BUILDING CONSENSUS ON ELECTION REFORM

A REPORT OF

THE CONSTITUTION PROJECT'S
FORUM ON ELECTION REFORM

August 2001

The Constitution Project

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ABOUT THE CONSTITUTION PROJECT

The Constitution Project, based at Georgetown University's Public Policy Institute, Washington, DC, is a bipartisan nonprofit organization that seeks consensus on controversial constitutional and legal issues through a unique combination of scholarship and activism. The Constitution Project currently has four initiatives: on the death penalty, judicial independence, the process to amend the U.S. Constitution, and election reform.

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CHAIR'S PREFACE

In 1997, Virginia Sloan and I founded the Constitution Project with the goal of developing and promoting bipartisan solutions to contemporary constitutional and legal issues. Now based at Georgetown University in Washington, D.C., the Project continues to operate on the belief that building consensus among individuals and groups with different perspectives is critical to the democratic process. We bring this conviction to our work on election reform.

In February 2001, The Constitution Project launched an election reform initiative by convening the Forum on Election Reform. We, along with many others, were motivated to help address the deficiencies in our nation's election system that were brought to light in the 2000 elections. We felt that there was an opportunity to implement needed reforms, but that there was some danger that the issue could be cast in a partisan manner. For that reason, we set out to identify and forge consensus between individuals of both political parties, and organizations of all kinds with an interest in reform. Our goal was simple: to ensure that eligible voters are able to vote and to have their vote counted accurately. We specifically excluded, as part of this initial effort, larger questions about election reform such as the role of the electoral college or how to increase voter participation.

The Constitution Project invited state and local elected officials, other officials who run elections, advocates for voters, and experts in relevant fields to participate in the Forum on Election Reform. What follows is the result of that five-month effort – a report that identifies what we believe are the major points of agreement between the participants. Our hope is that this partnership will increase the chances for timely and responsible action by the Congress and state legislatures.

This initiative was made possible by a grant from The William and Flora Hewlett Foundation. We are grateful to Paul Brest, President of the Foundation, for his early support and commitment to improving the American election system.

A number of people deserve recognition. We deeply appreciate the dedication of the working group chairs who provided expertise, worked closely with participants, and guided the formulation of our recommendations: Stephen Ansolabehere, Massachusetts Institute of Technology (Technology); Marlene Cohn, League of Women Voters Education Fund (Education); Norman Ornstein, American Enterprise Institute (Voting Procedures); Trevor Potter, The Reform Institute (Federal, State and Local Roles); and Richard Soudriette, International Foundation for Election Systems (Vote Counting).

Our report reflects the hard work of a core group of individuals. Michael Davidson assisted the working groups in preparing their reports and the Forum in preparing its report. Pamela Karlan of Stanford University Law School provided legal guidance about constitutional issues relating to election reform. Mickey Edwards of Harvard University's Kennedy School of Government and a Constitution Project board member contributed substantial insight and guidance throughout. Ronald Weich and Carlos Angulo of the law firm of Zuckerman Spaeder, LLP furnished helpful analysis about existing and proposed legislation and pending litigation. Zoe Hudson, Director of the Election Reform Initiative, and Tracy Warren, Senior Policy Analyst, kept the entire undertaking on track.

Finally, we owe our deepest gratitude to the many participants in our Forum who took time to engage in a thoughtful debate over how to improve the conduct of elections in the United States. We hope they continue to be our partners over the coming years as the nation turns to implementing election reform.

Morton H. Halperin
Chair, Forum on Election Reform
Board Member, Constitution Project
August 2001

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

ESSENTIAL ELEMENTS OF REFORM

A. Before Election Day

1. Voter Education and Election Personnel Training: Sustained education efforts are needed to ensure an informed electorate and trained election personnel. Election officials have primary responsibility for voter education, but they should also enlist others, beginning with the schools. Voter education should begin before election day, providing information to voters about how, when, and where to register and vote; how to update their address and confirm registration status; and identification requirements. Voters should be mailed sample ballots, instructions about the mechanics of voting, and notice of their rights and responsibilities. Correspondingly, election personnel should receive training in legal requirements and the operation of voting equipment. Overall, state officials should have a plan to assure that voter education and election personnel training commands the attention they merit throughout the state.

2. Voting Technology Research, Standards, Testing, and Clearinghouses: A system for fostering development of voting technologies is an essential foundation of a sound election system. Such a system should include: research on development of technologies that advance important objectives of our the election system (such as accessibility and equipment ease-of-use); standards for the design and performance of equipment to meet those objectives; testing to assure that equipment meets standards; and clearinghouses to collect and exchange information about the development and performance of voting systems.

In addition to technology improvements, the benefits of research, identification of best practices, and information clearinghouses also apply to a broad range of other election administration issues.

3. Registration Systems: All states should develop statewide registration databases, as now exist in some states. Accuracy of registration information should be maintained through integration or improved communications between voter registration and other databases, such as motor vehicle department records. A state's database should be available electronically at polling places on election day for timely

resolution of registration questions. Any process to remove ineligible voters from registration lists should be non-partisan, be in compliance with voting laws, provide notice to voters they have been removed from the rolls, and afford them an opportunity to correct erroneous information. General programs to purge lists should be completed sufficiently in advance of election day to allow individuals to correct erroneous information.

B. Election Day

1. Accessibility and Staffing: Polling places should be fully accessible and accessibility should be broadly defined. It should include selection of polling places that allow access for voters with limited mobility and are convenient to the communities they serve. Materials, including directions to polling places, should be available in multiple languages and formats. Longer voting hours can be critical in making voting at polls accessible for all voters. It is also a worthwhile long-term goal to work toward a system that would allow people to vote at polling places close to work.

Additional resources should be provided for the hiring and training of election day personnel. To increase the number of poll workers, the following should be considered: split schedules; use of high school students; recruitment of retired people and other potential part-time employees; time off with pay for public and private employees; and cooperative efforts with civic groups.

2. Posted Notices of Rights and Responsibilities: To provide a common point of reference for election officials and voters in resolving disputes, there should be prominent notice in every polling place of applicable federal and state election law. It should include the voter's rights to a provisional ballot, a new ballot if a mistake has been made, assistance in voting, and a demonstration of the equipment. It should also include any relevant information, such as identification requirements and any time limit on voting.

3. Preserving the Rights of Voters Who Come to the Polls: Voters in line by poll closing time should be allowed to cast a ballot. If a voter's name does not appear on the registration list, and the voter affirms he or she is entitled to vote, the voter should be entitled to submit a provisional ballot that will be counted if the voter is determined to be an eligible voter. Voters should be notified whether the ballot was counted.

4. Vote Casting: Together with good ballot design, technologies should be used that enable voters to avoid error and record their choices accurately. Technologies that provide voters with an opportunity to correct overvotes or undervotes should be used, as should technologies that enable disabled voters to vote independently and therefore secretly. Voting technology should be flexible enough to allow states to choose among a variety of ballot methods. The ability of election officials to conduct an audit of the original count should be considered in the design and selection of voting technologies.

C. After the Polls Close

State election calendars should allow sufficient time for all counting and contest procedures to be completed in time for presidential electors to cast the state's vote.

Each state should define what is a valid vote. As a matter of democratic principle, state law should establish a general rule that places a value on determining whether a voter's choice is clearly discernible. To apply that general rule, the state's chief election authority should be

given authority to adopt regulations, through a public rule-making procedure, for addressing recurring anomalies associated with particular voting methods. States should establish clear rules for manual recounts, which should be conducted uniformly across the jurisdiction of the election.

States should provide for pre- and post-election audits of equipment to assure integrity of the final count. Every validly cast vote should be counted, including those submitted by military and other absentee voters and provisional ballots submitted by qualified voters.

D. Alternate Methods of Voting

Election day voting at polling places provides the best opportunity to achieve five objectives: assure the secrecy of the ballot and protect against coerced voting; verify that ballots are cast only by registered voters; safeguard ballots against loss or alteration; assure their prompt counting; and foster the communal aspect of citizens voting together on the same day, so as to benefit from a common pool of public information.

No form of alternative voting – Internet voting, voting entirely by mail, unlimited absentee voting, and early voting at election offices – has been devised that can provide every one of these benefits. Of these alternatives, early voting at election offices is the most consistent with these fundamental objectives.

No matter how states resolve questions about alternative forms of voting, it is essential to have a hospitable and efficient system of absentee voting with protections against fraud or other abuse for important segments of our population unable to cast votes at polling places. These include persons in military or civilian service overseas or voters who by reason of age or disability are unable to vote at polling places.

E. Top-to-Bottom Review of State Election Codes

Each state should review its election code to ensure that it is easily usable by participants in the voting process, clear to the courts, and comprehensible to the public. The review should take into consideration when uniform statewide requirements are needed to assure equal protection. State reviews should also consider other issues such as reinstating voting rights for people who have completed criminal sentences, minimizing partisan influences in election administration, and consolidating elections in order to reduce their frequency.

PROPOSALS FOR CONGRESSIONAL ACTION

A. Federal Assistance for Research and Technology Standards

Congress should provide authority and funds for the following:

1) research and development on voting equipment and equipment standards, with particular emphasis on ease-of-use, accessibility for people with disabilities or low levels of English literacy, and special issues relating to electronic equipment, including the ability to audit election results. A priority should be placed on the development of open source code and architecture in all voting software so that it can be subject to broad scrutiny to assure accuracy and integrity;

2) an expanded standards program that includes management or operational standards, and performance or design standards to optimize ease-of-use;

3) an expanded testing program to assure that voting machinery complies with established standards; and

4) a clearinghouse allowing states and industry to share experiences with the performance of voting technologies.

B. Federal Grants for Capital Investment in Voting Systems Technology and Use

Congress should establish a multi-year capital investment grant program for investment in voting technology improvements, including funds for training in the use of technologies.

1. Scope: The grant program should include funding for improved registration systems, including statewide databases and communication with polling places; precinct-level voting and counting equipment, including equipment that allows voters with disabilities to vote independently; and election personnel training and voter education about the use of voting technologies.

2. Duration: Congress should establish a duration for the program that provides states with the ability to stage investments but does not unduly prolong the time for discernible improvement. To that end, a program that permits systematic implementation of changes over the next three federal election cycles should be considered.

3. Allotments: In determining how to allocate funds among the states, Congress should give preference to a grant program that is principally formula-based, most likely according to voting age population. A formula-based program will encourage participation by all states, and facilitate an orderly planning process in the states by assuring the timely and regular receipt of funds. To encourage innovation, a portion of the program should be reserved for grants for pilot state or local programs that are awarded on a competitive basis.

4. Applications: Each state and its local governments should work together to formulate, with an opportunity for public comment, a plan that the state submits to the federal government. The plan should describe how federal funds will address identified needs, how the grant will help the state meet existing federal requirements, and how the state will assure equitable use of federal funds within the state. With respect to registration, the plan should describe efforts to maintain complete and accurate lists and to protect the rights of registrants. Each state should also provide assurances that new funds will supplement rather than lower current spending on elections, and that its plan does not conflict with federal law.

5. Conditions Related to Technology: New technology purchases should comply with the voting systems standards in existence at the time of a purchase. Each state that receives federal grants should commit, during the life of the grant program, to provide at least one voting device at each polling station that allows sight-impaired voters to vote independently.

6. *Additional Requirements*: Congress should provide for two additional measures in federal elections, at least as a condition for federal grants: an opportunity to vote by provisional ballot if registration status cannot be determined on election day, and clear notification at polling places of the rights and responsibilities of voters under applicable federal and state law.

7. Reporting: To assist in evaluating whether federal grants are improving the administration of elections, states should regularly provide statistical information on the performance of new and existing voting technologies. At the end of a funding period, each state should publicly report what it has done with grants it has received.

8. Federal Agency: In selecting an existing agency or establishing a new one to carry out the research, standards development, and grant functions under an election reform act, Congress should vest final responsibility in a single agency. It should provide for an independent line-item appropriation so that funds for election purposes are protected against competing demands. To strengthen public confidence, the agency should be independent of partisan influences, and be guided by an advisory board that reflects the viewpoints of key participants in the election process. It should be organized to make decisions in a timely manner.

9. Appropriations for the Grant Program. Congress should authorize and appropriate sufficient funds to provide a significant incentive to states to participate in the grant program and to enable them to make necessary improvements. During the first year, after analyzing state plans the agency charged with responsibility for the program should submit to Congress a well-substantiated projection for the fiscal requirements of the full grant program.

C. A Permanent Program to Defray Expenses of Federal Elections

While other areas merit additional resources – such as voter education and training of election personnel – there is not agreement at this time on a permanent federal role in funding the conduct of federal elections. However, there is broad agreement that to assist states and local governments in part of their voter education programs (such as sending voters sample ballots) and in complying with election mail requirements for registration, Congress should establish a new class of postage for official election mail that provides first class service at half the rate.

INTRODUCTION

Early this year the Constitution Project began an initiative to consider measures for achieving election reform. As described in the preface to this report, the Constitution Project seeks to formulate and promote, through scholarship and public education, bipartisan solutions to contemporary issues. Of the public issues that merit the nation's attention, the task of ensuring that our democracy is well served by our election system must be among the foremost.

The Project invited participation in a Forum for Election Reform of representatives of organizations of state and local officials who are responsible for running elections, private groups concerned about voting rights, and experts in technology, politics, and law. From the outset, the work of the Forum has been premised on a conviction that a partnership among these participants would enhance the nation's opportunity to implement necessary reforms.

Members of the Forum participated in five working groups. Four of these groups considered aspects of the voting process: voter education, voting procedures, technology, and vote counting. A fifth group focused on the allocation of federal, state, and local roles in the election process. The chairs of these groups prepared written reports to the Forum that were posted on our website and discussed at Forum meetings. As they proceeded, the working groups modified their recommendations in light of comments from Forum members and others.

The five working group reports were then integrated into a report to the Forum. As a continuing part of the Project's commitment to an open process, the combined report was posted on the Project website and discussed and modified in the course of three meetings of the Forum. What follows is the report of the Forum on Election Reform.

As many recognize, improved voting technologies should be part of a broader effort to assure that all eligible voters are able to vote and to have their votes counted accurately, all on terms of full equality. In Part I, the report highlights essential elements of reform in each major stage of the voting process: before election day, at the polls, and in counting votes. These are interrelated, not isolated stages; sound measures in one should increase the chance of success in another. The report recognizes that some reforms described in Part I will require additional resources beyond the new federal resources that we propose. There is an appreciable challenge to each level of American governance – federal, state, and local –

to commit the resources that are needed to provide the nation's election system with the resources it requires.

The recommendations in Part I address matters principally related to responsibilities of state and local governments, although some reforms recommended in Part I also establish the predicate for congressional action. Part II addresses the need for Congress to aid in the development and acquisition of improved voting technologies, and the manner in which that aid should be provided.

The report represents the best efforts of our working group chairs, individual Forum participants, and mine as the reporter, to identify the main points of substantial agreement among the Forum's diverse participants. It is offered to the public with the conviction that it represents significant consensus on areas of importance to the future of American elections.

Our confidence that there are common themes on which to base an attainable and productive election reform agenda has been bolstered as the conclusions of other studies are announced. Throughout the year state task forces and officials have released recommendations. In May, the National Association of Counties (NACo) and the National Association of County Recorders, Election Officials and Clerks (NACRC) issued the report of their National Commission on Election Standards and Reform. The Caltech-MIT Voting Technology Project has issued its report on voting system improvements. The National Association of Secretaries of State has released a resolution on election reform. President Ford and Carter's National Commission on Election Reform has just reported. The Election Center's National Task Force on Election Reform and other bodies of state and local officials will soon report. The broad agreement that we have found within our Forum mirrors a comparable unity that is emerging in these major studies.

Nevertheless, a caveat is in order. At the end of the report we list the participants in our Forum. On any particular issue one or several participants may have a different view or emphasis. Many in the Forum are active participants in the legislative process now underway in Congress and in the states. In that process, some will express a position on one or another issue that more precisely accords with that individual's or organization's exact views. Participation in the Forum does not indicate that each person or organization agrees with every particular in the report. Indeed, we have welcomed additional statements from participants in the Forum, which are set forth in Appendix B to this report.

Finally, the work of our Forum has convinced us that while a great deal of work lies ahead, there is reason to be optimistic about the future. The American election system rests on the strong foundation of our nation's constitutional and statutory guarantees and the commitment of state and local election officials. That foundation, the special and expanding opportunities that modern technology provides, and – importantly – an honest recognition of the challenges we face, combine to make the promise of reform bright.

To turn that promise into reality, continuing efforts to expand consensus, including among participants in our Forum, will be essential. Also of critical importance will be a willingness of America's political leadership to build on public consensus, lay partisanship aside, and work to the common goal of improving our nation's electoral system.

Michael Davidson
Counsel and Reporter
The Constitution Project's Election Reform Initiative
August 2001

I. ESSENTIAL ELEMENTS OF REFORM

Improvement of our election system requires attention to each major stage of the voting process: measures applicable to steps that mainly precede election day, measures that apply directly to election day and procedures at the polls, and rules and procedures for counting and recounting votes. In Part I of this report, we take each stage in turn.

A. Before Election Day

1. VOTER EDUCATION AND ELECTION PERSONNEL TRAINING

This past presidential election brought together more than one hundred million voters and over a million full- time and election- day officials. Informed participation is critical in enabling this great volume of people to work together to produce an election in which all qualified voters have an opportunity to vote and have their choices accurately recorded and counted. To that end, voter education and training for election personnel are indispensable. Both should be sustained efforts. Both require commitment of enhanced resources.

The goal of voter education should be to provide voters with the information they need at each step of the election process in order to exercise their franchise successfully. A sound program should start well before election day. It should provide voters with timely information about how to register, confirm their registration status, and keep it up to date; where and when to vote; and how to operate voting devices correctly in order to cast a valid vote that accurately reflects each voter's intentions. Throughout the voting process, voters should be made aware of their rights and responsibilities as voters.

The principal responsibility for voter education lies with election officials, but it would be a mistake to think they have the sole responsibility. Voter education should be a continuous process that begins with civic education in schools. The education of students can also involve their assistance at the polls, thereby helping to address the problem of a shrinking pool of election-day workers. In addition to schools, election officials should engage a broad spectrum of public and non-governmental organizations to play an educational role.

While many voters can and should be reached at the places to which they go in their daily lives, such as shopping malls or other community gathering spots, all voters should be reached at

home. Sample ballots that enable voters to see and study their choices as they will face them on election day, with clear instructions about the mechanics of voting and information about voter rights and responsibilities, are a fundamental tool of a sound voter education program. For some voters, who – because of language, age, or disability – need information in different formats, there should be well-designed methods to reach and communicate with them. For that reason, attention should be given to providing information in multiple formats and languages, using all forms of media – print, radio, and television.

Our recommendation does not address nonpartisan voter guides, for which we have heard substantial support, only because the focus of our project is on the voting process and not on broader questions about the extent or quality of voter information in making electoral choices.

Overall, there should be a plan for voter education. Our society has professions and skills, whether in education or public advertising, that can be brought to bear. In this area, as in others concerning election administration, it is important for state officials to assure that voter education commands the attention it merits throughout the state. Federal officials should assist by broadly disseminating information, including instructional guides, on the requirements of federal law.

Correspondingly, election personnel, both those whose profession it is and the larger number who are recruited for election day, deserve the training required to perform what is an appreciable task. They need to know essential things about federal and state law and about the operation of voting systems, each of which inevitably evolves and requires periodic updating of earlier training. While training of election-day personnel is likely to continue to be the principal responsibility of the local officials whom they will directly assist, states should assure that full-time election officials receive the training that their responsibilities require.

2. VOTING TECHNOLOGY RESEARCH, STANDARDS, TESTING, AND CLEARINGHOUSES

An integrated system for fostering development and sound use of improved voting technologies is an essential underpinning of a sound election system. There should be four interconnected elements:

- research on development of technologies that advance important objectives of our election system;
- standards for the design and performance of equipment to meet those objectives;
- testing to assure that equipment actually meets these standards; and
- clearinghouses to collect and exchange information about the development and performance of voting systems.

These functions should be funded on a long-term basis in recognition that voting technologies will be continually developing.

Among participants in The Forum, there is broad agreement that the Federal Election Commission's 1990 voluntary engineering and performance standards need first to be brought up to date (as the FEC is now doing) and then kept current in response to technological changes in a rapidly developing field. Those standards should be expanded to add voluntary management or operational standards that

include such matters as maintaining sensitive electronic equipment. There is also strong support for voluntary performance or design standards to optimize ease-of-use and minimize voter confusion. The latter are often described as human factor standards, which take into account how voters interact with technology.

The preceding section describes the importance of voter education. Although clear information should be posted and demonstration machines made available, there are limits to the amount of educating about voting machines that can be done at polling places. Preferable designs are ones in which the way to vote accurately is apparent to voters and therefore requires little instruction. Technologies that require polling place instruction introduce a risk of inaccuracy because often there is insufficient time on election day to provide that instruction, particularly at peak voting times.

In developing standards, care should be given so as not to inadvertently create barriers to innovation. For some purposes, standards may be expressed as minimum criteria for satisfactory performance in meeting particular voting system goals. For other purposes, standards may be specifications that set forth exact features. For yet others, progress may be promoted by identifying best practices and providing clearinghouses to inform the public about experiences in using different technologies. The public authority that has responsibility for issuing standards should have discretion to select the form most suitable for its purposes.

Another barrier to avoid is a testing bottleneck. The certification process sponsored by the National Association of State Election Directors is recognized to be a good platform for assessing equipment durability and detecting errors in software. But as electronic equipment evolves, speed of certification will be an important concern, especially for newer firms. Slow certifications would act as a barrier to competition in the voting equipment industry. A public authority that is responsible for the overall system of basic support described in this section should facilitate use of multiple laboratories for testing hardware and software.

Long-term public funding for research and development on voting equipment and equipment standards. There should be particular emphasis on ease-of-use, as well as accessibility for people with disabilities, low levels of English literacy or principal literacy in another language. A priority is also research on the security of electronic voting. Attainment of these objectives, all of which serve broad public and democratic values, should not depend solely on research budgets of equipment manufacturers. An example is the development of technologies to enable disabled voters to vote privately and independently.

Much of this research should be conducted under grants to universities and other research centers, under the overall plan and superintendence of a public authority to assure the soundness and integrity of the process. In conducting research and establishing standards, it is important to give weight to the interest of states in having several options for selecting equipment so that the nation's election system is not tied to the vulnerabilities or imperfections of a single system.

One product of publicly-assisted research should be development of open source code and architecture for voting software. This would allow the inner working of vote casting and tabulating machines to be subject to broad scrutiny in order to assure accuracy and integrity. Pending progress toward that objective, the current system of testing laboratories, whose examination of software is facilitated by non-disclosure

agreements and software escrow, will continue to be needed to assure software correctness. Software standards should ensure correctness at each stage of the voting process from vote casting through vote counting.

There should be a clearinghouse of information about equipment performance in practice. Both the states and the federal government should regularly collect and report on data about the incidence of such matters as overvotes and undervotes, as well as about other aspects of equipment use and experience. This information should be readily available to industry, state and local election officials, and the public. A governmental authority should have the responsibility to assure the quality of the data and the objectivity of the reports issued.

Finally, other aspects of elections and election administration should be the subject of research, best practices, and clearinghouse exchanges of information. This includes such matters as polling hours, voter education, and election official training, to name a few.

3. REGISTRATION SYSTEMS

Improvements in registration are essential to enfranchisement, efficient voting, and the integrity of the voting process. Accurate registration records and prompt availability of them at polling places will facilitate voting by eligible citizens, including by enabling election officials and voters to concentrate on voting. Improving the technology for managing registration systems should also enable election officials to shorten the time between their state's registration deadline and election day, which will help to ensure that registration requirements are not barriers to participation.

All states should develop statewide electronic registration databases, as now exist in some states. Some states will establish a single database. Others may connect county databases upon assuring that they are compatible and may be linked successfully with each other. In maintaining accuracy, statewide databases should be integrated or at least have improved communications with other databases. These include those of voter registration agencies (particularly state motor vehicle records and social services agencies), U.S. Postal Service change-of-address records, and state or local agencies that collect vital statistics. There could also be links to other states to correct records such as when a voter moves from one state to another. To make this information useful on election day, statewide registration databases should be electronically accessible from polling places. There should also be improved communications between polling places and higher election officials in order to resolve registration questions expeditiously.

For many states, a major effort must be undertaken to bring voter registration lists up to date. To ensure fairness and credibility, election officials should involve non-partisan experts as well as adopt other procedures that eliminate any perception of political motivation in the design or implementation of programs to remove deceased or ineligible voters from registration rolls. Any removal process should be consistent with voting rights laws and have safeguards to ensure that eligible voters are not removed.

New technologies can be a boon. But the powerful tools of information technology, if poorly applied, can produce incorrect results that jeopardize legitimate expectations of validly registered voters. Of course, the first line of defense is a statewide system that eliminates occasions for sudden, large-scale, and error-prone purges by regularly and reliably updating records

through the integration of new information.

Technology can carry only part of the burden of making registration records more accurate. Improved administrative procedures in voter registration agencies are essential. It is also essential that voters be able to act promptly to prevent mistakes in the handling of their registrations. Registrars should give voters prompt notification when they have been removed from the registration rolls because the registrars have received information that the voters are ineligible. In response, voters should have an opportunity to correct erroneous information. To make that opportunity fully meaningful, general programs to purge lists (where the risks of error are greatest) should be completed sufficiently in advance of election day (as, for example, 90 days) so that notices can be sent to voters who may then respond in time to resolve registration questions prior to the election.

Our working groups did not address whether registration records should be made more precise by use of an identifying number that is unique to each registrant. For example, the FEC, pursuant to its responsibility under the National Voter Registration Act, recommends using a piece of the Social Security number. The Privacy Act of 1974 prohibits states from requiring use of a full Social Security number for voter registration unless they had done so prior to January 1975. Seven states now require full Social Security numbers; two states require the last four digits. Seventeen other states request full numbers; three request the last four numbers. The FEC has recommended that states require use of the last four digits for new registrations, and request that information from current registrants.[1] In the FEC's view, the combination of a voter's name, date of birth, and the last four Social Security digits would get states as close as practical to a unique personal identifier for each voter while still protecting voters from release of full numbers.

Each state will make its own evaluation. In particular states, it may be important whether the state already uses Social Security information for public record keeping, such as for motor vehicle records. The various experiences of states that have been using all or part of Social Security numbers in their registration systems deserves evaluation. Ultimately, states will need to weigh the benefit of using a part of a registrant's Social Security number to establish more precise registration records against privacy concerns and any resulting disinclination to register. Whatever course a state chooses for its registration system, a registered voter's ability to cast a vote should not be contingent on remembering and providing an identification number to election officials on election day.

B. Election Day

No subject has attracted as much debate within the Forum as the question whether or what kinds of general alternatives to election day polling places – such as early voting at polling places, voting by mail or Internet voting – should be encouraged or discouraged. That debate will be described in a subsequent section, which will also discuss particular questions such as voting opportunities of military personnel and citizens living overseas.

Whatever differences may exist about alternatives to voting at polls on election day, there is, we believe, overwhelming support for the proposition that voting at the polls serves basic and historically rooted objectives. The gathering of citizens to vote is a fundamental act of community and citizenship. It provides the greatest security for enabling voters to cast their ballots free of coercion. It facilitates prompt counting and

verification of results, which is especially important in presidential elections given the constitutional and statutory time constraints in resolving any disputes about them.

For these reasons, it is essential to direct resources to improve voting at polling places on election day. Every step should be taken to make that a pleasant, accessible, expeditious, and efficient process. No matter how states resolve questions about alternative methods of voting, the national priority should be to correct deficiencies in the election-day, polling-place experience of voters.

Election day can present two very different pictures. One is of a remarkable event in which voters and election personnel succeed together in producing a crowning event of democracy. For too many Americans, however, the experience of voting on election day is marred by long lines at peak hours before and after work, insufficient numbers of personnel at their precincts, incomplete or inaccurate voter registration information, an inadequate number of voting machines or places, poorly maintained or aging voting machines, a lack of accessibility for voters with disabilities, poorly translated materials, and confusing ballots. In the preceding section of this report, we addressed the need to improve registration systems. In this section we will discuss accessibility, voting systems (which also involve accessibility questions), posted notices of voter rights and responsibilities, and provisional ballots.

1. ACCESSIBILITY AND STAFFING

Polling places should be fully accessible. One hundred percent accessibility should be the goal. Accessibility should be defined broadly. It should include selection of polling places that are accessible by persons who utilize wheelchairs, are visually impaired, or whose other disabilities or age limit their ability to enter and move about the buildings in which polling places are located. It should include accessibility of polling places to the communities they serve, with respect to the adequacy of their number, location, and availability of public transportation in urban areas. Limited English proficiency can also be a barrier that should be addressed comprehensively, from directions to polling places to the languages used in materials in them. Training of election personnel to be of assistance to voters with disabilities or who speak other languages other than English is also important. (Accessibility of voting machines for voters with disabilities will be discussed below in 4 (b).)

Convenient access may also be increased by working toward methods by which persons may vote, –within the jurisdiction in which they reside – at polling places near where they work, and have their votes transmitted to the locations where they live. Secure local area networks (LANs) – in contrast to difficult to secure Internet voting – may be a feasible avenue for making voting at the polls available to those whose working hours now make voting at their home precincts a serious ordeal. We recognize that technological advances will be required to allow voters to vote at near-to-work polling places for some bottom-of-ballot offices that appear on the voter's home precinct ballot. Despite the challenges, we believe that development of that technological capacity is a worthwhile objective meriting funding at least in experimental ways in the short term.

For military and overseas voters, the feasibility of establishing polling places at U.S. military and diplomatic facilities should also be studied. If military or other overseas service or occupation makes absentee voting a necessity, it should not erase the opportunity to join fellow citizens in casting a secret ballot at a polling place.

A major accessibility problems in our election system is the time available for voting on election day. There are, of course, important balances to be struck, because additional time will require added resources, including for the hiring and training of poll workers. We recognize that state and local election officials cannot simply decree extended voting hours and hire and train poll workers. To make these things happen requires a substantial infusion of funds. We strongly recommend allocation of increased resources for these purposes.

There is no consensus now on proposals for shifting an existing holiday (e.g., Presidents' Day) for use as a new uniform federal election day, or for having one or two days of weekend voting. One concern about a major change, such as establishment of an election day holiday, is that it may result in lower turnouts, if many Americans (too many of whom are now tenuously engaged in our political process) simply decide to take a holiday. For that reason, any move to holiday or weekend voting should be adopted only on a trial basis so its impact can be evaluated before a decision is made whether it should become permanent.

Greater accessibility should also be achieved by an increase in polling hours to accommodate our growing population and varied daily schedules. Our voting procedures working group recommended a nationwide norm of 15 hours; these hours are used by New York State, which keeps its polls open from 6 a.m. to 9 p.m. The precise number of hours of an expanded schedule should be studied further. We recognize that mandating longer voting hours will require serious study of poll worker arrangements and working hours, risks of inaccuracy due to fatigue, and other issues, not the least being cost. Nevertheless, longer voting hours can be a critical element in achieving the basic goal of making voting at the polls on election day accessible for all voters. Every effort should be made to achieve this goal as expeditiously as possible.

Hiring and training election day officials is difficult as it is. It will be more difficult, even with additional money, if efforts are made to expand their numbers. Still, a number of approaches merit consideration, such as experimentation with split schedules for poll workers, use of high school students, and more aggressive recruitment of retired people and other potential part-time employees. Election officials should work with civic organizations and with businesses and governmental units, which should be encouraged to give employees time off with pay to volunteer at the polls.

Since many schools are closed on election day in November, teachers, administrators, and high school students are available resources to be of assistance at polling places. School districts could provide academic credit for students who volunteer to work at the polls, and extra time off for teachers and administrative personnel who do so. States that require poll workers to be of voting age could relax that rule to accommodate high school students. For these and other election innovations, a clearinghouse should be used to share information both on what works and what does not.

Finally, states and localities should consider whether an increase in pay can help to recruit more poll workers. Enlarging the pool of poll workers may also allow the recruitment of more poll workers who, on the basis of prior training or aptitude, are able to provide the required level of service. In the long run, increasing the number of available poll workers will help in efforts to meet minimum training requirements.

2. POSTED NOTICES OF RIGHTS AND RESPONSIBILITIES

Although most voter education should precede election day, there is an indispensable form of election day education that is mutually important both to voters and election officials. A clearly written, prominently posted statement of principal rights and responsibilities can provide an easily available, common public point of reference to resolve most polling place issues. It should include the major requirements of federal and state laws as they apply to individual voters. It should cover such matters as a voter's right to a provisional ballot, to receive a replacement ballot to correct a mistake before submitting the ballot for counting, and a demonstration of the voting process. The posted statement should also include information on any identification requirements or time limits on voting.
Consistent with previous recommendations, it should be available in multiple formats so that the information is accessible to blind voters and voters with limited English proficiency.

3. PRESERVING THE RIGHTS OF VOTERS WHO COME TO THE POLLS

Among a voter's most disappointing experiences must be that of getting to the polls and then being precluded from casting a ballot.

a. Closing Hour Lines

On account of his or her work schedule or for other reasons, a voter might arrive at the end of the voting day while the polling place is open but not reach the front of the line before the polls close. Lines at the end of a day may result from factors well beyond the voter's control, including an inadequate number of voting machines or machine breakdowns. The principle should be clear: if a voter is in line by the poll closing time, he or she should be allowed to cast a ballot even if that ballot is cast after the polls have officially closed. No voter who shows up within the hours that polls are open should be turned away.

b. Provisional Ballots

A voter may discover that polling place records do not show his or her voter registration. A motor vehicle department or other registration agency might not have forwarded registration information to election officials. Or election officials may have canceled a registration on receiving incorrect information wrongfully attributing to a voter a disqualifying circumstance, such as a criminal conviction. Integrated statewide voter databases will reduce the occurrence of such problems. Additionally, electronic access to statewide databases and improved communications to higher election officials should help resolve, on the spot, many registration questions. But some will not be resolvable on election day.

Some states allow voters who moved and whose names are not on the rolls at their new polling place to cast a ballot. Some have extended this practice to cover any voter claiming to be registered whose name does not appear on the rolls. But a broader reform is needed. If a voter is turned away and leaves a polling place without voting or filling out a provisional ballot, that voter's opportunity to vote will be irretrievably lost even if the facts show on further inquiry that the voter is qualified.
In the event that registration questions cannot be promptly resolved on election day, voters, at a minimum, should have an opportunity to submit provisional ballots that will constitute their votes if it is determined that they are qualified. A prominent feature of a voter bill of rights posted

at polling places should be information to voters about their right to submit provisional ballots. If a registration question arises that cannot be resolved that day, it is good practice to use the voter's request for a provisional ballot as a registration application or to offer the voter an opportunity to fill out a registration form, even as efforts are made to resolve whether the voter is entitled to vote in the election and at that polling place. At the very least, the voter should be secure in knowing that the registration question will not arise at the next election.

In some places, state laws or administrative rules allow election authorities to include provisional ballots in the initial election-day count. If those ballots are not counted on election day, election officials should determine in the days immediately after whether the voter was entitled to vote and the ballot should be counted. In making that determination, they should check relevant records, including motor vehicle records or records of other voting registration agencies that may have failed to transmit registration information to voter registrars. A voter should be informed whether his or her provisional ballot was counted.

In some states, key functions of provisional ballots may be served by devices of a different name, such as affidavit, conditional, or fail-safe voting. The key, of course, is not the name, but the substance of the procedure afforded to voters to preserve their opportunity to vote. It may also be that procedures in some states, such as affidavit balloting, are more protective of voters than provisional balloting, if they allow voters to vote (actually, not provisionally) on showing basic identification, affirming the fact of their residency, and attesting they made a good faith effort to register. A recommendation for provisional balloting should not be construed as an argument for cutting back on existing protections. Instead, provisional balloting procedures should be a floor from which to proceed in any jurisdiction that turns voters away if a registration question is not resolvable on the basis of polling place records.

Provisional ballots, used when the name of a voter does not appear on the register, should be distinguished from ballots cast by voters who are on the rolls but whose eligibility is challenged. For example, a party worker might claim that the voter should not have been registered because of a lack of citizenship or that the voter is not the person who was registered. States should take steps to ensure that any challenge process will not be used to intimidate voters or to manufacture a prolonged contest.

4. VOTE CASTING

In our discussions about vote casting, four objectives have been stressed:

1) to employ vote casting technologies and good ballot design that enhance the ability of voters to record intended choices accurately; avoid negation of votes by mistakenly casting more votes for an office than permitted (overvoting); and avoid inadvertently failing to cast a vote for an office (undervoting);

2) to provide voting technologies accessible to voters with disabilities or persons with limited English language literacy, that enable them to vote privately and therefore secretly;

3) to use voting technologies that are flexible enough to accommodate the various ballot methods currently in use; and

4) to use voting technologies that allow for auditability, namely, the ability to recon-

struct each voter's original vote in the event of an election contest.

a. Overvotes and Undervotes

Over the last four presidential elections, approximately two percent of all ballots cast were not counted as having recorded a valid presidential vote because they were unmarked, marked for more than one candidate, or marked in another way that led to their not being counted.[2] That rate has not changed over this period even though new technologies have been introduced. For some voting methods and some localities that rate is higher; for others, lower. Those differences present significant issues of equity. But even if the two percent rate had been evenly spread throughout the nation, and bore no relation to the wealth or racial or ethnic characteristics of various communities, two percent of 100,000,000 voters in a presidential election is 2,000,000 voters. That is an unacceptably high number. We should do better.

It now seems clear within the election community and among independent analysts that unmarked or spoiled ballots are due more to designs that lead to mistakes in voting than to the physical breakdown of equipment, although improved maintenance is often needed. There is strong evidence that failures associated with voting equipment are produced by two things. One is the difficulty or confusion that too often arises from the way in which voters are presented choices through the design of the ballot or a touch screen. To reduce confusion, it is important to bring to bear a high level of professional, contemporary understanding of how good design can assist voters in making accurate choices and being confident that they have made them.

The other strong contributor to mistakes is the lack of timely feedback to voters that would allow them to correct inadvertent errors before submitting their votes for counting. Some existing technologies offer especially poor feedback. Other than determining whether chads have been removed, it is particularly difficult for voters to determine whether they have properly recorded their votes on punch cards that do not include the names of candidates.

Two promising techniques are precinct scanning for optical or punch systems and ballot review in electronic machines. These allow voters to check if their ballots are properly marked before submitting them to be counted. If a voter learns before finally casting a vote that he or she mistakenly overvoted or undervoted, the voter should have a chance to correct the mistake. The field evidence is that second chance voting opportunities enable voters to reduce mistakes, in contrast to counting at central locations where ballots cast at precincts are transported and where voters no longer can correct mistakes. We believe officials should employ systems that enable voters to check for ballot errors.

Overvoting, typically the casting of votes for two candidates for the same office when only one vote is permitted, is almost invariably a mistake. In contrast, undervoting, not casting a vote for an office or ballot question, may be a voter's deliberate decision. A voter may choose to abstain from voting for a high office or, more generally, experience fatigue by the time he or she reaches local offices on a long ballot.

Owing to the potential difference between overvotes and undervotes, a question has been raised whether election officials should exercise discretion in deciding whether to provide an opportunity for ballot review in both circumstances, or if the opportunity should be limited

to notification of overvotes. A concern is that voting times and consequent lines will be lengthened if every voter is required to go through a second step of ascertaining whether the voter has made a mistake in completing his or her ballot. In this regard, the point to be stressed is that ballot review is an opportunity for voters to determine whether they have made a mistake. Voters may choose to bypass that chance. Also, in implementing any system of ballot review, voting devices should be developed over the long term that can limit and flag errors without the intervention of poll workers, in order to protect the sanctity of the secret ballot.

b. Accessibility

In addition to the physical accessibility of polling places and the other matters covered previously, the goal of full accessibility applies to each step in the voting process from registration to vote casting. In the past, voters with poor or no vision, motor impairments, or low levels of English literacy generally have not been able to vote without assistance.

Numbers of citizens will continue to need and therefore have a right to assistance in voting. But the goal of full accessibility also places a high value on the ability of each voter at every polling place to vote independently and therefore secretly – as all citizens should be able to do. There are important and encouraging developments. Some equipment vendors or election officials now offer recordings that guide blind voters through electronic voting sessions or provide tactile guides for voting with optically scanned paper ballots. Some electronic voting machines can be programmed in multiple languages for the nation's language minorities.

Further developments are needed. Technology provides the potential. Law and public resources should be enlisted to fulfill that potential.

c. Ballot Methods

In addition to employing vote-casting technologies that enhance the ability to vote accurately and privately, voting technology should also be flexible enough to enable states to choose among a variety of ballot methods. In all federal elections and most others, voters are asked to vote for a single candidates for an office. But in various state or local elections, voters may be allowed to vote for more than one candidate for an office, such as voting for two at-large county or city council representatives. But other formats are possible, and have their strong advocates, such as formats that allocate more than one vote for a single candidate, as in cumulative voting; or rank candidates in order of choice, as in choice voting and instant runoff voting.

This report does not take a position on the merits of particular ballot methods. Our point is only that voting technologies should have the capacity to accommodate various ballot methods. The development and selection of a particular voting technology ought not to impede the possibility of subsequent legislative adoption or modification of the kinds of ballot choices that should be made available to voters.

d. Auditability

The administration of elections involves a massive computing task. Votes are cast locally in precincts on dedicated machines. The votes cast for each office or ballot question must be tabulated quickly and accurately. Sometimes votes are tallied in the precinct and transmitted to a central location; sometimes the ballots themselves are transferred to a central location and

tallied there. The opportunities for errors in aggregating the vote or for corruption of the count seem inevitable. In the event of an alleged problem with the vote tally, officials must verify the accuracy of the count. The ability to reconstruct the original vote – to conduct an audit of the original count – is termed the auditability of the system.

Voting technologies differ in the ability of election officials to audit election results. Systems based on paper (hand-counted paper and optically-scanned or punch card ballots) have an advantage over direct recording technologies (lever machines and electronic voting machines) with respect to auditability. A tally of hand-counted paper ballots or an electronic count of punch card or optically-scanned ballots may be audited by recounting the original ballots marked by the voters. Judgment about voter intent is sometimes required, as ballots may have stray marks or voters may have marked their ballots in an unconventional manner. Nonetheless, there is an initial statement of the voters' intent that is separate from and remains after the counting process. Of course, paper-based ballots can be altered after they have been cast, and accurate vote verification can be a challenge with regard to any voting technology or method.

In contrast to paper-based ballots, votes cast on lever or electronic machines are directly recorded on them. Individual votes cast on lever machines cannot be audited. While the count recorded on the back of the machine can be verified, votes may be lost if a lever machine breaks down. Many direct recording electronic machines have the same problem. Some now produce internal tapes of each voter's voting session, but programming failures or fraud may affect data recorded on the internal tapes as well. However, if voting data from direct recording electronic machines is altered after election day, the alterations can be detected by comparing the data to multiple and independently saved data sets.

A further audit issue is the ability to observe a count. Historically, in the United States, the primary method for guaranteeing accurate counts is openness. Allowing campaign representatives and the press to observe a count introduces checks on errors. Campaign observers commonly catch transcription errors in the recording of tallies from the backs of lever machines. The increased use of electronic counting procedures and closed source software means it is becoming difficult if not impossible for candidates and party organizations to verify the vote. Lack of openness of software presents technological and security concerns that should be addressed. For all these reason, standards for acceptable levels of auditability should be developed.

Pointing out these considerations is not intended to favor one kind of technology over another. There may be pluses to a form of technology, either generally or with respect to voters for whom that technology provides essential benefits that outweigh the shortcomings of that technology. Overall, it is important to recognize that there are significant choices to be made and progress to be achieved in the course of both responding to deficiencies in technologies and in developing their strengths. In order to provide the greatest voting benefits to a varied voting population, it may be that several forms of technology should be used. For example, it might be appropriate to provide, in each polling place, a direct electronic recording machine with audio capacity for blind voters and multilingual capacity for voters who require that (although, of course, any voter may use those machines), while also using less expensive optical scan systems that do not have those enhanced features.

C. After the Polls Close

The key task after the polls close – vote counting – directly relates, of course, to the specific issues that dominated last year's election controversy: what should constitute a vote and how should vote-counting disputes be handled? In the 2000 election, those issues arose in a presidential election, a setting that presents special questions about the available time for resolving disputes. Counting and contest issues can arise less dramatically in elections for other offices. Responses to the 2000 experience should work for all elections.

1. TIMELINES

Each state should review its election code to ensure that its election calendar includes a realistic timetable for procedures on counting and any recounting of ballots that assures prompt resolution of the official outcome of the election. By virtue of two longstanding federal laws, one establishing the first Tuesday after the first Monday in November as the national election day (3 U.S.C. § 1), the other establishing the first Monday after the second Wednesday in December as the date on which presidential electors shall meet and vote (3 U.S.C. § 7), there are only about 40 days between election day and the date the electoral college meets. Thus, each state's post-election timetable should aim for resolution of counting and contest procedures within that time in order to assure that they are completed in time for electors to cast the state's electoral votes.

2. WHAT CONSTITUTES A VOTE

Each state should define what is a valid vote. Many states have election code provisions that (with variations in phrasing) require election officials to determine the intent of voters in deciding how to count ballots. In the aftermath of the Supreme Court's decision in *Bush v. Gore*[3], each state should review its general legislative policy on the definition of a valid vote, and also the manner in which it should apply that policy in order to assure the equal treatment of voters.

Each state has a major choice to make. One possibility is to prescribe an exact form of casting a vote and to preclude the counting of any vote not cast in that precise manner. Casting votes in accordance with election rules is the standard to which voters and election authorities should aspire. Nevertheless, it is inevitable – when millions of people vote – that systems that require voters to physically mark ballots or to punch holes in them will give rise to variations that make some difficult to count. As a matter of democratic principle, we believe election law should place a value on an effort to evaluate whether a voter's choice is clearly discernible even if a voter did not follow instructions to the letter. Certainly, in the case of write-in votes, exact spelling should not be required as long as the voter's choice is clear.

It is impossible to anticipate every anomaly. Still, as required by *Bush v. Gore*, rules should be in place to assure equal protection of the law in resolving recurring questions that arise under various voting technologies. An example of a recurring question for which there should be a uniform rule throughout a state is what to do when a voter correctly marks a vote for a candidate and also writes in the name of the same candidate. In that circumstance, the vote for the office should be treated as a single valid vote, as there can be no doubt about the voter's choice. The second marking may be understood to emphasize the voter's choice; it should not be the occasion to negate it.

State law should establish the general principle and procedures for developing specific rules for resolving counting issues. Because counting rules for different voting systems will be detailed and subject to change as technologies change, the task of filling in the details should be carried out in administrative rules, issued by the state's chief election authority in advance of an election, rather than fixed in permanent law. States should use procedures that give public notice of proposed rules and open them to public comment. The political parties whose candidates will be affected by the rules, and local election officials who will in many instances carry out the rules, should be an important part of the rulemaking process.

3. MANUAL RECOUNTS

Most states provide for an automatic retabulation of votes if the results are close. State law may also authorize candidates to petition for a retabulation. The latter may be conditioned on payment by the requesting candidate for the cost of the retabulation. In places with vote tabulating machines, retabulations can be conducted in accordance with established procedures, including procedures for auditing the machines for accuracy. This subject is discussed in the next section.

When should a recount go beyond machine retabulation of all votes and provide for the individual examination of some ballots? In response to its experience in the last election, Florida's answer is that manual recounts should be triggered in two circumstances. There will be an automatic trigger in elections with razor-thin margins of victory, where a candidate is defeated by one-quarter of a percent or less of votes cast for the office. In elections in which the difference is slightly larger but still small (between one-quarter and one-half percent) a manual recount shall be done on request.

In a manual recount, Florida now provides that approved software will be used to separate two kinds of ballots from all others: ballots in which no vote is tabulated for an office because none is identified by the tabulating machine (undervotes), and ballots in which no vote is counted because the machine has identified two or more votes for that office (overvotes). Only those ballots will be subject to individual review under Florida's new system. If on applying specific counting rules established for each certified voting system, counting teams cannot determine "a clear indication on the ballot that the voter has made a definite choice" (the state's new standard), the unresolved undervotes or overvotes will be submitted to a canvassing board for determination.

Because Florida's manual recount provision is triggered not by events in a limited geographic area (such as a machinery breakdown in one county), but by a margin of difference among all votes cast for an office, it follows that any manual recount should be throughout the electoral jurisdiction of the office in question. In Florida, as in all states (other than for two electors each in Maine and Nebraska who are separately elected in each state's two congressional districts), all presidential electors are elected statewide. This means that in Florida, any future manual recount in a presidential election will be conducted statewide. This requirement addresses one of the equal protection issues raised by *Bush v. Gore*.

Florida has fashioned a thoughtful approach to manual recounts that merits consideration elsewhere. Other states may frame answers in different ways. Before making a recommendation that might apply to all states, there is more to learn about the range of possible responses. Clearly, the questions answered by Florida – when should individual ballots be examined, which ballots should be selected for examina-

tion, what should be the standard and procedure for examining them, and what should be the geographical extent of the examination – are questions that all states should answer.

4. AUDIT PROCEDURES

Provisions for manual recounts are important safety valves in close elections. But confidence in the election system is needed even when electoral outcomes are not close. The challenges in maintaining that confidence have grown in light of technological changes that make the inner processes of machine vote counting less visible to parties, candidates, and the public. It is therefore critically important to establish and utilize regular systems to check the accuracy and integrity of vote tabulating machinery.

Audits of tabulating machinery should occur both before and after election day. A useful technique in auditing is to recount a small percentage of the ballots or electronic ballot images manually or on an independently programmed machine. For example, in California, a one-percent manual recount is required automatically, regardless of the spread of votes between the candidates. This process sometimes discovers errors due to programming errors or the assignment of votes to the wrong candidate.

5. ALL VOTES SHOULD BE COUNTED

Our individual right to vote includes our individual right to have that vote counted no matter which of the methods permitted by state law we use to cast that vote. This is true whether we cast a ballot at the polls, submit a provisional ballot to be counted if a registration question is resolved favorably, or cast an absentee ballot as a military or overseas voter. No qualified voter should be in any doubt about the counting of his or her ballot.

D. Alternative Methods of Voting

No subject has generated as much debate in our proceedings as the question of alternatives to voting on election day at a polling place. It is clear that there is not consensus on this issue. It is possible, however, to identify important areas of agreement while demarcating the principal significant area that presently eludes concurrence.

Election day voting at polling places provides the best opportunity to achieve every one of five fundamental objectives:

1) assure the privacy of the secret ballot and protection against coerced voting;
2) verify that ballots are cast only by duly registered voters;
3) safeguard ballots against loss or alteration;
4) assure their prompt counting; and
5) foster the communal aspect of citizens voting together on the same day after having had the opportunity to hear the full common pool of public information the campaigns can provide.

No form of alternative voting has been devised that can provide every one of these benefits.

There are four alternatives to election-day, polling-place voting methods:

- Internet voting;
- voting entirely by mail;
- absentee voting – which itself has two components: absentee voting for voters who are unable to come to polls, and unlimited absentee voting as a matter of convenience; and

- early voting at election offices.

This report discusses each in turn.

1. INTERNET VOTING

Three types of Internet voting are imagined. One is poll-site Internet voting in which votes cast at regularly established polls are transmitted for counting. A second is voting at kiosk terminals placed in public places (other than regularly established and staffed polls). A third is remote Internet voting in which voters cast votes from any Internet accessible location.

Poll site and kiosk Internet voting present significant unresolved issues, but systematic research and evaluation may identify reasonable limited experiments to help advance the objectives previously described, such as permitting voting at election day locations close to places of work. As for the potentially vast category of remote Internet voting, a recent study sponsored by the National Science Foundation demonstrates the significant security risks it would pose to the integrity of voting.[4] The study urges that remote Internet voting not be used in public elections until substantial technical issues, among others, are addressed. If security problems are ever solved, remote Internet voting would still face important additional issues concerning the impact of alternative voting. There is no present timeline on which remote Internet voting should become part of the nation's voting methods.

The National Science Foundation study suggested that remote Internet voting may be appropriate for special populations, such as the military and their dependents based overseas. We believe that experimental military voting experiments should be continued.

2. VOTING ENTIRELY BY MAIL

Only one state – Oregon – conducts its elections entirely by mail. The unique decision that Oregon voters and officials have made for themselves must, of course, be respected. However, whatever benefits there may be of having an alternative to polling place voting, voting entirely by mail is not an alternative, it is a replacement. The complete loss of polling place may be why no other state is considering the Oregon system.

3. ABSENTEE VOTING

a. For Persons Unable to Vote at Polling Places

Important parts of our population are unable to cast votes at polling places. These include persons who by reason of age or disability are unable to vote at polling places, persons in military or civilian service overseas, and other voters unavoidably away from home on election day. No matter how the broader debate about alternative voting methods is resolved, for these voters and others such as them, a hospitable and efficient system of absentee voting, with protections against fraud or other abuse, is essential to fulfilling our commitment to universal suffrage.

b. Unlimited Absentee Voting

The area of significant disagreement within our Forum is whether absentee voting should also be available to voters who are able to vote at polling places but as a matter of convenience prefer to absent themselves and vote by mail, as a number of states now permit. Absentee voting presents a risk to every one of the fundamental benefits of election day, polling place voting described at the outset of this section. For voters who are unable to come to a polling place on election day, the unavailability of absentee voting would cause the

loss of that person's franchise. For all other voters, the unavailability of absentee voting would present at most a possibility that some voters will choose not to vote.

We know from the actual experience of recent elections that, in some states at least, the number of voters who vote as absentees as a matter of convenience can grow vastly. Whatever any state may determine is appropriate for itself in state and local elections, in federal elections the consequence of unlimited absentee voting on the ability of the state to produce a final count and decide controversies about it in time for the resolution of a national election is something that the nation has a stake in. In presidential elections, both the sheer additional task of counting absentee ballots, and the multiplication of issues that may arise about the validity of individual ballots cast away from the protections and scrutiny of polling places, may overwhelm the ability of any state to resolve an election controversy within the spare six weeks that are available between election day and the meetings of presidential electors. Or the control, and hence, the organization of one or the other chamber of Congress may be at stake.

States that now employ unlimited absentee voting are not likely to roll back that voting method unless convinced by evidence from their own experiences. In the best tradition of federalism, any jurisdiction that has moved in that direction may serve as a laboratory for itself and others to examine. For any state that has adopted unlimited absentee voting, this report encourages, in light of the issues raised above, a regular reevaluation of the costs and benefits of their procedures. For any state that has not yet adopted unlimited absentee voting, the issues raised above warrant treating with caution and examining carefully any new proposal to move toward greatly expanded or unlimited absentee voting.

4. EARLY VOTING AT ELECTION OFFICES

Early voting at election offices (or at other places under the supervision of election officials) is the method of alternative voting most consistent with the fundamental objectives described at the outset of this section. It preserves all the secret ballot, fraud prevention, and ballot integrity aspects of polling place voting. It shares in a portion of the communal aspect of voting, because although the number of voters will be smaller, voting does not take place in isolation. It falls short only in that early voters will not receive all of the public information provided by the campaign and will not be able, as other voters may, to take account of events just before election day.

There are compensating advantages of early voting. Some voters who may have had to vote by absentee ballot because of travel on election day will be able to come to a polling place and vote in the several weeks before the election. Older or disabled voters, who may prefer to vote at a polling place but who would be impeded by the crowds or pace of election day voting (or, until remedied, the type of equipment at regular polling places) and therefore have to vote as absentees, also will be able to vote at a poll. Of course, other voters will vote early as a matter of convenience, but even for them there may be a reciprocal public benefit. Jurisdictions are able to use early voting at election offices or other election sites as an opportunity to test, on a smaller scale, voting machinery innovations that officials might prudently be reluctant to try first at polling places on election day. To ameliorate the impact of votes without a common base of information, the range of dates for early voting should be kept relatively narrow and close to the election.

One final concern is the impact of alternative forms of voting on voter participation. Enhanced turnout by itself would not necessarily outweigh the loss of the other combined benefits of voting achieved only by voting at the polls on election day. Nonetheless, in the course of evaluating the costs and benefits of alternatives to voting at the polls on election day, states should consider the impact on both overall voter turnout and turnout among different populations, such as people with disabilities, and people of different races, ethnicities, or income levels.[5]

E. Top-to-Bottom Review of State Election Codes

As elemental as it may appear, a pillar of each state's election system is a sound state election code. Even if a major revision of a state election code is not required, many state legislatures will discover that, over time, inconsistencies have crept in and that their codes are not easily usable by participants in the electoral process, clear to the courts, or comprehensible to the public. Earlier in this report, we discussed the particular need to address state code provisions on such matters as what constitutes a valid vote and procedures for resolving issues about recounts or contests. More generally, in light of the Supreme Court's decision in *Bush v. Gore*, states should consider whether uniform statewide requirements should modify or replace various delegations to local election authorities that might result in the unequal application of law to various parts of the state's electorate.

As long as its state law is harmonious with the requirements of the U.S. Constitution and federal law, each state is free to fashion its own code. Nevertheless, there is a great deal that states can learn from each other. To that end, there are mechanisms through such bodies as the National Conference of Commissioners on Uniform State Laws or the American Law Institute for preparation of model codes for consideration by individual states. One lesson from the last election is that an election dispute in one state may have enormous implications for the country as a whole. In a sense, every state owes it to every other state, as well as to its own citizens, to have an election code that draws upon both the best of its own experiences as well as that of others.

Among additional areas that merit review by the states, this report notes the following.

First, states should review their laws and procedures for the restoration of voting rights. Where such a procedure is available, states should ensure that individuals are notified about the opportunity to restore voting rights and that decisions are communicated to the individual in a timely fashion.

Second, we encourage states to take steps to increase public confidence by reducing partisan influences, and the appearance of such influences, as much as possible. We recognize that many election officials hold elected office, or report to elected officials. The most important check on partisanship will be sound laws and procedures established in advance of an election. Membership in professional associations with a code of ethics may also help to balance any concerns about partisanship. It is important that a review of partisan influences include all aspects of the election process, including registration, the design of ballots, absentee voting, oversight and observers at polling places, and the location of polling places.

Similar recommendations have been endorsed by the National Commission on Election

Standards and Reform, a joint undertaking of the National Association of Counties (NACo) and National Association of County Recorders, Election Officials and Clerks (NACRC).[6]

Third, states and localities should consider reducing the frequency of elections by consolidating them while being mindful of the desirability of ballots of moderate length. This is especially important as part of an effort to increase participation in elections.

PART II

II. PROPOSALS FOR CONGRESSIONAL ACTION

Congress has broad constitutional authority to regulate the times, places, and manner of conducting federal elections. As a result of that authority and other constitutional powers to ensure the voting rights of Americans, the federal government is today an active participant in establishing rules for federal elections on matters ranging from voter registration to protections against discrimination on grounds of race, language, and disabilities. But as pervasive as the federal role has become, Congress has never provided funds to state or local governments to assist them in administering federal elections or in defraying expenses for federal requirements that also affect state elections.

The proposals that follow do not come close to testing the limits of the constitutional authority of Congress to regulate federal elections. Historically, local governments (particularly counties) – and to a lesser extent states – have been primarily responsible for administering and funding elections. We share with many others the view that primary responsibility for conducting elections should remain at the state and local level.

We also believe the federal government should assist states and local governments in modernizing the nation's election system. An important balance must be struck between two important objectives. One is providing state and local governments with substantial discretion to make improvements that they identify as important. The other is to identify improvements that, as a matter of broadly shared national values not unique to individual states or locales, should be subject of special incentives or requirements. The pivotal mechanism for assisting the states is the power of Congress under the Constitution's General Welfare Clause, Art. I, § 8, cl. 1, which embraces the power to spend "as a means to reform the electoral process." [7]

A. Federal Assistance for Research and Technology Standards

For 130 years, Congress has legislated on the manner in which votes may be cast in congressional elections. In 1871, as part of a civil rights measure designed to protect against voter intimidation, Congress provided that all votes in House elections shall be by "written or printed ballot" and that "all votes received or recorded contrary to the provisions of this section shall be to none effect." In 1899, it amended this provi-

sion to permit voting for the House by "voting machine the use of which has been duly authorized by the State law." These provisions are now found in 2 U.S.C. § 9.

Each state was on its own in determining what machines to authorize. In 1975, the National Bureau of Standards awakened attention to the lack of technical skills at the state and local level for developing written standards to evaluate voting system hardware and software.[8] Its report launched a process that resulted in the 1990 approval by the Federal Election Commission of voluntary engineering and performance standards for voting equipment. Thirty-seven states have adopted (or advised the FEC that they will soon adopt) those standards for new purchases.

Congress should now take the next step and enact statutory authority and provide appropriations for support of federally-conducted or assisted activities to enable states and local governments to benefit from research on improved voting technologies, the development and regular updating of standards for them, and a clearinghouse of experiences with voting technologies. These functions should be funded on a long-term basis in recognition that voting technologies will be continually developing.

The FEC is updating the voluntary engineering and performance standards that it issued in 1990.[9] As described earlier in this report in Part I (A)(2), an expanded standards program should also include voluntary management or operational standards and performance or design standards to optimize ease-of-use and minimize voter confusion. The federal agency that Congress charges with the responsibility to conduct the standards program should have discretion to select for particular purposes the form of standards – such as minimum criteria, specifications, or best practices – that is most suitable for making progress while leaving sufficient room for innovation.

This recommendation is grounded on several considerations. Even if some states can afford the costs of developing new voting technology standards and keeping them current, many cannot. Overall, it makes economic sense for the federal government to undertake this function for the benefit of all states. Also, some objectives of federally assisted research or the development of standards or performance goals will be to serve democratic values that are not readily supportable by the budgeting of individual states. Neither should these objectives, such as development of technologies to enable disabled voters to vote without assistance, depend solely on the research budgets of equipment manufacturers.

In sum, Congress, by law in effect for now more than 100 years, has required states to authorize any use of voting machines; otherwise votes recorded on those machines may not be counted. For ten years, Congress has undertaken to provide voluntary standards to assist states in the exercise of that responsibility. Those standards are out-of-date and more limited than they should be. In short, the federal government has imposed a responsibility on the states for authorizing the use of voting machinery and taken on a reciprocal one that is key to enabling the states to perform their congressionally mandated responsibility soundly. The modest investment called for by this recommendation is amply justified.

Finally, improvements in election administration require research, the identification of best practices, and exchanges of information about issues in addition to new technologies. To provide illustrations from other portions of this report, there is a need to gain systematic knowledge about

such matters as the impact of poll locations, polling hours, and alternative methods of voting on voter participation. Election administrators could also benefit from research on systems management (e.g., the maintenance of accurate registration systems), human resource management (e.g., the recruitment and utilization of election day workers), and issues relating to compliance with federal law (e.g., the presentation of voting information in multiple languages).

Currently, Auburn University, in conjunction with the Election Center, provides one of the few professional training programs in election administration. Coordinated research on elections management, including development of curricula, would allow the nation's schools of public administration, an untapped resource, to play a constructive role in the continuing professionalization of election management.

B. Federal Grants for Capital Investment in Voting Systems Technology and Use

Broadly speaking, two kinds of proposals for federal election system grants have been presented in congressional testimony and public reports during the last several months. One is for a capital investment program for acquisition of new voting system hardware and software by states and local governments during a limited number of years. The other is for a permanent federal formula for sharing with state and local governments the costs of election administration that may be attributable to elections for federal office. In this section, we discuss the proposal for a capital investment program. In discussing a grant program, our references to states include the District of Columbia, which by virtue of the 23rd Amendment also appoints presidential electors.

We believe it is an appropriate federal role to provide grants for a multi-year capital investment in voting technology, both hardware and software, and that a strong case has been made for a grant program. A number of important technology needs emanate from requirements of federal law. Examples include the information management challenge of the National Voter Registration Act and the translation requirements of the Voting Rights Act. National aspirations that should not be dependent on local resources, such as assuring that disabled citizens have the same voting opportunity as other citizens, present other technological challenges. The grant program should enhance the efforts states are making to comply with existing federal requirements.

Finally, funding for election investment is now dependent on local government resources, and therefore constrained by disparate or limited local tax bases. States should do more to modernize and equalize voting opportunities among their jurisdictions, but the task is large enough that there is ample need for both federal and state assistance and cooperation.

The program should be for a range of purposes that is broader than just voting machines, although voting machinery would surely be an important part of it. While public focus has been on vote-casting devices, state and local election officials have demonstrated that there is a wider scope to voting system needs, including for investment in registration systems. As it should do for any appreciable federal expenditure, Congress should define clearly the program's scope and articulate its goals. Within that scope, states should be able to establish priorities that apply to their circumstances.

1. SCOPE

We recommend that the following be included within the scope and objectives of a federal grant program:

1) For improved registrations systems:

Funding should be provided for (a) development and maintenance of statewide databases – some states will establish a single database, other states may link county databases; (b) electronic integration of information from motor vehicle bureaus and other sources of registration information; and (c) electronic communications between and among polling places, county and other registrars, and central registration databases.

The purpose of this investment should be to enable states to develop and maintain accurate registration – databases that fully utilize key registration related information within each state, including change of address, death, and other such matters. Grant funds should be available for the development of links to other states to correct records as voters move from one state to another. Registration databases should be usable in a timely way at polling places to correctly and promptly resolve registration questions.

2) For precinct-level voting equipment, including counting equipment:

The purpose of this investment should be to enable states to acquire new voting machinery, including precinct counting machinery, that will be easy for voters to use and reduce voter mistakes or inadvertent omissions, including by alerting voters that they have cast more votes than permitted for an office or have not cast a vote for an office or ballot question, and that provide voters with an opportunity to correct those mistakes or omissions. The purpose of this investment should also be to enable voters with disabilities to operate voting machinery independently and thereby vote secretly, as other voters may.

3) For election personnel training and voter education about use of voting technologies:

We discuss below whether the federal government should provide general support for election administration. No matter how that question is resolved, we recommend that part of a technology grant program should be funds for training and education in the operation and maintenance of voting equipment, both with respect to new technologies that are acquired with federal grants and for improved use of existing technologies that continue to be utilized. Assistance in meeting these objectives should be integral to the basic investment.

2. DURATION

Congress should determine the duration of a federal voting systems technology grant program. We have several recommendations about factors that should be considered in establishing the length of a capital investment program.

Some states, through legislation already adopted, are ready to purchase or lease new voting technology. They would be assisted by the

appropriation of funds for a federal grant program that goes into effect for the fiscal year beginning October 1, 2001. Other states have established study or planning processes in order to help make technology and other decisions later this year or during next year. Their focus may be on the fiscal year beginning October 1, 2002. A state may wish to stage investments, such as by devoting initial efforts to registration improvements and then moving to voting machinery, or vice versa. States that have invested recently in new voting technology may wish to wait several years for the next generation of voting equipment. Consideration should also be given to the capacity of the voting equipment industry to produce for a market made more active by federal grants, so the pace of grants and acquisitions do not inflate the costs of new products.

In striking the right balance, there is also good reason not to extend unduly the national timeline for discernible voting system improvement. For planning purposes, it makes sense to think of the desirability of cooperative federal-state planning to effect stages of changes in time for the next three federal elections in 2002, 2004, and 2006. This period of time coincides with proposals in pending legislation to establish programs that are five or so years in length. A benefit of implementing modernization efforts by the 2006 election would be to ensure that there is an opportunity to work out any issues that may inevitably arise in adjusting to significant changes before the 2008 presidential election.

At the point selected by Congress, the program should sunset. Any extension would be subject to a fresh determination by Congress that, on evaluating experience under the program, renewal is warranted. Of course, in considering whether to extend the program, a major consideration should be whether a five-year program life has proven to be too short for effectuating soundly in all states the major modernization effort contemplated by the program.

3. ALLOTMENTS

Congress has many options for structuring a grants program. A threshold decision is whether to award grants to states on a competitive basis (with the possibility that some states may not receive any funds), or whether to award grants to all states on the basis of a formula. In light of the significant and urgent need for federal assistance throughout the country, we believe preference should be given to a grant program that is principally formula-based.

A likely formula is apportionment of funds among the states according to the share of each in the nation's voting age population, although a prescribed uniform minimum allotment for each state might sensibly reflect that certain costs (for example, software for statewide registration systems) may not depend on the voting population of each state. Of course, some states may opt out of the program, either entirely or in part. To the extent that applications from a state (or from localities if a state does not apply) do not utilize the entire amount allotted to the state, the state's unused share of the federal authorization should be reallocated among the remaining states. There may also be limited, defined circumstances, such as when a state is knowingly in violation of federal requirements, that release to it of the state's share should be deferred pending compliance with applicable requirements.

Each state should be required to submit a plan for use of its allocation, as described in the next section. Accordingly, some funds should be released at the outset of the federal grant program to assist states in preparing plans. The

formula for apportioning these funds should take into account that each state, no matter its population, will incur some similar minimum costs in establishing and implementing a statewide planning process.

There are several advantages to a principally formula-based approach. First, it will be useful to encourage participation by every state because all states can benefit from an investment in election administration. Second, the expectation of timely and regular receipt of a predetermined amount of funding will enable each state to engage in an orderly planning process. Third, a formula-based approach should reduce the costs of federal administration.

Finally, while the overall federal grant program should be principally formula-based, there is good reason to reserve a portion of it (for example, ten percent) for pilot state or local programs that may provide a testing ground for technologies or their applications. In the nature of pilot programs, the grants for them should be awarded on a competitive basis to encourage innovation.

4. APPLICATIONS

Congress should establish a process for application for federal grant funds and for the review of activities under those grants. As an ordinary matter, we believe local governments should submit requests to their states and that states should submit applications to the federal government. Each state will need to make a judgment, after collecting requests from local governments, about structuring its application so it fits within the amount that will be available to the state. There may be limited circumstances – for example when a state declines to participate in the grant program – in which local governments should be authorized to apply directly to the federal government. In the main, states and local governments should be encouraged to work together to formulate a statewide plan. Otherwise, the federal task of sorting through individual local government applications could be daunting.

A state application should include a publicly available plan that describes the state's election investment needs, how the state will use federal funds to address those needs – including how the grant will help the state meet existing federal requirements – and how the state will assure the equitable use of federal funds within the state. It should describe the state's compliance with existing election administration requirements under the Voting Rights Act, the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Assistance for the Elderly and Handicapped Act, the Americans with Disabilities Act, and the National Voter Registration Act. It should provide assurance that the state plan does not conflict with those requirements, and describe how grant funds will be used to meet them. These laws set out essential standards against which the lawfulness of every state's election system must be judged.

To illustrate, an important use of federal technology funds will be for improvements in registration systems. In the application process, states should describe how those improvements will enable them to maintain complete and accurate lists on a regular basis. Additionally, in order to prevent discriminatory or erroneous purging, states should describe the safeguards they have established, including timely notice and an opportunity for voters to rebut any grounds for being stricken from the registration list. To ensure that systems acquired with federal funds are available to all voters, states should describe their measures to assure that all voting locations are fully accessible.

The plan should provide assurance that federal funds (and any matching funds) will be used to supplement, rather than lower, current spending on elections. To facilitate resolution within each state of any issues about its plan, the application should be open to public comment during its formulation. The state's plan should also be publicly available after adoption. The application should be reviewed by the appropriate federal agency for compliance with existing federal law, such as existing law on minority languages, and with the requirements of the law establishing the grant program.

5. CONDITIONS RELATED TO TECHNOLOGY

Congress should require new technology purchases to comply with the FEC's existing voting systems standards. These standards are, of course, now voluntary and only become mandatory when they are adopted by a state. By conditioning federal grants on compliance with them, Congress would be making the standards mandatory in the minority of states that have not yet adopted them, insofar as equipment purchased with federal grants is concerned. The justification for doing so is that the existing standards have become *de facto* a national norm.

A different issue is presented by whether technology purchased with federal grants should comply not only with existing standards but also with any new ones that are in existence at the time of a purchase. We believe there is good reason to require that. New standards will represent the best understanding of what technology should achieve. We recognize this would partly alter the nature of the standards, which has depended on state decisions to adopt them. We are suggesting not that the new standards now be mandated for existing voting devices; but only that it is appropriate to use federal grants to give states an incentive to acquire new technologies in which voters have the greatest confidence that their voting opportunities will be secured by the best standards then available.

One technology objective that should be enacted into law is that federal technology funds be used to enable voters with disabilities to vote independently and therefore privately. A state applying for a technology grant should commit to provide, during the life of the grant program, at least one voting device at each polling station that allows sight-impaired voters to vote independently. Complete attainment of this objective with regard to some other disabilities may depend on further research, but the overall objective should be clear and reached as soon as feasible. Of course, individual voters may prefer as a matter of their own volition to have assistance in voting. But the right to cast a secret ballot is so central to our democratic tradition that Congress should accelerate this new opportunity that technology provides.

6. ADDITIONAL REQUIREMENTS

Apart from capabilities that may be required for voting systems acquired with federal funds, there are two important measures that Congress should provide be universally adopted in federal elections, at least as a condition for federal grants. If a change in state law is required, the time for compliance should allow for a regular meeting of the state legislature to enact that change.

One is that if a voter's name does not appear on the list of registered voters, and election officials are unable to resolve at the polls the question of the voter's registration, the voter should be given the opportunity to submit a provisional ballot. The reasons for providing an opportunity to submit a provisional ballot are described in Part I (B)(3)(b) of this report, together with more detail

about that process. The essential point is that if a registration issue cannot be resolved on election day, a provisional ballot ensures that the voter's opportunity to vote is not irretrievably lost.

Second, election officials should post at polling places clear notices of the rights and responsibilities of voters under applicable federal and state law. The posted information should be made available in alternate formats. We are not proposing that Congress mandate the specific contents of these statements. A number of states are in the process of fashioning them. Private groups are also recommending various forms of them. The key is that there be a prominent and readily available frame of reference for election personnel and voters to anticipate and then resolve polling place issues within the requirements of federal and state law.

Neither a provisional ballot requirement, nor one on posting bills of rights or statements of responsibility, would change the underlying requirements of federal or state law on who may vote or how they should do so. But they will both help promote an atmosphere and process that assures all participants in the voting process that decisions will be made in accordance with applicable law. Of course, states on their own can adopt these measures. Some have done so; others will follow. There is considerable benefit in providing for the early universality of them in federal elections as a national down payment on other improvements and reforms that will follow.

These additional requirements supplement the plan submission requirements detailed in Section 4.

7. REPORTING

To assist in making judgments about whether federal grants are helping to improve the administration of elections, states should regularly provide statistical information on the performance of new and existing voting technologies, at least in relation to elections for federal offices, although reporting on experience in other elections may be informative to the Congress and other states. The reports should include documentation about numbers of undervotes and overvotes with respect to various voting technologies. The information should be transmitted to the national clearinghouse so that it can be widely distributed in order to inform technology decisions at the local, state, and national levels. At the end of a funding period, each state should publicly report on what it has done with grants it has received. These reports should be evaluated by the federal grant-making agency.

8. FEDERAL AGENCY

Bills before the Congress place responsibility for election administration in different agencies: the Justice Department, the Commerce Department, and the FEC. At least one bill would establish a new federal agency. Some bills send discrete functions to additional agencies. Without commenting on the merits of any of these proposals, the federal agency chosen (or established) to carry out the responsibilities we have described should have several attributes.

First, it is desirable for a single agency or office to have final responsibility for all of the functions identified in this report: research and development, standards setting, and grant-making and oversight. There may, of course, be circumstances in which Congress determines that the expertise of another agency should be made available to the one that has final responsibility for these functions.

Second, Congress should include an independent line-item in the budget to cover these functions. This would occur if the Congress establishes a

new agency but should be the case even if Congress vests these responsibilities in an existing agency. Appropriations for election purposes should be protected from competing demands of a parent agency. The FEC's Office of Election Administration already has responsibility for some of these areas, and it is sensible to build on that agency's existing expertise, either by greatly expanding its mission and resources, or by relocating it elsewhere.

Third, it is important that the agency be independent of partisan influences to eliminate political considerations and thereby heighten public confidence in the agency's work.

Fourth, the agency should be guided by an advisory board that reflects viewpoints of key participants in the election process, including election administrators and representatives of voters. The advisory board should also include members with legal and technological expertise.

Finally, the agency should be organized to make decisions, particularly those on grants and standards, in a timely manner. If the grants program is given to the FEC, it will be important to establish an independent decision-making process to avoid potential deadlock on the even-numbered Commission. One technique for doing that would be to provide that the head of an election office within the FEC be appointed by the President (perhaps, as in the case of the Comptroller General, upon receipt of recommendations from the bipartisan leadership of Congress). There could be the added protection and status afforded by the advice and consent of the Senate, and a requirement that the head of the office have a vote on the Commission on all matters affecting the grant program.

We did not reach agreement on whether an existing agency or a new agency would best reflect these attributes. There is agreement, however, that time is of the essence. If the Congress decides to establish a new federal agency, it should provide for an interim arrangement so that the grant program can go forward while the agency is being established.

We have two comments with regard to existing responsibilities of the federal government. The Department of Justice should retain all of its current responsibilities for enforcement of voting rights laws. We also recommend that the Federal Voting Assistance Program (FVAP) be retained in the Department of Defense, although the agency given responsibility to carry out the grant program should be authorized to work cooperatively with that program to facilitate improvements. Military personnel and citizens living overseas face unique challenges in registering and voting. Timely delivery of ballots and other information is critical to enable these citizens to vote. We are concerned that if these functions as they relate to military voters are transferred to a civilian agency, they might not be accorded the same level of priority among military commanders as are communications from the Office of the Secretary of Defense.

Congress should provide the resources needed to ensure vigorous implementation of the responsibilities that remain in the Departments of Justice and Defense.

9. APPROPRIATIONS FOR THE GRANT PROGRAM

Congress should authorize and appropriate sufficient funds to provide a significant incentive to the states to participate in the grant program, and to enable them to make necessary improvements. Several pending bills would authorize amounts such as $500 million for five years. We believe this is a modest amount for the purpose

of an initial authorization, given the cost of administering elections and the improvements that are warranted. Other bills provide more flexibility by appropriating such sums as may be necessary to carry out the purposes of the grant program.

Two recent studies offer cost estimates for updating voting equipment. The Caltech/MIT Voting Technology Project estimates that it will cost about $2 per voter per year to achieve upgrades in voting equipment (assuming a 15-year life for voting machines). It will cost an additional $2 per voter per year to lease laptops for polls on election day with voter registration lists. The total cost would be $400 million per year for these two kinds of expenditures.[10]

A George Washington University report estimates that it will cost $1.2 billion to replace punch-cards with optical scan voting machines.[11]

Costs, of course, will vary based on the kind of equipment purchased, whether states lease or buy, the needs of the state, and the matching requirement. A number of recent decisions by states and localities to replace voting equipment also provide a preliminary indication of how much money is needed. Florida,[12] Maryland,[13] and Michigan[14] estimate it will cost between $24 and $39 million to replace voting equipment in their state. Some large counties in the United States will alone require comparable levels of funding. Harris County, Texas, the third largest county in the United States, is planning to invest $25 million to purchase direct recording electronic voting machines.[15]

The development of statewide registration systems also varies in cost. Several years ago Michigan invested $7.6 million to establish its statewide voter registration file, including payment to localities for installation. The state now spends $1.4 million annually to maintain the file.[16] Oregon estimates that establishing a centralized voter registration system will cost $6 million. These figures do not include the important element of electronic communications with polls on election day.[17] And there is the need for voter education and training programs in the use of voting technologies.

More thorough estimates of the needs of the federal grant program should be made possible by analysis and compilation of the plans submitted by each state during the first year of the grant program. An important function of the federal agency responsible for the program, aided by an advisory board, should be to submit to Congress during the first year, in time for the second annual appropriation for the program, a well-substantiated projection for the fiscal requirements of the program during the full term of the grant program.

10. OVERSIGHT

The federal agency responsible for awarding the grants should conduct periodic audits to ensure that funds made available under this section are expended for the stated purposes, and to review a State's activities in the areas required in sections (5) and (6) above.

C. A Permanent Program to Defray Expenses of Federal Elections

There is broad recognition that, in addition to a need for investment in voting systems technology, other areas of election administration – such as general voter education, training of election administrators, and staffing of polling places – would benefit from increased funding.

There is one form of permanent support for election administration for which there is broad concurrence. A significant factor in the cost of election administration is mailing. In the National Voter Registration Act, Congress directed the Postal Service to make available to state and local registration officials the rate that is available to qualified nonprofit organizations. For various reasons, including technical ones under Postal Service regulations, the promise of financial assistance in the mailing of mandated registration materials has not been fulfilled.

State and local officials should, in fact, be undertaking more mailing to voters, including sample ballots and information about procedures and voting rights. To these ends, state and local election officials have been urging Congress to establish a new elections class of postage that would provide first class service at half the first class rate. This arrangement would provide speed of delivery and necessary services that are important in election administration (such as the return of mail if addressees have moved) at a rate befitting the high volume of that mailing. The important public ends that are served by official election mail amply support that recommendation. We believe the proposal merits a favorable response by Congress.

Beyond provision for a new postal rate, a number of members of our Forum favor the idea that Congress make a long-term commitment to expend federal funds to defray the costs incurred by state and local governments in conducting elections for federal office.[18] In their view, there is merit in the suggestion that the federal government reimburse states and localities for their expenses in conducting elections for federal office, or at least for the part of them attributable to federal requirements, such as the notification requirements included in the National Voter Registration Act. Other members of the Forum oppose, or at least oppose at this time, a permanent federal role in funding state and local government election administration.

The authorization of a permanent contribution to general election expenses, in contrast to a limited-term investment in the technology of elections and a new postal rate, raises questions about the relationship of federal and state governments in this area that are larger than can be readily resolved at this time. If the uncertainty within our Forum reflects uncertainty elsewhere, it may be that Congress and the states will wish to evaluate their experiences in carrying out a technology grant program for several years before considering whether to embark on a permanent cost-sharing one.

CONCLUSION

As this report shows, there is a range of practical steps that can be taken by state and local officials to improve our nation's election system. There are also well-defined measures that Congress should take to support state and local government and advance broadly shared national values, while preserving historical balances. Above all, the participants in this Forum have laid out a path toward consensus, which of course remains a work in progress. Their efforts prove that there is an opportunity for reform. American political leadership has the responsibility to seize it.

ENDNOTES

[1] Federal Elections Commission, *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000, A Report to the 107th Congress* (June 2001).

[2] Caltech/MIT Voting Technology Project, *Voting – What Is, What Could Be* 23-24, 80 (July 2001).

[3] *Bush v. Gore*, 531 U.S. 98 (2000)

[4] Internet Policy Institute, *Report of the National Workshop on Internet Voting: Issues and Research Agenda* 34 (March 2001) (http://www.internetpolicy.org/research/results.html).

[5] We do not yet have exhaustive research on the impact of alternative voting procedures on turnout. A study of Oregon's vote-by-mail elections found some improvement in turnout among regular voters, but not among intermittent ones. A. Berinsky, N. Burns, M. Traugott, *Who Votes by Mail? A Dynamic Model of the Individual-level Consequences of Vote-by-Mail Systems* (October 2000) (copy of unpublished manuscript on file at the Constitution Project). Aggregate statistical analyses by Curtis Gans, Director, Committee for the Study of the American Electorate, found – for statewide elections – that all-mail voting, unlimited absentee voting, and early voting could lead to marginal declines in turnout. His full analysis is posted on our website (http://www.constitutionproject.org/eri/voting_procedures_comments.html).

[7] *Buckley v. Valeo*, 424 U.S. 1, 90 (1976).

[6] National Commission on Election Standards and Reform, *Report and Recommendations to Improve America's Election System* (May 2001).

[8] Roy G. Saltman, *Effective Use of Computing Technology in Vote-Tallying*, National Bureau of Standards Report NBSIR 75-687 (March 1975) (reprinted as SP500-30, April 1978) www.vote.caltech.edu/Links/#articles.

[9] Federal Election Commission, *Updating the Voting Systems Performance and Test Standards: An Overview* (June 2001) (http://www.fec.gov/pages/standardsoverview.htm).

[10] Caltech/MIT Voting Technology Project, *Voting – What Is, What Could Be* 23-24, 80 (July 2001).

[11] Norman Garfinkle and Patrick Glynn, *Report on Election Systems Reform*, Institute for Communitarian Policy Studies, George Washington University (July 2001). http://www.gwu.edu/~icps/

[12] Florida appropriated $24 million to replace voting equipment (small counties will receive $7,500, others will receive $3,750 per precinct). The state also appropriated an additional $6 million for voter education programs. (2001 Fla. Laws ch. 40 (SB 1118), §§ 74 and 76.)

[13] Maryland estimates that it will cost $36.8 million to replace all voting machines with DRE's. Maintenance expenses are estimated to be almost an additional $1 million. The same equipment could also be leased for $5.8 million a year.

[14] Michigan estimates that a statewide uniform optical scan system with precinct-based tabulation would cost between $26.1 million to $38.7 million. Secretary of State Candice Miller, *Uniform Voting in Michigan: A Report to the Legislature*, State of Michigan Secretary of State's Office (May 2001). The report is available at http://www.sos.state.mi.us/election/elecadmin/2001web/uniformvotinginmichigan.pdf.

[15] Harris county will buy 8,170 voting machines, with 1,150 of them equipped for people with disabilities. S. Brewer, "Harris County OKs New Voting Machine," *Houston Chronicle,* June 6, 2001.

[16] Candice Miller, Secretary of State, *Michigan's Qualified Voter File System: Bringing New Efficiency to the Management of Voter Registration and Driver License Records*, Bureau of Elections (February 1, 2001). For more information about Michigan's Qualified Voter File, go to: http://www.sos.state.mi.us/election/qvf/index.html.

[17] Bill Bradbury, Oregon Secretary of State, Testimony before U.S. Senate Committee on Commerce, Science and Transportation (March 7, 2001).

[18] See, for example, National Commission on Election Standards and Reform, *Report and Recommendations to Improve America's Election System* (May 2001).

APPENDIX A: PARTICIPANTS

Chair, Forum on Election Reform

Morton H. Halperin, Board Member, Constitution Project

Working Group Chairs

Steve Ansolabehere, Professor of Political Science, Massachusetts Institute of Technology*

Marlene Cohn, Consultant, League of Women Voters Education Fund

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Participants

Angela Arboleda, Civil Rights Policy Analyst, National Council of La Raza

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Melanie Campbell, Executive Director, National Coalition on Black Civic Participation

Charlotte Cleary, General Registrar, Arlington County, Virginia

Carol Ann Coryell, Electoral Board Secretary, Office of the Electoral Board, Fairfax County, Virginia

Todd Cox, Assistant Counsel, NAACP Legal Defense and Educational Fund

Charles Crawford, Executive Director, American Council of the Blind

Ed Davis, National Director of State Organizations and Field Operations, Common Cause

Jim Dickson, Vice President, Government Affairs, American Association of People with Disabilities

Mickey Edwards, John Quincy Adams Lecturer in Legislative Politics, Kennedy School of Government, Harvard University*

David Elliott, Assistant Director of Elections, Office of the Secretary of State of Washington State

John Fortier, Research Associate, American Enterprise Institute*

Susan Parnas Frederick, Director, Law & Justice Committee, National Conference of State Legislatures

Curtis Gans, Director, Committee for the Study of the American Electorate

Nancy George, National Coordinator of Voter Education, AARP

Heather Gerken, Assistant Professor of Law, Harvard University*

Thad Hall, Program Officer, The Century Foundation

Ernest Hawkins, Sacramento County Registrar of Voters, and Past President National Association of County Recorders, Election Officials, and Clerks

Ron Hayduk, Professor of Political Science, City University of New York*

Wade Henderson, Executive Director, Leadership Conference for Civil Rights*

Loretta Herrington, Director of the Telecommunications & Information Technology and Trade & Transportation Task Forces, American Legislative Exchange Council

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Connie Kaplan, Chicago Board of Election Commissioners and International Association of Clerks, Recorders, Election Officials, and Treasurers (IACREOT)

Pamela Karlan, Kenneth and Harle Montgomery Professor of Public Interest Law, Stanford University*

Steve Katsurinis, Vice Chair, Alexandria Electoral Board, Alexandria, Virginia

J. Patrick Kelly JD, CERA Clerk/Recorder, El Paso County, Colorado

Linda Lamone, Maryland Administrator of Elections

Lloyd Leonard, Legislative Director, League of Women Voters

Doug Lewis, Executive Director, Election Center

Thomas Mann, W. Averell Harriman Senior Fellow, Brookings Institution*

The Honorable Deborah Markowitz, Secretary of State, Vermont

Robert McGarrah, Senior Policy Analyst, AFL-CIO

Ann McGeehan, Texas Director of Elections and President, National Association of State Election Directors

Alysoun McLaughlin, Policy Associate, National Conference of State Legislatures

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

Mark Richert, Governmental Relations Representative, American Foundation for the Blind*

Robert Richie, Executive Director, Center for Voting and Democracy

Roy G. Saltman, Consultant on Election Policy and Technology

Ari Schwartz, Policy Analyst, Center for Democracy and Technology

Hilary Shelton, Director, Washington Bureau, National Association for the Advancement of Colored People*

Dave Scott, Director of Affiliates, The Council of State Governments

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Tony Sirvello, Harris County Administrator of Elections, and International Association of Clerks, Recorders, Election Officials and Treasurers

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Lisa-Joy Zgorski, Communications Manager, The Century Foundation and National Commission on Federal Elections Reform

Please note: Participation in the Forum does not indicate that each person or organization agrees with every particular in the report or recommendations to Congress. Participants should be consulted in determining their position on any issue covered in this report.

* Affiliation is for the purpose of identification only.

APPENDIX B: SUPPLEMENTAL VIEWS

American Council of the Blind

The American Council of the Blind congratulates all the participants in the Constitution Project for their many contributions of wisdom and good faith as we worked together in our common goal of perfecting our democracy. ACB only adds this supplement to amplify and clarify points already present in the report.

If voting is to be truly accessible to persons who are either blind or have low vision, then the equipment necessary to accomplish this goal of a true ability to cast a secret ballot must be put in place at polling sites. ACB strongly supports the use of direct recording equipment (DRE) to insure accessible, independent, secret and verifiable voting rights for the millions of blind or visually impaired citizens who only seek to exercise our franchise along with all other Americans.

Direct recording voting equipment offers the advantage of maximum flexibility for future opportunities while costing less in the long run than do optical scanning devices.

ACB therefore strongly recommends that any federal legislation and financial support for the acquisition and deployment of voting equipment be done in such a way as to afford visually impaired voters with the ability to cast a secret ballot through the use of a direct recording device. ACB further recommends that at least one device be available at all polling places.

Center for Voting and Democracy

Federal standards currently require that all electronic Direct Recording Equipment (DRE) record and store an electronic image of each ballot. The Center for Voting and Democracy believes that the federal standards should include the same requirement for all new voting equipment used to count paper-based ballots. This belief is driven by two concerns. First, electronic ballot images increase the security of the electoral process by enabling the rapid detection of any alterations to paper ballots that occur between the casting of ballots and the final certification of results. Second, the storage of electronic ballot images ensures compatibility of the voting equipment with all four ballot types currently used in U.S. elections. We believe that new voting equipment should not create a barrier for jurisdictions wishing to adopt new ballot types.

Common Cause

Common Cause supports the "Recommendations for Congressional Action" of the Constitution Project Election Reform Initiative. If followed, these comprehensive recommendations would result in a substantial federal investment in election system research and standard development, and in much needed improvements in voting equipment, registration systems, and voter education programs at the state and local level.

Because the serious flaws in our nation's election systems have denied citizens basic voting rights, Common Cause believes that Congress should play a more direct and proactive role in election reform than these recommendations envision. With constitutionally guaranteed protections at stake, Congress has a responsibility to act as necessary to ensure that citizens are treated fairly and equally in all stages of the voting process. Directly mandating basic changes for federal elections should not be ruled-out as a means to that end, and Congress should set other fundamental reforms as conditions for states seeking federal election grants.

Demos

Demos applauds the Constitution Project for recommending to Congress and the states several very important election reform measures. If adopted, these suggestions will measurably improve the conduct of elections in America and advance the cause of full enfranchisement and fair representation of our nation's diverse voices and communities. Demos also takes this opportunity to comment on specific elements of the Report of the Forum on Election Reform ("Report") and recommend additional reform measures for accomplishing a comprehensive rejuvenation of our electoral system.

Demos strongly supports the Constitution Project's call for state adoption of provisional ballots, extended polling hours, and posted voter rights and responsibilities. These recommendations will substantially improve an individual's opportunity to have her vote properly tallied and counted. Administrative error in the formation of voter registration rolls are inevitable. The opportunity to cast a provisional ballot, at the polling place, offers a practical and workable remedy and safeguards an eligible voter's exercise of her constitutional right. Prominent posting at the polling place of a voter's rights and the procedures that have been adopted to effectuate it are an important additional safeguard and educational tool for voters and poll workers alike. Extended polling hours, like those adopted in New York, are an appropriate accommodation of the lengthening workdays, non-traditional work schedules, and increasingly competing demands of work and family that now characterize life in America.

The application process for state grants suggested in the Report is also noteworthy. As a condition for federal funds, state applications should indicate prospective plans for compliance with federal registration and voting requirements, allow for public input into the formulation of those applications, and anticipate federal agency review of the proposed compliance measures. These are welcome responses to the many instances of voting irregularities or abuses documented in last November's elections, especially in communities of color, low-income areas, and among naturalized citizens.

Several other measures to expand opportunities for voters to cast their votes were raised in the Report but not offered as thoroughgoing recommendations. Demos presents them here as important innovations that should be seriously considered for adoption. Like many other commentators, we strongly support an election day holiday and weekend or multi-day voting. Demos also recommends that Oregon's system of voting by mail and other alternative voting schemes be

fully reviewed and considered by the states. In all instances, we value as paramount expanded opportunities for voter participation and a resultant vote that more fully expresses the will of the people.

Two other innovations must be considered in any discussion of election reform: election day registration and the restoration of ex-offenders' voting rights. Six states now allow eligible citizens to both register and vote on election day. These states also enjoy an average turnout rate that exceeds the national average by ten percentage points or more. Given the fact that voter interest typically peaks in the closing weeks of an election campaign, when media attention soars and the choice between candidates crystallizes, it make little sense to shut down the registration process–and the opportunity to subsequently cast a vote–30 days or so before election day. Six states have shown that election day registration is workable. Other states should follow their lead.

The restoration of voting rights for ex-offenders is raised but not altogether embraced in the Recommendations to Congress. We do so here. 4.2 million American citizens are now disenfranchised by state laws that deny them the vote upon conviction. Many of them have served their sentences and been reintegrated into the community. The burden falls most severely on people of color, who are disproportionately affected. Demos calls for an end to this blanket disenfranchisement and a return of the vote to ex-offenders upon their release from incarceration. Four states have adopted voter restoration laws over the past year. More should consider the same.

The Recommendations to Congress detailed herein, if embraced, would constitute a very important contribution to the ongoing realization of the ideals that underlie our democracy. More can and should also be done to break down the barriers to the vote. Additional reforms and more vigilantly enforced or appropriately implemented pre-existing measures or safeguards will also advance the cause of democracy. Demos looks forward in the years ahead to exploring every opportunity to expand the franchise with the many organizations that have contributed to the report, the many others who are not represented here, and to policymakers in the states and at the federal level.

Pamela Karlan, Kenneth and Harle Montgomery Professor of Public Interest Law, Stanford University

Many of the problems described in this Report are the product of a failure to comply with existing federal law, including the Voting Rights Act of 1965, the National Voter Registration Act, the Americans with Disabilities Act, and the Voting Assistance to the Elderly and Handicapped Act. While I endorse the recommendations in Section II of the Report, and think they will improve compliance levels, I am skeptical that, standing alone, they will produce full compliance. I therefore would support additional measures, such as strengthening attorney's fees provisions and providing additional resources to enforcement agencies, to ensure that every eligible citizen has full access to the electoral process.

The League of Women Voters

The League of Women Voters appreciates the opportunity for dialogue and discussion on election reform issues that the Constitution Project has provided. A wide variety of important topics have been debated, and substantial agreement on best practices – the types of election administration that every state and locality should follow – has been achieved in Part I of the report.

However, the League of Women Voters does not endorse Part II of the report, the proposals for congressional action. We find that they fall significantly short of what will be needed to protect the fundamental rights of American voters.
We wish to briefly highlight several points. First,

many of the problems voters faced in the 2000 election, from not having their names on the voter registration lists to the lack of bilingual ballots where they were needed, were failures to implement existing federal laws. Yet the proposals contained in Part II do not ensure full implementation of these laws, such as the Voting Rights Act, the National Voter Registration Act, and the Voting Accessibility for the Elderly and Handicapped Act. Our nation must not risk, after a substantial commitment of federal funds such as is recommended here, continued non-compliance with basic voter protections.

Second, citizens in many states were purged from the voter lists without basic due process protections that would have prevented their erroneous removal from the lists. We believe protections against erroneous purges are a prerequisite in any federal program. We were disappointed that such a provision was not included in the requirements section of Part II.

Finally, the grants program proposed in Part II is simply too modest. It does not fully reflect the many recommendations in Part I. It is a short-term program from which states can opt out. Those states that participate will receive an allotment, similar to a revenue sharing program, with minimal requirements. The League of Women Voters believes that a more substantial response is needed to ensure that the problems of Election 2000 are not repeated and to protect the voting rights of all American citizens.

The National Asian Pacific American Legal Consortium and National Council of La Raza

The National Asian Pacific American Legal Consortium (NAPALC), dedicated to advancing the rights of the Asian Pacific community, and the National Council of La Raza (NCLR), the nation's largest Latino civil rights organization, applauds the Constitution Project for its work toward making the electoral process fair and accessible to all Americans. However, we strongly believe that unless states are mandated to comply with the language assistance protections enumerated in the Voting Rights Act of 1965, limited-English-proficient voters will not have equal access to the voting process. Therefore, NAPALC and NCLR firmly urge that federal funding be determinate upon mandatory demonstration of state and local compliance with current federal voting laws.

National Conference of State Legislatures

The closeness of the most recent presidential election and the subsequent spotlight on flaws in the nation's complex system of election administration served as a clarion call that was heard by state lawmakers across the nation. Subsequently, more than 1,700 bills have been introduced in state legislative chambers and approximately 250 have been enacted into law. These include funding and establishing standards and procedures for updating voting technology, counting and recounting votes, training election-day workers, educating voters, reforming absentee voting procedures, designing ballots, registering voters and purging voter lists. To ensure that states have the resources and information to undertake this critical effort, NCSL established a bipartisan task force to assist states in ensuring the integrity of the ballot; identify and recommend best practices on election laws; study the effect of recent changes in the voting, such as early voting and mail-in ballots; and provide technical assistance to states on implementing state election reforms. Since early March, task force members have heard from experts on election reform and discussed the various kinds of legislation being considered in state legislatures and Congress on election reform. NCSL's task force plans to com-

plete its work by mid-August with a report outlining recommendations and identifying model election laws and systems.

In addition, the task force has supported federal legislation such as H.R. 2398, a block grant formula which awards money to states for broad-based initiatives related to election reform, while opposing legislation which seeks to mandate specific requirements on the states. NCSL's task force also supports amendment of the National Voter Registration Act (NVRA) to grant states greater latitude to remove ineligible voters from registration lists and increased funding for the FEC Office of Election Administration for the development of voluntary equipment standards and the dissemination of election-related statistics and information. NCSL's recommendations for federal legislation, a database of the more than 1,700 bills that have been introduced in state legislatures, and further information on NCSL's task force on election reform can be found at NCSL's Web site at www.ncsl.org.

John Pearson and David Elliott, Director and Assistant Director of Elections for Washington State

Thank you for the opportunity to respond to the Constitution Project report. We have serious concerns about one aspect of the report and we are pleased to share those concerns in this forum. Our concerns are centered on the section of the report dealing with alternative voting methods – specifically absentee voting and voting by mail generally.

Here in Washington State we have had vote by mail elections, ongoing absentee ballots, and absentee ballot on demand for nearly two decades. From our point of view, as leaders in this field, frankly, we found the section on absentee voting and voting by mail to be so out of touch with the realities of voting in the West as to be useless. Unfortunately, that particular section taints our opinion of the entire report - which does contain some good analysis and some useful recommendations. The conclusions in that section are based on premises which we believe have no basis in fact - at least in our state. No consideration is given to the point of view that one reason western states have enhanced voting by mail is because THE VOTERS LIKE IT! It is convenient for them, and they appreciate the extra time it gives them to consider their various choices and make informed, intelligent decisions.

We believe that we are in the business of facilitating the voting process for voters - and there is no doubt in our minds that safe, secure absentee voting does just that. There is no proof offered for any of the alleged evils of mail voting - just the very conservative opinion of the authors offered up as fact. The concern raised about timing of election results and the time needed to organize the houses of Congress are specious at best. The 2000 election in Washington State featured a very close race for the U.S. Senate. Partisan control of that body hung in the balance. The election was conducted with about half of the ballots transmitted through the mail, and the race was close enough to require a recount of every ballot. We were able to complete our work in a timely fashion and the results remain accepted and unchallenged.

As to the concerns raised by the author, asked and answered. The proper use of resources and training of election personnel can, and does, produce timely accurate elections by mail. We also found the dismissal of Oregon's experiences to be disturbing at best and insulting at worst.

APPENDIX C: RESOURCES

Constitution Project Resources
http://www.constitutionproject.org

Davidson, Michael, *Notes on the History of Article I, Section 4, Clause 1*, April 3, 2001.

Karlan, Pamela, Stanford University, *Congressional Authority to Regulate Elections and Election Technology*, February 2001.

Weich, Ronald and Carlos Angulo, Zuckerman Spaeder LLP, *Lawsuits Arising Out of the November 2000 Presidential Election*, April 27, 2001. (This memo is updated as needed.)

In addition, the Constitution Project has been monitoring election reform legislation in the 107th Congress. An overview memo and side-by-side comparison of leading proposals is available at the website.

State Reports

California: California Internet Voting Task Force, *A Report on the Feasibility of Internet Voting*, January, 2000. http://www.ss.ca.gov

Florida: The Governor's Select Task Force On Election Procedures, *Revitalizing Democracy in Florida,* Standards and Technology, March 1, 2001. http://www.collinscenter.org

Georgia: Secretary of State Cathy Cox, *The 2000 Election: A Wake-up Call for Reform and Action*, Report to the Governor and Members of General Assembly, January 2001. http://www.sos.state.ga.us

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Maryland: Special Committee on Voting Systems and Election Procedures in Maryland, *Reports and Recommendations*, February 2001. http://www.sos.state.md.us

Missouri: Secretary of State Matt Blunt, *Making Every Vote Count: A Report of Secretary of State Matt Blunt to the People of Missouri*, January 29, 2001. http://mosl.sos.state.mo.us

New York: New York State Task Force on Election Modernization, *Recommendations for the Fall 2001 Elections*, May 2001. http://www.state.ny.us/governor/electionmodernization/

Oregon: Secretary of State Bill Bradbury and Oregon Association of County Clerks President Dana Jenkins, *Report of the Oregon Elections Task Force*, February 6, 2001. http://www.sos.state.or.us

Additional Resources

Administration and Cost of Elections Project (ACE). International Foundation for Election Systems (IFES), International IDEA, and the United Nations. Washington, D.C.: ACE Website Version 2001. http://www.aceproject.org/

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General Accounting Office, *Elections: The Scope of Congressional Authority in Election Administration*. GAO-01-470, March 13, 2001. http://www.gao.gov

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Hoffman, Lance, *Internet Voting: Not Ready for Prime Time (Yet),* January 2001 (slide presentation). http://www.seas.gwu.edu/~cpi/library/presentations/internet-voting/index.htm

Mann, Thomas, Brookings Institution, *An Agenda for Election Reform*, Policy Brief #82, June 2001. http://www.brookings.org

National Science Foundation, *Report on the National Workshop on Internet Voting: Issues and Research Agenda*, March 2001. http://www.internetpolicy.org/research/results.html

National Commission on Election Standards and Reform, *Report and Recommendations to Improve America's Election System*, May 2001. The Commission is a joint effort between the National Association of Counties (NACo) and the National Association of County Recorders, Election Officials and Clerks (NACRC).

The National Commission on Federal Election Reform, To Assure Pride and Confidence in the Electoral Process (August 2001). Web reference. http://www.reformelections.org/

Norton Garfinkle and Patrick Glynn, Institute for Communitarian Policy Studies, George Washington University, Report on Election Systems Reform, July 2001. http://www.gwu.edu/~icps/

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http://election2000.stanford.edu

Saltman, Roy, *Accuracy, Integrity, and Security in Computerized Vote-Tallying*, August 1988, sponsored by the Markle Foundation. http://www.nist.gov/itl/lab/specpubs/500-158.htm (Additional papers by Roy Saltman are available at the Constitution Project's website.)

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