

tration offices; and link their statewide computerized system, where feasible, with the computerized systems of the collateral public agencies relevant to the NVRA (motor vehicle offices, public assistance offices, etc.).<sup>60</sup> The FEC's recommendation, repeated in each of its biannual reports to Congress, has not gone unheeded, but meager resources in the states for technological upgrades have served as a barrier to implementation.

It is not easy to generalize about the costs involved in bringing all states online.<sup>61</sup> Costs vary across a wide of range of circumstances, including the distribution of responsibility for administering elections between state and county governments, the state of the existing computer infrastructure in the relevant state and local agencies, the level of sophistication desired in a statewide voter registration system, and how fast a state wants its new system operational. The FEC estimates that costs to implement such systems over the past two decades have ranged from less than \$1 million to more than \$8 million. Michigan's database, the Qualified Voter File, a unified database considered one of the best systems in the country, cost the state \$7.6 million to develop and \$3 million for annual maintenance.<sup>62</sup>

Help should be on the way. The new federal election reform law would provide roughly \$3.9 billion in federal funds for the upgrading of voting equipment and procedures and the training of poll workers. The law would require the states to implement interactive computerized statewide voter registration lists that are accessible to each state and local election official. However, while funds to implement reform had been authorized as of this writing, these funds had not yet been appropriated.

## Partisanship in Election Administration

Partisan control of election administration has historically created greater potential for election fraud. Partisan control of local election administration is much less of a problem now than when fraud prevention measures were first introduced a century ago, but it nevertheless has the potential to compromise elections. In very decentralized election systems, as in Florida, it can be even more difficult to monitor

administrative arrangements and keep partisanship out of the process. Yet even in more centralized systems, effective oversight can be difficult and there is considerable latitude for discretionary actions by local board officials and the influence of dominant politicians.

The 2000 election in Florida vividly showed the perils of such partisanship in a close race. In particular, major questions were raised about the fairness and propriety of local election officials in Seminole and Martin Counties, where elections officials gave Republican Party employees special opportunities to add information to incomplete absentee ballot forms. Questions were also raised about the partisan ties of Secretary of State Katherine Harris, who was closely connected to the Bush presidential campaign and who made critical decisions about purging Florida voter lists in ways that disadvantaged Democrats. In addition, the image of partisan local election officials presiding over hand vote recounts in Palm Beach and elsewhere during the 2000 election further underscored the problematic nature of partisanship in elections.

In almost every state, final authority over election systems rests with state government—generally in the secretary of state's office. How those officials are chosen has important effects on the level of partisanship in elections. Thirty-six secretaries of state are elected statewide in partisan elections. In Alaska, Hawaii, and Utah, the lieutenant governor serves as the secretary of state. In Texas, the secretary of state is appointed by the governor without legislative approval. The legislatures of Maine, New Hampshire, and Tennessee elect the secretary of state. In other ways, election officials at the county and state level are dependent on dominant politicians and parties.<sup>63</sup>

## V. Best Practices in the States

As government officials and reformers grapple with the challenge of maximally expanding registration and voting opportunities—while constraining opportunities for fraud—they can learn from procedures and infrastructure already in place in various states aimed at successfully achieving this balance.

### Managing Voter Registration Records

The best available means of keeping accurate, continually updated records of voter registration are through statewide, unified registration systems, where the state and all localities share the same database. As a result of the new federal election law, such systems will be required of all states. Statewide coordination has a number of advantages over locally controlled databases. By integrating all local lists, duplicates are easier to identify and remove. States can more easily coordinate records with other state-held records, such as driver's licenses. Ten states currently employ unified systems. They are Alaska, Delaware, Hawaii, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, South Carolina, and Virginia. Unified databases are not enough, however, to facilitate accurate registration and voting. States are much better served by systems designed to link together election agencies with those agencies relevant to NVRA provisions, so that new applications are processed and recorded without delay. Ideally, poll workers should have laptops so that they can resolve registration problems that arise on election day. Currently, only ten states have statewide registration systems that allow voter information to be automatically transferred online to a central statewide database and updated immediately in "real time." They are Alabama, Alaska, Delaware, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Oklahoma, and South Carolina. Of these, the systems in Kentucky and Michigan are generally seen as among the best.

- **Kentucky:** From local terminals, county election officials access a statewide database located in the statehouse, and state election officials regularly update the database by comparing voter lists with lists of those deemed ineligible for reasons of death, mental

The best available means of keeping accurate, continually updated records of voter registration are through statewide, unified registration systems, where the state and all localities share the same database.

database by comparing voter lists with lists of those deemed ineligible for reasons of death, mental incompetence, felony conviction, relocation, or voter inactivity. Local election officials can update records and receive confirmation from state officials within a day. In the near future, they will be able to access the database at the precincts on election day via the Internet.

- **Michigan** : Michigan's Qualified Voter System is also an exemplary structure for accurate and efficient records management. Michigan's motor vehicle agencies are linked electronically to the electronic voter list, so new registrations are transmitted there directly and automatically, reducing the chance of losing registrations. The state matches its registration list against the U.S. Postal Service National Change of Address records, death records, and felony records.

## Voter Identification Requirements

In recent months, the issue of voter identification has been the subject of much legislative scrutiny, thanks to the I.D. requirements mandated by the new federal election reform law, the Help America Vote Act (HAVA). HAVA imposes I.D. requirements on first-time voters who register by mail. Many fear that the new requirement will depress voter participation, particularly among low-income voters, people of color, voters with disabilities, young voters, senior citizens, and others who are less likely to possess the necessary documents. Given these concerns, states should look to reduce the burden on voters by adopting a broad and flexible approach to identity and residence verification. The following states permit the use of a variety of I.D.s that voters are more likely to have.

- **Alaska** : Voters must present an I.D. at the polls, including a registration card, a driver's license, a birth certificate, a passport, a hunting or fishing license, or others prescribed by regulation. *The voter I.D. requirement is waived if an election official corroborates a voter's identity.*
- **Connecticut** : Voters must present an I.D. at the polls, including a social security card or other preprinted identification that includes name and either address, signature, or photograph. *Voters may sign an affirmation instead of presenting I.D.*

- **Georgia** : Voters must present an I.D. at the polls, including a driver's license, a government-issued I.D., an employee or student I.D. card with photo, a weapons' license, a pilot's license, a military I.D., a birth certificate, a social security card, court records showing adoption, name, or sex change, or naturalization documents. If the voter does not have I.D., he or she can sign an affidavit.
- **Virginia** : Voters must present a Virginia voter card, a driver's license, a social security card, a federal, state, or local government-issued I.D., or a photo I.D. issued by an employer in the course of regular business. Voters without I.D.s can sign a statement under oath. Voters who registered by mail are required to vote in person the first time they vote.

## Nonpartisan or Bipartisan Election Administration

Reducing partisanship in election administration is an important step toward ensuring the integrity of elections. While partisanship in election administration is the norm in the majority of states, it varies in intensity. Some states have devised different systems for choosing state election officers in ways that are either nonpartisan, or at least bipartisan. Among them are:

- **Illinois** : The Illinois State Board of Elections has eight bipartisan members, four appointed by the governor and four selected by the governor from a list of nominees submitted by the highest-ranking official of the opposite political party. Members serve staggered, four-year terms. The board provides a uniform manual of instructions for election judges; certifies ballots for all federal, state, and multi-county offices; and serves as the electoral board for objections to petitions for federal, state, and multi-county offices and statewide referenda.

- **Kentucky:** The State Board of Elections has six members, three from each of the two major parties, appointed for a four-year term by the governor. The secretary of state is chairman of the board and therefore the chief election official in the state. The board supervises voter registration, purgation of voters and the administration of election laws; supervises the county boards of election; prescribes voter registration forms; and furnishes county clerks with master lists of registered voters before each election.
- **North Carolina:** The State Board of Elections oversees administration of elections. Its five members are appointed by the governor, but its composition is bipartisan. The board issues and enforces rules and regulations binding on local officials; has power to remove local officials for fraud, neglect, or incompetence; prescribes form and content of ballots and other forms used in elections; investigates possible election irregularities; appoints members to county boards; approves all voting machines before use; and tabulates election returns, certifies the results, and sends the results to the secretary of state.



## VI. Policy Recommendations

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The guardians of America's election systems have two equally solemn responsibilities: on the one hand, to realize the promise of democracy and make voting as accessible as possible, and on the other hand, to ensure that elections are carried out with the utmost integrity and are not susceptible to malfeasant manipulation. This report suggests that election officials are already doing a good job of protecting against fraud in the system, as it had traditionally been defined. Yet while the incidence of fraud appears to be very low and to have little impact on election outcomes, many barriers to voting endure, and too much disenfranchisement occurs within an election system that is outdated, prone to error, and too partisan. Below, we build on the previous section on best practices and offer four core recommendations to help guarantee safe elections that are as open as possible.

- **Upgrade Technology in the States.** Computerized voter registration records and state-of-the art voting technology are critical components of election systems that both facilitate participation and reduce the potential for fraud. The new federal election law, which mandates the creation of statewide computerized registration systems and also aims to provide states with money to upgrade voting machines, will be an important step forward if it is fully funded and effectively implemented. It is especially important that new state-of-the-art registration systems allow for interagency networking (for prompt and proper transmission of registration information under NVRA) and local poll access to systems (through laptops or other means). We also endorse the CalTech/MIT Voting Technology Project recommendation for the establishment of a National Elections Research Lab that would continue to foster the development of better voting equipment and voting systems, so that as technological advances take place they can be harnessed to help provide systems that are increasingly secure and accessible.
- **I.D. Requirements That Do Not Burden Voters.** The new federal election law places undue burdens on voters to prove their identity at the polls. We recommend modifying the law in certain respects and following several guidelines: (1) expanding the list of

**At the very least, states and counties should strive to remove ambiguity and conflicts of interest from all aspects of election laws, from registration to postelection procedures.**

acceptable identifying documents; (2) allowing state or local officials discretion to incorporate or expand forms of identification currently in use; (3) stipulating that all provisions should be uniformly applied; and (4) enforcing a voter's bill of rights that outlines acceptable forms of I.D.

- **Reduce Partisanship in Election Administration.** We recommend that state legislatures explore ways to make election administration free of partisan control. At the very least, states and counties should strive to remove ambiguity and conflicts of interest from all aspects of election laws, from registration to postelection procedures. The National Association of Counties (NACo) and the National Association of County Recorders, Election Officials, and Clerks (NACRC) have recommended professionalization as a way to curtail partisanship.<sup>64</sup> Regular training and exchanges with elections administrators from other jurisdictions may increase officials' commitment to the integrity of the democratic process itself, as opposed to party loyalty.
- **Strengthen Enforcement.** The federal and state criminal penalties for election fraud are significant and should serve as a powerful deterrent against fraud. However, this will not be the case if laws are poorly enforced, or enforced unevenly. All states should ensure adequate funding and authority for offices responsible for detecting and prosecuting fraud. In addition, all states should track allegations of election fraud, as well as the outcomes of criminal investigations, and make this data available to the public.
- **Establish Election Day Registration.** As some elections experts have pointed out, EDR may allow better forms of fraud prevention than other systems.<sup>65</sup> Under NVRA, election officials have lost some measure of control over registration. Most registrations now come through departments of motor vehicles, through registration drives, and through the mail. EDR requires voter identification and authorization in person before a trained election worker, which should reduce the opportunity for registration error or fraud.

## Appendix

### Major Recent Cases of Alleged Election Fraud

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#### A. The 1997 Primary Mayoral Election, Miami, Florida

Perhaps the best-known contemporary case of uncontroverted absentee ballot fraud is the disputed 1997 primary mayoral election in Miami, Florida.<sup>66</sup> Running for reelection as mayor, Joe Carollo received 51.4 percent of the ballots cast at the polls, while his opponent, former mayor Xavier Suarez, received 61.5 percent of the absentee ballots, giving Suarez a slim lead (155 votes) over Carollo in total balloting. Because neither candidate received more than 50 percent of the vote, a run-off election was held, and Suarez narrowly won both the precinct and absentee ballots.<sup>67</sup>

Immediately after the November 4 election, Carollo challenged the results, claiming fraud in the absentee ballot vote that swung the election to Suarez, thus denying Carollo the majority support he received at the polls and forcing him into a run-off. A week after the election the Florida Department of Law Enforcement arrested two Suarez supporters for buying absentee ballots and falsely witnessing absentee ballots. The day after he lost the run-off election to Suarez, Carollo petitioned the Circuit Court for the Eleventh Judicial Circuit of Florida to overturn the results of the November 4 election on the grounds of voter fraud.

The trial was held in February 1998. For two and a half weeks, the trial court heard evidence and read depositions from 87 witnesses and examined 195 exhibits.<sup>68</sup> Its March 3 decision noted "a pattern of fraudulent, intentional and criminal conduct" in the extensive abuse of absentee ballot laws.<sup>69</sup> An expert documents examiner testified that 225 absentee ballots cast had forged signatures; there was evidence of 14 stolen ballots and 140 improperly witnessed ballots. Another 480 ballots were procured or witnessed by 29 "ballot brokers," 27 of whom invoked their Fifth Amendment privilege against self-incrimination instead of testifying at trial. One such ballot broker was 92-year-old Alberto Russi, a campaign volunteer for Humberto Hernandez, a Suarez ally on the five-member City Commission. Within days of the November 4 election, Russi was arrested and charged with three counts of election fraud. Police traced Russi to the absentee ballot of a dead man whose ballot he witnessed. When police searched



## In its zeal to address the embarrassing behavior of politicians in Miami, the Republican-controlled legislature passed a law that paved the way for one of the more underreported scandals of the 2000 election in Florida.

Russi's home they seized 75 absentee ballots already filled out and intended for the November 13 run-off, many of which were addressed to Russi's home in the names of other voters. A separate grand jury, convened to investigate the fraud allegations and make recommendations for improvements in the absentee ballot process, found that absentee ballots were stolen from mailboxes, that "unscrupulous individuals" had secured ballots for people under the guise of "helping the voter," and that voters had been coerced into voting for particular candidates in return for past favors done for them.<sup>70</sup>

At the center of what the trial court subsequently found to be "a massive, well-conceived and well-orchestrated absentee ballot voter fraud scheme" were a large number of absentee ballots—nearly 70 percent of the total—cast from Little Havana. Little Havana voters reinstated Commissioner Hernandez, the embattled Suarez ally who won reelection to the City Commission by a large majority after being removed from office by the governor following a 23-count indictment for bank fraud and money laundering.<sup>71</sup> An expert in statistical analysis testified at trial that the large number of absentee ballots from Little Havana were a statistical "outlier," the Little Havana absentee ballot rate an "aberrant case" so unlikely that it was "literally off the [statistical probability] charts."

The trial judge, Thomas S. Wilson Jr., concluded that "the evidence shows a pattern of fraudulent, intentional and criminal conduct that resulted in such an extensive abuse of the absentee ballot laws that it can fairly be said that the intent of these laws was totally frustrated.... This scheme to defraud, literally and figuratively stole the ballot from the hands of every honest voter in the city of Miami."<sup>72</sup> Judge Wilson overturned the results of the November 4 election and ordered a new election, but his remedy was overturned on appeal. The appellate court affirmed the finding of fraud but voided the remedy of a new election and remanded the case to the lower court with instructions to enter a final judgment that voided all of the absentee ballots, determining the outcome of the election by the machine total alone. This decision took victory out of Xavier Suarez's hands and gave it to Miami's new mayor, Joe Carollo.

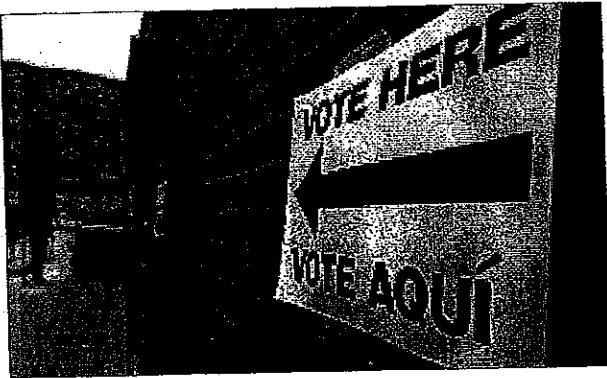
The 1997 Miami mayor's race presents one of the most egregious cases of election fraud in recent memory. News coverage of the fraud scheme and trial was extensive and national and local leaders and residents loudly bemoaned the further tarnishing of the city's image as one steeped in political corruption. The state legislature acted quickly to pass a \$4 million election law reform package to root out voter fraud. But the law did much more than that. In its zeal to address the embarrassing behavior of politicians in Miami, the Republican-controlled legislature passed a law that paved the way for one of the more underreported scandals of the 2000 election in Florida: the massive disenfranchisement of Florida voters—most of them African American—whose names erroneously appeared on felony lists.<sup>73</sup>

In May 1998 the legislature added Section 98.0975 to Title IX, Chapter 98 of Florida's statutes. Section 98.0975 required the Division of Elections in the secretary of state's office to contract with a private company to compare the central voter file with databases of persons deceased, those with felony convictions, and those adjudicated mentally incompetent and to provide lists of matching names to the division. The division was required to provide the information to the county supervisors of elections who were to undertake their own verification process on local voter registration databases. Florida was the only state in the United States to require its local election officials to verify their voter rolls using data processed by a private firm.<sup>74</sup>

### B. The 1996 Sanchez/Dornan Contest for the U.S. House of Representatives, Orange County, California

Orange County, California, is the fourth largest county in the United States, with 2.8 million people, more than one-quarter of them Latino. The 46th Congressional district is nestled in the heart of Orange County and includes centers of Latino concentration, Santa Ana, the county seat, and most of Garden Grove and Anaheim, giving the 46th district a population that is nearly two-thirds Latino. Vast

growth and demographic change, along with careful redistricting by Democrats in California's state legislature, have facilitated political change in Orange County. Orange County was once a Republican stronghold, a core constituency for the Republican party in presidential elections because it could swing California to the party. As late as 1988, voters in the 46th district gave 62 percent of their votes to George Bush. By 2000, however, a 24 percent Republican margin in presidential elections had been replaced by a 12 percent Democratic margin when Al Gore won the 46th with 54



percent, to 42 percent for George W. Bush. The advancing ability of new immigrant and Latino voters to define Orange County politics and the transformation in party dominance toward the Democrats set the stage for an explosive case of alleged voter fraud in 1996.

The contested election between the nine-term Republican incumbent Robert K. Dornan and a little-known businesswoman named Loretta Sanchez involved a blizzard of allegations of registration fraud, noncitizen and illegal immigrant voting, double voting, voting from nonresidential addresses, illegal inducements to register and vote, voter intimidation, ballot box tampering and absentee ballot fraud, all under the canopy of a bitter and protracted partisan battle that quickly bled into national politics.

One day after the November 5, 1996, election, Dornan led Sanchez by 233 votes, but 12,000 absentee and provisional ballots had yet to be counted. A week later, when

about 3,000 ballots were still left to tally, the Associated Press called the election for Sanchez, who had moved into the lead with a 929-vote margin. As the count proceeded, Dornan repeatedly raised the issue of "noncitizen" voter fraud and vowed to take his reelection fight to the floor of the House of Representatives if he lost. He added that his Republican colleagues were looking for a case to use in challenging the recently implemented National Voter Registration Act, signaling the likely entry of national political forces into the fray.<sup>75</sup> Dornan specifically charged that a well-known Latino rights group and the Democratic Party signed up illegal voters in a drive he argued may have led to "the first case in history where a congressional election was decided by noncitizens."<sup>76</sup> His lawyer later called the case "what we think is the single largest example of voter fraud in a federal election in the last 50 years, and, yes, maybe in this century."<sup>77</sup>

On November 22, 1996, the Orange County Registrar of Voters certified Loretta Sanchez the winner by 984 votes,<sup>78</sup> and a 14-month battle to deny Sanchez a seat in the House was joined. State electoral and law enforcement agencies were the first to open investigations into the alleged election irregularities. Then, on December 26, 1996, Dornan filed a three-page Notice of Electoral Contest in the House of Representatives requesting an investigation of the election. This was within keeping of his prerogative and the constitutional authority of the House under Article I, Section 5, Clause 1, which provides that each House of Congress shall be the judge of the "elections, returns and qualifications" of its members. Under the rules of the FCEA, the contest is first heard by the Committee on House Oversight, which conducts its own investigation, and then by the whole House, which disposes of the contest, by resolution or majority vote. In the 105th Congress, the eight-member committee was chaired by Rep. William M. Thomas, a Republican from Bakersfield, California, and dominated 5-to-3 by Republican members. Thomas created a three-person task force comprised of Rep. Vernon Ehlers (R-Mich.) and Rep. Robert Ney (R-Ohio), and, later, Rep. Steny Hoyer (D-Md.) to conduct the investigation and recommend a

## The Dornan-Sanchez electoral dispute fits squarely in what political scientists Benjamin Ginsberg and Martin Shefter call “politics by other means.”

course action to the full committee. Along with the Orange County D.A. and secretary of state investigations, the House committee’s investigation took a year to complete and produced, in the end, a disputed finding of fraud that was too insubstantial to convince the Republican dominated House to upset or reverse Sanchez’s victory.<sup>79</sup> On February 12, 1998, the House voted 378-33 to dismiss Dornan’s contest.

The Dornan-Sanchez electoral dispute fits squarely in what political scientists Benjamin Ginsberg and Martin Shefter call “politics by other means.” Politics by other means involve the use of legal strategies and the courts, revelation, prosecution and investigation, and the media to win.<sup>80</sup> The fraud allegations and subsequent 14-month investigations by state, county, and federal government agencies cost American taxpayers well over \$1.4 million.<sup>81</sup> And in the end, very little voter fraud was convincingly substantiated. On April 29, 1998, California’s secretary of state announced that the people identified by the task force as illegal, noncitizen voters in the 46th congressional district election of 1996 would not be prosecuted for voter fraud, the secretary deciding that they had registered in error and not from criminal intent.<sup>82</sup>

### C. The 2000 Election, St. Louis, Missouri

Like most big cities, St. Louis has had its share of election fraud.<sup>83</sup> In the wake of the 2000 election, allegations of voter fraud in St. Louis were raised that included illegal registration; voting by deceased people, felons, and people whose addresses appear to be vacant lots; multiple voting; and unqualified election judges permitting unqualified voters to cast illegal ballots. All the facts are not yet in, but it appears that claims of a vast conspiracy on the part of the Democrats to undertake “a major criminal enterprise designed to defraud voters” are strongly exaggerated.<sup>84</sup>

The St. Louis case has gained national notoriety beyond what the available evidence of voter fraud would suggest, because the partisan conflict between a senior Missouri Republican senator and a newly elected St. Louis Democratic representative underlying it has erupted in congressional hearings and other public venues, giving the story a wider national audience than it would have had otherwise. As such, the

contemporary St. Louis case is a classic case of the conflict between forces promoting expanded access to the franchise and those that would contain them.

African-American leaders became concerned that the removal of more than 30,000 names from the registration rolls to an “inactive” list in St. Louis during the summer and fall before the election would create problems at the polls on election day. State Senator William Lacy Clay Jr., a candidate for a seat in the U.S. House of Representatives, gave a speech the day before the election in which he warned that if legal voters were prohibited from voting at the polls because of inaccurate registration records, lawsuits would be brought to keep the polls open past their legal closing time of 7 p.m.<sup>85</sup> In fact, that is exactly what happened. Late afternoon on election day, Lacy Clay’s campaign, the Gore-Lieberman campaign, and the Missouri State Democratic Committee filed suit in St. Louis City Circuit Court to keep the polls open until 10 p.m. A sympathetic judge issued an order to extend voting hours, but the Missouri Court of Appeals overruled her. The polls in St. Louis shut down at 7:45 p.m., with only an estimated 100 votes cast after the official 7 p.m. poll closing time.

As expected, the Democrats did very well in St. Louis, a heavily Democratic city, but they also did well statewide, electing a Democrat to the U.S. Senate and as governor. Within two days of the election, U.S. Senator Bond called for a federal investigation of voting in St. Louis, hinting at a conspiracy behind the Democrats’ efforts to extend polling place hours. “What I saw and heard on Tuesday night is an outrage,” he said, adding that the St. Louis Election Board and the Democratic Party should be investigated for “orchestrat[ing] a concerted scheme to deny all Missouri voters a valid count by keeping the polls open.”<sup>86</sup>

Postelection investigations by the newly elected Republican secretary of state, Matt Blunt, and the *St. Louis Post-Dispatch* suggest a marginal amount of voter fraud may have been committed in 2000. But most of the initial charges about criminal conspiracies and the defrauding of Missouri voters have been shown to be overblown. For example, the newly elected Republican circuit attorney, Jennifer Joyce, convened a St. Louis grand jury to investigate fraudulent voter registration cards delivered to the city board of elections on the last day of the voter regis-

tration period; three months later, the grand jury disbanded without issuing any indictments, though the case presumably is being investigated now by a federal grand jury looking into all the fraud issues. According to press reports, a third of the more than 3,000 cards under suspicion were clearly fraudulent—they appeared to be completed in the same handwriting and included at least three deceased aldermen, the deceased mother of a sitting alderman, a former deputy mayor, and a dog named Ritzy Mekler.<sup>87</sup> A number of these registrations, and then, upon further research, hundreds more, listed addresses that the board said were vacant lots. Bond and others jumped on this information to further fuel their fraud charges. The secretary of state's probe significantly reduced the number of vacant lot addresses to 79 voters, and subsequent investigations a year later by reporters at the *Post-Dispatch* discovered that "dozens of St. Louis voters are being wrongly accused of casting ballots from fraudulent addresses" in the 2000 election. The *Post-Dispatch* surveyed 1,000 supposedly vacant lots and found that 704 of them had buildings on them, some of them more than 50 years old.<sup>88</sup> Errors in the city's property records and methods for classifying vacant a multi-parcel address if only one of the parcels at the address is vacant account for the mistakes in the voter records. With no indictments in fraudulent voter registration and the problem of vacant lot addresses solved, Bond and Blunt focused on court orders permitting 1,233 people to vote. The court orders were issued by St. Louis City and St. Louis County election judges for reasons Blunt argued do not conform to Missouri law.

Most of the court orders appeared to be granted to people who acknowledged that they had failed to register by the October 11 deadline, although judges interviewed by the *St. Louis Post-Dispatch* said that they believed their court orders complied with state laws. St. Louis County judge Robert S. Cohen said that election officials first screened voters who believed they were eligible to vote but who were not on voter registration lists; voters then had to wait in long lines to have their cases reviewed by an election judge.<sup>89</sup> At this time, the alleged voter fraud scandal in St. Louis looks more like a case of managerial ineptitude and underfunding, and poor implementation of NVRA on the part of St. Louis and Missouri election officials.<sup>90</sup>



## Notes

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1. Juliet Eilperin, "Voter Registrations Are Probed; In S.D., Irregularities Cloud Democrats' Outreach to Indians," *The Washington Post*, October 24, 2002: A9.
2. Kevin Fagan and Mark Simon, "Election-Day Registration Loses; Opponents Said Prop. 52 Would Have Opened Door to Fraud," *San Francisco Chronicle*, November 6, 2002: A5.
3. See for example: *Voting: What Is, What Could Be*, Caltech/MIT Voting Technology Project, July 2001; Democratic Investigative Staff, House Judiciary Committee, *How to Make a Million Votes Disappear: Electoral Sleight of Hand in the 2000 Presidential Election* (U.S. Congress, House Committee on the Judiciary, August 20, 2001).
4. Dayna Cunningham, "Who Are to Be Electors? A Reflection on the History of Voter Registration in the U.S.," *Yale Law and Policy Review* 9(2) (1991): 383.
5. *Ibid.*, 384, citing Joseph P. Harris, *Election Administration in the United States* (Washington, D.C.: The Brookings Institution, 1934); Frances Fox Piven and Richard A. Cloward, *Why Americans Don't Vote and Why Politicians Want It That Way* (Boston: Beacon Press, 2000): 25-6, 91-2.
6. R. Michael Alvarez, "How Widespread is Voting Fraud," Unpublished paper, September 2002. The paper analyzes data provided by the California Secretary of State's Election Fraud Investigation Unit.
7. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), perhaps the most radical reform of U.S. immigration laws ever, makes it much easier to deport otherwise lawful noncitizens for illegal voting in federal elections (see Title II).
8. U.S. General Accounting Office, *Elections: The Scope of Congressional Authority in Election Administration*, Report to the Congress (March 2001), GAO-01-470.
9. *Ibid.*, 4-7.
10. *Ibid.*, 11.
11. Elizabeth Simson, *Justice Denied: How Felony Disenfranchisement Laws Undermine American Democracy*, Americans for Democratic Action Education Fund, March 2002.
12. One critic of the NVRA has suggested in recent testimony before the Senate Committee on Governmental Affairs that the lack of an evidentiary record of voter fraud prosecutions should not be taken as indicative of a lack of voter fraud. This assumes that only the states can pursue fraud claims in court, which is not the case. See the testimony of Deborah Phillips, founder and chair of the Voting Integrity Project, who asserts without evidence that "Prosecutors do not like election fraud cases because they take precious resources from strained budgets needed for more serious crimes." U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Election Administration Reform*, 107th Cong., 2nd sess. (May 3, 2001).
13. Section 11(b). See below for a discussion of the NVRA and fraud.
14. United States Department of Justice, Criminal Division, Public Integrity Section, *Federal Prosecution of Election Offenses*, 21.
15. *Ibid.*, 22 (underlined in original).
16. 18 U.S.C., Section 241 (1988); see also Richard Craswell, "Comments: Federal Prosecution for Local Vote Fraud Under Section 241 of the Federal Criminal Code," *University of Chicago Law Review* 43 (1976), 542-572.
17. See *United States v. Daugherty*, 952 F.2d 969, 971 (8th Cir. 1991); *United States v. Saenz*, 747 F.2d 930, 935 (5th Cir. 1984); *United States v. Canales*, 744 F.2d 413, 416 (5th Cir. 1984).
18. Prepared Remarks of Attorney General John Ashcroft, Voting Integrity Symposium, U.S. Department of Justice, Washington, D.C., October 8, 2002 (<http://www.usdoj.gov/80/ag/speeches/2002/100802ballotintegrity.htm>).
19. *Ibid.*

20. William Walker, "Deeply Divided America Heads to the Polls," *Toronto Star*, November 5, 2002: A1.
21. Chet Brokaw, "Voting Claims Still Under Investigation," *Yankton Press and Dakotan On the Web*, December 7, 2002 ([http://www.yankton.net/stories/120702/new\\_20021207027.shtml](http://www.yankton.net/stories/120702/new_20021207027.shtml)).
22. U.S. Congress, Committee on House Administration, *National Voter Registration Act of 1993*, 103rd Cong. 1st sess., H. Rept. 103-9 (February 2, 1993): 27. Officials in those states were concerned that the multiple registration sites required by the law would result in duplicate registrations, and that the costs of maintaining the quality of voter rolls would be prohibitive. At least six states sued to block implementation of the law. The states included California, Illinois, Louisiana, Michigan, South Carolina, and Virginia. See Jonathan E. Davis, "Comment: The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud," *Temple Political and Civil Rights Law Review* 6 (Fall 1996-Spring 1997), 117, n20.
23. U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Federal Election Practices and Procedures, Part I*, 107th Cong., 2nd sess. (May 3, 2001) (testimony of Ralph O. Neas).
24. Christopher S. "Kit" Bond, "Motor Voter Out of Control," *Washington Post* (June 27, 2001): A25. This case is discussed below. According to Deborah M. Phillips of the Voting Integrity Project, a national organization concerned about voter fraud, and a critic of NVRA, "the National Voter Registration Act has tied the hands of election directors to protect the rights of legitimate voters from the dilution of vote fraud." U.S. Congress, Senate Committee on Rules and Administration, *Hearing on Election Reform*, 107th Cong., 2nd sess. (March 14, 2001) (testimony of Deborah M. Phillips).
25. U.S. Congress, Senate Committee on Rules and Administration, *Hearing on Election Reform* (testimony of John Samples). At the same hearing, Todd F. Gaziano, Senior Fellow in Legal Studies and director of the Center for Legal and Judicial Studies at the Heritage Foundation, testified that "Regardless of the intent of the Motor Voter law, it has helped create the most inaccurate voting rolls in our history. Citizens are registered in multiple jurisdictions at the same time, and very few states have effective procedures to ensure that those registered even are citizens...you can almost guarantee that illegal voting may provide the margin of victory in a close contest."
26. See *The Wall Street Journal*, "Blind To Voter Fraud" (March 2, 2001): 10; "The Voter Fraud Iceberg" (March 12, 2001): 22; "Manufacturing Votes" (May 8, 2001): 26; and "Too Easy To Steal" (December 11, 2001): 18.
27. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*, Report to Congressional Requesters (October 2001), GAO-02-3: 75.
28. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*, 22 and Table 1.
29. According to the U.S. Census Bureau, nearly one in five Americans of voting age moves annually. See Jason Schachter, "Geographical Mobility: Population Characteristics, March 1999 to March 2000," Current Population Reports, U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau (May 2001).
30. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*: 22.
31. Steve Barber *et al.*, "The Purging of Empowerment: Voter Purge Laws and the Voting Rights Act," *Harvard Civil Rights-Civil Liberties Law Review* 23 (1988): 499 and Appendix A. The other states purging for failure to vote did so on an accelerated schedule, purging registered voters after two years of inactivity or for failure to vote in a single election.
32. Those states are Alabama, Connecticut, Kentucky, Maine, Massachusetts, Missouri, Nebraska, and Texas.
33. Federal Elections Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000*, Table 3. Kentucky, Maine, and Nebraska have yet to delete any names from their inactive lists.
34. These provisions apply to voters assigned to inactive lists for failure to respond to notices asking for address confirmation, and are meant to secure the right of these voters to vote as long as they are eligible. While NVRA does not specifically require states to provide provisional ballots to voters disputing their denial to vote, the House Report on the Act recommended "it would be appropriate, and in compliance with the requirements of this Act, to require that such a person vote by some form of provisional ballot." See U.S. Congress, Committee on House Administration, *National Voter Registration Act of 1993*, 103rd Cong. 1st sess., H. Rept. 103-9 (February 2, 1993): Section 8. Moreover, a number of analyses of the 2000 elections have concluded that reforms should seek to expand the use of provisional balloting given the documented level of error in list management contributing to an estimated 3 million eligible voters being denied their right to vote. These numbers are drawn from the U.S. Census Bureau Current Population Survey's estimate that 7.4 percent of the 40 million nonvoters in 2000 did not vote due to registration problems.

35. See *ACORN v. Miller*, 129 F.3d 833 (6th Cir. 1997); *ACORN v. Edgar*, 56 F.3d 791 (7th Cir. 1995); *Voting Rights Coalition v. Wilson*, 60 F.3d 1411 (9th Cir. 1995); *Condon v. Reno*, 913 F. Supp. 946 (D.S.C. 1995); and Jonathan E. Davis, "The National Voter Registration Act of 1993: Debunking States' Rights Resistance and the Pretense of Voter Fraud," *Temple Political & Civil Rights Law Review* 6 (1997): n20 at 119, citing Human Serve and ACORN, "Legal Obstructions to the Implementation of the National Voter Registration Act Including Constitutional Challenges: An Update," (September 1995) at 2-8.
36. U.S. Congress, Senate Committee on Governmental Affairs, *Hearing on Federal Election Practices and Procedures, Part 2*, 107th Cong., 2nd sess., (May 9, 2001) (testimony of Hans A. von Spakovsky).
37. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 22.
38. *Ibid*; see also, J. Eric Oliver, "The Effects of Eligibility Restrictions and Party Activity on Absentee Voting and Overall Turnout," *American Journal of Political Science* 40(2) (May 1996): 498-513.
39. Thirty-nine states and the District of Columbia also permit in-person absentee or early voting.
40. Poll workers are given the responsibility of counting ballots in Alabama; in Florida, New Jersey, Oklahoma, and Maryland, county election boards count absentee ballots; an array of local judges are designated to count absentee ballots in Colorado, Minnesota, Ohio, and Vermont; finally, special absentee ballot committees or boards are set up to count ballots in North Dakota, Montana, Nevada, and Texas.
41. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 129.
42. Upon investigation it turned out that the vast majority of the remaining cases were cases of voter error. The secretary of state's Office sends letters to voters committing mistakes admonishing them of the rules. (E-mail correspondence to the author from Norma Buckno of the Oregon Secretary of State's Office, dated February 14, 2002. Data were compiled by Ms. Buckno.)
43. Phone interview by author with John Lindback, Elections Division, Oregon Secretary of State's Office (February 21, 2002).
44. Those states are Alaska, Alabama, Louisiana, Missouri, North Carolina, Oklahoma, and Rhode Island. An election for chief judge of the Alabama Supreme Court was recently overturned on a technical violation of the law after an 11-month court battle. A number of absentee ballots larger than the margin of victory for the presumed winner were thrown out by a federal court because they were unwitnessed. See, Lori A. Tarle, "Comment: Statutory Interpretation and the Alabama Absentee Ballot Controversy," *Cumberland Law Review* 26 (1995-1996): 197+.
45. Mark J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *American Politics Quarterly*, 22(1): 84; Benjamin Highton, "Easy Registration and Voter Turnout," *Journal of Politics*, 59: 565-75; Craig Leonard Briens and Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Social Science Quarterly* 82(1): 171-183.
46. National Conference of State Legislatures, *Voting in America: Final Report of the NCSL Elections Reform Task Force* (July 2001), <http://www.ncsl.org/programs/press/2001/electr0801.htm>.
47. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 71.
48. Prepared text by Joan Growe for the panel "Election Day Registration in Practice," *Symposium on Election Day Registration*, Brennan Center for Justice, New York City, November 30, 2001.
49. R. Michael Alvarez and Stephen Ansolabehere, *Expanding the Vote: Election Day Registration in California*, Demos, March 2002, 22.
50. Andrew Nieland, "In Milwaukee Activists Use New Tactics to Help Boost Voter Registration, Turnout," *The Wall Street Journal Interactive Edition*, December 18, 2000, <http://interactive.wsj.com/archive/retrieve.cgi?id=SB977098086874819675.djm>. Nieland offers the following observation about EDR and fraud by Milwaukee Mayor John Norquist: "To rig any significant number of ballots would just be an unimaginable pain in the butt."
51. A series of articles in the *Milwaukee Journal Sentinel* covered the case. See David Doege, "No Evidence Found of Multiple Voting: McCann concludes students misled Marquette newspaper," <http://www.jsonline.com/news/metro/dec00/vote21122000a.asp>.
52. "Cigarette case involves 15 to 25," *Milwaukee Journal Sentinel On Line*, November 14, 2000, <http://www.jsonline.com/news/metro/nov00/smokcs15111400a.asp>.



53. Interview with Mike Mahoney, assistant attorney, Milwaukee County, February 6, 2002.
54. The states are Alaska, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Missouri, South Carolina, Texas, and Virginia. See the Constitution Project, *Election Reform Briefing: Voter Identification* (April, 2002); and U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 188-90.
55. U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*: 189.
56. "Spotlight: Voter Identification Requirements," *Democracy Dispatches*, Number 15 (February 15, 2002), Demos.
57. American Association of People With Disabilities, "Kill the Senate Election Reform Bill," <http://www.aapd-dc.org/docs/votekill.html>.
58. "Groups Protest Senate Bill for Voter ID Checks; Say Will Make Many New Yorkers 'Second Class Voters'" News release, the Citywide Coalition for Voter Participation, (April 3, 2002).
59. The Constitution Project, *Election Reform Briefing: Statewide Voter Registration Databases*, March 2002. See also: Demos, *An Overdue Reform: The Need for Statewide Computerized Voter Registration Systems*, February 2002.
60. Federal Election Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996, A Report to the 105th Congress*, 39-41.
61. Federal Election Commission, *Developing a Statewide Voter Registration Database: Procedures, Alternatives, and General Models*, Autumn 1997: 9.
62. The Constitution Project, *Election Reform Briefing: Statewide Voter Registration Databases: 2*.
63. Ronald Hayduk, "The Weight of History: Electoral Reform in the Progressive Era and Today," in Ronald Hayduk and Kevin Mattson, *Democracy's Moment: Reforming the American Political System for the 21st Century* (Lanham, MD: Rowman and Littlefield, 2002): 40-41.
64. Report and Recommendations to Improve the American Elections System, NACO and NACRAC, May 20, 2001. <http://www.naco.org/programs/infotech/elections/election.pdf>.
65. Alvarez and Ansolabehere, *Expanding the Vote: Election Day Registration in California*: 14-16.
66. The City of Miami is not to be confused with Miami-Dade County government. Approximately 365,000 people live in the City of Miami, one of 30 municipal jurisdictions within Miami-Dade County where consolidated government represents the larger "Miami" community and performs most of the functions local government.
67. Suarez received 23,598 votes or 53.2 percent to Carollo's 20,739 votes (46.8 percent). See "Former Mayor Wins an Upset in Miami Ballot," *The New York Times* (November 14, 1997): A30.
68. William T. McCauley, "Florida Absentee Voter Fraud: Fashioning an Appropriate Judicial Remedy," *University of Miami Law Review* 54 (2000): 627.
69. *In re Matter of Protest of Election Returns and Absentee Ballots in the November 4, 1997, Elections for the City of Miami, Dade County, Fla., No. 97-25596 CA 09* (Fla. Dade County Ct. March 4, 1998).
70. "'Outright Fraud' Found in Miami Mayoral Elections," *The Washington Post* (February 3, 1998): A4.
71. Hernandez was eventually convicted of attempting to cover-up the election fraud scheme and sentenced to one year in jail. Governor Chiles again removed him from office.
72. Mike Clary, "Miami Without Mayor as Judge Voids Election: Voting: 'Massive ... Fraud' in Absentee Forms Cited; New Balloting to Take Place Within 60 Days," *Los Angeles Times* (March 5, 1998): A11; Donald P. Baker, "New Mayoral Election is Ordered for Miami; 'Fraud and Abuse' Prevalent, Judge Says," *The Washington Post* (March 5, 1998): A2.
73. Florida is one of only seven states that permanently disenfranchises persons convicted of felony crimes. Its felony disenfranchisement laws are the harshest in the country, with about one third of all disenfranchised ex-felons in the U.S. reside in Florida. Human Rights Watch and the Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* (1998), <http://www.hrw.org/rc/ports98/vote>.
74. Greg Palast, *The Best Democracy Money Can Buy* (Sterling, Virginia: Pluto Press, 2002): 16.
75. Peter M. Warren, "Dornan Vows Appeal to House if Lead is Lost," *Los Angeles Times*, Orange County Ed. (November 12, 1996): A1.
76. *Ibid.*
77. Dexter Filkins, Peter M. Warren, and Jean O. Pasco, "Dornan, Sanchez Square Off Before House Task Force," *Los Angeles Times*, Orange County Edition (April 20, 1997): A1.

78. A recount requested by Dorman reduced the final margin by five votes.
79. See: U.S. Congress, House, Committee on House Oversight, Task Force for the Contested Election in the 46th Congressional District of California, *Dismissing the Election Contest Against Loretta Sanchez: Report of the Committee on House Oversight on H.R. 355, Together with Minority Views* (February 12, 1998), H. Rept. 105-416.
80. Benjamin Ginsberg and Martin Shefter, *Politics by Other Means: Politicians, Prosecutors and the Press from Watergate to Whitewater*, Revised and Updated Edition (New York: W.W. Norton & Company, 1999): 44.
81. Cost estimates are as follows: investigation by the House Oversight Committee (\$300,000); expenditures by the INS to conduct data analysis (\$500,000); reimbursement to Dorman for costs associated with his contest (\$320,000); reimbursement to Sanchez for her defense (\$250,000). These costs do not include the expenditures by the Orange County Registrar of Voters to conduct an internal review and assist the Committee in its investigation, the Orange County District Attorney's Office for its criminal investigation of Hermandad Mexicana Nacional, or the California Secretary of State's Office for its investigation of noncitizen voting in Orange County.
82. "California Won't Prosecute Noncitizen Voters," *The Washington Post* (March 1, 1998): A19.
83. Missouri, Office of the Secretary of State, *Mandate for Reform: Election Turmoil in St. Louis, November 7, 2000*, Report by Secretary of State Matt Blunt (July 24, 2001): 39-46.
84. Carolyn Tuft, "Bond Wants Federal Investigation of Problems at City Polls; He Accuses Democrats of 'Criminal Enterprise' in Keeping Polls Open Late; Democrats Criticize Election Board," *St. Louis Post-Dispatch* (November 10, 2000): A1.
85. Jo Mannies, "Vote Fraud Charges are Hogwash, Clay Says, But Bond Stands Firm," *St. Louis Post-Dispatch* (February 21, 2001): C2.
86. See Tuft. Bond's assumption of criminal intent behind the effort to clear out what all parties agree was a chaotic situation inside many St. Louis polling places, may have a personal dimension. Speaking of his successful run for governor in Missouri in 1972, Bond said, "They [St. Louis Democrats] tried the same stunt on me. This time was one too many"—referring to his belief that St. Louis Democrats intentionally kept the polls open until midnight in 1972 to prevent his election as the youngest governor in the state's history. See Mannies (February 11, 2001). One of the lawyers for the Democrats in 2000 was Douglas Dowd, the son of Ed Dowd Sr., the man Bond defeated in 1972.
87. Carolyn Tuft, "Grand Jury Looks at Voter Registration," *St. Louis Post-Dispatch* (February 14, 2001): A1; Stephanie Simon, "National Perspective: Politics: In St. Louis, Dead Are Causing Lively Debate With Their Votes," *Los Angeles Times* (February 28, 2001): Part A1, Page 5; Christopher S. "Kit" Bond, "Motor Voter' Out of Control," *The Washington Post* (June 27, 2001): A25.
88. Jo Mannies and Jennifer LaFleur, "City Mislabeled Dozens as Voting From Vacant Lots; Property Records Appear to be in Error, Survey Finds; Just 14 Ballots Are Found Suspect," *St. Louis Post-Dispatch* (November 5, 2001): A1. Further investigation by the *Post-Dispatch* fully debunked the vacant lot claims. According to reporter Jo Mannies, "Basically, we checked every one of the 2,000-plus props [properties] listed as vacant lots with voters, and found virtually all had houses on them—had been misclassified by the assessor's office." (E-mail correspondence with the author, February 25, 2002.)
89. St. Louis County judge Robert S. Cohen said, "This process had taken them hours and hours. Some had babies with them; some had wheelchairs; some had taken off work. We were trying to accommodate people in a long line and get them in and out. We were erring on the side of allowing people to vote. Rejecting an American citizen at the poll who appears to have engaged in no fraud ... it's a difficult thing to turn that person away and say you cannot vote, you cannot participate in the democracy today." Jo Mannies, "Secretary of State Says Local Judges Erred in Election; 1,233 People Were Improperly Allowed to Vote, Report Says," *St. Louis Post-Dispatch* (July 25, 2001): A1.
90. In one of three recent reports on voting in St. Louis, Secretary of State Blunt called the communications between local polls and the St. Louis City Board of Elections on election day 2000 "grossly inadequate." One of his recommendations for improving election administration on election day was the providing of working cell phones to local poll workers and elections judges and the installation of more telephone lines at Board of Elections headquarters so that poll workers could more easily access the inactive voter files by calling in their inquiries. On election day 2000 in St. Louis, many cell phones at the local polls had no batteries and a new telephone system at the Board of Elections malfunctioned, preventing judges from checking whether voters were listed on the inactive file. Under such circumstances, Missouri voters must get a court order to vote, a partial explanation for why so many court orders were issued. Blunt's recommendations were heeded for the March 6, 2001, municipal primary election. See Missouri, Office of the Secretary of State, *Making Every Vote Count: A Report of Secretary of State Matt Blunt to the People of Missouri* (January 29, 2001).



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