

VOTING IN 2006:



Have We Solved The Problems of 2004?

*A Follow-Up to Voting in 2004:
A Report to the Nation on America's Election Process*

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EXECUTIVE SUMMARY

With the critical mid-term elections weeks away from our publication date, this report looks at some of the serious problems that marred the 2004 presidential election and asks: are we any better off today than we were two years ago?

The authors of this report – The Century Foundation, Common Cause, and The Leadership Conference on Civil Rights – are uniquely qualified to answer that question. The three organizations did intensive monitoring of the 2004 elections and held a conference including several of the other major monitoring organizations in December of that year. They reported their findings in “Voting in 2004: A Report to the Nation on America’s Election Process,” published in December 2004.

This follow-up report explores whether a sampling of 10 states with a history of various election problems and potentially close races – Arizona, Florida, Georgia, Michigan, Minnesota, Missouri, Ohio, Pennsylvania, Washington, and Wisconsin – have taken steps to address the concerns addressed in our foundational report.

The findings of our report on the whole

are troubling. Some states have made it harder to register to vote rather than easier. This is critical because problems with voter registration were among the most common complaints of voters in 2004. Another critical problem from 2004 – long lines for voters – is likely to recur because few states have dealt with the issue. New voter ID laws in certain states are likely to disenfranchise voters, and only one state has acted aggressively to address voter intimidation tactics.

Select Findings

- Even though our groups and others have identified voter registration rules and requirements as one of the biggest barriers to voting, some states have made it more rather than less difficult to register to vote.

For example, Arizona’s new law requiring voters to prove citizenship in order to register represents a huge new barrier to voter participation. In many states, there is no system for promptly notifying a voter if his registration application is missing information necessary for him to be registered to vote, so that by the time Election Day arrives, it is too late for him to amend or complete his application and he is thus disenfranchised. New restrictions on third party

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voter registration drives in Florida and Ohio threaten to diminish voter participation. Some states continue to ignore the National Voter Registration Act's requirements that government agencies provide voter registration materials. In May 2006, the National Voting Rights Institute, the Lawyers' Committee for Civil Rights Under Law, Project Vote, and Dechert LLP sent a letter to Ohio Secretary of State Kenneth Blackwell notifying him of their intent to sue the state for its failure to implement the public assistance provisions of the NVRA.

- States should be applauded for making progress in the area of poll worker recruitment. Many of the states studied in our report have been particularly aggressive about recruiting young people to serve as poll workers.
- New voter identification laws in half of the states studied present major new barriers to voting. Arizona, Georgia, and Missouri have all enacted disenfranchising voter identification requirements. Ohio and Florida have made their voter identification requirements more restrictive. Minnesota, Wisconsin, Michigan, and Pennsylvania have all considered stringent voter identification requirements; all of those states could

pass such measures in the near future.

- Despite the huge incidence in 2004 of misleading fliers and phone calls, only two states, Missouri and Minnesota, have taken an aggressive step to address the problem. Arizona has taken a smaller step to start to address the problem. Bills restricting deceptive practices are pending in two states – Pennsylvania and Ohio – but have not passed. The other states have ignored the problem of deceptive practices.
- Partisan pre-election and Election Day challenges to voting eligibility was a major source of controversy and possible voter suppression in 2004. A few states should be praised for taking steps to address this, notably Minnesota and Washington. But most of the states studied have not taken sufficient measures to rein in this deplorable practice, and existing laws are vague enough to be abused again. This is a particular risk in Florida and Pennsylvania.
- Despite the huge problems in 2004 with long lines and insufficient and inequitably distributed voting machines, most states continue to employ vague and decentralized standards for voting machine distribution. Unacceptable and disenfranchising long lines

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State and local governments must enforce existing laws and be more active in prosecuting illegal activities intended to intimidate voters or disrupt voter turnout.

threaten to be a problem again in 2006. Neither Florida nor Washington has a formula for determining the number of voting machines for each precinct. Minnesota's requirements are vague. In Ohio, where voters faced the longest polling lines of any state in 2004, the state passed a law requiring counties that use DREs to provide at least one machine for every 175 voters registered in the previous presidential election. The provision, however, does not take effect until 2013. Pennsylvania has no statutory requirements on machine distribution.

Key Recommendations

- Remove barriers to registration, such as proof of citizenship requirements and unduly harsh restrictions on third party voter registration drives, and allow more time and information to complete faulty or incomplete forms. Take measures to boost the number of people registered to vote, such as ensuring compliance with the National Voter Registration Act, automatic re-enfranchisement of felons upon completion of incarceration, and Election Day registration.
- Limit identification requirements to those mandated by HAVA. More stringent requirements, particularly those

that involve government-issued photo ID, disenfranchise too many voters.

- State and local governments must enforce existing laws and be more active in prosecuting illegal activities intended to intimidate voters or disrupt voter turnout.
- State and local governments must prosecute deceptive practices criminally and have in place emergency procedures that can be implemented immediately to correct the information spread by deliberate misinformation campaigns.
- States must establish fair standards for challenges. Such standards should include penalties for overtly partisan, racial, ethnic, or otherwise frivolous challenges. States should enact stringent rules restricting the conditions under which a challenge may be made by a challenger at the polls. States should require pre-election challenges to be filed in advance of Election Day.
- Prohibit election administrators from participating in partisan political campaigns; limit elected officials to participation in their own campaigns. The Secretary of State or the county elections director, individuals who are

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charged with administering and overseeing elections, should not play a role in a partisan campaign for senator or president. Campaign contributions from vendors to election officials, revolving-door arrangements by which election officials become lobbyists for vendors, and other such ethical improprieties erode public confidence in elections and weaken election management.

- Base allocation standards for voting machines on the latest registration numbers and other factors such as demographic data, the length of the ballot, and recent voter turnout. Long lines at the polling place act as a deterrent to voters, effectively disenfranchising those who cannot afford to wait due to childcare, work, or other time commitments.

While some states have made sporadic improvements to their election procedures, none have come close to addressing in full the major problems that plagued the system during the last federal election. Election administrators, elected officials, advocates, and voters have much work to do in the days leading to the 2006 congressional elections and the 2008 presidential election if those elections are to be fair and efficient and earn the trust of the American people.