

2004 Presidential Election

2004 U.S. ELECTION: AN INTERNATIONAL PERSPECTIVE

NOVEMBER 2004
UNITED STATES ELECTION
OBSERVATION REPORT

FAIR ELECTION INTERNATIONAL



Fair Election
International Election
Observation 2004

2017 Mission Street, Suite 303
San Francisco, CA 94110
415-558-0500



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Fair Election International (FEI) is a project of Global Exchange, an international human rights organization dedicated to promoting social, economic and environmental justice by building people-to-people ties around the world.

For more information about FEI or to download a free copy of this report or the pre-election report, please visit www.fairelection.us. For media inquiries, please contact Jason Mark at (415) 558.9490 or jason@globalexchange.org. For more information about other projects of Global Exchange, please visit www.globalexchange.org.

FAIR ELECTION INTERNATIONAL STAFF

Ted Lewis, Program Director
Karen Decker, Program Manager
Nell Greenberg, Program Coordinator
Program Volunteers: Bob Lent, Abby Trollinger

ELECTION REPORT

Shannon Biggs, Managing Editor
Nell Greenberg, Associate Editor
Karen Decker, Associate Editor
Abby Trollinger and Jason Mark, Copyeditors
Additional contributions by: Michael Barton, Ted Lewis and Carleen Pickard

MEDIA

Jason Mark, Tim Kingston and RipTide Communications
Videography: Michael Barton, FEI Video Coordinator,
Michael Edo Keane, Carl Jesse, and Jordan Debee

STATE TEAM LEADERS

Ohio: Karen Decker and June Brashares
Missouri: Michael Barton and Carleen Pickard
Florida: Nell Greenberg, Matt Rosen and Walter Turner,
President, Global Exchange Board of Directors

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TABLE OF CONTENTS

INTRODUCTION	2
RECOMMENDATIONS FOR FUTURE U.S. ELECTIONS	4
FLORIDA STATE REPORT	8
OHIO STATE REPORT	11
MISSOURI STATE REPORT	15
APPENDICES	
A. Election Day Observation Delegation Biographies.....	i
B. Recommendations from the Fair Election International Pre-Election Observation.....	iii
C. Polling Location Observed	vii
ENDNOTES	ix

INTRODUCTION

The 2004 U.S. election inspired a wave of unprecedented civic activity across the United States aimed at improving the U.S. electoral system and avoiding the kinds of breakdowns that fueled disputes and acrimony in November 2000. The Fair Election International independent, non-governmental observation is an initiative that sought to contribute to the ongoing efforts to increase confidence in the U.S. electoral process through increased transparency and the sharing of democratic innovation.

This report summarizes the election observation conducted by 15 election experts and democracy advocates from five continents who observed voting activities in Florida, Ohio and Missouri. These observers are part of a larger group of 30 civic leaders, members of parliament, diplomats, lawyers, electoral officials, academic specialists, journalists and veteran election observers from around the world who volunteered to apply their decades of experience supporting, administering, and building democracies in more than 100 countries to further electoral transparency and reform in the United States.

The delegation was hosted and supported by the Fair Election International (FEI) initiative of the U.S. based international human rights organization, Global Exchange. The election observation covered in this final report followed a September pre-electoral visit made to the same three states of Florida, Ohio and Missouri as well as Arizona, Georgia and Washington, DC. The recommendations of that report (available in the Appendix and on-line at www.fairelection.us) are broad in scope and help frame the more specific suggestions made in this report.

In the U.S., the FEI delegation found both a great depth of democratic belief, tradition, and practice as well as a widespread impulse for reform. The delegation applauds the sincere and honest efforts of many citizens and elections offi-

cial, while at the same time calling attention to an electoral system in considerable distress. In brief, the delegation concluded that despite reforms undertaken in response to the contentious 2000 election, confidence in and the equity of the U.S. electoral system continues to be compromised by ambiguities in election standards, partisan oversight, and problematic voting equipment. All of these practices needlessly undermine voter confidence in the integrity of U.S. electoral decisions:

- the lack of uniformity and continuous reinterpretation of voting standards;
- non-transparent and partisan oversight of most election administration; and

- the widespread use of privately programmed computerized voting systems with no reliable recount mechanism.

Had the vote totals in the 2004 presidential race been marginally closer, the imprecision introduced by any of the factors just mentioned could have thrown the elections into protracted dispute. Even as this report is published, nearly a month after the election, many local races are being recounted and sometimes contested. The mistrust generated by opaque practices is real and will only be put to rest by reform and genuine transparency, not by blind faith in machinery, voting officials, and ambiguous standards.

Based on international best practices, as well as some examples of best practice in the U.S such as in Boone County, MO and Leon County, FL, the delegation's key recommendations include:

- Simplifying and standardizing procedures for electoral processes at the state level, and, to the extent possible, at the national level.

- Conducting the administration, oversight and certification of elections at all levels by non-partisan, independent officials;
- Including a voter verified paper audit trail with public-access "open source" codes for all DRE machines; and
- Providing full access to all voting processes for independent observers, both domestic and international.

Further recommendations are included pertaining to easing Election Day congestion at the polls and clarifying electoral processes, especially regarding challengers and provisional ballots. The delegation was struck by another unique characteristic in U.S. elections — the amount of campaigning and canvassing that occurs up to and on Election Day. In most other countries, a "reflection period" of 24-48 hours is recognized during which no campaigning is allowed.

A more detailed discussion of these recommendations can be found in the first section of the report, followed by three summary reports of the observation in Florida, Ohio and Missouri.

RECOMMENDATIONS FOR FUTURE U.S. ELECTIONS

The delegation reaffirms the Fair Election International pre-election delegation's recommendations as stated in the report, *"Election Readiness: It is Never too Late for Transparency."* The overall recommendations from that report can be found in the appendix of this report. The entire pre-election observation report can be obtained at www.fairelection.us.

Based on Election Day observations, the delegation adds the following recommendations.

1. The delegation recommends that procedures for electoral processes be simplified and standardized at the state level, and to the extent possible, at the national level.

In the United States, virtually all the decision-making for electoral procedures is done at the state, county, or municipal level, despite minimum national standards introduced by the Help America Vote Act of 2002. Even in national elections no uniform standards are applied to critical issues such as registration, poll watching, balloting and training of poll workers. This lack of national standards institutionalizes procedural ambiguity, leaving room for confusion amongst the electorate and poll workers. Consequently, state and national election results become vulnerable to local interpretation and error. The lack of uniformity also puts greater responsibility on the counties to research, design and administer ballots and voting equipment which would more efficiently be conducted at the state or national level. Such variety in the electoral systems creates a tremendous array of election laws, making oversight difficult.

For example, the use of provisional ballots, now a national requirement under HAVA, is designed to safeguard the rights of eligible voters whose names do not appear on the rolls. However, state law and county procedures determine *whether or not a provisional ballot is counted once cast*, which means that rules vary between, and even within, states. Due

to these vagaries, litigation involving the rules and regulations for provisional ballots was underway in Florida, Ohio and Missouri in the weeks and days prior to the election, and on Election Day poll workers within the same county were giving different information on provisional ballots.

Internationally, the United States is virtually alone in administering national elections at the local level. Most countries charge a national board with the responsibility of preparing the standards used by all poll workers, to ensure that the system does not rely on the criteria or subjective opinions of local officials and poll workers. In the United States, clear criteria, rules and best practices should be determined by a non-partisan or, as an interim step, a bipartisan body. Clear national standards would:

- simplify state and federal oversight of elections;
- reduce the amount of work at the county level, providing more time and resources for administration and voter education;
- reduce poll worker confusion by providing uniform guidelines;
- minimize the chances of litigation over imprecise electoral rules and regulations;
- enhance voter confidence that rules will be applied fairly and consistently.

2. The delegation recommends that the administration, oversight and certification of elections at all levels be conducted by non-partisan, independent officials.

Currently in the U.S., the majority of election functions are carried out by officials linked to a political party, often actively engaged in running for office or campaigning for a party at the same time they are responsible for the administration of the elections. Even poll workers are hired according to party affiliation. To avoid the perception that they favor a particular outcome, those who administer elections must be neutral and transparent in their conduct. Election administrators should act strictly on a nonpartisan basis so that all voters of whatever party affiliation can have confidence in a fairly administered system. The employment of nonpartisan electoral officials and poll workers who, as civil servants, would be selected on a non-partisan basis, would promote voter confidence in the administration of elections.

Non-partisan electoral oversight is the international norm. For example, in South Africa elections are administered and managed by an Independent Electoral Commission. The Commission, founded by the Constitution, is one of the pillars of South African democracy and emphasizes its independence and impartiality in carrying out its duties.

The Commission consists of five members, one of whom is a judge appointed by the President of the country in accordance with the provisions of the Constitution and Electoral Act. Members of the public are allowed to nominate candidates to serve as Commissioners, whose suitability to serve is determined by the following criteria: they should be South African citizens; they should not have a high political profile; and should have been recommended by a majority of members in the National Assembly. Qualifying candidates are short listed and eventually interviewed in full view of the public by a panel that is chaired by the President of the Constitutional court. Their recommendations to Parliament and eventually to the President of the country are also public.

The fact that members of the public have input in the nomination and eventual appointment of these commissioners has a positive effect on voters, who are assured that no political party agenda can hamper the administration of elections and that all political parties will be treated equally, notwithstanding their representation in Parliament. In a further effort to ensure transparency in the execution of its functions, all registered political parties form part of a Liaison Committee at all spheres of government. It is in this forum where the Electoral Commission updates parties of its processes.

In most countries, the commitment to independent, non-partisan elections continues down to the local level. Often poll-workers are selected at random, similar to jury duty in the U.S. In other countries, such as India, the largest democracy in the world, the state level and local (municipal) officials are representatives of the national independent Election Commission. The nearly five million polling personnel and civil police forces employed on Election Day are considered to be deputies of the Election Commission and subject to its impartial statute.

3. The delegation recommends the inclusion of a voter verified paper audit trail with public-access “open source” codes for all DRE machines.

Voter confidence is seriously undermined by the current use of touch screen (DRE) paperless voting, which neither provides a verifiable recount mechanism nor ensures that a vote cast on a DRE machine without a voter verifiable paper trail will correspond to that being recorded, transmitted, and tabulated. All voters should have concrete confirmation that their vote is recorded accurately, so as to leave no room for doubt. Prior to the elections, the need for a paper trail on DRE machines was hotly contested, and only Nevada equipped its DREs with this auditing technology. In 2004, the case for voter verification became clear as irregularities and reports of data loss emerged during the primaries and the general election.

In Ohio, an optical scan machine in Franklin County wrongly added 3,893 votes to the George W. Bush tally in one polling location where just 800 voters registered. The error was discovered in preliminary vote counts and remedied immediately. However, if a similar error had occurred with a DRE machine there would have been no way to accurately reverse the error.

In Broward County, Florida, a software glitch resulted in a computer miscounting thousands of absentee ballots affecting vote totals for Amendments Five through Eight, and altering the outcome of Amendment Four. Fixing the software glitch restored more than 32,000 ‘yes’ votes cast for the Amendment. Supervisor of Elections Brenda Snipes attributed the problem to human error — a technician failed to adjust the computer software in order to allow a greater vote tally than the limit set for smaller precinct counts. It is important to note that there would have been no way to catch the error if it had not been for the paper trail provided by the absentee ballots.

In both the Ohio and the Florida examples, double-checking procedures caught the errors; however, it would have been impossible to implement any double-checking proce-



Polling location clerk checks the final tabulation of optical scan ballots with one of her poll workers after the closing of polls at the Lafayette Recreation Center, Leon County, FL.

dures had the errors occurred with a general ballot and a DRE machine. DRE machines without a voter verifiable paper trail render complete confidence and reliability in the electoral process impossible. The delegation is unequivocal in support of a paper trail so that problems can be brought to light and remedied. Furthermore, to enhance transparency the delegation recommends that the source codes for all DRE machines be made available for public review, which would allow for citizen oversight and promote a transparent and accessible voting system.

4. The observation recommends that domestic and international observers enjoy full access to all aspects of voting and tabulation.

The 2004 general election marked an unprecedented confluence of both international and domestic non-partisan election observers who were active, if not always welcomed by local authorities, at the polls. The presence of these observers points out ways of opening the doors to real electoral transparency, a cornerstone of the democratic process.

Democracies throughout the world openly invite domestic and foreign observers into the process without compromising the sanctity of the polling station or creating administrative headaches; their multitude of experiences can inform the creation of U.S. practices. The benefit of both domestic and international election observation was recognized by the United States in 1990 when President George H. W. Bush signed an international agreement at the Conference for the Security and Co-operation in Europe (of which the U.S. is a party).¹ Based on this agreement, the US State Department invited international observers in 2002 and 2004. However, the spirit of this agreement has not been embraced nor legally enforced as state governments refused

to provide the access granted in this agreement. As shown by this delegation, access to the polls is granted inconsistently among states and even left to the county to decide: Missouri law provided for international observers but not for domestic observers; Ohio did not allow any independent observation; while in Florida, the individual counties decided who would have access.

The delegation recommends the normalization of access for both domestic and international independent observers at polling locations, canvassing boards and tabulation centers.

5. The delegation recommends the implementation of broad measures to ease Election Day congestion at the polls.

The 2004 U.S. general election registered a record turnout of voters. Increased voter participation is a sign of healthy civic interest, but this year's turnout overwhelmed the capacity of the system in many places throughout the country. The delegation witnessed lines of up to four hours in some polling locations and voting queues of up to eight hours were reported. The introduction of new and thus unfamiliar machines, as well as lengthy ballots (the delegation witnessed some as long as 16 pages) contributed to delays.

Long lines present discouraging obstacles to voting, disproportionately impacting low-income and otherwise vulnerable populations, including single parents and those with little job flexibility. No voter should ever have to decide between casting a ballot and making it to work or childcare on time.

While the delegation is not proposing any one particular response, there are many options common internationally that address these challenges. They include:

- *Early Voting.* The delegation applauds progressive measures such as no-fault absentee balloting and in particular, early voting and urges nationwide adoption of early voting measures, and expansion where it currently exists, to better meet demand.
- *Observing Election Day as a national holiday, or holding elections on a weekend.* These options are used successfully in many countries, and are not only helpful in reducing queues (people can vote throughout the day rather than at "peak hours" before and after work), but also allow for a greater pool of poll workers.
- *Enhanced training of poll workers.* International standards for poll worker training are higher than most places observed in the U.S. Better training allows for less confusion at polling locations, which contributes to longer queues. This would be further streamlined by the

standardization of election procedures at the statewide or national level as recommended above.

- *Reducing the number of issues/candidates per election.* A majority of countries do not combine elections, having fewer offices and issues per election, which results in shorter, less complicated ballots. This would also address questions around the counting of provisional ballots, since for Statewide and Federal ballot races voters could cast a vote anywhere in the state and be assured that it would be counted.

6. The delegation recommends election officials at all levels clarify legal requirements regarding electoral processes well in advance of elections.

In Florida, Ohio and Missouri, as well as in other locations throughout the country, various changes to and clarifications of electoral processes were occurring up to and during Election Day. These changes were often instigated by or resulted in legal challenges and last minute rulings leading to last minute scrambling and confusion.

Last minute information about election procedures, both legitimate and fraudulent, was being distributed to voters in the days before the election. A freeze on changes to voting rules would help poll workers, voters and voter education groups to better inform the public as well as to recognize and discount any fraudulent information.

The delegation recommends that wherever possible election officials at all levels clarify legal requirements regarding electoral processes well in advance of elections, between three and six months, and publicize them as widely as possible, to avoid confusion and uncertainty.

7. The delegation recommends strict limits on partisan challengers.

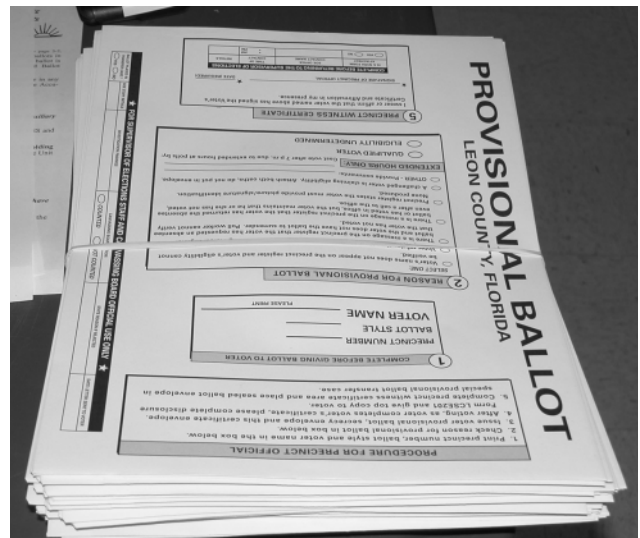
The delegation notes widespread concern about the presence of party-affiliated challengers, and the lack of clarity about their role. Unregulated challengers raise the potential for voter intimidation and disruption of the voting process. Given that poll workers are party-affiliated, such challengers are redundant. In general, the delegation recommends that all voter registration and identification problems should be resolved prior to Election Day. However, in the event of questions regarding voter impersonation or other Election Day identification requirements, any challenges should be directed to and resolved by the polling clerk or polling judge; challengers should never approach voters personally.

8. The delegation recommends clarification and further study of provisional ballot procedures.

The delegation recognizes the need to maintain the use of provisional ballots as a safeguard for voters whose names do not appear on the voter list. However, provisional ballots generally reflect the poor organization and management of registration lists. Thus, the delegation recommends that measures be taken by election officials to minimize the need for provisional ballots, such as streamlining the registration process and immediately implementing the statewide voter registration database.

In order to better understand how provisional ballot requirements are being implemented and how they effect the final vote, the delegation recommends that an analysis be undertaken of how many and for what reasons provisional ballots were cast, validated and counted, as well as reasons they were disqualified and not counted.

In addition, the delegation reiterates the recommendation of the pre-election delegation that provisional ballots cast within the voter's correct county should be considered valid for county, state, and federal level candidate races and ballot initiatives.



Provisional ballots proved to be a major source of litigation on the days leading up to the election and ultimately for confusion on Election Day.

FLORIDA STATE REPORT

2004 Election Day Delegation:

Justice Bekebeke (South Africa); Roberto Courtney (Nicaragua); Manuel Garreton (Chile); Oscar Gonzalez (Mexico); Caerwyn Dwyfor Jones (Wales); and Owen Thomas (England).

In accordance with the recommendations put forth by the FEI Pre-Election observation, the Florida Delegation went to three counties: Miami-Dade (population 2,253,362); Broward, Ft. Lauderdale (population 1,731,347); and Leon, Tallahassee (population 242,577).² Both Miami-Dade and Broward counties used DRE voting machines, whereas Leon County used the optical scan system.

The delegation received varying levels of access to the polling locations in each of the three counties. In both Miami-Dade and Broward counties, the delegation was initially denied access to the inside of polling locations. However, after last minute, unexpected meetings with election officials, the delegations in both counties were permitted access to a limited number of predetermined polling locations. In Miami-Dade, after a meeting on the afternoon of Election Day, the delegation was granted access to two named polling locations with the mandatory presence of one county election official.³ In Broward County accreditation was issued to four locations selected by the Board of Elections two days before the election.⁴

In comparison, the Leon County Supervisor of Elections, Ion Sancho, provided full and unfettered access to all polling locations and to all information requested about the county's electoral process. In addition, poll workers, poll watchers, and the canvassing board commission welcomed the presence of the delegation throughout the county.

Prior to Election Day the delegation observed Get Out The

Vote efforts at both Republican and Democratic headquarters, the last day of Early Voting, and volunteer and lawyer trainings conducted by the nonpartisan Election Protection Coalition. On Election Day, the delegation conducted observations at 18 polling locations, observed meetings at canvassing boards and tabulation centers, and witnessed the efforts of election protection groups.

The delegation found that major improvements in the Florida electoral process have occurred since the 2000 elections. The delegation was also impressed by voters determined to exercise their right to vote despite very long lines, and by election authorities who were committed to preventing and addressing any problems that could have impeded the electoral process. In addition, highest praise is reserved for both the highly organized nonpartisan election protection groups whose effective presence in preventing voter confusion and disenfranchisement was noticed at all observed polling locations; and the dedication to electoral transparency displayed by the Leon County Supervisor of Elections, Ion Sancho.

MAIN FINDINGS

Had the margin of victory been as close as it was in 2000, the irregular use of provisional ballots, the lack of control over the distribution of absentee ballots, the lack of a paper audit trail and an open source code for DRE machines, and the problems with the registration process would have thrown the electoral process into doubt. In addition, the partisan nature of the electoral administration, the inconsistent procedures from county to county, and the permanent disenfranchisement of former felons placed unnecessary stress on the process and remain far from international standards.

EARLY VOTING:

In all three counties the delegation observed very long lines with waits of up to three and a half hours during the early voting period. At each location there were a number of prospective voters who were deterred from voting due to the lines; however, electoral authorities made no effort to determine the overall percentage of “walk-offs.” The delegation found that in some cases the long waits were either due to an inadequate number of voting machines or to the lengthy 2004 ballot. In Miami-Dade, the ballot had 27 questions and nine pages, taking voters up to 45 minutes to cast their ballots. However, the delegation found that despite long lines most voters were ready and willing to wait in order to cast their vote. In Miami-Dade County, approximately 250,000 persons voted early out of a total of 1,058,000 registered voters in the county.

OPENING OF THE POLLS:

In all observed locations election officials and poll workers opened the polls in a timely and efficient manner. In Broward County, for example, the electoral officials invited the delegation to observe the Broward County Emergency Operations Center (EOC), where election officials regulated the opening of the polls. The Broward delegation watched a large screen that showed a map of all the locations in Broward as they came “on-line” just prior to 7:00 a.m. The Broward delegation observed that virtually all of the Broward polls opened on time. In Miami-Dade, the delegation went to the law offices of Shook, Hardy, and Bacon, where attorneys staffed an Election Protection phone-in center. During the time the delegation was at the phone-in center (6:30-7:30 a.m.), there were no calls received regarding late poll openings or other irregularities. The relatively smooth opening of polls in Miami was in stark contrast to the 2002 election, during which Governor Bush was forced to issue an executive order to extend the

voting hours beyond 7:00 p.m. due to many late poll openings. It was clear that Miami-Dade elections officials had worked hard to implement solutions to these problems.

CLOSING OF THE POLLS:

At the close of all observed polling locations poll workers allowed those who were already in line to vote, in accordance with Florida electoral law. Because Florida state law provides that poll closing be public, Miami-Dade Election Reform Coalition (MDERC) had trained its volunteers, as well as the FEI election delegation, to observe poll closings in order to determine whether protocol had been followed.

The Miami delegation was troubled to find that the polling place clerks at the observed polling locations did not know the number of registered voters assigned to their polling location. Consequently, poll workers could not reconcile the number of voters with the number of votes logged into each DRE terminal. The Miami delegation observed the closing of the poll at Juan P. Duarte Park, where the Poll Clerk did not count the signatures at all (a violation of protocol); therefore, there was no reconciliation with the number of votes counted by the DREs. In addition, at Olinda Elementary School polling location the number of votes recorded by all of the DREs was approximately 23 more than the number of signatures counted. Poll workers could not explain this discrepancy.



Delegate Caerwyn Dwyfor Jones, Wales, meets with Deforest Blake Soares, Jr., Chairman of the Electoral Assistance Commission, while observing the closing of polling location Bethel, Leon County, FL.

PROVISIONAL BALLOTS:

The delegation found that both voters and poll workers were significantly confused about the administration of provisional ballots. In some instances, poll workers too readily provided voters with provisional ballots, rather than attempting to find a solution that would allow the voter to cast a vote via a general ballot. For example, at location 34Z in Broward County, poll workers told one voter that she was not on the electoral roll and was, therefore, given a provisional ballot. However, the Election Protection Coalition monitor outside the polling location was able to assist the voter in providing accurate information for the voter to return inside and cast a general ballot.

CHALLENGERS:

The Leon County delegation witnessed two instances in which a voter's eligibility was called into question by a party-appointed challenger. In one instance the voter's name did not appear on the voter rolls; however, the supervisor of elections, who was called to the location, determined that the voter was eligible to vote. Although the challenge was dismissed, the delegation found that it is not viable for the supervisor of elections to be called to every location where a controversy arises. Under such circumstances, the clerk at the polling location is responsible for resolving the challenge. In addition, the delegation found that in the instance of a challenge the voting process was slowed.

VOTER IDENTIFICATION:

The delegation found that not all poll workers were clear about the rules for presenting identification at the polls. In Broward County (location 27N) one delegate observed a poll worker telling a voter that she could not vote without photo ID; the poll worker subsequently changed her mind when she realized that the FEI delegate was noting the incident. In both Broward and Miami-Dade Counties, the delegation discovered that many poll workers still mistakenly believed that the law required all voters to have some form of identification.

ABSENTEE BALLOTS:

In Broward County, 58,000 voters did not receive their absentee ballots. During Election Day the delegation visited the Election Protection call-in center based in the law offices of Gordon, Hargreaves, and James. Election Protection volunteers reported approximately 30 complaints from voters who went to the polls on Election Day after not receiving their absentee ballots and were told that the elections department had received their absentee ballots. The delegation went to one of the locations, 34C, where this was said to have occurred, but the incident could not be corroborated.

HANDLING OF PROBLEMS:

Overall, the delegation observed that poll workers articulated and solved problems in a timely and effective manner. Notwithstanding, the delegation felt that systematic procedures are still needed to handle all problems uniformly. In addition, when problems did arise the delegation found that more consideration should have been given to effectively communicating the cause and solution to voters in order to insure voter confidence. For example, a voter at the Bucklake Elementary location in Leon County noted that the optical scan counter did not record his vote as it had for the previous voter. When this matter was brought to the attention of the polling location clerk and the election supervisor, who happened to be at the location, the clerk informed the voter that all the votes would be recounted in another optical scan machine at the close of polls as the machine had been malfunctioning throughout the morning. Although the polling location officials assured the voter that the ballots would be recounted, the voter indicated that he felt disenfranchised. The delegation recommends that for future elections there is not only a procedure for dealing with malfunctioning machines, but also a system put in place to inform the public of the problem and the mechanisms in place to ensure that every vote will count prior to casting their vote.

OHIO STATE REPORT

2004 Election Day Delegation:

Kwesi Addae (Ghana); Sergio Aguayo (Mexico); Irene Baghoomians (Australia); Horacio Boneo (Argentina); K.J. Rao (India).

In Ohio the team of five international delegates observed elections in two counties: Cuyahoga and Franklin. Cuyahoga County includes Cleveland and its surrounding communities, and is the most populous county in Ohio with almost 1.4 million people, including the states' largest African American population. Cleveland, with nearly a third of its people in poverty, experienced the highest poverty rate among America's big cities last year. For the 2004 election, the county was still using the punchcard ballot system. Franklin County, with a population of approximately 1.1 million, includes the capital, Columbus, and is home to Ohio State University. Since 1992, voters have used an older model electronic voting machine made by the Danaher Corporation. ⁵

Independent observers, including the FEI Delegation, were denied access to all polling locations and vote tabulation centers throughout the state, and were required to remain 100 feet from polling locations.⁶ County officials expressed interest in allowing independent observation but were restricted by state law. In Franklin County, a local poll judge invited the group inside the polling location, indicating more openness to transparency. At several locations the voting area was visible through windows; however, the observers were predominantly limited to talking with voters as they emerged from the polls and gathering information from election authorities, civil society organizations, party representatives and the media. While this was an important and useful exercise, the delegation notes the lack of transparency of the system, especially in comparison with the two other states visited by FEI delegations where independent observation was permitted and even welcomed.



Delegates Irene Baghoomians, Australia, and Sergio Aquayo, Mexico, look at early vote count results and voter turnout statistics with Kim Bartlett, Community Outreach Specialist for the Board of Elections, Cuyahoga County, OH.

Prior to Election Day, the delegates met with and observed the training for the Election Protection Coalition in both counties. In Franklin County, the delegates also met with the Voter Protection Coalition. The delegates contacted both the Democratic and Republican parties to talk with them about their efforts on Election Day. The Democratic Party met with the delegates and provided access to this information.

On Election Day, the Cuyahoga County team visited 10 polling locations and the Franklin County team visited eight polling locations. The sites were selected to represent a sampling of income levels; various racial and ethnic communities, including predominately African American, Latino, and White communities; and predominantly Republican and Democratic precincts. One site (at Ohio State University) had primarily student voters. The delegates also visited the field offices of the Election Protection Coalition and the Boards of Elections.

In Ohio, civil society was extremely well represented on Election Day due, in large part, to the nonpartisan Election Protection Coalition. The Coalition organized thousands of poll monitors who were stationed at a majority of polling locations, targeting low-income neighborhoods and areas with a high number of newly registered voters. Poll monitors stood at the 100-foot limit to provide a voters bill of rights and to ask voters if they had questions or needed help. If people emerged without an “I voted” sticker monitors approached them to help identify and resolve any problems. The Election Protection Coalition also operated a phone hotline staffed by lawyers.

The Franklin County delegation also visited the Franklin County Department of Elections twice, meeting with the Director Matt Damschroder on November 1 and then with the Communications Director La Rue on Election Day.

MAIN FINDINGS

Again, it should be noted that the observers were not allowed inside the polling locations. In general, the irregularities witnessed were characterized as minor incidents and glitches. However, the delegation was concerned by overarching questions about legal procedure, interpretation and administration. In situations where the results are not very close, many irregularities go unnoticed or are of less concern. However, electoral systems should not be selected simply because they work the majority of the time, but because they work under the most difficult circumstances. If one applied this test, the Ohio system would not pass.

CHANGING LEGAL LANDSCAPE:

In Ohio, the changing electoral legal landscape was brought about by the delayed issuance of directives by the Secretary of State, as well as by legal challenges from political parties, voters and civil society groups. These included last minute litigation over the presence of partisan challengers in polling locations, which was not resolved until the early hours of November 2;⁷ the continuing legal controversy regarding the casting and counting of provisional ballots—especially the Election Day suit and decision allowing people who had applied for but not received an absentee ballot to cast a provisional ballot;⁸ and last minute rulings at both the state and county level regarding media access to the polls.

During the days preceding Election Day there were several

cases of voters receiving fraudulent letters stating that their voting location had been changed, as well as allegations that people were going door-to-door telling voters that, should they not have the opportunity to vote on November 2, they could still cast a vote on November 3. A freeze on changes to voting rules would allow poll workers, voters and voter education groups to be properly informed and better recognize fraudulent information.

The delegation recommends that wherever possible election officials at all levels clarify legal requirements regarding electoral processes well in advance of elections, between three and six months, and publicize them as widely as possible, to avoid confusion and uncertainty.

IRREGULARITIES:

All delegates observed various irregularities at the polls, including: a polling station opening late; a polling station without a judge as of mid-morning; several reports of voting machines being broken and then replaced; and the failure of electronic voting machines due to overcharging.⁹ There were second-hand reports of one voter using a touch screen machine that would not allow the voter to select a particular candidate.¹⁰

Delegates observed long lines at almost all of the polling locations—up to two hours at sites the delegates visited and reported waits of up to six hours in other areas—often in a

steady rain. Voters met with long lines not only at typical peak times but also throughout the day. Some explained that the voter turnout was much greater than usual and there were not enough voting stations to accommodate this turnout. While increased voter participation is a positive development, this large turnout had been predicted for months and adequate preparations could have been made. Electoral officials should take care to accommodate the voters when selecting polling locations, and to choose locations with covered waiting areas and seating for the elderly.¹¹ Best practice would also suggest that preferential treatment (minimized waiting) be provided for the elderly and disabled.

The delegation also concluded that problems were heightened by administering too many elections at the same time, creating very long and complicated ballots.

ABSENTEE BALLOTS:

It was reported that absentee ballots in Cuyahoga County were confusing to voters. The ballots are the same as punch card ballots, except that they are hand-held. Because of the design, the numbered holes in the punch card do not line up with the arrows in the ballot. Efforts should be made to simplify and standardize the ballots to minimize confusion and voter error.

PROVISIONAL BALLOTS:

There were more than 155,000 provisional ballots cast in Ohio. The Counties have 11 days after the election to determine the legitimacy of the provisional ballots and begin counting. Only provisional ballots cast in the voter's correct precinct are counted. The Election Protection Coalition reported numerous calls regarding differing interpretations of provisional ballot rules by poll workers. The delegation recommends taking measures to minimize the use of provisional ballots, including the improvement of the registration process and the quick incorporation of the state voter list as required under HAVA. The delegation also reiterates the pre-election delegation recommendation that provisional ballots cast within the voter's county should be counted for county, state, and federal level candidates and issues. The delegation further recommends that an analysis be undertaken of how many and for what reasons provisional ballots were cast, deemed legitimate or not, and counted in 2004.

ISSUES AT TABULATION CENTERS:

Independent observers were not allowed into the tabulation centers. In Cuyahoga County, the Board of Elections staff escorted the observers into the media area to view the tabulation through a glass partition for five minutes, and provided the publicly available early count results and voter turnout

sheets. In Franklin County, the delegates were also allowed into the media area where they could watch results appear on a screen for a short period, but were unable to witness any of the downloading of ballots from the voting machines.

MEDIA AT POLLING LOCATIONS:

Several media representatives reported that poll workers were unaware of the recent decision giving media access only to specific polling locations; some poll workers allowed media access at restricted sites, and others denied legal access.

CHALLENGERS:

In the days and even hours before polls opened, legal battles continued regarding the presence of challengers in the polls. Ohio Revised Code 3505.20 allows for challengers to question a voter's eligibility based on age, citizenship, and residence in the county. Challengers may be appointed by "any political party supporting candidates to be voted upon at such election and any group of five or more candidates." This elaborate ritual places the burden of proof on the voter and, if utilized, often creates significant delays in the voting process.¹²

Questions of voter eligibility are a matter of registration and should be completed far in advance of Election Day. The registered voter list should be made public, allowing enough time for challenges to be made as to the right of a person to vote on account of citizenship, age and/or residency requirements. The challenges could then be adjudicated, and a final list of voters made available to the polling stations. Adequate time for voters to appeal any removal from the registration list must be taken into account.

In non-partisan election administrations found throughout the rest of the world, challenges are essential to safeguard the transparency and integrity of the system. The authorized presence of party representatives in polling locations is a mechanism frequently employed in electoral legislation to ensure transparency in the process by providing parties with an opportunity to witness the process. However, the type of information that can be challenged is limited, and parameters are clearly defined for who can challenge, how and for what purpose. In Ohio, as in the majority of US states that have partisan election administration, there is an extreme redundancy of party participation. The polling judges are themselves partisan representatives, selected in such a way so that no party can have more than 50 percent of the appointments in a polling place. In this system, the interests of the parties are adequately represented by the participation in the polling personnel and additional challengers are not necessary.

The role of a challenger at the polling location should be strictly to raise questions of voter impersonation, such as when the signature of the person appearing to vote is not the same as the one in the registration form, or when the ID documentation that is to be presented in certain cases is inadequate. In this case any challenge should be addressed to the poll judge (not the voter), who could make a quick ruling so as not to interfere with the election process. In all

cases, challenges should be structured in a way that does not overburden the system on Election Day.

It is recommended that the Ohio law for challengers be eliminated. Any questions of voter impersonation can be identified and adjudicated by the poll workers. In the event that Ohio elections become administered in a non-partisan fashion (which this delegation recommends), a limited role for party challengers may be implemented.

MISSOURI STATE REPORT

2004 Election Day Delegation:

David MacDonald (Canada); Shanta Martin (Australia); Normal du Plessis (South Africa); Luis Tonelli (Argentina).

The delegation convened on Oct. 30 in St. Louis, then met with the St. Louis (City) Election Commission and observed a Specialist [election] Judge training session.

On Oct. 31, David MacDonald and Normal du Plessis traveled to Boone County in rural central Missouri, population 141,000, to begin their observation. Most residents of Boone County live in Columbia, home to University of Missouri-Columbia, Columbia College of Missouri and Stephens College. The rest of Boone County is rural. Eighty-five percent of the population of Boone County is white, 8.5 percent African American and 6.5 percent other, with a mean household income of \$37,000.¹³

Luis Tonelli and Shanta Martin remained in St. Louis to observe the elections in St. Louis City, population 332,000, and St. Louis County, population 1,013,000. The city of St. Louis is classified as an urban city, with 51 percent of the population black, 44 percent white, and five percent other. The mean household income of the city is \$27,000. By contrast, in St. Louis County 77 percent of the population is white, 19 percent black and four percent other. The mean household income of the County is \$50,000.¹⁴

Missouri state election law explicitly permits international observation in polling locations.¹⁵ FEI was the first international group to seek this access. In Boone County, elected County Clerk Wendy Noren welcomed the observers as colleagues and granted full access to all 90 polling locations. The Directors of the City of St. Louis Board of Election Commissioners, Gary Stoff and Jim O'Toole, granted the observers full access to all 200 polling locations in St. Louis City. The Board of Election Commissioners for Saint Louis County limited access to only two polling locations and, despite Missouri State law granting full access,



Delegate David MacDonald, Canada, speaks with Susan DiPetre, a volunteer coordinator at the Republican Party Headquarters in Columbia, MO, working on Get Out The Vote efforts on election eve.

restricted the delegations' activities and questions within the polling locations.

MAIN FINDINGS

On November 1, both teams received credentials for entering the polls and then visited the Republican and Democratic Party headquarters. In St. Louis City and in Boone County, staff of the Missouri Democratic Party welcomed the delegation and answered all of the delegates' questions. In Boone County staff of the Missouri Republican Party talked briefly with the delegation; however, in St. Louis they declined to meet with the delegation.¹⁶ The team was disappointed not to have been able to have this meeting and the diversity of viewpoint it would have offered.

Later on November 1, the Boone County team witnessed the distribution of ballots and equipment at the County Clerk's office and the St. Louis team observed the election eve logic and accuracy test of the ballot counting machines at the St. Louis Electoral Commission. The test result was clear and successful.

Since the electoral administration and the observed Election Day issues were significantly different in the counties visited, the findings that follow are reviewed by county rather than by issue.

ST. LOUIS CITY AND ST. LOUIS COUNTY:

Election observation in St. Louis City must take into account the context of the 2000 presidential election in which confusion over inactive voter lists created serious problems and effectively prevented thousands of citizens from voting. In comparison to the widespread disenfranchisement of voters in the 2000 elections, the process of voting in St. Louis city in 2004 was greatly improved. Many of the remedies devised to forestall confusion functioned as planned. Nevertheless, the delegation observed lines up to three hours long throughout the day at many of the polling locations, primarily located in poorer African-American areas. In light of these long delays, the observers recommend preferential treatment be given to enable the elderly and disabled to vote.

The observers noted a number of other serious flaws that merit ongoing attention, including: Inadequate preparation of poll judges and poll workers; identification requirements that go beyond HAVA (if voters did not have identification at the time of voting, their votes were not counted); significant manual handling of ballots at polling stations in an unsecured manner (including tipping ballots out of the ballot boxes onto tables and allowing them to spill onto the floor before putting them into another box to be taken to the Election Commission office); the manual replication of

ballots determined by Election Commission officials to have been inadvertently cast on the incorrect ballot; and the presence of unauthorized persons, including armed police, at polling locations. Additionally, the delegation noted that polling stations appeared to be illogically resourced: in some locations containing more than one polling location long lines formed in front of polling stations where judges struggled to service more than 1000 registered voters; while across the room, the same number of judges were available to assist a precinct consisting of less than three city blocks and containing many fewer voters with no lines.

Additionally, polling locations in wealthier neighborhoods appeared to have been supplied with greater human and material resources than those in low-income neighborhoods where voter wait-times were consistently longer.

Due to the openness and transparency of St. Louis City voting officials, the delegation was able to observe both poll worker trainings as well as the execution of their tasks. The delegation found that the trainings were too brief to adequately cover the materials presented and that the sessions would have been greatly enhanced by including simulations and other practical exercises. Discussions with poll judges on Election Day confirmed the observers' conclusions that some judges felt ill prepared for the challenges they faced.

Many of the irregularities witnessed by the observers were not necessarily systemic, but were the result of poor poll worker training. These include: the late opening of a polling location; voters being misinformed by poll judges as to whether their votes would count if they voted at a place other than their correct polling location; and one voter being misinformed by poll workers as to her correct polling station, only to find her correct polling location after closing time.

Observers noted cases in which Specialist (election) Judges provided incorrect information and failed to consistently follow counting procedures designed to track the issuance of ballots. In another instance one of the elections Supervisors effectively halted voting for 30 minutes while addressing a problem in that polling location. In several cases, the delegation witnessed officials improvising solutions. While the delegation admires the "can do" spirit of these officials, voter confidence is enhanced when judges clearly understand regulations and can apply them consistently.

Observers noted the presence of unauthorized persons in some polling locations and inconsistency about who was allowed to enter. Indeed, the response the observers them-

selves received by poll workers varied markedly, from not responding to the presence of the observers, to requesting the observers to sign a register, to requesting the observers to swear an oath. The lack of consistency in dealing with the delegation was symptomatic of a broader uncertainty among poll workers about their role in ensuring that only authorized individuals were present in the voting area. The delegation observed one instance of an unauthorized individual within the polling location who was seeking to challenge voters' credentials on behalf of the Republican Party, but who hastily departed when questioned. In some polling locations the delegation observed voters engaging in 'group voting,' where more than one eligible voter was present at a voting station at a particular time. In other voting sites, police officers overstepped their legal role, limited to delivering and collecting ballot boxes and escorting election officials, by remaining inside polling locations for hours, handling ballots, and giving incorrect information and orders without consulting poll officials. The delegation also observed police officers at polling locations standing very close to voting mechanisms while handling their firearms, which may have been intimidating to voters.

In general, most of the irregularities observed by the delegation could readily be addressed by more effective training of poll workers and police officers combined with thorough voter education about privacy norms. The delegation also recommends that levels of resource allocation between polling locations be reassessed, and that the County Election Commission provide clear instruction on how to spatially organize polling locations so as to orient voters and facilitate the flow of voting.

BOONE COUNTY:

In Boone County the election proceeded smoothly and successfully. Minor and easily resolved problems were observed such as partisan campaign signs being too close to polling locations and inefficient processing of voters at some polls, which slowed the flow of voters and caused unnecessary delays. The delegation also noted some inconsistencies in the instructions poll workers gave to voters on how to complete their ballots.

Overall, the conduct of the Boone County election was exemplary, which can be attributed to the following:

- High retention rates of workers from election to election.



Delegates Luis Tonelli, Argentina, and Shanta Martin, Australia, prepare for their observation by poring over maps of the St. Louis City precinct locations on election eve.

- High quality training for poll workers that is hands-on, includes refresher courses for returning poll workers, and provides a succinct but thorough manual explaining the whole electoral process, not just the task of the individual trainee.
- Adequate tools for the polling judges including cell phones, pagers, and laptops allowing for instant access to the voter database, which were maintained at the County Clerk's office. Polling judges were able to communicate quickly to ensure eligible voters received a full ballot, minimizing the use of provisional ballots.
- Careful attention to the special needs of voters—the delegation observed curbside and other types of special needs voting proceeding smoothly and routinely.

One specific measure taken by the Boone County Clerk was to implement the Missouri State law allowing for geographically dispersed "central polling places." These polling places handled problems with registration and other issues and took the pressure off staff in the central office of the County Clerk, permitting them to focus on countywide organization. At the "central polling places" people were allowed to vote from anywhere in the county (if registered) and receive full ballots, rather than provisional ballots.¹⁷

GENERAL OBSERVATIONS

INACTIVE VOTER LISTS:

Inaccuracies in the inactive voter lists were at the root of the Election Day breakdowns in 2000. This year the situation had clearly improved. Overall, improved list maintenance and more reliable communication allowed officials to navigate the vagaries of the inactive voter list without repeating the crippling delays experienced in 2000. Voting officials were equipped with individual Hand-held (Palm Pilot) computers for quick reference to the inactive voter list, and other conveniences. The delegation commends the steps taken by the St. Louis City and County officials.¹⁸ Nevertheless, given the effort required to manage a dual list system, the delegation recommend they be integrated. Information about voter inactivity may be denoted on the master list, but registrants would only be removed after a standard and thorough verification. Until then, the principles of voter inclusion weigh in favor of maintaining a voter's registration. The implementation of the HAVA-required statewide voter database should assist in providing

local elections boards with uniform registry and voter identification criteria.

ELECTRONIC VOTING:

Missouri has, to date, avoided the controversy surrounding DRE touch screen voting by maintaining the equally controversial punch card system. The delegation recommends that any decisions regarding acquisition of new election technology be made with maximum public input, and that any DREs purchased be equipped with a voter verified paper record.

ELECTION OBSERVATION:

While the delegation fully supports the Missouri law allowing for access to the polls by international observers, non party-affiliated domestic election observation is a key aspect of election transparency and voter confidence. Thus, domestic observers should be granted at least the same level of access as international observers.

APPENDIX A

ELECTION DAY OBSERVATION DELEGATION BIOGRAPHIES

Argentina

HORACIO BONEO has been involved in electoral assistance and observation in more than 60 countries, including countries of Latin America and the Caribbean, Asia, and Africa. Since 2000, Boneo has served as a consultant on issues of democratic governance and elections for the United Nations, the United Nations Development Program (UNDP), the Swedish International Development Agency, the National Democratic Institute, the Organization for Security and Cooperation in Europe, and the International Foundation for Electoral Systems.

LUIS TONELLI is a professor of Political Science at the University of Buenos Aires specializing in the comparative design of political institutions. In addition, he is a Member of the Advisory Council of Poder Ciudadano, a top public elections watchdog organization in Argentina. In addition, he makes regular contributions to public debate through weekly magazine and newspaper columns.

Australia

IRENE BAGHOOMIANS is currently a part time professor at the University of Sydney Law School. As a human rights lawyer based at the Center for Constitutional Rights, she has participated in the conduct of the Alien Tort Claim Act Litigation, as well as civil rights litigation relevant to the protection of rights guaranteed under the 1st, 4th, 5th, and 6th Amendments of the U.S. Constitution. In addition, she has served as legal policy advisor for the Human Rights and Equal Opportunity Commission (HREOC) on racial discrimination.

SHANTA MARTIN is an international legal advisor currently working for the Commission for the Verification

of Codes of Conduct (COVERCO) in Guatemala. She has done extensive research and writing on human rights and labor law in both Central America and in Australia, with particular emphasis on the effects of corporate activity on the enjoyment of human rights.

Canada

HONORABLE DAVID MACDONALD is a former Minister of Communications and Secretary of State. He served as a Progressive Conservative MP during the Pearson, Trudeau, Clark and Mulroney governments from 1965 to 1993. In the 1980's, he was the Canadian Ambassador to Ethiopia and Sudan.

Chile

MANUEL ANTONIO GARRETON is one of Chile's most distinguished social scientists and has been deeply involved in the civic and political life of Chile. He has great expertise in democratic systems and teaches at the University of Chile, where he directs the Institute of Public Affairs. Mr. Garreton has published more than 200 articles in different languages, he participated in more than 40 books as author, co-author or editor, and he has taught in several U.S. and European universities. His work is widely known among Latin American specialists and his principle works have been published in the United States.

England

OWEN THOMAS has over 20 years of experience with both electoral administration and international election observation. Currently, Mr. Thomas is the Chief Executive of Electoral Reform Services, London. He has

extensive practical experience of current major electoral issues: electronic voting, electoral registration, voting fraud issues, and election participation issues. In addition, he has observed elections throughout the world, including the 2002 Florida mid-term elections, as a member of the Office for Democratic Institutions and Human Rights (ODIHR) delegation.

Ghana

KWESI ADDAE is the founder of Pollwatch Africa, which carries out election monitoring and consulting services to the Election Commissions of various African countries including Ghana, South Africa, Togo and Botswana. He has also served as Chairman of the Council of District Chief Executives in Ghana.

India

KJ RAO is currently the Elections and Training Advisor to the Election Commission of India. During his nearly 38 years of association with the Election Commission, Mr. Rao has had extensive experience with electoral laws, practices, and procedures. In addition, Mr. Rao has conducted and supervised enquiries into irregularities in the preparation of electoral rolls and conduct of elections and has also overseen the settlement of internal disputes of recognized political parties in India.

Mexico

SERGIO AGUAYO is a Professor at El Colegio de México. An expert in electoral affairs, he was a founder of and a key figure in Mexico's premier electoral watchdog organization, Civic Alliance (Alianza Civica). Mr. Aguayo is active in the intellectual life of Mexico; he has published widely and contributes weekly columns to Mexico's leading newspapers. In addition, he was president of the Mexican Academy of Human Rights from 1990-1996.

OSCAR GONZALEZ received the UNESCO Award on Human Rights in 2002. Mr. Gonzalez has been President of the Mexican Academy of Human Rights (1997-2002), undertaking pioneer initiatives and efforts for free and fair elections in Mexico. A Former diplomat, he was DPR of Mexico at the Security Council of UN (1981), also he was the Ambassador head of the Mexican delegation at the World Conference on Transnational Organized Crime (United Nations, 1994), Mexico's Ambassador of the

United Nations Committee of Government Experts for the Prevention of Massive Flows of Refugees (1985), and he is a member of the Citizenship Council of Alianza Civica, Citizen Movement for Democracy, and Peace and Democracy.

Nicaragua

ROBERTO COURTNEY is the Executive Director of Etica y Transparencia—the principal electoral and clean government watchdog organization in Nicaragua, which specializes in anti-corruption, governance, and monitoring of electoral and judicial activities.

South Africa

JUSTICE BEKEBEKE joined the Independent Electoral Commission of South Africa in September 1998.

He is the Provincial Electoral Officer for South Africa's largest province, the Northern Cape, and an Admitted Attorney of the High Court of South Africa. He has extensive electoral management experience and observed elections in Australia (1999) and Rwanda (2003).

NORMAN DU PLESSIS has over 20 years of experience in electoral development, administration, and observation. He was a member of the Steering Committee that drafted the Constitutional provisions for elections for the first democratic elections in South Africa, and that established a permanent Electoral Commission. Since 1998, Mr. Du Plessis has been Deputy Chief Electoral Officer at the Electoral Commission; over that time he has covered all management, operational, financial, and technological aspects of the respective elections in 1999, 2000, and 2004.

Wales

CAERWYN DWYFOR JONES has over 30 years of experience in the field of electoral registration. As an electoral officer and electoral service manager for Wrexham county, Mr. Jones insured that the necessary administrative arrangements were undertaken and that all statutory legal requirements were met in connection with Parliamentary, European, Local Government elections and referenda. Additionally, Mr. Jones has participated in election monitoring in 10 countries, including supervising the first ever elections in Cambodia.

APPENDIX B

RECOMMENDATIONS FROM THE FAIR ELECTION INTERNATIONAL PRE-ELECTION OBSERVATION**

*** (For the complete pre-election report of findings and recommendations, please visit www.fairelection.us)*

Introduction

In many respects, the electoral landscape has improved since 2000. The delegation applauds the efforts of state and local officials to discover and implement creative solutions to many of the problems in their communities. It is also heartened by the energy of civil society to work toward positive electoral change. Despite this collective good will there are a number of existing problems that pose a substantial threat to the integrity of the 2004 General Election in the United States. Clearly, many of these thematic concerns are shared across states. Our recommendations are based on our findings and, as appropriate, on the standards and norms set by democracies around the world.

Administration of Elections

RECOMMENDATION REGARDING HAVA IMPLEMENTATION:

HAVA recognized the need for structural changes and a measure of uniformity in electoral laws. The delegation urges every state to move swiftly toward implementation of all HAVA provisions. International norms also reaffirm the need for federal oversight and/or regulations for minimum standards for election procedures, state and federal registration lists, and standardized voter ID requirements. HAVA, while no panacea, and lacking clear instructions for implementation, provides at least a best practice framework for many specific issues faced nationwide. HAVA provides targeted funding as well as guidelines for most of the areas of concern mentioned above, from disabled access to poll worker training. The delegation reiterates its understanding

that the spirit of HAVA is in keeping with democratic principles of openness and inclusion, and cautions states against interpreting HAVA so narrowly that its intent is negated (as has happened with provisional balloting in some states). The delegation also notes its most positive experiences occurred when dealing with electoral systems and elections officials who place a high value on procedural transparency. The delegation recommends implementing transparent systems across the board.

RECOMMENDATION REGARDING OBSERVATION OF U.S. ELECTIONS:

The delegation strongly endorses the recommendations of the OSCE, the Carter Center for Human Rights, the U.S. Commission on Civil Rights and other expert bodies that call for independent, non-partisan poll watchers, both domestic and international, to be welcomed at the polls and

tabulation centers in 2004 and beyond. Democracies around the globe integrate observation without compromising the integrity of the polling station.

As a confidence building measure, the delegation recommends that states invite domestic and international observers to help create an environment of civic transparency and voter confidence, and to address obstacles to participation on Election Day.

RECOMMENDATION REGARDING PARTISAN OVERSIGHT OF ELECTIONS:

The delegation strongly recommends a shift from the partisan administration and oversight of elections to a system of independent supervision of elections by bodies without partisan affiliation. Partisan oversight and administration of elections is not the international norm, as it builds in the possibility for the perception of conflict of interests. Elections officials have great power to protect the integrity of the voting process. They must be scrupulous in resolving all disputes in a way that is even handed and resists partisanship. The delegation recommends that states establish independent and impartial bodies to administer, oversee, and certify elections.

RECOMMENDATION FOR STRENGTHENED PARTNERSHIPS BETWEEN OFFICIALS AND COMMUNITY:

The delegation believes more needs to be done to ensure that a greater proportion of eligible citizens become active voters. As with efforts to restore the voting rights of ex-felons, encouraging people of color, youth and the poor to vote requires open dialogue and an earnest desire for partnership between election officials and civic leaders.

Ethnicity, age, income, religious beliefs and gender all affect the way we learn, our access to information, the way we interact with authority and government, and restrictions on our time. The delegation believes that open communication is the first step toward overcoming misunderstandings about electoral matters, from anxiety about the use of DREs to the more serious allegations of voter tampering and fraud. The delegation also recommends that election officials consult and cooperate far more closely with civil society organizations to determine the levels of targeted public education, outreach and information that will engender trust and create transparency. Community leaders should also proactively engage with their election officials to assess needs and determine ways to partner to achieve their aims. This work can and should start immediately; it is not too late to improve

voter education, enhance training methods for poll workers, and build trust and transparency for the November 2004 elections and beyond.

RECOMMENDATION REGARDING RECRUITMENT AND TRAINING OF POLL WORKERS:

A number of the problems encountered by voters in 2000 could have been resolved immediately, if not prevented entirely, had poll workers been sufficiently trained. Some counties are instituting exemplary poll worker training programs for high school and college students. This is rare, however. Poll workers in some U.S. counties are trained as seldom as every three years, while in other counties they receive an hour of training each year, regardless of the number of changes in election law. Internationally, greater importance is placed on the role of poll workers; in some countries it is an act not only of civic pride, but also of civic duty, similar to jury duty in the U.S. Poll workers must be given the fullest possible information and training to carry out their legal and moral responsibility to ensure that all eligible voters are allowed to cast a valid ballot even if they are confused about their voting place or have errors in their registration. The delegation has already recommended the immediate utilization of the HAVA funds available for poll worker training, but it is worth reiterating here. The delegation also recommends that these funds be used creatively in the medium term, such as for youth poll worker training programs in schools, and that in the long term, legislation be enacted to transform poll working into a civic duty.

RECOMMENDATION REGARDING VOTER EDUCATION:

The Election Assistance Commission (EAC) should develop minimum standards for voter education materials and guidelines for the frequency of distribution. Standard materials should include information on how to file a complaint and applicable voting rights laws. Local outreach efforts should also include distribution of sample ballots and technical demonstrations as well as public service announcements.

RECOMMENDATION REGARDING DISTRICTING:

The current partisan system for districting allows and, in fact, encourages the current party in power to reshape districts in a manner that maintains and solidifies its power. This is inherently undemocratic. The delegation recommends that authority for re-districting be given to a non-

partisan or at least bi-partisan, state committee in order to prevent both malapportionment and gerrymandering.

Voting Systems

RECOMMENDATION REGARDING DIRECT RECORDING ELECTRONIC VOTING (DRE):

Public trust is a cornerstone of the electoral process, and any loss of transparency is detrimental to the integrity of the process. Transparency at the polls is critical and cannot be readily established without voter verification. The delegation recommends that every DRE machine in the United States be equipped with a mechanism for voter verification and a paper record. The delegation also recommends that open source coding be incorporated, allowing system transparency into security matters for the public and for officials. In addition, front-end testing by an independent agency and parallel monitoring during elections should be adopted to achieve optimum transparency.

The high cost of initial investment, maintenance and security upgrades has made changes to voting technology prohibitive once it is adopted. The delegation recommends that any decision to purchase new technology or to upgrade be made with full public involvement, rather than by select committees, as has been the case in some Florida counties and other locales.

Available statistical analysis in each state or county showing spoiled ballot rates by ethnic groups, age or gender would also help electoral officials determine which sectors most need specialized voter education. The delegation encourages election authorities to concentrate not only on preventing such spoilage but also on working with civil society groups to develop and implement targeted specialized voter education.

RECOMMENDATION REGARDING THE USE OF PROVISIONAL BALLOTS:

The improper implementation of provisional balloting has great potential to be a significant source of disenfranchisement in the 2004 federal elections. In the immediate term, the delegation recommends that efforts to train poll workers on the correct distribution of provisional ballots are maximized and that to the extent possible, election administrators make adequate preparations for verifying and counting provisional ballots. Wherever provisional ballots are certain not to be counted or offered, poll workers should be provided with accurate lists of polling locations

for all registered voters, and should be required to direct voters to their correct polling stations. Voters, particularly those who have recently changed address or party affiliation or are first-time voters, should take precautionary steps by contacting their local Election Board well in advance of November 2 to ensure that they are registered, and to verify their polling location. In the longer term, provisional ballots should—in the spirit of HAVA—count for state and federal contests regardless of where the vote is cast.

RECOMMENDATION REGARDING THE USE OF ABSENTEE/MAIL-IN BALLOTS:

Theoretically, absentee balloting is intended to facilitate the act of voting but there is a need to maintain minimum procedural standards. The lack of clear and uniform guidelines for the provision and verification of absentee ballots makes the entire process vulnerable to fraud, coercion and unintentional error. The delegation recommends that states standardize their processes and procedures through clear and concise regulation and use the HAVA monies available for training, implementing best practice models for verification and of course, for voter education. The delegation also recommends that states maintain statistics that will enable them to detect unusual activity regarding application or rejection rates.

The Franchise

RECOMMENDATION REGARDING THE DISENFRANCHISEMENT OF EX-FELONS:

Many countries restrict the voting rights of serious offenders while they are serving their sentence. The delegation's concerns center on the permanent disenfranchisement of former felons, a practice that falls outside of international or even U.S. norms and is an unreasonable restriction that creates subcategories of citizenship in the United States. In most states, it is assumed that ex-offenders have paid their debt to society, and that rehabilitated, they will lead productive lives in society. Ex-felons are expected to contribute to society as gainfully employed citizens, pay taxes and raise families, but their disenfranchisement gives them no say in how those tax dollars are spent, who sits on their children's school board, or who represents their interests in government. The delegation strongly recommends that those states that permanently disenfranchise felons—Florida, Virginia, Nebraska, Mississippi, Kentucky, Iowa, Arizona and Alabama—amend their laws and practices to restore full citizenship rights to ex-offenders. In addition, in

those states where voting rights of ex-felons can be restored upon release, authorities should disseminate clear and precise materials in a variety of media informing ex-felons of their restored rights.

Financing of Elections

RECOMMENDATION REGARDING PUBLIC FINANCING OF ELECTION CAMPAIGNS:

In circumstances where the amount a candidate spends is directly related to the likelihood of success,¹⁹ it is not sur-

prising that voters may sense that politicians are more concerned with big campaign contributors than with individual voters. This perception is a significant contributor to voter apathy. Although limiting campaign expenditure is not an option in the U.S., curbing the perception of disproportionate influence over politicians by wealthy campaign contributors can be achieved adopting a system that provides a neutral source of funding for campaigns. The delegation strongly recommends that states adopt a system for the public financing of election campaigns. The delegation also strongly recommends that public financing be extended to federal House and Senate candidates.

APPENDIX C

POLLING LOCATIONS OBSERVED

In all counties the polling locations observed were diverse in party affiliation, ethnicity, and socioeconomic makeup.

Florida

MIAMI-DADE COUNTY

Kendall Branch Library, Kendall, polling location # 723
Lemon City Library, Little Haiti, polling # 430
Malcolm Ross Senior Center, polling location #528 and #588
Juan Duarte Park, polling location # 527
Carrie P. Meek Cultural Art Center, polling location # 520
New Providence Missionary Baptist Church, polling location # 521
Toussaint Louverture Elementary School, polling location # 515 and # 977
Little River Elementary School, polling location # 501 and # 580
El Portal Village Center, polling location # 159
Haitian Baptist Church of the Living God, polling location # 517
Olinda Elementary School, polling location # 261 and # 288

LEON COUNTY

Supervisor of Elections Office, polling location # 9000 and # 9998
Lafayette Recreation Center, polling location # 5105 (visited twice)
Florida A&M University, polling location # 1307 and #1309
Bethel Precinct, polling location #1319 (visited twice)
Bucklake Elementary, polling location # 5218, # 5219, # 5253 and # 5257

BROWARD COUNTY

Plantation Branch Library, polling location # 27N
Riverland Elementary School, polling location #68R

Lauderhill City Hall, polling location # 6L
Martin Luther King, Jr. Elementary School, polling location # 34Z
Wilton Manors Elementary School, polling location # 5P
McNair Recreation Center, polling location # 34C

Ohio

CUYAHOGA COUNTY

Paul Lawrence Dunbar School, Cleveland Ward 14, polling location #2,
Heritage Middle School, East Cleveland, polling location #16
Starlight Baptist Church, East Cleveland, polling location #7
North Central YWCA, East Cleveland, polling location #8
Taylor Road Academy, Cleveland Heights, polling location #1
Menorah Park Center for Senior Living, Beachwood, polling location #3
Beachwood High School, Beachwood, polling location #1
Harvard Community Center, Cleveland Ward 1, polling location #9
Shaker Community Building, Shaker Heights #7
Marion Sterling Elementary School, Cleveland Ward 5, polling location #1

FRANKLIN COUNTY

Driving Range at 1100 Rhoads Avenue, polling location #1035B and #1035C
Nazareth Towers, polling location #1008B
Linden Transit Center, polling location # 01013C
Ohio State University, polling location #1041B and #1041D & #1041E
St. Andrews School, polling location #20005B and 20006C
Windermere Elementary, polling location #20006A & 20006D and 20006E

Department of Elections
Mount Vernon AME Outreach Center, polling location #1007B
Driving Range, polling location #1035B and #1035C (returned)

Missouri

BOONE COUNTY

Fairview Rd, Church of Christ, polling location # 4A1&3
Fairview School, polling location # 4A2
Fairview Rd, United Methodist Church, polling location # 4G2
Rocheport Community Hall, polling location # 18
Woodlandville Methodist Church, polling location # 13
Columbia Public Library, polling 12:05pm location # 5A
Unitarian Church, polling location # 6C2, 3, 4
MU Life Sciences Bldg, polling location # 1E1
Eugene Field School, polling location # 1H
Columbia/Boone County Health Clinic, polling location # 1C
Lukes Methodist Church, polling location # Central 1
Memorial Union, polling location # Central 4

THE CITY OF ST. LOUIS

Stevens School Library, polling location # 18.5
Washington Montessori, polling location # 18.6
St. Rochs School, polling location # 28.5
New Cote Brilliante, polling location # 28.6
Stanley and Clayton, polling location # 4.1
Hickey School, polling location # 4.4 and # 4.7
Cote Brilliante School, polling location # 4.6 and # 4.8
Washington Montessori, polling location # 18.6 (returned)
Kingshighway Baptist Church, polling location # 13.1
Walbridge Community Education Building, polling location # 27.3
Mark Twain School, polling location # 1.3
Euclid Place High Rise, # 1.4
Yeatman School, polling location # 21.3 and # 21.4

ST. LOUIS COUNTY

Reed School, polling location # 77
Olivette Community Center, polling location # 43

ENDNOTES

- 1 Conference on the Security and Co-operation in Europe, 5–29 June 1990 Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE. Article 8 reads, “The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other CSCE participating States and any appropriate private institutions and organizations that may wish to do so to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavor to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.
- 2 U.S. Census Bureau: Florida State and County QuickFacts. Data derived from Population Estimates, 2000 Census of Population and Housing: <<http://quickfacts.census.gov/qfd/states/12/12073.html>>
- 3 Another group of international observers present in Miami-Dade County (PAX Christi) was also given access to four different polling locations. International observers were therefore granted access to a total of six of the 734 polling locations within the county.
- 4 A second group of international observers present in Broward County, sponsored by the OSCE, was also given access to four different polling locations. International observers were therefore granted access to a total of eight of the 815 polling locations within Broward County.
- 5 2003 estimate, U.S. Census Bureau.
- 6 FEI was informed that observers from the OSCE as well as the US Department of Justice were also denied access to the polls and tabulation centers.
- 7 United States Court of Appeals for the 6th Circuit, Nos. 04-4311/4312, <http://pacer.ca6.uscourts.gov/opinions.pdf/04a0378p-06.pdf>
- 8 US District Court, Sarah White v. J. Kenneth Blackwell, Secretary of State (3:04cv7689), Honorable David A. Katz, Memorandum Opinion and Order—filed 11/2/2004, http://www.ohnd.uscourts.gov/Clerk_s_Office/Notable_Cases/04-7689tro.pdf.
- 9 This was reported by the Board of Elections. Mechanisms were in place to discharge the machines, which were then used normally.
- 10 Reported by Electronic Frontiers Foundation.
- 11 Several locations visited did provide indoor seating for voters, but most did not.
- 12 “Each challenge requires specific questions to be asked. The judges might demand identification or other written proof. The electors must answer the judge’s questions under oath” [§ 3505.20].
- 13 2003 estimate, U.S. Census Bureau.
- 14 Ibid.
- 15 Blunt, Matt. Missouri Election Laws, Section 115.409, 2004.
- 16 In St Louis the Republican Party declined to meet with the observers because the observers had not made an appointment; however, prior to arrival in St Louis, FEI staff had contacted the Republican Party offices at least once a day for more than two weeks unsuccessfully seeking an appointment.
- 17 Missouri State Law Section 115.429 and 115.115 provides for the establishment of up to five “central polling places”.
- 18 Boone County does not employ inactive voter lists.
- 19 Statistically, candidates who outspend their opponents win an electoral race the great majority of the time. In 2002, for example, House candidates who spent more than their opponents won 94 percent of the time: Public Campaign, *Color of Money* 2003, (2003) 8.



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To contact or donate to Fair Election International or Global Exchange please call
or write to:

2017 Mission Street, Suite 303

San Francisco, CA 94110.

tel: (415) 255.7296

fax: (415) 255.7498

www.globalexchange.org