Counts noted that working people today have irregular schedules, long hours, unpredictable travel demands and family responsibilities that make voting finding time for voting difficult, even if they are highly motivated. She said "voting is so important we should make it as easy as possible, not as difficult as possible."

## Q&A

The first questioner said she had become a voter activist after seeing problems with the system. She said she wanted a paper receipt of her vote to take away with her and asked Avi Rubin what voting system should be used – "and please don't tell me computer." Rubin responded by pointing out that an actual receipt could lead to problems of vote-buying and voter intimidation. He said with proper safeguards, including a paper trail, computers could be trusted. He also noted that advocating for paper and pen voting was unrealistic.

Another questioner suggested that elections officials should not be partisan, "foxes guarding the henhouse." Reynolds said NASS takes this issue seriously and will be addressing it. Wade Henderson noted that "I think in the course of our discussion today a number of speakers have made the point that it really is important to separate the nonpartisan responsibility of managing an election system from the partisan positions that one may hold in support of one candidate or another."

An audience member (and later another) asked why hand-counted paper ballots were not being discussed by any panelist. Two panelists answered that hand counting is inaccurate and that paper ballots created problems of accessibility and in large precincts could cause time delay.

A member of the audience asked about the Omega Corporation, which had been named by Rubin as the private contractor handling military voting. Rubin reiterated his concerns about a private contractor handling voting and said he had seen reports of sizable campaign contributions by the head of the company.

Another questioner asked about party affiliation notation on absentee ballot envelopes and whether early voting was done by paper or machine. Strickland said the ACLU of Florida would be investigating the problems with partisan notations on envelopes. She also said that in Florida early voting is generally done with the same procedures the county uses for Election Day, but said there could be some problems, for instance concerns about electronic machines being used in a different context, for a longer time, for early voting.

Strickland also urged activists to look not only to Congress and state legislatures for action on election reform but also at local action.

[T]he sort of ad hoc coalitions that have come about in various locations in Florida simply by attending every meeting of every county commission every time they ever talk about voting you can get things done that folks have not been able to get done for years through litigation, legislation, you name it. And honestly had I not seen that for myself I'm not sure that I would have believed that. So, I'm here to tell you take your energy, go home. Voting for the most part is a local endeavor and therefore the upside of that is that as locals you can do a lot in your own community.

## [DISCLAIMER](#)

The summary and highlights of this event are based on a [transcript](#) of the day's proceedings. We took care to be as accurate as possible in summarizing each person's comments and to include as much as possible while keeping this document to a manageable length. Nevertheless, we had to cope with errors in the transcript itself and with the nature of each panelist's speaking style, i.e., some people's spoken words, when read on paper, have more clarity than others.