

Suit charges Florida election reform violates voting rights

Jerry White**24 August 2001**

The US Department of Justice has delayed the implementation of an election reform law in Florida after a request by the American Civil Liberties Union and several voting and civil rights organizations, which charge the measure would further discriminate against minority voters who faced widespread disenfranchisement during the 2000 presidential election.

The Florida Election Reform Act of 2001 was signed into law last May by Governor Jeb Bush with great fanfare by both political parties, which claimed its measures, including the ending of punch card ballots, addressed the concerns over antiquated voting machines and the unequal distribution of resources that led to widespread anger, particularly among African-American and poor voters.

What received little publicity, however, was that the Republican-controlled state legislature passed the measure after Democrats agreed to include a 10-point list of so-called voter responsibilities. The ACLU says this measure imposes retrogressive and illegal requirements in violation of the federal Voting Rights Act as well as the First, Fourteenth and Fifteenth Amendments to the US Constitution.

The list of voter responsibilities is to be prominently posted at each polling place alongside a voter bill of rights. While the list of rights includes items protected by state law, such as the right to have one's vote accurately counted, the voter responsibilities list is not based on any such law. Among other things, the posted signs will say that each registered voter is responsible to "study and know candidates and issues," "know his or her precinct and its hours of operation" and "know how to operate voting equipment properly." In addition, voters will be told they are responsible to "bring proper identification to the polling station," "keep his or her voter address current" and "check their completed ballots for accuracy."

Because of the way the signs will be posted, the ACLU charges, it will appear to voters and poll watchers that these are legal obligations, not advisory goals. Such a perceived requirement as studying and knowing candidates and issues and knowing voting procedures could frighten away voters, particularly those with lower levels of education. Moreover, there would be no other way of determining whether or not a voter was informed about candidates, issues or voting

procedures outside of an election official or poll watcher questioning him or her. This would be an explicit violation of the Voting Rights Act, which outlaws any requirement that a voter be able to demonstrate the ability to read, write, understand or interpret any matter, or demonstrate "knowledge of any particular subject."

On August 15 the ACLU's Florida Equal Voting Rights Project filed a lawsuit in federal court in Miami on behalf of the Florida Voters League and Charles L. Major, a black voter in Key West, to stop the implementation of the list and other sections of the new law. Meanwhile the Justice Department has given the state of Florida 60 days to provide more information about the disputed provisions, after which it will take up to another 60 days to determine whether they are discriminatory.

The lawsuit, which names Secretary of State Katherine Harris and Monroe County Supervisor of Elections Harry Sawyer as defendants, was filed on behalf of a resident of Monroe County. Monroe is one of five Florida counties that must obtain approval of all voting changes from the US Department of Justice due to previous discrimination against minority and non-English speaking voters, including the former use of literacy tests.

Courtenay Strickland, a coordinator for the Florida Equal Voting Rights Project, told the *World Socialist Web Site*, "The philosophy behind the voter responsibility list is that not every person is deserving of the right to vote. But in a democracy, the least educated and those with the fewest means must have equal standing when it comes to voting, and having their votes counted, as those in the opposite spectrum."

Strickland said such requirements as knowing how to operate voting machines and hours that polls are open "placed the burden on the voter, not the state." She explained that during the 2000 election there was mass confusion over which precincts voters belonged to, because the explosive population growth had led to the creation of new precincts and split up old ones, which voters had used for years. "How is a person going to know this information if it is not properly disseminated by the government?" she asked.

Another problem, Strickland said, was that several precincts posted signs saying "photo identification required" and sent voters without proper ID home, preventing many from voting.

The proposed list of voter responsibilities also includes a provision requiring voters to have “proper identification.” JoNel Newman, one of the plaintiffs’ attorneys, said posting the ID requirement not only threatens to discourage eligible voters, it “falsely informs voters about the law.” Under Florida law, he said, a voter without ID is entitled to vote by affidavit ballot.

The lawsuit also challenges a measure under the election reform package allowing those whose eligibility is in doubt to cast “provisional ballots” that will be counted only if it is later confirmed that the person is registered in the same voting precinct where he or she cast the ballot. The state legislature rejected a provisional ballot proposal that would have mandated canvassing boards to accept ballots even from those who voted in the wrong precinct.

The ACLU lawsuit notes that the latest census data shows that blacks and Latinos are far more likely than whites to move frequently and be impoverished. As a result they are less likely to have photo identification or to know their correct precinct after a recent move. “I know elderly people here who have never driven a car in their entire lives,” commented Norma Jean Sawyer, wife of the plaintiff in the lawsuit. “They don’t have photo ID. You tell them ID is required and give them no options and they will not vote.”

The election reform act would not restore the right to vote to half a million Florida citizens—including nearly a third of all black males of voting age—who are permanently disenfranchised because they were convicted of a felony in the past. The lifetime ban dates back to Jim Crow laws passed in the late nineteenth century to strip blacks of the right to vote.

In its investigation into the 2000 election, the US Commission on Civil Rights concluded that the state’s “purge” of voter registration lists for alleged felons resulted in “the inexcusable and patently unjust removal of disproportionate numbers of African Americans from Florida’s voter registration rolls.” The commission found that Republican officials encouraged private contractors, hired to compile a list of voters who had committed felonies in other states, to employ an “error-laden strategy” that state officials knew would result in falsely identifying eligible voters as felons. Officials left it up to county officials to confirm which voters were ex-felons, and in turn these county officials forced voters to prove their eligibility.

The ACLU suit targets new procedures for removing ex-felons from voter rolls included in the Election Reform Act, saying the burden of determining which voters are ex-felons would remain in the hands of county officials, who would continue to force voters to justify their right to vote. This would perpetuate a system which the US Commission on Civil Rights says “proceeds on the premise of guilty until proven innocent.”

During the five weeks that the 2000 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 George W. 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.

In an effort to justify the trampling of voters’ rights, Republican spokesmen dismissed charges that the high rate of uncounted votes was the result of antiquated machinery, lack of resources and other problems concentrated in Florida’s minority, immigrant and poor neighborhoods. They also sought to obscure the fact that Florida law mandates officials to do everything to determine the will of the electorate and upholds that every ballot where the intent of the voter can be discerned be considered valid, regardless of whether or not the voter made some type of mistake.

Instead Republican officials sought to foist the blame for uncounted ballots on “voter error,” arguing if voters could not figure out how to use the system correctly then their votes should not count. This view was spelled out explicitly by Tom Feeney, the Republican speaker of the Florida House, who said, “Voter confusion is not a reason for whining or crying or having a revote. It may be a reason to require literacy tests.”

It is no coincidence that Feeney—who led the fight to have the Florida legislature appoint its own set of electors to run roughshod over Florida voters and hand the state’s electors to Bush—also championed the voters responsibility list.

Included in the right-wing majority on the US Supreme Court that voted to stop the counting of votes in Florida and install Bush in the White House was Chief Justice William Rehnquist, who began his career in the 1960s as a Republican lawyer helping to enforce literacy-test voting requirements in Arizona.



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