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Reforming Elections for the Preservation of Liberty



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The following is adapted from a speech delivered at a luncheon co-sponsored by Hillsdale College and the Evergreen Freedom Foundation on June 22, 2005, at the Rainier Club in Seattle, Washington.

Joseph Stalin once said, “The people who cast the votes don’t decide an election, the people who count the votes do.” In the former Soviet Union, the dictator’s minions counted the votes and the totals added up according to his wishes. One expects such things in a communist country. But here in , where free and fair elections are an indispensable cornerstone of our republic, sloppy or politically-oriented vote counting is not acceptable. Our founders established the principle of “ballots not bullets,” based on the belief that political decisions should be freely made at the ballot box by eligible voters whose votes would be properly counted. It is up to us to preserve that principle today through election reform.

Through constitutional amendment, we have rightly expanded the franchise since our nation’s founding. All citizens of voting age can cast a ballot, if they have not lost their voting rights by committing a felony, if they are mentally competent and if they still have a pulse. Yet in many places around the country, felons, dead people and non-U.S. residents vote. Sometimes people vote twice. The laws that protect the integrity of our elections have been eroding for years, but it took a few whisker-thin elections to bring attention to the problem. Now is the opportunity to act.

How and why has our election system become so compromised? Some claim incompetency or human error is at the root of the problem. Others point to fraud. In fact it is both—and neither is acceptable. Until this past year, I myself had no idea how bad the problem had become. According to University of Virginia Professor Larry Sabato, in his book *Dirty Little Secrets*, ignorance is

precisely how election systems are compromised: “The fact that voter fraud is generally not recognized as a serious problem by the press, public and law enforcement creates the perfect environment for it to flourish.” And flourish it has. Following the 2004 election, serious questions of various sorts were raised in Ohio, New Mexico, Wisconsin, South Dakota, and elsewhere concerning the integrity of vote counts in close races. Perhaps the largest controversy has been in my own state of Washington, with respect to its gubernatorial election.

The Washington Debacle

Wall Street Journal columnist John Fund, author of *Stealing Elections*, writes that he has a “haphazard, fraud-prone election system befitting an emerging Third World country rather than the world’s leading democracy.” I am forced to concur with his conclusion, based on what we have seen here in Washington.

Democrat Christine Gregoire is Washington state’s current governor, having won by a mere 133 votes out of more than 2.8 million cast. Or did she? When the election was first over and the ballots were tallied, Gregoire’s challenger, Republican Dino Rossi, won by 261 votes. A mandatory recount under state law reduced Rossi’s margin of victory to just 42 votes, prompting a Democrat demand for a hand recount of more than 2.8 million ballots. Hand recounts are expensive and must be paid for by the challenging party. Presidential candidate John Kerry joined groups like MoveOn.org to help raise money for Gregoire and after the second recount, she was declared the winner by 129 votes. A judge later changed the total to 133.

But it wasn’t that simple. Immediately after the November election, reports started coming in about problems at polling locations. Ours and other organizations began independent investigations to determine if the complaints were justified. We were shocked by what we found. Here are just a few of the most egregious examples.

- *On at least 10 occasions after the election, King County (which accounted for one-third of the state’s votes last year) found unsecured ballots and, in nine of those cases, election officials added them to the ballot count.*
- *King County election officials admitted in sworn depositions that they deliberately submitted misleading absentee ballot reconciliation reports—the reports that reconcile the number of voters with the number of ballots cast. With no system in place to track how many absentee ballots were sent out and returned, King County ended up with 875 more absentee votes counted than the number of people who voted by absentee ballot.*
- *Also in King County, at least 785 provisional ballots—ballots used by voters whose identification or eligibility to vote is in question—were improperly tabulated without verification of voter eligibility. Around the state, an additional 1,033 provisional ballots were identified as improperly tabulated.*
- *Evidence exists of voter registration drives in state mental institutions, among Alzheimer’s patients in extended care facilities, and with felons.*
- *More than 1,400 felons whose voting rights had not been restored were allowed to vote—including one felon who voted absentee from his jail cell!*
- *At least 55,175 ballots were “enhanced” in King County—meaning election workers decided for those voters how they meant to vote for governor, even if, in some cases, the voter did not select a gubernatorial candidate at all.*
- *In five counties, the Secretary of State certified election results even though there were 8,500 more votes cast than voters credited with voting.*

Despite this evidence and more, not one law enforcement official in King County has investigated the problems inside the elections department—not the U.S. Attorney, not the King County sheriff, and not the King County prosecutor. The prosecutor says he won’t do anything unless the King County elections director, who is the person at the center of this scandal, brings charges. The U.S. Attorney General won’t investigate unless someone can bring him proof of fraud. In his opinion, the items I just listed are insufficient.

The Republican Party challenged the election in court, arguing that a new election should be held. The judge in the case disagreed, citing Washington’s stringent law regarding election contests. He concurred that at least 1,678 illegal votes were cast, but said fraud was not proven in those cases, since Republicans could not determine on whose behalf the illegal votes were cast. We are left scratching our heads about how it could legally be determined who people illegally voted for, since candidate selections are supposed to be confidential. Besides, if a voter knowingly cast an illegal ballot, and then testified about who he voted for, he would be admitting to a felony.

The judge did agree that witnesses for both the Democrats and Republicans had testified to significant errors in the election, including sloppy and misleading voting reports and ballots overlooked until months after the election was over. But because fraud was not argued in this case, he decided to throw out the illegal votes instead of ordering a new election.

After the decision, most elected officials were patting themselves on the back so loudly that they missed the judge’s startling opening lines. He noted that Washington state’s election system itself had been compromised, and then added:

This court is not in a position to fix the deficiencies in the election process that we heard about in this courtroom over the past nine days. However, the voters of this state are in a position to demand of their executive and legislative bodies that remedial measures be instituted immediately. And, clearly, the evidence here suggests that the problems require more than just constructing new buildings and hiring more staff.

The Problem of Unrestricted Absentee Voting

The judge, by inference, made another observation that underscores something that should be of concern for every state in the nation: the problem posed by the increased use of absentee ballots. “Extraordinary efforts are in place to make it easier to vote,” he said. “But unfortunately I fear it will be much more difficult to account for those votes in the future.”

The move to permit unrestricted voting by absentee ballot is sweeping the nation. This is a dangerous trend because it greatly expands the opportunity to commit fraud. The National Commission on Election Reform, chaired by former Presidents Gerald R. Ford and Jimmy Carter, warned in 2001 that voter fraud schemes from the past are even more likely now. According to the commission’s report, “Opportunities to commit such frauds are actually growing because of the trend toward more permissive absentee voting.” And again: “Growing use of absentee voting has turned this area of voting into the most likely opportunity for election fraud”

In its report on voter fraud, the Florida Department of Law Enforcement agrees: “The lack of in-person, at-the-polls accountability makes absentee ballots the tool of choice for those inclined to commit voter fraud.” Former Alabama Secretary of State Jim Bennett summarized these concerns when he said, “We don’t use guns, tanks or bullets to put political leaders into power. We simply allow absentee ballot manipulators to undermine and possibly corrupt the system.”

This problem arises because of a basic disagreement among state and federal legislators and administrators over the definition of voter disenfranchisement. One view holds that voters are disenfranchised when the system is too demanding. Its proponents argue that voting should be simple and easy for as many people as possible; that voters are on an “honor” system; and that election officials must have broad discretionary power, including the ability to “discern voter intent.” The second view holds that legal voters are disenfranchised when illegal votes are cast and counted. This side argues that voters should have to prove they are eligible; that they should properly fill out their ballots, thus avoiding the issue of “discerning voter intent”; and that their votes should be counted accurately. Unfortunately, the first group has been winning the argument of late.

During the Clinton administration, for instance, Congress passed the Motor Voter Act, requiring employees at state driver’s licensing agencies to ask applicants if they wanted to register to vote. These same employees were forbidden, however, from asking applicants if they were citizens. This makes sense only if the goal is to increase the number of potential voters at the cost of ensuring that people who vote are eligible to do so.

In recent years, traditional safeguards at the polls, like requirements to show identification, have been eliminated. And with more people voting by absentee ballot, previous safeguards are increasingly not applicable. It should not be surprising, then, that corruption is on the rise. “We the people” have allowed it, whether by silence, inattention or misunderstanding. It is time now for us to demand that the problem be fixed.

Implementing Solutions

The ballot integrity issues faced by Washington state and many other jurisdictions present significant challenges, but solutions exist. They fall in three main categories:

First, criminal prosecution of voter fraud is necessary. More than 60 federal investigations have been launched in 28 states and one territory since 2001. People have gone to jail already, and others will.

Second, legislative reforms are needed.

- Voter rolls must be cleaned up. To do this, all citizens on those rolls should be required to show proof of citizenship and to register in their legal names. This would allow for the removal of names of ineligible felons, dead people and illegal aliens. Voter ID bills have passed legislatures in five states. The legislation was signed by the governors of Georgia and Indiana. Unbelievably, it was vetoed by governors in New Jersey, Arizona and Wisconsin (in the latter it has been vetoed twice).
- Photo identification and a signature should be required of voters prior to casting a ballot, whether they are voting by absentee ballot or at the polls. Even Mexico, whose government spent \$1 billion to clean up its voter rolls, requires this. It is a travesty that our great democracy does not.
- Laws should be tightened regarding the use of provisional ballots. According to federal law, individuals cast provisional ballots if their names are not on the register in their own precincts, or if their voting eligibility is challenged by an election official. The ballot must be verified by the elections department before it is counted. Missouri has the best provisional ballot law on the books: A voter seeking to cast a ballot outside his own precinct is required to show identification, and the election judge will call headquarters to verify eligibility. If a voter insists on casting a ballot at the wrong location, he is given a special ballot allowing him to vote only in those races for which everybody in his state is voting. Also, provisional ballots should be designed to prevent illegal counting prior to verification. They can be a different color, have a different bar code identifier, or be a different size.

Laws should be tightened regarding “ballot enhancement.” Under what circumstances should anyone be allowed to determine a voter’s intent if it is not made it clear on a ballot? Most of us fill out our ballots entirely, but sometimes we purposely choose not to vote for something or somebody. That is our right, but under the laws that allow voter enhancement, election officials can look at our voting pattern and decide to fill in that missing vote for us. This is not right. It’s mostly illegal. And it certainly doesn’t represent our vote!

Widespread vote-by-mail should be rolled back. We have seen that it does not increase voter participation, which was the sole purpose behind it. Those of us who love its convenience have to face the fact that it has eroded electoral integrity. Voting by absentee ballot should be the chosen method only for those who truly cannot get to the polls on election day.

Third, we must insist that election officials do their jobs in a timely and law-abiding manner.

Strong legislative oversight is necessary to implement the Help America Vote Act passed by Congress in 2002. Some provisions of that law are likely not to work, and they will need to be fixed. For the rest, stiff penalties must be in place for election officials who disregard the law.

Military ballots must be sent out in a timely manner. In Washington state, thousands of ballots were sent to overseas military too late to be counted in the 2004 election. Our state’s late primary election makes it difficult for county auditors to mail ballots in time to overseas troops. But the Pentagon has recommended excellent solutions, including the use of write-in ballots. Or, for the military, we may be able to develop and implement a completely secure Internet balloting procedure.

Untold numbers of Americans have given their lives to protect our precious freedom to vote. Permitting rampant and unchecked election irregularities makes a mockery of this sacrifice. As President Ronald Reagan once reminded us:

Freedom is never more than one generation away from extinction. We didn’t pass it to our children in the bloodstream. It must be fought for, protected, and handed on to them to do the same, or one day we will spend our sunset years telling our children and our children’s children what it was once like in the United States where men were free.

The challenges we face in reforming our election system are daunting. But we must meet them and conquer them. If we don’t, who will?

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