



Office for Democratic Institutions and Human Rights

**UNITED STATES OF AMERICA
GENERAL ELECTIONS
5 November 2002**

**OSCE/ODIHR ELECTION ASSESSMENT MISSION
REPORT
Implementation of Election Reforms**



**Warsaw
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I. EXECUTIVE SUMMARY

In line with the 1990 Copenhagen Document commitments, the United States invited the OSCE Office for Democratic Institutions and Human Rights (ODIHR) to observe the 5 November 2002 general elections in the U.S.¹ The ODIHR deployed an Election Assessment Mission to the U.S. in order to assess the measures the authorities and civil society had undertaken to address the challenges of the 2000 presidential election and to learn from any examples of good practice that may have been put in place. Given the problems in Florida during the 2000 election, the Mission focused on that state, but also visited federal institutions and representatives of civil society in Washington (District of Columbia).

The 2000 presidential election revealed serious shortcomings in the administration of elections in Florida, which resulted in a highly controversial, divisive and litigious end to the presidential election process. Following the adoption of remedial measures at the county, state and federal levels, these shortcomings have been addressed to a significant degree, demonstrating the responsive nature of U.S. democracy. While room for some further improvement remains, a number of measures adopted in Florida can serve as an example of good practice to the rest of the U.S. and other OSCE participating States.

Shortcomings in Florida during 2000 included problems with voting equipment used by some counties resulting in a high rate of invalid ballots, a lack of sufficient guidance to county officials by the state Division of Elections, inadequate training of election personnel, lack of uniformity in ballot design and counting procedures, inaccuracies in the voter register, discrepancies in regulations for overseas voting, and a lack of resources for voter education. Serious allegations were also made that some of these shortcomings, in particular the wholesale disenfranchisement of felons and inaccurate maintenance of the felons list, had a disproportionate impact on minority voters, particularly African Americans.

In response, all levels of government reacted effectively. At the state level, Governor Jeb Bush swiftly appointed a bi-partisan task force which reported within four months of the election with nine lessons learned and 35 recommendations. In May 2001, the state legislature adopted the *Florida Election Reform Act*, containing many of the task force's proposals, including requirements for greater uniformity in the conduct of elections, abandonment of problematic voting equipment, increased training for election officials, improvements in voter registration, the adoption of provisional balloting, and increased voter education.

¹ Letter from Ambassador Stephan M. Minikes, Chief of Mission, U.S. Delegation to the OSCE in Vienna, to Ambassador Gérard Stoudmann, ODIHR Director, 5 September 2002.

At the federal level, Congress adopted the *Help America Vote Act*, signed into law on 29 October 2002. The Act introduced a stronger federal dimension to the conduct of elections nationwide, with provisions for statewide voter registration and provisional balloting, and federal money to improve voting equipment, train election officials, conduct voter education, and provide greater accessibility and assistance for disabled persons and those with limited English language proficiency.

Despite problems in two Florida counties during the primary elections in September 2002, visits to five counties in November revealed evidence of substantial efforts to improve the administration of elections. These included the introduction of new technologies, increased and more professional training of officials, extra support to election departments, including staff of other county departments, the use of provisional ballots and enhanced public information programs. Civic groups were also more engaged in the electoral process and played an effective role in voter outreach.

Notwithstanding these significant measures at all levels of government, a number of issues remain to be addressed, including access for non-partisan domestic observers to all levels of the election administration, reform in the use of the felons list, and the development of more effective links between the state and county levels of election administration.

The ODIHR wishes to thank Ambassador Stephan M. Minikes, Chief of Mission, U.S. Delegation to the OSCE in Vienna, the Commission on Security and Co-operation in Europe (Helsinki Commission), the Office of the Secretary of State for Florida and its Division of Elections, the Florida State Association of Supervisors of Elections, and in particular those supervisors who facilitated the ODIHR visits, and other authorities for their openness, co-operation, and assistance to the ODIHR Election Assessment Mission. The ODIHR is also grateful for the assistance provided by the International Association of Clerks, Recorders, Election Officials, and Treasurers (IACREOT) in making arrangements for the visit.

II. THE ELECTION ASSESSMENT MISSION

On 5 September 2002, the U.S. Department of State invited the ODIHR to observe the general elections scheduled for 5 November. This welcome invitation was in line with the commitment in paragraph 8 of the 1990 OSCE Copenhagen Document, which affirms that “the presence of observers, both foreign and domestic, can enhance the electoral process in States in which elections are taking place. They therefore invite observers from any other [OSCE] participating States ... to observe the course of their national election proceedings....”

The ODIHR accepted this invitation in line with its new program of assessing electoral practices in established democracies in addition to observation missions deployed in countries in transition, and decided to deploy an Election Assessment Mission to assess how the authorities and civil society in the U.S. had addressed the challenges of the 2000 presidential election and to learn from examples of good practice that may have been put in place. During 2002, similar missions were also deployed to France and Turkey. Given the extent and nature of the problems in 2000, the Election Assessment Mission focused on Florida, but also visited federal institutions and representatives of civil society in Washington, D.C.

The Mission visited the U.S. from 30 October to 7 November. It was led by ODIHR Director, Ambassador Gérard Stoudmann (Switzerland), and included Illir Celibashi, Chairman of the Albanian Central Election Commission; Andreas Gross, a Swiss MP, Vice-President of the Parliamentary Assembly of the Council of Europe; Vladimir Lysenko, Legal Expert of the Central Election Commission of the Russian Federation; Holly McManus, Assistant Chief Legal Counsel, Elections Canada; Irena Hadžiabdić, Executive Director, Association of Election Officials in Bosnia and Herzegovina; John Hartland, Paris University 2 – Centre for the Comparative Study of Elections (United Kingdom); Owen Thomas, Executive Director, Electoral Reform Ballot Services (U.K.); Linda Edgeworth, independent election expert (U.S.); and Andrew Bruce, ODIHR Election Adviser (U.K.). The Mission was joined on election day by Alexander Veshnyakov, Chairman of the Central Election Commission of the Russian Federation.

In Washington, D.C., the Mission met with the Federal Election Commission, staff of the Senate Rules Committee, the Commission for Security and Co-operation in Europe (Helsinki Commission), the U.S. Commission on Civil Rights and representatives of civil society. In Florida, meetings were held with the Assistant Secretary of State and the director and staff of the Division of Elections, county executives and Supervisors of Elections, representatives of the Republican and Democratic Parties, and representatives of civic organizations with special interests in the election process. On election day, the Mission deployed teams in Miami-Dade, Broward (Fort Lauderdale), Palm Beach, Hillsborough (Tampa) and Duval (Jacksonville) Counties in Florida.

III. BACKGROUND

The 2000 presidential election revealed serious shortcomings in the administration of elections in Florida, which resulted in a highly controversial and litigious process. Given the problems in Florida during 2000, the Election Assessment Mission focussed on that state.

The 2002 mid-term elections were the first nationwide elections to be held since the presidential election in November 2000. They involved the election of all 435 members of the House of Representatives, one-third of the 100 members of the Senate, 34 of the 50 state governors (including Florida's), some members of state legislatures, and according to locality, various state officials, judges, county commissioners and some school and hospital administrators. Voting also took place on numerous citizens' initiatives, some of which involved amendments to state constitutions.

A. THE 2000 PRESIDENTIAL ELECTION

In the U.S., the conduct of federal elections is decentralized with ultimate and autonomous authority vested in each of the 50 states. For the most part, administration is delegated to the counties. Election laws promulgated by Congress relate only to federal elections, except where they relate to broader civil rights issues. Generally, however, it is common for states to adopt conforming legislation and procedures for state and federal elections since they are almost always held simultaneously.

The President of the U.S. is elected by an electoral college appointed by each of the 50 states on the basis of the number of representatives and Senators they have in Congress. Except in

Nebraska and Maine, where the electoral college members are selected proportionally, all electoral college votes go to the candidate who wins in the state.

Following a closely fought election campaign, the outcome of the November 2000 presidential election turned on who won Florida's 25 electoral college votes. On election night, before polls closed in the west of the state, the media prematurely announced victory for Al Gore in Florida. Shortly thereafter, they revised this assessment, declaring the race too close to call. On 8 November, the Florida state Division of Elections reported 2,909,135 votes for George W. Bush and 2,907,351 votes for Gore. As the margin of victory was less than one half of 1%, machine recounts were automatically conducted. The unofficial result announced on 10 November reflected a much smaller margin of victory of 327 votes for Bush. Gore immediately requested manual recounts in several counties, especially where punch card voting had been utilized, and where a significantly high numbers of ballot papers had been rejected by the machine counts.

Bush appealed to the courts to halt the manual recounts, on the grounds that they were being performed under inconsistent rules. Florida's Supreme Court upheld Gore's request and also extended the deadline for certification of the results from 14 to 26 November. On 26 November, the Secretary of State for Florida, Katherine Harris, certified Bush the winner by 537 votes, based on recounts reported by the certification deadline. Gore contested this certification on the grounds that thousands of potentially valid votes had not been manually recounted, and their inclusion would have changed the outcome. Finally, on 12 December, the U.S. Supreme Court ordered an end to all recounts, validating the certified results. On 14 December, Gore conceded defeat and Bush was inaugurated as President on 20 January 2001.

B. INVESTIGATION AND RESPONSE TO CONCERNS ARISING FROM 2000 PRESIDENTIAL ELECTION IN FLORIDA

In the aftermath of the 2000 elections in Florida, reports abounded of people being turned away from the polls and of shortcomings in the election administration. Voting equipment, the competence of election officials, the management of voter registration and the resourcing of the election precincts were all called into question. Moreover, allegations of civil rights violations also emerged.

In response, Governor Bush appointed a bi-partisan *Task Force on Election Procedures, Standards and Technology*, which heard testimony from experts and citizens in four cities over a two month period. In its role as guardian of the 1965 Voting Rights Act, the U.S. Commission on Civil Rights held hearings in Tallahassee and Miami. From these investigations a number of serious deficiencies came to light:

- **There was no uniformity in voting systems.** Five different systems were used in the state: punch card, optical scan with central tabulation, optical scan with precinct tabulation, machine lever, and paper ballot systems. Moreover, a high number of ballots were counted as invalid, particularly when a punch card system was not able to detect a valid vote if the voter had failed to cleanly and completely punch through the ballot. Approximately 180,000 votes fell into this category. Furthermore, several of the counties experiencing the highest rates of invalid ballots had significant populations of African Americans, leading to allegations that the punch card voting system had disproportionately affected this minority group in violation of Section 2 of the Federal

Voting Rights Act. The U.S. Civil Rights Commission reported that of the 100 precincts with the highest number of disqualified ballots, 83 were precincts where African Americans were the majority of the population.

- **There were no standardized guidelines for the conduct of recounts.** Counties (and indeed, different counting teams in the same county) applied different criteria for determining a voter's intent on a ballot in which the hole had not been cleanly punched through. This resulted in the U.S. Supreme Court finding the recount procedures unconstitutional.
- **There was no uniformity in ballot design.** This resulted in a lack of clarity, confusing formats and problems with font size. In Palm Beach County, an area with many elderly voters, to avoid a very small type-face a confusing "butterfly ballot" with the names of candidates on facing pages and punch holes running down the centre was designed. This was alleged to be responsible for an unexpected and quite improbably high proportion of votes for a third candidate.
- **There were inaccuracies in the voter registers.** Some voters were unable to find their names on the voter registers due to inefficiencies and inaccuracies, particularly in the transmission and processing of registration applications and change of address information from the Department of Highway Safety and Motor Vehicles.
- **There were problems with the system of purging names from the voter registers.** In line with regular practice, the state Division of Elections sent each county Supervisor of Elections a list of names to be deleted from the voter registers, which included those who had died or been judged mentally incompetent, and felons deprived of their voting rights. As part of this process a "felons list" was drawn up by a private company, contracted by the state, which contained the names of 3,000, to 4,000 people who should not have been included, either because they had never committed a felony or because their voting rights had been restored. Moreover, in Florida former felons have to appeal to the Governor's Office of Executive Clemency to have their civil rights restored. This procedure was found to be over-burdensome, time consuming and expensive. Furthermore, the U.S. Civil Rights Commission determined that African Americans suffered a disparate impact from the purging system. In Miami-Dade County, for example, the Commission found that 65% of the names on the purge list were African Americans, although they made up only 20.4% of the population.
- **There were no arrangements for "provisional voting",** which allows a voter to cast a ballot without it being included in the count until the right to vote is established. Instead, an ineffective affidavit procedure was in operation that depended on communication by telephone between the polling place and the Election Supervisor's office, which proved to be problematic and resulted in voters being turned away without voting.
- **There was a discrepancy between regulations for overseas ballots.** Florida Statute § 101.67 provided that "[a]ll marked absent electors' ballots to be counted must be received by the supervisors by 7 p.m. the day of the election" while Florida Department of State Rule 1S-2.013 provided that, for federal elections, "any absentee ballot cast for a Federal office by an overseas elector which is postmarked or signed and dated no later than the date of the Federal election shall be counted if received no later than 10 days from the

date of the Federal election as long as such absentee ballot is otherwise proper.” Thus, the deadline for absentee ballots depended on whether the election is a federal or state election.

- **There was a lack of sufficient guidance to county officials by the state Division of Elections and a lack of experience and training of election personnel at both levels.** The state Division of Elections failed, for example, to provide standardized rules for the determination of voter intent on questionable ballots during recounts or clear instructions on the removal of ineligible voters from the voter registers. In the four years leading up to the election, staff of the state Division of Elections had been reduced from 65 to 37. At the county level, many poll-workers were new and had received minimal training.
- **No significant action had been taken at either the state or county levels to cater for the large numbers of newly-registered first-time voters**, many of whom had weak English language capabilities. The only funding available was at county level for billboards and pamphlets against fraud. In contrast, \$35 million had recently been available in a single year to inform Floridians how to play the lottery.

In March 2001, the *Task Force on Election Procedures, Standards and Technology* issued a report containing nine lessons learned and 35 recommendations. Most significantly, it recommended that Florida should establish a uniform and standardized statewide voting system for the 2002 elections. Other recommendations included the provision of adequate state and county funding for better voter education, the recruitment of more qualified poll workers, the adoption of “provisional” ballots, the establishment of uniform statewide standards for counts and recounts for each type of voting system, the development of an online voter registration system and the adoption of uniform closing times in all time zones throughout the state.

In its report, *Voting Irregularities in Florida during the 2000 Presidential Election*, published in June 2001, the U.S. Commission on Civil Rights found that “the problems Florida had during the 2000 presidential election were serious and not isolated. In many cases, they were foreseeable and should have been prevented. The failure to do so resulted in a disproportionate impact on African American voters.” The report recommended that the U.S. Department of Justice and the Civil Rights Division of the Office of Florida’s Attorney General “initiate the litigation process against state election officials who violated the Voting Rights Act of 1965.” The Act prohibits not only intentional discrimination, but also practices or procedures that, when considering the “totality of the circumstances”, result in “people of color” being denied equal access to the political process.

Two members of the Commission issued a minority statement with a strong rebuttal, rejecting the report as “prejudicial, divisive, having little basis in fact”, and stating that the report’s central finding that there was “widespread disenfranchisement and denial of voting rights” “[did] not withstand even a cursory legal or scholarly scrutiny”.

Litigation was subsequently initiated by the National Association for the Advancement of Colored People (NAACP). This led to a quite exemplary settlement agreement, which was finalized in September 2002, rectifying many of the deficiencies experienced in the 2000 elections. In exchange for the provisional withdrawal of legal action against them, the state election authorities and certain county election supervisors, while refusing to acknowledge

any liability or breaches of the law, undertook to implement highly detailed and specific reform measures, and to report periodically to the plaintiffs up to the expiry of the agreements on 15 May 2005.

IV. LEGISLATIVE REFORMS AT THE STATE LEVEL

A. THE FLORIDA ELECTION REFORM ACT OF 2001

In response to the findings of the task force, faced with the critical report of the U.S. Commission on Civil Rights, possible intervention by the Department of Justice, and the lawsuit filed by the NAACP, in May 2001, the Florida state legislature adopted the *Florida Election Reform Act*, which included many of the task force's recommendations. Significant changes to rules of the Florida Department of State followed. Generally, the Act established a framework for more direct leadership by the Secretary of State and the state Division of Elections, and promoted more uniformity in the administration of elections statewide. The major changes featured in the new law included:

- abandonment of punch card voting, optical scan with centralized tabulation and lever machine systems;
- overhaul of administrative practices related to voter registration and the development of a statewide voter register;
- introduction of "provisional voting" as a means of compensating for inadvertent errors or omissions on the voter lists;
- establishment of formal guidelines ensuring more uniformity in the design of ballots;
- definition of specific procedures for the conduct of recounts and determination of voter intent during manual review of under-voted and over-voted ballots;
- imposition of stricter requirements for the training of polling station workers; and
- establishment of minimum standards for the development and implementation of voter awareness programs.

B. ABANDONMENT OF OUTDATED VOTING SYSTEMS

The new Act decertified the punch-card, optical scan with central tabulation, and machine lever systems, requiring affected counties to shift to "an electronic or electromechanical precinct-count tabulation voting system." The law also required that voting systems provide automatic tabulating equipment capable of rejecting a ballot, and providing voters with an opportunity to correct the ballot, where the number of votes marked in a particular contest exceeds the number to which the voter is entitled, or where no choice has been made. To evaluate the performance of the voting systems and to identify ballot design and instruction problems, the law requires county Election Supervisors to submit reports to the Florida Department of State regarding the number of invalid ballots cast. In turn, the Department of State is required to submit a statewide summary to the Governor and the Legislature. The law also directs the state Division of Elections to establish minimum standards for certification of voting systems.

C. VOTER REGISTRATION

In a positive step towards resolving voter registration problems, the Act requires Supervisors of Elections to inform applicants if their application is denied, outline the reason for denial

and provide an opportunity for missing information to be submitted. Additionally, when applicants register in a new jurisdiction, the new jurisdiction must notify the prior jurisdiction of the change.

The Act also authorizes the development of a statewide, on-line registration database that will identify duplicate registrations, deceased voters, and voters who are ineligible to vote because of a felony conviction or an adjudication of mental incompetence. To improve the accuracy of the voter lists and to provide better controls over the purge process, county Supervisors of Elections are required to compare information from relevant sources, including the Department of Law Enforcement, the Board of Executive Clemency, the Office of Vital Statistics, and other state and local governmental entities. Under the amended law, voter lists are a matter of public record and are open for examination by citizens. Only the voter's signature and social security number are treated as confidential information.

While improvements to voter registration procedures will help to alleviate some of the problems experienced in 2000, those concerning the systemic discrimination of African-Americans due to Florida's policies regarding a felon's loss of his or her civil rights have not been addressed. *It is recommended that the disenfranchisement of a voter occur only where the person has been convicted of a crime of such seriousness that forfeiture of political rights is indeed proportionate to the crime committed. Further, the forfeiture should be for a specified, proportionate period of time, and restoration of political rights should occur automatically after the expiration of this period of time and the fulfillment of the penalty.*

D. PROVISIONAL VOTING

In an attempt to ensure that voters are not unnecessarily turned away from the polls and to compensate for administrative errors in the voter lists, the Act introduced provisional balloting. Under this new provision, a voter who is confirmed to be at the correct polling station is allowed to vote by placing a ballot in two envelopes on the outer of which his or her identification and residence information is written. The envelopes remain sealed until the canvassing board confirms that the voter is eligible to vote in the precinct, that the voter's signature is consistent with the signature maintained in the database, and that he or she has not already voted by absentee ballot. Only then is the ballot counted.

E. BALLOT DESIGN

Many of the ballot design problems that caused confusion to voters in 2000 were addressed by decertifying the punch-card system of voting. Furthermore, at the direction of the Legislature, the state Division of Elections adopted rules prescribing uniform standards for the design of ballots for primary and general elections for both optical scan and touch screen systems. The rules specify that no race shall appear in more than one column on an optical scan ballot or on more than one screen of a touch screen ballot unless the number of candidates makes it impossible to fit them all in a single column or on a single screen. The rules also require optical scan ballots to advise voters of the need to vote both sides of the ballot.

F. RECOUNT AND COMPLAINT PROCEDURES

Florida's new legal provisions prescribe the conditions for a manual recount of the over-votes and under-votes cast in the geographic jurisdiction of a particular office or ballot measure. Such recounts must be open to the public and be conducted by as many counting teams of at least two electors as is necessary. If the counting team cannot discern the voter's intent, the ballot must be presented to the county canvassing board for determination. Pursuant to the legislature's directive, the Florida Department of State established Rule 1S-2.027 which sets out in detail what constitutes a valid, countable vote when using an optical scan ballot. The Department also adopted a comprehensive, detailed, uniform recount procedure for manual recounts of optical scan ballots.

G. TRAINING

The Act requires Supervisors of Elections to conduct training for election officials in advance of elections and polling station clerks to demonstrate a working knowledge of election laws and procedures related to registration, voting systems operation, balloting, polling place procedures and problem solving and conflict resolution. The Act also requires the Florida Department of State to prepare and distribute a uniform polling procedures manual to every precinct.

H. VOTER INFORMATION

Under minimum standards for the development and implementation of voter education programs established by the Act, the Florida Department of State is required to print and provide voter instruction cards for display at each polling station which include a "Voter's Bill of Rights and Responsibilities". This gives a registered voter the right to ask for and receive assistance; receive up to two replacement ballots in the event of a mistake; receive an explanation if his or her registration is in question; sign an affidavit to prove identity; be provided with written and/or oral instructions on voting; cast a vote free from coercion or intimidation by election officers; and vote on a voting system that is accurate and in working condition. Voter responsibilities include familiarization with candidates, ballot measures, polling station location, appropriate ID and voting equipment.

Pursuant to the legislature's directive, the Department of State prescribed minimum standards for non-partisan voter education. Supervisors of Elections are required to make a Voter Guide publicly available, which includes information about registration, dates of upcoming elections, absentee voting procedures, and use of voting systems. The information must include contact details for the office of the Election Supervisor and be made available electronically by Supervisors who have websites.

I. OVERSEAS BALLOTS

The Florida Department of State, on authorization from the Florida Legislature, has made it easier for overseas voters to cast their ballot by enacting rules allowing requests for absentee ballots via facsimile or electronic mail. Ballots may be returned by mail or facsimile, but not by electronic mail. However the discrepancy between Florida Statute § 101.67 and the Florida Department of State Rule 1S-2.013 regarding the deadline for receipt of absentee

ballots still remains. *Florida should harmonize these provisions and apply the same deadlines for all absentee ballots.*

V. RESPONSE OF THE ELECTION ADMINISTRATION IN FLORIDA

A. ADMINISTRATIVE STRUCTURES

In Florida, the Secretary of State is the chief electoral officer supported by an appointed director and staff of the state Division of Elections. The Secretary of State has general statutory authority to interpret the election laws and to ensure their uniform application. The state Division of Elections provides general guidance and technical assistance to county election administrators. The state canvassing commission, comprising of the Governor, the Secretary of State, and the Director of the state Division of Elections, has ultimate responsibility for the statewide tabulation and certification of the results.

At the county level, responsibility lies with an Election Supervisor who heads an election department charged with maintenance of the county voter registration processes, organization of absentee and polling day voting, establishment of polling stations, recruitment and training of polling station workers and voter outreach. In 66 of Florida's 67 counties, the Supervisors of Elections are elected and serve four-year terms. In Miami-Dade County, the Election Supervisor is appointed by the County Manager. In each county, a Canvassing Board made up of the Election Supervisor, a county court judge and the Chairman of the County Board of Commissioners is responsible for the tabulation of countywide results and final decisions about the eligibility of absentee and provisional ballots. Polling station boards, appointed by the Election Supervisor, are supervised by a "clerk" and staffed with "inspectors" who serve the voters on election day.

B. ADMINISTRATIVE MEASURES TAKEN TO OVERCOME PAST DEFICIENCIES

The authorities in Florida dedicated extraordinary financial and administrative resources to ensure that the circumstances experienced in 2000 (and during the September 2002 primaries in two counties) would not be repeated during the general elections. Among the most important administrative measures undertaken were:

- the purchase and installation of new and highly sophisticated voting equipment using updated technology;
- extensive involvement of county employees across departments to support the administration of elections;
- facilitation of early voting to provide additional opportunities to vote and reduce waiting lines on election day; and
- enhanced public information efforts and increased participation of civic groups, including organizations representing racial and ethnic minorities, in voter outreach activities.

C. IMPACT OF THE TRANSITION ON THE 2002 PRIMARY ELECTIONS

Following the decertification of their former voting systems, several counties, including Miami-Dade, Broward, Palm Beach and Hillsborough, selected touch screen voting machines. Others, such as Duval County, selected optical scanning devices that allowed voters to insert their ballots into the units for automatic inclusion in the count at the polling

station. This transition, which had to be accomplished before the primary elections on 10 September 2002, was not easy. Purchasing of new equipment was costly. Hillsborough County, for example, spent more than \$13 million and Broward and Miami-Dade Counties, in excess of \$20 million each.

The transition had serious consequences for Broward and Miami-Dade Counties. Officials were insufficiently prepared on 10 September 2002 and polling station workers did not receive adequate training in the use of the new technology. Some polling stations were not able to open on time, long lines of voters resulted and many were reportedly unable to vote. Palm Beach and Hillsborough Counties fared better and experienced minimal problems during the primary elections. Hillsborough County even conducted a countywide mock election to test their new touch screen voting machines, in which 14,400 citizens participated. The lessons learned prompted the county to purchase additional machines to ensure that a demonstration unit was available at each polling station and to enhance training efforts.

D. USE OF NEW TECHNOLOGIES

On the occasion of the general elections in November 2002, both the touch screen voting and optical scanning systems were successful in overcoming instances of under and over-voting that caused so many ballots to be rejected in the 2000 elections. Voting for more than one choice in any contest is impossible with touch screen machines, while the optical scanning machines used in Duval County were calibrated to reject a ballot containing more than one choice in the same contest. If the scanning machine rejected a ballot deposited by a voter, the voter was able to request a replacement.

While under-voting (leaving a contest with no vote cast) was allowed on the touch screen devices used in Hillsborough and Palm Beach Counties, any contests in which no choice was indicated was highlighted, allowing voters to cast a vote if the omission was inadvertent. Although no safeguards against under-voting were offered in the optical scanning systems, the number of under-votes was greatly reduced compared with 2000.

The new systems were easy to use and provided voters with greater assurance that their votes would be counted. Concern that the new systems would cause problems to older voters did not appear to materialize. Ballot papers used in optical scan machines and displayed on touch screen machines were available in both English and Spanish. In Miami-Dade County, Creole was also an option. Touch screen voting machines were calibrated to recognize the ballot types provided, based on a voter's residence address and voting jurisdiction.

Some variation in preparation and use of machines was noted. Those used in Miami-Dade and Broward Counties took longer to set up than those in other counties. Delays in opening were avoided by preparing the machines on the evening before polling. In Miami-Dade County, an official at the polling station had to activate the machine for each voter. In contrast, voters could personally activate the machines utilized in Hillsborough and Palm Beach Counties with an encoded plastic card.

E. INVOLVEMENT OF COUNTY STAFF IN ADMINISTRATION OF THE ELECTIONS

To overcome the challenges of past elections, counties provided extra support to their Election Departments. In Hillsborough County, 250 county employees, including

supervisory and managerial personnel, were granted leave with pay to work on the elections under the direction of the Election Supervisor. In Broward County, administration and logistics were entrusted to the county's Chief Executive Officer. Election headquarters were stationed in the county's emergency and natural disaster operations room and county officials at all levels of seniority were mobilized.

A similar strategy was put into place in Miami-Dade County where, following problems in the primary elections, responsibility for planning and preparation was vested in the Director of Police. While the Supervisor of Elections maintained responsibility for election procedures, legal compliance, and tabulation of results, various operational components were directed by police officers with staff members from the Election Department serving in support roles. In addition, professional staff from other county departments took over responsibility for voter outreach and training functions and three county employees were assigned to each polling station to oversee the work of polling boards, verify the registration status of voters, and provide technical support for startup, maintenance and closeout of the voting machines. Altogether, nearly 5,000 employees from other departments were involved.

While these strategies successfully demonstrated how resources and expertise within the county administrations could effectively be used by Election Departments to strengthen capacities, concerns were expressed that some of the strategies were cost prohibitive and could not be sustained as a continuing practice. In the future, maintaining a traditional election management structure without superimposing alternative lines of authority, as was possible in Hillsborough County, is ultimately a preferable option. Inter-departmental support could still be utilized without a major overhaul of fundamental election institutions. More effective links between the state and county levels of the election administration could also be developed. *Counties that superimposed extraordinary administrative structures should evaluate how these enhanced capacities can be developed within Election Departments under the Election Supervisor. The leadership role of police in the management of the elections in Miami-Dade County should be minimized, although the police could continue to serve as a valuable resource to advise on the development of work plans and crisis management strategies, and provide logistics and communications support.*

F. VOTER OUTREACH

In response to concerns regarding the inadequacy of voter outreach programs in 2000, the authorities took extra measures to inform voters about the elections in 2002. A number of counties, including Hillsborough and Miami-Dade, mailed comprehensive information to voters that included instructions on how to use the new voting machines, sample ballots and the full text of all ballot measures in at least two languages. Hillsborough County also included the voter's new voter ID card and addresses and maps showing the location of the voter's polling station. Miami-Dade County supported their mailing with a message in the media encouraging voters to become familiar with all ballot measures before going to vote. *These activities proved effective and should become a standard practice for future elections.*

Civic organizations also played an increased and significant role in promoting voter awareness. Outreach efforts were targeted toward several minority groups including Hispanic and Creole populations and information materials and advertising were produced in both languages. In response to the disparate impact of electoral deficiencies on African American voters in 2000, civic organizations representing African Americans, such as the

NAACP, were particularly active throughout the state. In Hillsborough County, the Supervisor of Elections worked closely with the organization and provided demonstration voting machines for use in their outreach efforts.

In Duval County, *Big Vote*, a member of the coalition of Black Trade Unionists and Common Cause, organized a program to mobilize African American voters and placed members outside polling station to assist electors if they encountered problems in trying to vote. In Miami-Dade County, officials maintained an ongoing dialog with the Election Reform Coalition, which represented a number of associations, unions and civic organizations. The Coalition assisted officials in identifying potential shortcomings and possible solutions and engaged in voter information campaigns. Significantly as representatives of a non-partisan organization, members of the Coalition, as well as those of some other civic organizations, were unable to gain access to polling stations on election day to observe. *Every effort should be made by the authorities to sustain positive and collaborative relationships with civic organizations on an ongoing basis and to build on the successes achieved during the 2002 elections. Representatives of non-partisan organizations should be granted access to all levels of the election administration in line with commitments agreed to by the U.S. in paragraph 8 of the 1990 OSCE Copenhagen Document.*

G. TRAINING

In counties visited, it appeared that efforts had been made to improve training. In Hillsborough County, for example, polling stations officials reported that they had received approximately 24 hours of training, while in Broward County it was estimated that 12,000 “person-hours” of training had been provided. In Miami-Dade County, extensive training classes were followed up with refresher classes immediately before the election, with special sessions focusing solely on setting up and operating the touch screen voting machines.

Although some disparity in the proficiency of poll workers from one precinct to another was noted in Duval County, at most polling stations visited officials appeared confident in carrying out their assignments. NAACP leaders in Hillsborough and Duval Counties raised concerns that African Americans comprised a significant number of the poll workers who were not recalled for the general elections in spite of their prior election experience and their completion of training. *This should be investigated by the Supervisors of Elections in these counties. If this concern is substantiated, an explanation should be provided and measures taken to avoid such circumstances in the future.*

H. POLLING PROCEDURES

Most polling station sites visited were spacious and staffed with a sufficient number of officials and voting machines to ensure a smooth and efficient flow of voters. However, some polling stations in Palm Beach County appeared to lack sufficient machines and voters often experienced a long wait to vote. *Criteria for assigning the number of voting machines should take into account special circumstances, such as the number of elderly voters, who may require more time to complete the voting process.*

Each polling station was provided with a list of persons registered to vote in the precinct. Upon presentation of appropriate ID, voters were asked to sign the voter list. Voters not on the list but whose eligibility within the precinct could be confirmed, and voters on the list

without proper identification could sign an affirmation form and be added to an “add-on list”. The format of voter lists utilized in some counties included several categories of information about the voter beyond their name, address, jurisdiction/ballot type and voter number, such as their gender, date of birth, race and party affiliation. Since voters are required to present photo identification, it is not clear why this information is necessary, and except in primary elections, the indication of party affiliation seems to serve no purpose. Notwithstanding laws that make registration information of the state a public record, unless there is a compelling public interest in disclosing this information at the polling stations, there is a legitimate question as to whether its inclusion is an infringement of individual privacy.

Some counties, including Miami-Dade and Hillsborough, provided polling stations with laptop computers containing the complete countywide register of voters, including those not eligible to vote for reasons such as their status as felons or for having moved out of the county, or registered after the deadline. This helped officials to determine quickly whether voters not found on the precinct register were to be directed to a different polling station, declined a ballot, or given a provisional ballot.

1. Under-use of Provisional Ballots

Very few provisional ballots were issued due to an overly restrictive requirement that to receive such a ballot a voter had to be confirmed to be in the correct polling station. A voter who has waited in line only to be informed that he or she is in the wrong polling station may be reluctant to go and wait in line again at the correct station. This restriction was presumably imposed to ensure that a voter receives the correct ballot. It is not uncommon in Florida for a polling station to serve “split precincts” in which voters at the same site may receive different ballots based on their residence addresses. Moreover, a person whose eligibility is in question should have an equal opportunity to have a formal review by the Canvassing Board. Under the current rules, a person who protests is afforded this opportunity, while a person who does not is denied. *The provisional ballot process should be expanded so that, depending on the findings of the Canvassing Board, portions of the ballot for which the voter is eligible, such as federal or statewide elections, are counted, even if local contests or ballot measures must be left uncounted. The provisional ballot envelope should be redesigned so that it contains sufficient information to register the voter or correct his or her voter record for future elections.*

2. Length of the Ballot

Ballot papers were rather lengthy due to the inclusion of the full text of each ballot measure. This contributed to long lines at some polling stations. While Hillsborough and Miami-Dade Counties publicized the full text in advance through mass mailing of voter information and extensive advertising, this was not the case in all counties. *To make ballot measures easier to understand and speed up the voting process, the full text should be publicized in advance, be made available on posters at polling stations, and meet a standard not greater than a ninth grade reading level.*

I. SECRECY OF THE VOTE

Layout in polling stations was not always conducive to ensuring voters’ privacy. For example, in some polling stations visited by the ODIHR Election Assessment Mission,

scanning units were placed near the entrance/exit, exposing the voters' ballots to others' view when feeding the ballots into the scanners. In some stations, touch screen voting machines were lined up in a way that a voter could look over the shoulder of the person at the next machine and see the vote. Screening was also not always provided for disabled voters voting at tables. In addition, in some precincts poll workers, rather than voters, fed ballots into the scanning unit. *Greater care should be taken to ensure that the secrecy of the ballot is ensured and safeguards should be established to minimize the likelihood of a poll worker seeing how a voter voted.*

J. CLOSE OUT PROCEDURES AND AUDITING

Closeout procedures did not always involve the usually standard practice of comparing the number of signatures on voter lists or authorization slips against the number of votes recorded for the polling station. Although Hillsborough County implemented a system of scanning bar codes in the voter lists next to the names of people who voted in order to establish a point of comparison between the number of voters who voted and the number of votes recorded, it is not clear what measures were undertaken by other counties. *Where suitable procedures have not been incorporated to initiate an audit trail by counting and comparing the number of voters' signatures or authorization slips with the number of votes cast at a polling station, steps should be taken to define an appropriate solution prior to the next election.*

Inconsistent approaches were adopted for the tabulation process at the polling station level. In Hillsborough County, for example, the results from each machine were recorded separately, creating the opportunity for a definitive audit should a challenge be forthcoming. In Miami-Dade County, however, the results from all machines were accumulated and reported on a polling station basis. *Consistent rules for the reporting of polling station results should be established by the state Division of Elections.*

VI. LEGISLATIVE REFORMS AT THE FEDERAL LEVEL

The 2000 events in Florida became the catalyst for nationwide reforms. Interest was prompted by escalating concern that similar failings, hidden only by fortuitously large margins of victory, existed in other states as well. In 2001, a *National Commission on Federal Election Reform*, headed by former Presidents Gerald Ford and Jimmy Carter, examined election reform from a national perspective. Congress responded to the public concerns, and the *Help America Vote Act*, authorizing \$3.86 billion in federal funding, was adopted and signed into law on 29 October 2002. Notwithstanding the decentralized nature of the U.S. election process, this Act introduces a stronger federal dimension to the conduct of federal elections nationwide and establishes uniform standards and procedures with which all states should comply by 2004. Many states started to implement the requirements of the Act before it was adopted and these efforts had a positive impact on the 2002 general elections.

To a large degree, the new Act governing federal elections accommodates many of the reforms already adopted by Florida. For example, the Act requires all states to develop a statewide voter list for federal elections. By 2004, "provisional" balloting will be mandatory across the country during federal elections. Administrators will also have to establish a website, toll-free telephone access number or other contact system that will allow provisional voters to ascertain whether their vote was counted or why it was rejected.

While not imposing a ban on punch card or other outdated voting systems, the legislation authorizes grants to states seeking to upgrade their election systems with new technologies. Voting systems used for all elections to federal office must permit voters to change their vote or correct any error before they cast their ballots, alert the voter if he or she has selected more than one candidate in a race, and produce a record that can be audited. The Act also requires each state to adopt uniform, nondiscriminatory standards defining what constitutes a valid vote for each type of voting system used.

The federal law authorizes the appropriation of funds to improve state election administrations, train election workers, and improve accessibility and assistance for disabled persons and those with limited proficiency in the English language. An Election Assistance Commission will be established to issue grants for such purposes, and to study the feasibility of providing materials in more languages. The Act also creates the “Help America Vote Foundation” and the “Help America Vote College Program” to encourage secondary school and college students to serve as non-partisan poll workers and assistants. Finally, the Act requires states receiving funds under its provisions to establish and maintain complaint procedures that provide opportunities for a hearing, timely resolution, and appropriate remedies for a violation.

The NAACP and other civic organizations actively lobbied for these reforms. However, objections were raised that requiring presentation of a valid drivers’ license, social security card or other identification issued by a state agency, would have a disparate impact on the poor, elderly and disabled, and minorities. Despite the law being adopted with these requirements intact, and with some reservations, the African American caucus in Congress supported the bill as a step forward in alleviating some of the problems experienced in 2000. Nonetheless, civic groups will continue to lobby for future improvements and monitor the impact of the new provisions on constituencies they represent.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's main institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections by the OSCE Heads of State or Government at the 1990 Paris Summit. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratisation. Today it employs over 80 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following six thematic areas: rule of law, civil society, freedom of movement, gender equality, trafficking in human beings and freedom of religion. The ODIHR implements more than 100 targeted assistance programs, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR **monitors** participating States' compliance with OSCE human dimension commitments. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR [website](#), which also contains a comprehensive library of reports and other documents, including all previous election reports and election law analyses published by the ODIHR.