

US Civil Rights Commission report: Florida officials disenfranchised thousands of voters

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The US Commission on Civil Rights has concluded that Florida's Republican officials were responsible for "widespread disenfranchisement and denial of voting rights" during last November's presidential election. A draft of the commission's final report, obtained by the press earlier this week and due for release Friday morning, says the voices of countless persons "were silenced in this historic election by a pattern and practice of injustice, ineptitude and inefficiency." These measures resulted in an unknown number of voters being "wrongfully purged from the voter registration rolls, turned away from the polls, and by various other means prevented from exercising the franchise."

African-American voters were most harshly affected, the commission said, with blacks 10 times more likely than white voters to have their ballots rejected in Florida. On a statewide basis, while blacks comprised about 11 percent of all state voters in the 2000 elections, African Americans cast about 54 percent of the votes that were either not detected by voting machines or rejected for containing mistakes. Nine out of the ten counties with the highest percentage of African-American voters had spoilage rates above the Florida average, with Gadsden County, which has the highest percentage of black voters in the state, also claiming the highest rate of rejected ballots.

The commission blamed these results on "restrictive statutory provisions, wide-ranging errors and inadequate and unequal resources," including the use of antiquated and error-prone punch card systems in working class and minority neighborhoods. Referring to the expected high turnout of African-American voters—which increased 65 percent over 1996—the report says President Bush's brother, Florida Governor Jeb Bush, and Secretary of State Katherine Harris in particular "chose to simply ignore the mounting evidence that many counties were experiencing rising voter registration rates in communities with out-dated voting technology." Before and during the election, the report says, "state and county officials were aware of several key factors that ultimately contributed to the disenfranchisement of qualified voters."

Though for its own political reasons the commission said it did not find "conclusive evidence" that the highest state officials "conspired to produce the disenfranchisement of voters," the facts it presents provide ample evidence that Jeb Bush, Katherine Harris and other state and county officials took actions that all but assured a high percentage of likely Democratic voters would face obstacles at the polls or would have the counting of their votes blocked.

During the five weeks that the election result hung in the balance, the Republicans utilized their control of Florida's state apparatus and other resources to prevent an accurate count of the votes in the state in order to maintain Bush's official lead of a few hundred votes. In the

end, the right-wing majority on the US Supreme Court intervened to overturn a state high court decision and stop a manual recount of votes, thereby handing the state's 25 electoral votes and the White House to Bush.

Despite the commission's charitable interpretation of facts in connection with Bush and Harris's intent, the report details how deliberate measures by state election officials under their direction resulted in thousands of citizens being denied the right to vote. This was particularly evident in the state's "purge" of voter registration lists for alleged felons, which resulted in "the inexcusable and patently unjust removal of disproportionate numbers of African Americans from Florida's voter registration rolls," according to the report.

Florida and several other states permanently strip convicted felons of citizenship rights even after they serve time in jail and pay other penalties. In Florida, this has resulted in nearly a third of all black males losing the right to vote. The commission found that Republican officials encouraged private contractor DataBase Technologies (DBT), hired to compile a list of voters who had committed felonies in other states, to employ an "error-laden strategy," which state officials knew would result in falsely identifying eligible voters as felons. According to a DBT senior vice president, the company warned election officials that a search based simply on matching names and dates of birth would result in large numbers of "false positives."

In fact, that is what state officials wanted. In a March 1999 e-mail message to DBT officials who warned him about probable mistakes, Emmett "Bucky" Mitchell—who headed the state purge effort—said, "Obviously, we want to capture more names that possibly aren't matches and let the [county elections] supervisors make a final determination rather than exclude certain matches altogether." Clayton Roberts, the head of the state's election division, confirmed that this was the state's policy in an interview with the *Washington Post*: "The decision was made to do the match in such a way as not to be terribly strict on the name."

One list sent to Florida officials inaccurately contained 8,000 people who had committed misdemeanors—not felonies—in Texas. Another list included at least 2,000 felons who moved to Florida from states that automatically restore voting rights.

"The purge system in Florida proceeds on the premise of guilty until proven innocent," the commission report states. "The process places the burden on the eligible voter to justify their right to remain on the polls. The ubiquitous errors and dearth of effective controls ... gave priority to the exclusion of voters instead of the expansion of voter participation."

The commission found that in an election in 1998 election supervisors were alerted to verify exclusion lists and provide

opportunities for persons to vote by affidavit ballot when they made a credible challenge to his or her removal from the registration rolls. No such measures were taken before the November 2000 presidential elections, the commission said.

The commission specifically cited Governor Bush, Harris and Roberts for failing to set guidelines for their subordinates to protect historically disenfranchised populations, i.e., African Americans, from being wrongly purged from the voting lists. In its conclusions the commission called on the state to end its permanent disenfranchisement of discharged felons, a policy which, it said, raises “fundamental issues of fairness” and disproportionately affects African Americans, who are “disproportionately charged, convicted and sentenced in the criminal justice system.”

The commission also found other possible violations of state and federal laws in its investigation, including the decision by election supervisors to deny bilingual assistance to thousands of Puerto Rican and other Spanish-speaking citizens who have moved to central Florida in recent years. Federal law requires ballots to be printed in two languages in any county in which voting-age citizens with English-language deficiencies make up at least 5 percent of the population. But in Osceola County, for example, where 29 percent of residents are Hispanic, election supervisors refused to print ballots in two languages. The Department of Justice is currently investigating possible violations of the federal Voting Rights Act, under which several Florida counties are mandated to provide bilingual assistance because of a repeated history of discriminating against immigrant voters.

“The failure to provide proper language support resulted in widespread voter disenfranchisement of possibly several thousand Spanish-speaking voters in central Florida,” the commission concluded.

The civil rights commission's report is based on three days of hearings earlier this year, more than 30 hours of testimony from over 100 witnesses—including Jeb Bush, Katherine Harris and Clayton Roberts—and a systematic review of 118,000 pages of documents.

During the commission's January 12 hearing in Tallahassee other evidence emerged about significant violations of the law that are not mentioned in the commission's summary. During the questioning of Roberts by Commissioner Victoria Wilson, he acknowledged that several county election supervisors intentionally disregarded state law requiring an automatic machine recount of all ballots when the margin between candidates is one-half of one percent or less.

When the polls closed in Florida on Election Day, George W. Bush led Al Gore by 1,784 votes, out of the nearly 6 million votes cast in the state. As the results of the automatic machine recount came in, Bush's lead fell to a mere 327. According to a report in the *Washington Post*, election supervisors in 18 of the state's 67 counties defied state law and refused to do a recount.

Although Bush's spokesman James Baker often repeated the claim that Florida's votes had been counted and counted again, the reality was that 1.58 million votes in those 18 counties were never recounted. Republican-controlled election boards simply checked their original results and resubmitted them.

The following is the exchange between Roberts and Commissioner Victoria Wilson at the January 12 hearing:

Wilson: I understand that all of the Florida counties on optical scan did not actually recount the individual ballots for Florida this year. Is this true?

Roberts: Yes, ma'am.

Wilson: Okay. Two of the counties that did recount had over a thousand additional votes that were recorded. Is that true?

Roberts: I'm not aware of that number.

Wilson: Were you aware there were additional votes that were added once the recount took place?

Roberts: Typically when there is a machine recount there are extra votes that are counted, and there are some counties that did report to me that when they did their original count there were ballots that for some reason or another did not get counted.

Wilson: Well, how can some counties be counted and others not counted without discrimination?

Roberts: I don't think that they can, but there were some counties where supervisors have interpreted the statutes to not require a machine recount in that automatic machine recount.

When Commissioner Wilson then asked how the vote could be certified if all of the ballots were not counted, Secretary of State Katherine Harris, who was also testifying under oath, intervened. She said, “When we receive [the results] ... the local county canvassing boards certify the results to the state board. When we receive that, which again is strictly ministerial, you can't look beyond that certification. When we receive it, that is what we can certify. We can't go back and say how did you count, what are these issues here.”

Harris's lack of concern about violations of state election laws contrasts starkly to her insistence in the week following the election that Florida statutes gave her no leeway to extend the deadline to certify the results. Just as canvassing boards were set to begin counting votes that machines failed to detect in order to ascertain the intent of voters, Harris reiterated that the statutes required that election results be certified within seven days of the election and that she would not extend the deadline.

Commenting on the double standard employed by Harris, co-chair of Bush's Florida campaign, the commission report says, “While she described her role in the policies and decisions affecting the actual voting operations as limited, she asserted ultimate authority in determining the outcome of the vote count.”

While saying it did not have conclusive proof of intentional wrongdoing by Governor Bush, Harris, Roberts and others, the commission makes the point that under the provisions of the 1965 Voting Rights Act (VRA), officials can be found guilty of violating the law without demonstrating intent. The only precondition for establishing that such a violation occurred is that the “state's actions resulted in African Americans and other people of color being denied the right to vote under a ‘totality of circumstances,’” the report notes.

Summarizing its findings, the commission states that its “hearings spotlighted and this report highlights the harsh reality that despite the closeness of the election, it was widespread voter disenfranchisement and not the dead-heat contest that was the extraordinary feature of the Florida election.”

The commission concludes with an appeal to the US Department of Justice and Florida officials to determine “whether certain state and county officials in Florida violated the VRA and, if so, to seek appropriate sanctions and remedies.”



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