



# Democracy Dispatches

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Democracy Dispatches is a regular Demos publication that tracks and analyzes democracy issues through continual contact with a growing network of people committed to improving American democracy.

We welcome submissions of short articles, op-eds, and letters to the editor. For more information, please contact the editor, Sarah Tobias, at [stobias@demos-usa.org](mailto:stobias@demos-usa.org).

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## STATE NEWS



### California: Results of San Diego Mayoral Election Certified; Calls for Nonpartisan Secretary of State Mount

The disputed results of San Diego's mayoral election were certified in early December despite charges that some ballots remain uncounted.

Controversy about the mayoral vote began on Election Day when write-in candidate Donna Frye appeared to garner as many votes as one of her Republican challengers. Frye's candidacy was called into question after Election Day and partisan activists sued, claiming that the city charter disallowed a write-in candidacy. The race remained close for several days while absentee ballots were counted.

Though incumbent Dick Murphy won the election by a margin of 2,108 votes, Frye contends that thousands of voters wrote her name on the ballot but failed to fill in a circle on the same line. The registrar ruled against counting those votes.

Frye, who sits on the city council, was the only member to vote against certifying the election. According to the San Diego Union Tribune, independent requests for a recount of the disputed ballots have been made.

Meanwhile, if Assemblyman Joe Canciamilla (D-Pittsburgh) and Senator Jeff Denham (R-Modesto) succeed with two separate pieces of legislation, California may soon require its Secretary of State to be nonpartisan.

Canciamilla's bill would designate the office of Secretary of State nonpartisan. It would also require a candidate to state whether or not she would endorse other candidates and ballot initiatives. Denham proposes a

similar constitutional amendment. Both will be discussed in the legislature after the New Year.

If the legislation passes, California will be the first state to have a nonpartisan Secretary of State.

Democrat Kevin Shelley, California's current Secretary of State, has come under fire in recent months after the San Francisco Chronicle reported that he received illegal contributions and used federal election money for partisan activity.

*San Diego Union Tribune 12/10/04 & 12/15/04; San Francisco Chronicle 12/10/04*

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### **Florida: Absentee Balloting Problems Predominate**

The 2004 presidential elections in Florida once again revealed systemic problems that must be corrected before Florida can be considered to have free and fair elections. Many of the problems, such as votes being rejected from eligible voters who cast a provisional ballot in the wrong precinct, were predictable. But others, such as the massive disfranchisement caused by delays in mailing absentee ballots, were less expected.

Absentee balloting problems on November 2 accounted for 13.4% of all Florida voting incidents recorded in the Election Incident Reporting System -- the Election Protection Coalition's database. The most prevalent type of absentee ballot-related complaint fielded by the ACLU of Florida involved voters who received their absentee ballots too late, or not at all. Other complaints involved confusing postage, return envelope formatting that caused mail delays, and absentee ballots from eligible voters being rejected on hyper-technical terms.

The battle to protect the right to vote in Florida takes place on many fronts, and includes on-going campaigns for voter-verified audit trails for touch-screen voting machines, eliminating the correct precinct requirement for provisional balloting, ensuring proper implementation of voter ID requirements, and more. But the 2004 elections illustrated that protecting the right to vote is an evolving and changing endeavor that requires our continued vigilance.

*Article contributed by Courtenay Strickland, American Civil Liberties Union of Florida*

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### **New York: City Council Holds Hearing on Amendment to Pro-Voter Law**

On November 30, 2004, the New York City Council held a hearing on an amendment to the Pro Voter Law. The original bill, passed in 2000, designated a wide range of city agencies to provide voter registration at all points where interactions between citizens and the city government occur. The law was meant to increase access to voter registration for New York City residents, and to compensate for the limited effect of the federal "Motor Voter Law" on the city's population -- over 50 percent of New Yorkers are non-drivers and therefore do not benefit from registration opportunities at the DMV.

But a 2003 investigation found that the majority of city agencies failed to provide voter registration forms to the public. The amendment, sponsored by Speaker Gifford Miller and Council Members Bill Perkins and Eric Gioia, seeks to address the lack of proper implementation of the Pro Voter Law. It requires, among other things, that participating city agencies provide training for their staff, attach voter registration forms to all agency forms, and collect and forward the voter registration cards to the Board of Elections.

Representatives from Unlock the Block: Release the Vote, the Legal Action Center and the Brennan Center for Justice at NYU testified in support of the amendment. Joseph Hayden of Unlock The Block stressed the important role that city agencies can play in ensuring that every eligible citizen knows she can vote, receives a voter registration form and, if necessary, gets help filling it out. Prospective voters also need to have confidence that their registration forms will be delivered to the Board of Elections in a timely fashion.

While challenges to the state's felony disenfranchisement laws are focused on expanding voting rights to citizens with felony convictions, those already eligible to vote are largely uninformed about their voting rights. The amendment would work to combat the massive misinformation surrounding the eligibility of many New

Yorkers to vote.

*Western Queens Gazette, October 2003; Gotham Gazette, October 2004*

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### **Ohio: Recount Underway**

The Ohio recount is underway. Re-counting began in some Ohio counties on Monday December 13, and in others later the same week. But the manner of recounting varies from county to county. In Hocking County, officials initially told folks not to bother sending witnesses, because there was no space for them in the counting room. Allen County said that if there is a discrepancy in the first 3% of ballot recounts, then they will begin the full recount on January 10, after electors have been accepted by Congress. And there remains uncertainty about how re-counting will be conducted in counties with electronic voting machines that have no paper trail.

The National Voting Rights Institute (NVRI) asked a federal judge to insist on one standard for the recount. That request has been declined for now, though the judge is planning to review more documents later. NVRI also plans to monitor the county recounts with the assistance of witnesses being provided by the David Cobb and Michael Badnarik campaigns, as well as the DNC.

Meanwhile, Sherole Eaton, the deputy director of the Hocking County board of elections, has submitted a sworn affidavit describing voting machine "fixes" that were conducted by a technician from Triad on Friday December 10. Her [affidavit](#) is attached to a [letter from Congressman John Conyers, Jr.](#), asking the FBI to investigate the incident. Voting technology expert Doug Jones from the University of Iowa argues that the [evidence from Eaton](#) is serious and potentially threatens the integrity of the statewide recount. It highlights the need for preserving all ballots and election-related machinery throughout the state.

NVRI is submitting the Conyers letter, Eaton and Jones affidavits, and other documents relating similar concerns in Monroe and Greene Counties, to the federal court.

*Article contributed by Stuart Comstock-Gay, NVRI*

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### **Pennsylvania: Governor Creates Election Reform Committee**

In response to November's confused and at times disorderly election process, Governor Ed Rendell has formed a thirteen-member task force to consider ways to improve Pennsylvania's election process. The 13-member task force, headed by Secretary of the Commonwealth Pedro A. Cortes, will consider reforms that include moving the mid-April primaries forward to late January or early February, splitting electoral votes proportionally between presidential candidates, and introducing early voting. Rendell also wants the task force to think about ways to better educate the public about provisional ballots. Rendell noted that many unregistered Pennsylvania voters incorrectly anticipated that provisional ballots would work like Election Day Registration, enabling them to register and vote at the polls on November 2.

*AP 12/13/04*

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### **Rhode Island: Right to Vote Campaign gets off the Ground**

In November 2004, a coalition of community organizations, service providers, student activists, and advocacy groups launched the Rhode Island Right to Vote Campaign.

Rhode Island is home to some of the most restrictive felon disfranchisement laws in the country. It is the only state in New England that restricts voting rights not only while an individual is incarcerated for a felony conviction but also while they are on probation and parole. The state's prison population has grown by 625 percent over the last 30 years -- mainly due to the war on drugs and tougher sentencing. Forty percent of Rhode Island's prison population is serving time for nonviolent or drug offenses. Consequently, many Rhode Islanders are denied the right to vote. More than 15,500 state residents are disfranchised due to a felony conviction. One in five black men and one in eleven Latino men are barred from voting statewide. Inhabitants of urban areas are disproportionately affected; more than 10 percent of South Providence residents are disfranchised. And the vast

majority of Rhode Islanders denied the right to vote -- fully 86 percent of the disfranchised population -- are not currently in prison.

*Article Contributed by Nina Keough & Marshall Clement, Rhode Island Family Life Center. To get involved in the Rhode Island Right to Vote Campaign, contact Marshall Clement at the Family Life Center 401.781.5808, x109, [www.ri-familylifecenter.org](http://www.ri-familylifecenter.org).*

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### **Washington: Pierce County considers Mail-in Voting**

The Pierce County City Council has set up an advisory task force to explore the viability of converting to an exclusively mail-in voting system. The task force has been commissioned to make cost comparisons between vote-by-mail systems and polling place-based voting. While more than 70,000 of Pierce County's 405,000 voters cast ballots at the polls on Election Day, 250,000 people mailed in absentee ballots. As a pre-requisite for transforming Pierce County into a vote-by-mail system, Washington State law would require the auditor's office to create new voting precincts -- each inhabited by less than 200 voters. But County Auditor and Election's chief Pat McCarthy favors retaining polling place-based voting, even if the task force finds this option is less efficient. Five other Washington counties currently use a vote-by-mail system.

*The News Tribune, 12/12/04*

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### **PROVISIONAL BALLOT ROUNDUP**

A new Demos report shows that the right to cast a provisional ballot was violated in election precincts across the county on November 2. The study, *Continuing Failures in Fail-Safe Voting*, analyzes 744 provisional balloting problems reported by voters to the Election Protection hotline -- a toll-free telephone hotline created and staffed by the Election Protection Coalition. Volunteers entered the information into the [Election Incident Reporting System \(EIRS\)](#) to collate the data. Of the hundreds of thousands of calls made to the hotline on and before Election Day, more than 37,000 incidents have been entered into the EIRS; about 1,900 concern provisional ballots.

The Demos report finds that half of the provisional ballot problems analyzed involved eligible voters being denied the right to cast a ballot. Twenty percent of these reports entailed voters being offered provisional ballots when they were entitled to vote using a regular ballot. Another twenty percent of the cases derived from a botched voter list created before Election Day or from another prior error in elections administration. Only 3 percent of voters reporting problems were required to cast a provisional ballot because of their own mistakes.

In Ohio, the number of provisional ballots cast exceeded President Bush's original margin of victory. Compared with voters in other states, four times as many Ohio voters reported that they were offered provisional ballots when they were entitled to vote by regular ballot. Ohio voters also reported twice as many provisional ballot-related problems per capita than in the rest of the country. They were nearly three times as likely to be given provisional ballots as voters in the neighboring battleground state of Pennsylvania. And Ohio voters also suffered from the state's refusal to count provisional ballots cast in the wrong precinct.

Many of the problems described in Demos's new report were anticipated in its October 2004 study, [Placebo Ballots: Will 'Fail-Safe' Voting Fail?](#) In this report, Demos argued that over half of the states would not count provisional ballots cast by voters at the wrong precincts. Other states would not allow voters who could not provide ID at the polls to have their provisional ballots counted. "Many of the problems predicted for provisional ballots came true on Election Day," says Demos' Steven Carbo. "Our analysis of the incidents illustrates a stark reality -- that for many voters, HAVA's 'fail-safe' voting provision failed."

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### **EDR ROUNDUP**

The six states that use Election Day Registration (EDR) -- Minnesota, Wisconsin, Maine, New Hampshire, Idaho and Wyoming -- experienced exceptionally high voter turnout during this year's presidential election. In fact, over 14 percent more eligible voters cast ballots in EDR states than in non-EDR states. In other words, 72.5 percent of eligible voters in EDR states cast a ballot, compared with 58 percent in non-EDR states. "The results of this past election further cement the evidence that EDR works" said New York State

Assemblymember Scott Stringer. "Plain and simple, EDR brings more people, especially young voters to the polls." EDR makes it possible for new voters, the recently relocated, and those whose registrations were incomplete or lost, to participate without unnecessary hurdles.

In the aftermath of Election 2004, efforts to enact EDR are underway in legislatures around the country, including Connecticut, Massachusetts, New York, and North Carolina. Iowa Secretary of State Chet Culver also plans to introduce EDR legislation in the next session "I think Iowa is ready for same-day voter registration" he said.

*Press Release 12/8/04; AP 9/25/04*

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### **NONCITIZEN VOTING ROUNDUP**

San Francisco voters rejected by 51 to 49 percent a local ballot initiative that would have granted noncitizen parents and guardians the right to vote in municipal school board elections. Proposition F was put on the November 2 ballot after the San Francisco Board of Supervisors endorsed the measure by a vote of 9-2 earlier this year. More than 60,000 students in San Francisco's public schools are either of Chinese or Latino decent, and at least one out of every three students in the city's school system has an immigrant parent.

Meanwhile, the Cambridge City Council in Massachusetts adopted a "home rule petition" by a 5-4 margin to extend the vote in local elections to noncitizen permanent residents. The petition must be approved by the state legislature in order to go into effect. Massachusetts legislators have rejected similar measures in Cambridge and Amherst in the past.

The issue of noncitizen voting also reemerged in New York City last month when City Council member Bill Perkins announced that he would introduce local legislation by the end of the year. His measure would extend the vote in local municipal elections to noncitizens. The debate is likely to heat up in the 2005 mayoral race. Last April, Mayor Michael Bloomberg came out in opposition to noncitizen voting. One of the mayor's likely opponents, Fernando Ferrer, says he supports the idea.

*San Mateo County Times, 09/17/04; San Francisco Chronicle, 11/03/04; Cambridge; New York Sun, 11/12/04; Chronicle, 11/24/04*

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### **NATIONAL NEWS**

#### **Experts Discuss the Election Process and Release Election 2004 Reports**

The Common Cause Education Fund, the Leadership Conference on Civil Rights and the Century Foundation hosted an examination of the November 2 elections earlier this month in Washington, DC. Election administrators, legislators, civil rights leaders and reform advocates from across the country gathered to assess what happened on Election Day. Despite waves of editorials and news reports lauding the success of this year's election, the post-mortem provided ample evidence that this year's election was far from smooth. Among the problems voters faced were partisan attempts to suppress and mislead voters, unbearably long lines, problems with provisional ballots, voter registration discrepancies, and a spate of voting machine malfunctions.

Several of the participating organizations released new reports detailing problems at the polls on Election Day. Demos released "*Continuing Failures in Fail-Safe Voting*," a follow-up to its pre-election report, "*Placebo Ballots: Will 'Fail-Safe' Provisional Voting Fail?*" The new report investigates what types of provisional voting problems individuals encountered on Election Day (see Provisional Ballot Roundup for more information).

Meanwhile, Common Cause released "*A Report from the Voters: A First Look at the 2004 Election Data*," which describes a variety of problems confronted by voters. The Common Cause hotline—866.MYVOTE1—fielded 208,000 calls on or before Election Day. Half of the callers wanted information about polling place locations and a third reported problems with their voter registrations. Fifty-five percent reported that they were unable to connect with their local board of elections on Election Day.

Finally, the Election Protection Coalition, a broad-based coalition of national, state and local organizations,

released "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections." The report offers a snapshot of the types of problems reported to the Election Protection Coalition's voter hotline, 866.OURVOTE. Of the 39,000 complaints that have been recorded and analyzed thus far, over 10,000 concern voter registration problems, nearly 4,000 report absentee ballot issues, 2,500 are related to voting machine malfunctions, and thousands more concern voter suppression attempts.

"Continuing Failures in Fail-Safe Voting" can be found [here](#), "A Report from the Voters" can be found [here](#), and "Shattering the Myth" can be found [here](#).

### **Updating Democracy for the Twenty-First Century: Voting With Dollars and Deliberation Day**

[CitizenSovereignty.org](#) is a new, nonprofit and nonpartisan organization dedicated to creating fundamental, common sense changes to our electoral system that would strengthen popular sovereignty. Imagine, for instance, a national holiday designed to re-engage Americans in political life. "Deliberation Day" would be held two weeks before presidential elections and would enable Americans to gather at neighborhood meeting places to discuss the central issues raised by leading candidates for the White House and Congress. "Deliberation Day" would supplant the influence of manipulative political marketing and compel political campaigns to engage and inform voters. Or imagine voter-determined public financing and mandatory anonymity for private contributions. "Voting With Dollars" would mimic the secret ballot in safeguarding the integrity of elections.

Achieving these goals is a long way off, but we've gotten started. "Time to Choose," a McNeil/Lehrer production and a seventeen-city simulation of Deliberation Day, was broadcast nationally on October 21, 2004. Highlights are [on-line](#). Chile held nationwide municipal elections in October in which campaign contributions could be made anonymously through banks acting as a blind trust. We are actively building a network of advocates for implementation of these ideas at the local, state and national levels, and internationally. To learn more, visit [www.CitSov.org](#).

*Bill Corbett is Executive Director of [CitizenSovereignty.org](#)*

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### **FEDERAL NEWS**

#### **EAC and FEC Name New Officers**

In mid-December, both the Election Assistance Commission ([EAC](#)) and the Federal Election Commission ([FEC](#)) named new officers.

The EAC named Gracia Hillman as chair, and Paul DeGregorio as vice chair. Hillman, a Democrat, is former executive director of the League of Women Voters. DeGregorio, a Republican, is a former executive vice president of the International Foundation for Election Systems. Both commissioners will assume their new roles on January 3, 2005. Next year, the EAC plans to develop a report on the 2004 elections and present it to Congress. The EAC will also issue guidelines on a range of issues related to HAVA-implementation, including provisional ballots and statewide, computerized voter registration lists.

The FEC appointed Democrat Scott Thomas as chair and Republican Michael Toner as vice chair.

*EAC News Release 9/14/04; AP 12/16/04*

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### **NEWS FROM PUERTO RICO**

Controversy persists in the aftermath of the recent Puerto Rican gubernatorial election. On December 13, 2004, The First Circuit Court of Appeals in Boston heard arguments about whether 28,000 disputed paper ballots cast in the race between candidates Acevedo Vila and Pedro Rossello should be counted. The ballots in question are "mixed" ones -- in other words, they are ballots where voters select a preferred political party but also vote for candidates from more than one party. The contested ballots show three penciled-in X marks indicating support for Vila, who represents Puerto Rico's pro-commonwealth Popular Democratic Party, as well as for the pro-commonwealth candidate for resident commissioner and for a small third party, the PIP.

Mixed ballots have regularly been counted in Puerto Rico in the past. But Rossello argued for their disqualification after Vila was preliminarily certified as victor and retained his lead in a recount. Although he bills himself as the pro-statehood candidate, Rossello filed suit in federal court rather than in the Puerto Rican courts. His actions started a struggle for jurisdiction over whether a US district judge in San Juan or Puerto Rico's Supreme Court should have authority to rule on the disputed ballots.

Rossello is represented by former Solicitor General Ted Olson, who was counsel to George W. Bush in *Bush v. Gore*, while Vila is represented by Charles J. Cooper, who also represented Bush in 2000 and by Charles Fried, a solicitor general for former President Reagan. After hearing arguments about the issues at stake, the First Circuit Court of Appeals returned the case to Puerto Rico's Supreme Court on December 15, 2004. The decision means that federal courts will not decide who wins the Puerto Rican gubernatorial race.

*Washington Post* 12/11/04; [Equal Vote Blogspot](#) 12/14/04; *Boston Globe* 12/15/04

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## **OPINION/EDITORIAL**

### **Pull the Plug on the Electoral College With No Constitutional Amendment**

By December 22, each state will submit its votes in the real presidential election at the Electoral College, ratifying what amounts only to an advisory vote taken by the public on November 4. Many states do not even require their electors to follow the will of their voters. A Minnesota elector has already cast a vote for John Edwards instead of John Kerry. Congress will count these votes, the real votes for President, on January 6.

The Electoral College is nothing short of an embarrassing blight on American democracy. But given the long odds of passing a constitutional amendment, nobody has much appetite to take on the challenge of abolishing it. Voters, however, could render it obsolete by nominating presidential primary candidates who mutually agreed to abide by the results of the popular vote in the general election.

As we send troops and funds to spread democracy abroad, nobody seriously suggests that Afghanistan, Iraq, or anyone else should choose their president by an elite group of electors instead of by popular majority. In a modern world where the legitimacy of a government derives from the consent of the governed, there's simply no justification for an elections system that allows the minority to rule. Yet our Electoral College does just that.

Some cling to the Electoral College for its supposed stability, but it is anything but stable. Had just 22,000 voters in Iowa, Nevada, and New Mexico switched their votes from Bush to Kerry, this last election would have been thrown to the House of Representatives in an electoral college tie. While the Republican House would likely have elected Bush anyhow, the outcry from Democratic activists would have destabilized and divided the country.

Others defend the Electoral College by pointing out that it gets it right most of the time. But in four out of fifty-five elections, the College has selected someone who lost the popular vote – a failure rate of seven percent. We're all familiar with what happened in the 2000 election, but not many realize that it nearly happened again in 2004. If 60,000 Ohio voters had switched from Bush to Kerry, the Massachusetts Senator would be the president-elect despite clearly losing the popular vote.

Most of us tolerate this embarrassing institution primarily because we don't see any way around it. There have been some 700 attempts to alter or get rid of the Electoral College and all have failed. The most recent real effort came in 1969, when the House of Representatives passed a constitutional amendment 338 to 70 abolishing the Electoral College. Polls at the time showed 81% support. Despite endorsement by President Nixon, the amendment died when it only received 54 votes in the Senate, 13 short of the required two-thirds.

Even if our current Senate could muster the needed 67 votes for a constitutional amendment, it would need to be ratified by three quarters of the states. Many small-state voters are beginning to realize that the Electoral

College advantages swing states more than small ones, but small state legislators may be more provincial. It takes 13 state legislatures to block enactment of any constitutional amendment.

But voters could take matters into our own hands by nominating both Republican and Democratic presidential candidates who pledge to sign a mutual agreement that instructs their chosen electors to vote for whichever candidate received the most popular votes. The agreement would need to be in place by January 1 of 2008, so that both sides would know the rules for the general election ahead of time.

There is strong historical precedent for politicians voluntarily abiding by the popular vote even when not required to. Our constitution originally called for US Senators to be elected by state legislatures. As concern over this anti-democratic procedure grew, voters in Oregon began conducting straw polls for US Senate candidates on their state ballots and instructing their state legislators to vote for the Senate candidate who won the popular vote. State legislators did as they were instructed. Other states followed suit, leading to de facto popular election of US Senators in more than half the states by 1912. After a critical mass of Senators had been elected by this method, there were finally enough votes to pass the 17th amendment through the US Senate in 1913 and require direct election for all Senators.

Given Al Gore's experience in 2000 and Bush's near-death experience with the 2004 electoral vote, now is the perfect time for both parties' candidates to embrace this reasonable approach. With such prominent figures as Bob Dole and Hillary Clinton opposing the Electoral College, it is more than possible that both parties could nominate candidates in 2008 who are willing to abide by the popular vote. If voters begin demanding this now, we might just make it happen.

*Derek Cressman directs [TheRestofUs.org](http://TheRestofUs.org), an independent watchdog group working to improve democracy in America.*

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## **ANNOUNCEMENTS**

The January 2005 edition of the American Prospect features a special section about Election 2004, featuring articles by Demos' Miles Rapoport and Steven Carbo. To read the special section, click [here](#).

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