Democracy at Risk: The 2004 Election in Ohio

Section II
Executive Summary

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EXECUTIVE SUMMARY

1. Background

In December 2004, the DNC announced a comprehensive investigative study and analysis of election administration issues arising from the conduct of the 2004 general election in Ohio. The DNC decided to undertake this study because of the many reports, made to the Democratic Party, appearing in the press and made to advocacy groups, immediately after the election, of problems in the administration of the election in that state—problems that prevented many Ohio citizens who showed up at the polls to be able to vote and to have their vote counted. Although significant problems were reported in several states, the DNC decided to concentrate on Ohio because it was a pivotal state in the election and was the focus of extensive litigation and questions relating to administration of the election, both before and after Election Day.

The purpose of this investigation was not to challenge or question the results of the election in any way. Rather, the purpose of this effort was to fulfill the Democratic Party's commitment to ensuring that every eligible voter can vote and that every vote is counted. This study, accordingly, was intended to address the legitimate questions and concerns that have been raised and to develop factual information that would be important and useful in crafting further necessary election reforms.

The investigation sought to address the following key questions, among others:

- Were the numbers of voting machines, official pollworkers and other resources adequate? If not, did the shortage, in effect, lead to people waiting much longer than they should have in order to vote? Were there differences in how long people had to wait based on race, income or other factors?

- The Help America Vote Act ("HAVA"), passed by Congress in the wake of the 2000 Florida election problems, requires that voters who show up at the polls and believe they are registered but aren't on the voter list be allowed to cast a "provisional ballot"—a special, paper ballot that is put aside, separate from other ballots, and considered later. Different states and counties had different rules about how and under what circumstances to count those ballots. It's much better to be able to cast a regular vote than a provisional ballot: In Ohio more than 20 percent of provisional ballots cast were not counted. The number of voters forced to cast provisional ballots in Ohio was very high compared with other states.

What accounted for that? Were there problems in the timely processing of registration applications, or with purges and/or with other issues in the development and maintenance of registered voter lists?

- Why were approximately one quarter of the provisional ballots cast found to be invalid? Were there more invalid provisional ballots in particular jurisdictions or among particular race or income groups? Why were so many people who thought they had registered in the correct precinct, ultimately found not to be on the registered voter list for that precinct?

- Were there anomalies in the reported voting results compared, for example, with exit polls or with a county's voting history that cannot be explained by factors other than machine malfunction, misreporting and/or mistabulation?

- Did the DRE (touchscreen) voting machines in use for the first time function properly? Were proper security, logic and accuracy testing and other procedures consistently followed?

2. Study Team and Methodology

To address these questions, the DNC assembled the following team:

Voting Experience in Ohio—Survey Research:

Diane Feldman, The Feldman Group

Cornell Belcher, brilliant corners Research and Strategies

Quantitative Analysis of Precinct Level Data:

Michael C. Herron, Ph.D., Associate Professor of Government, Dartmouth College; Former Research Fellow, Center for Basic Research in the Social Sciences, Harvard University; former Faculty Associate, Institute for Policy Research, Northwestern University

Walter Richard Mebane, Jr., Ph.D., Professor of Government, Cornell University; former Visiting Scholar Center for Basic Research in the Social Sciences, Harvard University and former Visiting Associate Professor, Dept. of Social and Decision Sciences, Carnegie Mellon University

Jasjeet Singh Sekhon, Ph.D., Associate Professor of Government, Harvard University

Voting Machine Technology:

Juan M. Jover, Ph.D., Chairman and Co-Founder of Phyten Technologies; former Partner, Silicon Design Experts; former Director of Business Planning, American Express

Dan S. Wallach, Ph.D., Associate Professor of Computer Science and Electrical and Computer Engineering, Rice University

Data Collection and Assembly:

Eric Greenwald, Esq., Deputy Voter Protection Director for Ohio, 2004, Democratic National Committee/Kerry-Edwards 2004

Julie Andreeff Jensen, Esq. Voter Protection Coordinator, Cuyahoga County, Ohio, 2004, Democratic National Committee/Kerry-Edwards 2004

Project Management:

Donna Brazile, Chair, DNC Voting Rights Institute

Lina Brunton, DNC Targeting Director

Vincent Fry, Executive Director, DNC Voting Rights Institute

Monica Marvin, Esq., Brazile & Associates, Project Coordinator

Joseph E. Sandler, Esq., DNC General Counsel

The study methodology consisted of several basic components, which are described in detail in the individual chapters of the report:

(1) A statewide random survey of Ohioans (conducted January 30 – February 2, 2005) who voted or went to the polls with the intention of voting in the 2004 general election; sample size: 1,201.

(2) Two surveys related to provisional ballot voters: a survey of 400 provisional ballot voters in Cuyahoga County (includes Cleveland and surrounding cities) and a survey of non-provisional voters in Cuyahoga County, each of whom was paired with a geographically similar person from the provisional ballot survey. In order to do this survey in the most thorough manner possible, it was necessary to do these two separate polls, which was costly and time-consuming. It was therefore necessary to limit the surveys to one county. Cuyahoga County was selected because a higher percentage of provisional ballots were NOT counted in that county compared to other counties.

(3) Comprehensive analysis of all available precinct data on voter registration, turnout, election results, absentee ballots cast, provisional ballots cast and counted, number of voting machines/booths in each precinct, and number of poll workers in each precinct.

(4) Analysis of above data by voting machine technology team.

(5) Comprehensive collection and analysis of available reports received by DNC Voter Protection teams in Ohio on Election Day.

3. Highlights of Findings

A. Substantial numbers of voters experienced problems in voting and these problems varied significantly by race, geography and type of voting machine and tabulation system that was used.

- Overall, 28 percent of Ohio voters reported problems with their voting experience, including ballot problems, locating their proper polling place and/or intimidation.

- Twice as many African American voters as white voters reported experiencing problems at the polls (52 percent vs. 25 percent).

- Touchscreen voting machines—also known as "direct recording equipment" or "DRE" machines—were used for the first time in a number of counties. Voters in counties using touchscreen voting machines reported experiencing far more problems than voters in other counties—56 percent vs. 28 percent statewide.

- This problem was particularly acute in Franklin County (which includes Columbus and surrounding areas) where 70 percent of voters reported problems with their voting experience. Franklin is one of the major urban counties in Ohio with a significant percentage of lower-income and minority voters.

- There was a vast disparity in the level of confidence in the election system among Ohio voters based on race: 71 percent of whites are very confident their vote was counted correctly versus 19 percent of African Americans.

- Overall, nearly one-quarter of all Ohio voters reported that their experience in 2004 has made them less confident about the reliability of elections in Ohio.

B. Scarcity of voting equipment caused long lines and deterred people from voting. These problems varied significantly by race and type of voting machine.

- Scarcity of voting machines caused long lines that deterred many people from voting. Three percent of voters who went to the polls left their polling places and did not return due to the long lines.

- Counties using DRE (touchscreen) voting machines witnessed longer waits, with more than half (52 percent) of voters in these counties waiting more than twenty minutes.

- Of the counties using DRE (touchscreen) voting machines, Franklin County (Columbus and surrounding cities) was the worst— 74 percent of voters waited more than twenty minutes to vote. There were also proportionally fewer voting machines in Franklin County's minority neighborhoods than in its predominantly white neighborhoods.

- Statewide, African American voters reported waiting an average of 52 minutes before voting while white voters reported waiting an average of 18 minutes.

- Overall, 20 percent of white Ohio voters reported waiting more than twenty minutes, while 44 percent of African American voters reported doing so.

C. Provisional ballots were vastly overused in Ohio and the types of voters forced to vote provisionally varied significantly by registration status, residential mobility and race. Anecdotal evidence suggests these problems were due to extremely faulty election administration.

- 158,642 provisional ballots were cast in Ohio, equaling 2.8 percent of all votes cast for President—compared with 0.9 percent for Pennsylvania and 0.3 percent for Florida. Indeed, only 27,742 provisional ballots were cast in Florida, which had 135 percent more votes cast for President than were cast in Ohio.

- New registrants were much more likely to be required to cast ballots provisionally: 26.5 percent of voters who first registered to vote in 2004 were required to cast a provisional ballot versus 2.5 percent of voters who registered before 2004.

- Residential mobility was also associated with the likelihood of casting a provisional ballot: Voters who had moved since the last time they voted were 6.7 times more likely to vote provisionally.

Voters who had lived at their current address for less than five years were seven times more likely to cast provisional ballots than those who have lived at their current address for more than five years.

- Persons who rent their homes were 2.1 times more likely to cast provisional ballots than homeowners.

- Again, in order to do a more intensive study, the DNC team did two surveys of voters in Cuyahoga County (Cleveland and surrounding areas)—a survey of those who cast provisional ballots in Cuyahoga County and a survey of non-provisional voters in Cuyahoga County. Of provisional voters in Cuyahoga County, 35 percent were African American, compared to 25 percent of non-provisional voters, matched by geography. African American voters were 1.2 times more likely than white voters to be required to vote provisionally.

- These racial differences hold even when related differences in mobility are accounted for: *African American voters who had voted in the past but had moved since the last time they voted were nearly twice as likely to be forced to vote provisionally than white voters who had voted in the past but had moved since the last time they voted*.

- Voters between the ages of 18 and 54 were far more likely to be forced to vote provisionally than voters over the age of 55, even when registration and residential mobility effects were taken into account.

- Overall, 78 percent of provisional ballots in Ohio were counted whereas only 66.2 percent of provisional ballots in Cuyahoga County were counted.

- Reports submitted to the DNC's Voter Protection Teams made it clear that many election officials and poll workers did not understand the provisional ballot rules and made many significant mistakes:

    1. in requiring voters to vote provisionally;
    2. in not offering ballots to voters when they should have been allowed to vote provisionally;
    3. in running out of provisional ballots; or
    4. in failing to handle ballots as legally required.

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D. Identification requirements were illegally administered and the effects varied significantly by race and age.

- Under Ohio law, the only voters who should have been asked for identification were those voting in their first Federal election who had registered by mail but did **not** provide identification in their registration application. Although only 7 percent of all Ohio voters were newly registered (and only a small percentage of those voters registered by mail and failed to provide identification in their registration application), more than one third (37 percent) reported being asked to provide identification.—meaning large numbers of voters were illegally required to produce identification.

- For example, only 23 percent of provisional ballot voters in Cuyahoga County were in fact newly registered, but 71 percent were forced to provide identification.

- African American voters statewide were 47 percent more likely to be required to show identification than white voters. Indeed, 61 percent of African American men reported being asked to provide identification at the polls.

- Although statewide only 22 percent of voters under age 30 were in fact newly registered, 67 percent of these voters reported being required to provide identification.

- Overall, 36 percent of previously registered voters reported being required to provide identification.—a requirement that was both unnecessary and illegal.

E. There were significant problems in processing new registrations and these problems varied by race and county.

- Statewide, 2 percent of voters overall reported having their registration status challenged at the polls—but only 1 percent of white voters who were actually registered reported such problems versus 4 percent of African American voters who were actually registered.

- African American women and younger African Americans experienced the most registration problems.

- Ballot problems varied across counties, with Cuyahoga County (3 percent) experiencing the most trouble.

- Reports received by DNC Voter Protection Teams indicated that local boards of election were simply unprepared to process the dramatic surge in voter registration applications. This problem was compounded by contradictory and incoherent directives from the Ohio Secretary of State.

F. Many voters experienced intimidation and this experience varied significantly by race.

- 6 percent of all voters reported feelings of intimidation.

- Statewide, 16 percent of African Americans reported experiencing intimidation versus only 5 percent of white voters.

- Reports received by the DNC Voter Protection Teams included voters being told falsely that if they had outstanding parking tickets or car payments they would be arrested at the polls.

G Voters were less likely to have their votes counted in counties using punchcard machines and optical scan machines that were centrally tabulated.

- There is a difference in the residual vote rate (i.e., many ballots cast with few valid presidential votes counted) depending upon the type of machine used: optical scan voting machines that were tabulated at the precinct where the votes were cast (precinct-tabulated optical scan machines); optical scan voting machines that were tabulated at a central terminal (centrally tabulated optical scan machines); DRE (touchscreen) machines; or punchcard machines.

- The median residual vote rate in those precincts using precinct-tabulated optical scan machines is within a normal range—while that rate in punchcard precincts is more than twice as large, and is clearly unacceptable.

- Unexpectedly high residual vote rates also occurred in centrally tabulated optical scan precincts.

- In DRE (touchscreen) and precinct-tabulated optical scan precincts, the higher number of machines per voter, increased the odds that the votes would be counted. With fewer machines per voter—a widespread problem in Ohio this time, as noted above—polling places became more crowded and voters were less likely to take the time to check or correct their ballots.

- The residual vote rate is higher in precincts where the proportion voting for Kerry was higher.

H. The study findings and independent analysis indicate that the use of DRE (touchscreen) machines is highly problematic and the use of precinct-tabulated optical scan systems is vastly preferable if accessibility issues can be successfully addressed.

- As the study findings summarized above indicate, use of DRE (touchscreen) machines was problematic in terms of deterring voters, voters reporting experiencing problems, long waits and, where machines were scarce, which was widespread, actual loss of votes—i.e., votes cast but not counted.

- Team experts have confirmed that DRE (touchscreen) systems are consistently shown to have higher residual vote rates than optical scan systems even though DRE systems are specifically designed to produce high valid vote rates.

- Our team expert points out that current DRE (touchscreen) systems are extremely expensive to procure and maintain—which makes it unlikely that sufficient numbers could ever be purchased to remedy the scarcity problems detected in the study.

- While there is no reliable evidence of actual fraud in the use of these machines in Ohio in 2004, our expert advises that DRE (touchscreen) machines are not sufficiently safeguarded against fraud and are less usable for the broad population of voters than earlier simpler technologies; and that existing standards and practices for certification are insufficient to ensure the security requirements of DRE (touchscreen) systems.

- A voter-verified paper trail or equivalent system would address the security of DRE (touchscreen) systems while preserving their attractive features such as enhanced accessibility for disabled voters.

- Precinct based optical scan systems remain superior, however, with respect to ensuring that everyone's vote is counted.

- One attractive alternative is the use of a computer-assisted optical scan ballot marking device, which would enable voters who need the accessibility feature of DRE (touchscreen) systems to use a computer to actually mark the optical scan ballot. Other voters would use a standard marking pen. Only one computer device per precinct would likely be necessary.

I. The statistical study of precinct-level data does not suggest the occurrence of widespread fraud that systematically misallocated votes from Kerry to Bush.

- The tendency to vote for Kerry in 2004 was the same as the tendency to vote for the Democratic candidate for governor in 2002 (Hagan). That the pattern of voting for Kerry is so similar to the pattern of voting for the Democratic candidate for governor in 2002 is, in the opinion of the team's political science experts, strong evidence against the claim that widespread fraud systematically misallocated votes from Kerry to Bush.

- Kerry's support across precincts also increased with the support for Eric Fingerhut, the Democratic nominee for U.S. Senate, and decreased with the support for Issue 1 (ballot initiative opposing same-sex marriage) and increased with the proportion of African American votes. Again this is the pattern that would be expected and is not consistent with claims of widespread fraud that misallocated votes from Kerry to Bush.