

U N D E R S T A N D I N G B O S T O N

Voting In Massachusetts

Report by the Caltech/MIT Voting
Technology Project

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Caltech/MIT Voting Technology Project

The Caltech/MIT Voting Technology Project came into being even as the ballots from the 2000 presidential election were being counted and the Florida recount was being contested in court. The presidents of Caltech and MIT, David Baltimore and Charles Vest, convened a team of mechanical engineers, computer scientists, human factor designers, and social scientists from their respective campuses to respond to the national need for strong academic guidance at the intersection of technology and democracy. Since then, the VTP has sponsored a series of conferences, reports, and consultations aimed at bringing the best in objective, scientific analysis to the problem of applying the best technology to the improvement of voting in the United States. Specific tasks have included evaluating the reliability of existing voting technologies and administrative practices, proposing objective and reliable quantitative guidelines for assessing voting technology reliability, and proposing specific principles for the design of new voting technologies. Primary funding for the VTP has been provided by a series of grants from the Carnegie Corporation of New York. For more information about the Voting Technology Project visit vote.caltech.edu.



The Boston Foundation

Dear Members of the Greater Boston Community:

Nearly three years ago the nation stood transfixed, watching the unfolding drama of the closest presidential election in over a century. The national soul-searching that followed the 2000 election was focused on the states where the election had been the closest and where election administration seemed most questionable. Massachusetts escaped much of this scrutiny, due to a combination of luck and skill—luck, because the failures of punch card voting machines had already been demonstrated in a 1996 Massachusetts primary, leading to their being banned in the state; skill, because Massachusetts has a long tradition of careful election administration.

Even though Massachusetts acquitted itself well in the 2000 presidential election, Bay State residents should avoid complacency about how well elections are administered in the state. It is the mark of a well-functioning democracy that it periodically casts a critical eye toward its most cherished institutions, asking the question, “Even if it’s done well, can’t we do better?”

This report presents the findings of research conducted by a team from the Caltech/MIT Voting Technology Project into voting in Massachusetts. The Voting Technology Project (VTP) has emerged as a leading objective voice as the nation has searched for ways to apply technology more effectively to election administration. The research in this report applies the broad knowledge the VTP has gained studying elections nationwide to the particular case of Massachusetts.

After research on this report got underway in the summer of 2002, the Help America Vote Act (HAVA) emerged from congressional stalemate, which President Bush signed into law in October. The passage and implementation of HAVA provides an opportune moment (and much-needed funding) for the implementation of many of the recommendations found here. Indeed, many of the report’s recommendations are now mandated by HAVA; the only question is how quickly, decisively, and thoroughly the state acts. Other recommendations, such as the institution of Election Day Registration, are facilitated by the Act, even if not required.

I strongly urge policy makers with a role in the electoral process and citizens of the Commonwealth to read and consider the recommendations made in this report. Beyond responding to the urgency of meeting performance deadlines established under HAVA, this report provides an agenda for the continual improvement of the quality of our democracy in this Commonwealth.

Paul S. Grogan
President and CEO
The Boston Foundation

Preface

This report was written by MIT members of the Caltech/MIT Voting Technology Project, at the invitation and through the generous funding of the Boston Foundation. It builds on research into voting reform nationwide that we had previously published in 2001 in the report *Voting: What Is/What Could Be*, which was supported through the generosity of the Carnegie Corporation of New York.

We have characterized current practices in Massachusetts using a variety of sources. Massachusetts election law is of course publicly available. The Massachusetts Secretary of State biennially publishes *Massachusetts Election Statistics* (Public Document 43), which was the source of election return information. We received information about the 2002 election returns, along with information about town-by-town usage of election technology, directly from the Elections Division of the Secretary of State's Office. We also gathered invaluable insights about the conduct of elections in Massachusetts through the generous advice of election professionals in the Boston metropolitan area.

The report that follows is organized around a series of 24 recommendations. These recommendations grow out of the experience gained over the past two years by the Voting Technology Project, as we have talked to election officials, voting technology vendors, and citizen groups throughout the country. These recommendations are consistent with the "best practices" that have been highlighted in a series of conferences and reports, at the national and state level, that have appeared over the past two years. Currently the most comprehensive accounting of election reform nationwide is available through the Election Reform Information Project and its indispensable web site, www.electionline.com.

The research for this report was begun before the Help America Vote Act (HAVA) was passed in October 2002 and completed in mid-April 2003. Since then, election reform has progressed in Massachusetts and nationwide. Most importantly, a steering committee to produce a Massachusetts state plan under HAVA has been appointed, chaired by Secretary of State William Galvin. That committee began meeting in late spring 2003, under a deadline to produce a state plan in September 2003. In another important development, the first electronic touch screen voting device has been certified for use in Massachusetts.

Charles Stewart III, MIT Professor of Political Science, was primarily responsible for research into voting technologies and for drafting this report. All questions concerning this report should be directed to Professor Stewart. Julie Brogan, Esq., Project Coordinator of the Caltech/MIT Voting Technology Project, was primarily responsible for research into Massachusetts election laws and regulations and into issues pertaining to polling place practices.

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Executive Summary

Massachusetts avoided the most egregious shortcomings that dogged many other states in the 2000 presidential election. Perhaps for that reason, the Bay State has lagged behind most of the rest of the nation in reforming antiquated election practices and upgrading antiquated election technologies that confuse and frustrate voters. The result is tens of thousands of “lost votes” each statewide election—votes that could be recovered by adopting a range of sweeping and incremental reforms.

Facilitating the move to reform is the Help America Vote Act (HAVA), which will supply much-needed funding to assist states, including Massachusetts, upgrading voting equipment. The HAVA also has requirements that will spur Massachusetts into adopting certain “best practices” in election reform, such as a comprehensive “provisional ballot” to handle cases in which a voter’s registration is in question on Election Day.

The Florida debacle in 2000 focused attention on the failure of antiquated voting technologies in guarding the sanctity of the franchise. Just as important in protecting the quality of our voting rights, however, is maintaining an accurate voter registration system and staffing polling places so that voting occurs efficiently and within all provisions of the law. Massachusetts could greatly streamline its registration system and increase voter turnout by adopting Election Day Registration (EDR), at the same time it is replacing its most dated voting machines.

Positive Developments in Massachusetts Elections

- Massachusetts has higher turnout and lower rates of voter registration problems than those experienced nationwide.
- The banning of Votomatic punch cards after 1996 allowed Massachusetts to avoid many of the most serious problems that were highlighted in Florida in 2000. This change alone resulted in the recovery of 20,000 Massachusetts votes in 2000 that would have been lost had the Votomatics continued to be used. (pp. 10–13)

- The Massachusetts Central Voter Registry, after a rocky start, is a model for central voter registries nationwide. (p. 7)
- The Help America Vote Act will provide significant funding to assist Massachusetts in making the most pressing improvements to its voting technologies. (p. 2)

Election-Related Problems

- Massachusetts has lagged behind other states in investigating improvements to voting and implementing election reform. (p. 13)
- Using Census Bureau data, we estimate that 122,000 voters did not vote in Massachusetts in 2000 due to registration problems or difficulties encountered at polling places. (p. 3)
- Thousands of votes continue to be lost in statewide elections because of deficiencies in DataVote punch cards and mechanical lever machines. Lever machines are especially deficient in recording votes for ballot questions. (p. 12)
- Almost half of all Massachusetts voters move their place of residence from one presidential election to the other, making the upkeep of election rolls a monumental task, and introducing many opportunities for registration-related confusion on Election Day. (p. 7)
- Recruiting and retaining skilled precinct workers is the biggest, and often least-appreciated, headache facing most local election officials in the state. (p. 18)
- Demand for more convenient forms of voting, such as on-demand absentee voting, are growing, and the laws of Massachusetts are ill equipped to handle this demand. (p. 21)

Voter Registration: Proposals for Reform

- Massachusetts should adopt Election Day Registration (EDR), to reduce Election Day registration confusion and to encourage even greater turnout. (p. 4-5)
- Massachusetts should adopt standard “provisional ballot” practices that are consistent with those in virtually all other states in the nation. (p. 9)
- Massachusetts should require proper identification of all voters. (p. 5)
- Massachusetts should adopt administrative remedies to facilitate the use of driver license records to keep voter registration current. (p. 7)
- Voter registration information should be broadly, and directly, available to precinct workers on Election Day. (p. 8)
- Massachusetts should adopt aggressive voter education measures aimed at steering prospective voters to the right polling places on Election Day. (p. 6)
- Massachusetts should adopt new anti-fraud legislation to guard the integrity of Election Day Registration. (p. 6)

Voting Technologies: Proposals for Reform

- The Secretary of State should decertify mechanical lever machines and DataVote punch cards for use in Massachusetts. (p. 13-14)
- Massachusetts should change its election laws to make it easier to certify electronic voting machines that otherwise meet Massachusetts voting machine standards. (p. 14-15)
- The interpretation of Massachusetts election laws should be changed to allow voters to be notified if they have over-voted on an optically scanned ballot. (p. 15-16)
- Localities should not lock themselves into stagnant voting technologies in a time of technological flux. Massachusetts should encourage localities to lease, not buy, new voting equipment. (p. 15)

- The Secretary of State should expeditiously move to establish a task force to develop a statewide plan for the improvement of voting technologies. (p. 16)

Polling Place Practices: Proposals for Reform

- Massachusetts should abolish the requirement that election officials be registered to vote in the town or city where they staff the polls. (p. 18)
- Massachusetts should begin experimenting with methods of in-person early voting. (p. 21-22)
- Cities and towns should be encouraged to use municipal clerical employees as polling place workers on Election Day. All levels of government should grant its employees a paid day of leave if they work as an election official on Election Day. (p. 18-19)
- Cities and towns should be allowed to experiment with using students as polling place workers. (p. 18-19)
- Massachusetts should issue voter registration cards to all voters every two years as a way of educating voters about where they should vote. (p. 19)
- Local officials should be more diligent in ensuring accessibility to polling places for disabled voters. (p. 20-21)

Election Reform Leadership

- The Secretary of State should act quickly to appoint a permanent director of the State Elections Division. (p. 23)



Introduction

Residents of the Bay State pride themselves in their long tradition of robust political participation. Symbolized by the New England town meeting, participatory governance is written in our laws and culture.

Events of the past three years have raised questions about the quality of elections in the United States. In the wake of the electoral debacle that beset Florida in 2000, many states re-examined their electoral procedures and voting technologies to ensure that “Florida won’t happen here.” A major exception was Massachusetts, where no significant public review of election procedures or voting technology has taken place.¹

Although Massachusetts lacks the most egregious deficiencies in electoral procedures that were highlighted in Florida and other states in 2000, the Commonwealth still needs election reform. Election procedures in Massachusetts are tradition-bound, often failing to account for changes in society over the past century. As a result, voters and election officials often labor under procedures that depress turnout and create polling place confusion. Antiquated voting technologies malfunction and confuse voters, resulting in lost votes.

Massachusetts has historically been an innovator in using technologies and procedures to enhance the quality of voting. Other states have now taken that lead. It is time for the Commonwealth to recapture its spirit of full inclusion and innovation in elections. The purpose of this report is to suggest some ways this might happen.

The electoral process in Massachusetts could be improved in numerous ways, large and small. Among the most important are the following:

It is time for
the Commonwealth
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in elections.

- Massachusetts should adopt Election Day Registration, to help end confusion about how and where citizens can register and vote, and to help local election officials cope with the rapidly-rising mountain of paperwork that accompanies the registration process.
- Massachusetts should ban the use of mechanical lever machines and “DataVote” punch cards, and move to certify state-of-the-art Direct Register Electronic (DRE) voting equipment.
- Massachusetts should adopt “provisional ballots” so that qualified voters, who are uncertain about their registration status on Election Day, can cast a ballot that will be counted, once the confusion is clarified.
- Massachusetts should change its laws governing who may serve as a precinct election official and adopt administrative practices that encourage state and local workers to staff polling places on Election Day.
- The Secretary of State should appoint a permanent director of the Elections Division who possesses exceptional management and political skills, to help lead the state in a much-needed upgrade in its voting procedures.
- The Governor and Secretary of State should establish a “blue ribbon panel” of citizens and public officials to review election procedures in the Commonwealth, similar to dozens of such commissions in other states that have reviewed issues like voting technology, registration procedures, and polling place practices in other states.

¹ Election Reform Information Project, *Election Reform since November 2001: What’s Changed, What Hasn’t, and Why*, October 2002.

Adopting these election reforms has become more imperative, and more attainable, because of the passage of the Help American Vote Act of 2002 (HAVA).² Important provisions of HAVA include the following:

- **Funding for the elimination of punch card and lever machines and for the improvement of election administration.** Title I of the act provides payments to states to eliminate substandard election technologies, allocating those funds on a formula basis that could amount to over \$6 million for Massachusetts in the next fiscal year alone. Furthermore, Title I also allows states to apply for funds to improve the administration of elections, including improving voter education and election procedures, and training election officials.
- **Establishment of voting system standards.** States must use voting systems that comply with certain standards. For instance, a voter must be able to verify votes before casting a ballot and must be notified if he or she overvotes on a ballot. Voting machines must be accessible to individuals with disabilities, and each voting precinct must have at least one direct recording electronic machine to ensure that people with disabilities can vote privately and independently.

The Appendix to this report summarizes the provisions of HAVA and assesses what changes may be needed in the Massachusetts election system in light of HAVA.

The recently passed Omnibus Appropriations Bill by the United States Congress provides federal funding for these provisions, so there is no financial reason for Massachusetts to fail to adopt most of the proposals outlined here.

The remainder of this report assesses the current state of elections in Massachusetts, making the case for these, and other, reforms. This report was undertaken by the Caltech/MIT Voting Technology Project (VTP) at the request of the Boston Foundation. In the summer of 2001 the VTP released a report, *Voting:*

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What Is/What Could Be, which assessed voting procedures and voting technologies nationwide.³ We have applied much of what we learned in the process of writing that report, and in studying election systems over the past two years, to our assessment of Massachusetts.

Our study of Massachusetts is divided into three major parts. First we examine voter registration in Massachusetts, which is a matter that requires even greater attention

from the state than the well-publicized problems with voting machines in the 2000 election. Second, we turn our attention to voting technologies in Massachusetts. Massachusetts avoided the worst performance problems that beset states like Florida in 2000, but its continued use of mechanical lever machines and DataVote punch cards results in an unacceptable number of lost votes, particularly on ballot questions. Finally, we examine polling place practices, making proposals to improve the staffing of precincts and to facilitate greater convenience for voters.

² Public Law 107-252.

³ The full report is available online at <http://vote.caltech.edu/Reports/index.html>.

Voter Registration

In 1800 Massachusetts became the first state to require the pre-registration of voters. Voter registration became universal across the United States nearly a century later. These reforms were the product of a strange coalition of forces—Progressives, who wanted to clean up politics by excluding non-citizens and other “non-desirables,” and political bosses, who wanted to have greater control over who voted.⁴

Voter registration may have provided the benefit of reducing election fraud, but it came at a significant cost, throwing up significant hurdles against the participation of legitimate voters. These barriers are so severe that research has consistently shown that registration-related procedures, not factors such as voter alienation, are the primary reason why voter turnout is so low in the United States.

In our 2001 nationwide report, we estimated that roughly 4 million registered voters were denied the right to vote nationwide in 2000 because of problems with their registration or problems with polling places.⁵ This is a striking fact, dwarfing the number of votes (2 million) that were lost because of the deficiencies of voting machines that were so thoroughly discussed after the November 2000 election.

Registration is a huge, yet mostly hidden barrier to the full participation of all citizens in American elections. It is just as big a problem in Massachusetts. Using the same methodology as our nationwide report, we

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estimate that 122,000 *registered* voters in 2000 did not cast a ballot because of registration-based problems.⁶

Three major factors account for why registered voters who show up at the polls on Election Day nonetheless fail to cast a ballot. First, the voter may have registered so soon before the election that the registration may not have been processed. Second, the voter may have failed to re-register after moving. Third, the voter may have shown up at the wrong polling place.

There are no systematic studies to quantify how many registered voters have what type of registration problem. We have heard enough anecdotes from voters and from local election officials over the past two years to convince us that Election Day registration problems are not trivial. The question is whether the Commonwealth of Massachusetts can do anything to address these problems.

In our view, there are two paths that Massachusetts could take to reduce the number of Election Day registration problems that face voters. The first is radical—Massachusetts could adopt Election Day Registration. The second is incremental—Massachusetts could adopt a series of “best practices” that have already proved effective in other states.

⁴ Alex Kassar, *The Right to Vote*, pp. 65–66, 151–159.

⁵ *Voting: What Is/What Could Be*, pp. 8–9.

⁶ In 2000 there were 1.3 million registered Massachusetts voters who did not vote. According to the Voting and Registration Supplement to the 2000 Current Population Survey (U.S. Census Bureau), 9.4% of registered non-voters in Massachusetts gave as their reason for not voting “registration problems.” This works out to roughly 122,000 voters, or approximately 60 “lost votes” due to registration problems at each precinct.

RECOMMENDATION # 1. Massachusetts should adopt Election Day Registration (EDR), to reduce Election Day registration confusion and to encourage even greater Election Day turnout.

Six states nationwide have eliminated the practice of cutting off voter registration several weeks before Election Day, allowing registration to occur on Election Day itself. (These states are Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming.) The states that have adopted EDR have found two major advantages to this reform. First, and most important, any eligible voter who goes to the correct polling place on Election Day is allowed to vote. Problems with registering before some pre-election deadline, processing last-minute registrations, or forgetting to re-register after moving are eliminated. Second, the administrative burden on local election officials of processing new registrations is shifted to after Election Day. The administrative burden of maintaining voter lists is not eliminated, but the timing of the burden is shifted away from the most hectic season of the voting cycle to the (relatively) calmer post-election period.

With Election Day voter registration, voting is simplified to a one-step procedure whereby qualified individuals with a valid identification may register at the same time that they vote. There are some difficulties associated with Election Day Registration (EDR), but the benefits from EDR are worth the effort required to meet these challenges.

The most notable benefit of EDR is increased voter participation. Studies show that Election Day Registration produces a 3 to 6 percentage point increase in participation in the states that have adopted it. Professors Michael Alvarez of the California Institute of Technology and Stephen Ansolabehere of the Massachusetts Institute of Technology, both with the Caltech/MIT Voting Technology Project, recently conducted a study to determine whether the state of California would benefit from EDR.⁸ They found that EDR in California would lead to an increase in participation by up to 1.2 million individuals, especially among young people and people who have moved recently. They also found that EDR is a non-partisan reform because the participation rates would improve in California without much change in the partisan composition of the electorate. We know no reason why this analysis wouldn't apply to Massachusetts, though of course on a smaller scale.

The main difficulty with EDR, according to Alvarez and Ansolabehere, is making sure that new voters go to the right polling place. Their study found that this problem could be overcome with improved voter education. The year after Minnesota adopted EDR, Minneapolis reported that half of all polling place registrations happened in the wrong polling place. Today, however, less than one percent are reported in the wrong location. Their study also found that the extensive voter education campaign undertaken by the state of Minnesota did not have a significant fiscal impact on the overall cost of the election.

⁷ Alvarez and Ansolabehere cite the following academic studies as providing a good overview of the effects of registration laws on turnout: C.L. Brians, *Voter Registration Laws and Turnout in American: The Last Two Decades*, Ph.D. Dissertation, University of California, Irvine, 1997; C.L. Brians and B. Grofman, "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model", *Public Choice* 99, 161-176, 1999; M.J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992", *American Politics Quarterly*, 22(1), 74-87, 1994; B. Highton, "Easy Registration and Voter Turnout", *Journal of Politics*, 59(2), 565-575, 1997; S. Knack, "Election-Day Registration: The Second Wave", *American Politics Quarterly*, 29(1), 65-78, 2001; G.E. Mitchell and C. Wlezian, "The Impact of Legal Constraints on Voter Registration, Turnout, and the Composition of the American Electorate", *Political Behavior* 17(2), 179-202, 1995; S. Rhine, "Registration Reform and Turnout Change in the American States", *American Politics Quarterly* 23(4), 409-426, 1995; R.A. Teixeira, *The Disappearing American Voter*, Washington, D.C.: Brookings Institute, 1992; R.E. Wolfinger and S. J. Rosenstone, *Who Votes?*, New Haven, CT: Yale University Press, 1980. S.J. Rosenstone and J.M. Hansen, *Mobilization, Participation and Democracy in America*. New York: Macmillan, 1993.

⁸ R. Michael Alvarez and Stephen Ansolabehere, *California Votes: The Promise of Election Day Registration*, New York, Demos, 2002

With Election Day voter registration, voting is simplified to a one-step procedure whereby qualified individuals with a valid identification may register at the same time that they vote.

One common concern about EDR is that it opens up opportunities for fraud. Alvarez and Ansolabehere discovered, however, that fraud was not a great problem in states with EDR because the reform has been coupled with imposing heavy penalties for registration fraud. Their study quotes Renee Coffee of Ramsey County Minnesota's Election

Office (St. Paul) as saying: "There's minimal-to-no fraud.... It's a felony. It's just not worth it. There's a minimum fine of \$10,000 or 1 to 2 years in prison."⁹

One cost of adopting EDR would be the requirement that identification be produced at the polling place the first time someone voted at a precinct. Although this is a common requirement nationwide, Massachusetts is the rare instance of a state that gives localities the discretion to decide whether identification must be shown by all voters. Our conversations with election officials lead us to conclude that Massachusetts voters rarely have to provide identification at the polls.

EDR would require poll workers to request proper identification from those who register at the polling place. This objection has largely been rendered moot, however, since the recently passed Help America Vote Act (HAVA) requires most newly registered voters to show an identification card the first time they vote.

Increased voter participation is reason enough to adopt EDR, but we see other benefits as well. EDR would eliminate the confusion caused by registration problems at the polls. There would no longer be late registrants, inactive voters, or clerical errors holding up check-in lines. Polling place check-in lines could easily refer voters to a registration table a few feet away, rather than making voters wait while a warden tried to reach city hall, or worse, send them away with

the hopes they will register before the next election. The penalty for being an inactive voter would be reduced from what it is today (possibly being denied the opportunity to vote) to the slight inconvenience of being sent to a registration table across the room.

Voters seem to prefer the one-step process. Registering at the polls is the main way that voters now register in states with EDR. In states with only pre-election registration, people rely heavily on registration at departments of motor vehicles, registration by mail, and registration drives run by a non-government organizations.

EDR is the most sweeping administrative reform we recommend to improve the quality of voting in Massachusetts. With or without adopting this more comprehensive type of reform, registration procedures in Massachusetts are full of problems, no one of which presents a significant barrier to voting, but taken together diminish the quality of voting statewide. These more incremental reforms should be adopted, too.

RECOMMENDATION # 2. Massachusetts should require proper identification of all voters, including driver licenses, utility bills, or affidavits signed by registered voters.

If EDR were adopted, clearly establishing the identity of each voter would be essential, to guard against mistaken or fraudulent voting. Under the provisions of the Help America Vote Act, Massachusetts will be required to change its law to require most first-time voters to show such identification. We recognize that many civil rights and civil liberties groups oppose identification procedures and regard them as ripe for intimidation. However, civil rights laws can be invoked to prosecute those who intimidate voters. As with all reforms, adopting identification requirements is a balancing act. We believe that the real likelihood that voter turnout would increase under EDR outweighs possible problems with intimidation.

⁹ Alvarez and Ansolabehere, p. 14.

RECOMMENDATION # 3. Massachusetts should adopt aggressive voter education measures aimed at steering prospective voters to the right polling places on Election Day.

If new voters are going to register at polling places, they need to know where to go the first time. Local election officials already work hard to notify currently registered voters of their polling locations. Further efforts to reach non-voters, through the mass media and bulk mailings, would also be necessary.

The Massachusetts Secretary of State’s web site already contains a lookup feature that allows anyone to type in his or her street address and receive in response the proper polling location. This site, which is among the simplest and most powerful polling place search engines in the country, is a good starting place for such an effort.¹⁰

RECOMMENDATION # 4. Massachusetts should adopt new anti-fraud legislation to guard the integrity of Election Day Registration.

In the current electoral environment, voting fraud is rare in Massachusetts, as it is throughout the United States. However, because the primary objection to Election Day Registration concerns its seeming invitation to fraud, stiffer penalties and enforcement procedures need to be adopted if EDR is to succeed. We agree that something like the anti-fraud provisions adopted by Minnesota would be appropriate in Massachusetts under Election Day Registration. Minnesota went a step beyond most states, *requiring* county prosecutors to give prompt attention to all reports of voter fraud that were referred to them. The Minnesota election commission also has the jurisdiction to prosecute election fraud cases directly, rather than relying entirely on the attorney general—a power the Massachusetts Elections Division does not have.

If Election Day Registration is not adopted in Massachusetts, then a number of incremental changes must be instigated to bring the quality of election administration up to a level expected by Massachusetts residents. Some of these incremental changes would also improve the implementation of EDR. To understand these more incremental changes, we must first discuss how election data are maintained in the Commonwealth.

Formally, Massachusetts municipalities are responsible for registering voters; the database of voters maintained by the state is actually the “property” of the 351 cities and towns in the Commonwealth. That the state maintains a central database of voters is a relatively new development, brought on by the passage of the National Voter Registration Act (NVRA) in 1993.¹¹ The NVRA, also known as the “Motor Voter Law,” was passed because many people believed that registration barriers were keeping voters from the polls. There were three major provisions of that act:

1. States were required to allow citizens to register to vote when they received state services, such as applying for driver’s licenses or welfare benefits.
2. States were required to accept mail-in voter registration cards.
3. States were limited in purging voter rolls because of non-voting and for other common reasons (such as moving within an election district).

The Secretary of State’s web site already contains a lookup feature that allows anyone to . . . receive the proper polling location . . . is among the simplest and most powerful polling place search engines in the country.

¹⁰ The URL for this search engine is <http://www.wheredoivotema.com>.

¹¹ 42 U.S.C. 1973gg-5(a), (b),

Massachusetts has complied with the provisions of the NVRA, to mixed success. The Commonwealth established the Central Voter Registry (CVR)—a centralized voter database maintained by the Secretary of State’s Office—to help manage the recordkeeping burden that the NVRA placed on the towns and cities. The CVR is particularly useful in streamlining the process of removing voters from the rolls in one community when they have moved to another community, or another state.

After a bit of a rocky start, the CVR has emerged as a model for the nation.

On the whole the NVRA has shifted the location of voter registration dramatically over the past decade. Whereas citizens once had to trek to the local city or town hall during (often short and erratic) office hours to register or just change their address, the relatively mundane task of registering to vote can be handled at the voter’s convenience, either through the mail or dozens of state offices. In Massachusetts, 64% of recent voter registrations have been handled by the Registry of Motor Vehicles and 17% have been handled by mail, leaving a tiny fraction now handled by local town halls.¹²

Even though the CVR has functioned well in recent years, voter registration in Massachusetts still labors under antiquated practices that result in significant inconvenience to voters and election officials during every election. The biggest problem involves keeping track of voters who move. According to the Census Bureau, 13% of eligible voters in Massachusetts moved within the year prior to the 2000 presidential election, 27% had moved in the previous two years, and 41% had moved between the 1996 and 2000 presidential elections.¹³

Given this high mobility rate, simply keeping track of voters once they have registered is a daunting task.

Given this high mobility rate, simply keeping track of voters once they have registered is a daunting task.

RECOMMENDATION # 5. Massachusetts should adopt a unique numerical identifier for each Massachusetts voter, either the voter’s driver’s license number or a combination of the voter’s last name and last four digits of their Social Security number.

RECOMMENDATION # 6. Massachusetts should adopt a program to facilitate the linking of information among driver’s license, vital statistics, and the CVR.

One problem in Massachusetts, as in the rest of the nation, is removing duplicates from the CVR. This problem arises for two separate reasons. The first is the lack of a unique identifier for each voter in the CVR. Common names, variant spellings of names, and suffixes (such as “Jr.” and “III”) often make it difficult to purge deadwood from the voting rolls appropriately. The second reason is the failure of government bodies to coordinate collateral databases in order to keep voting rolls up to date. For instance, although most Massachusetts residents now register to vote at the Registry of Motor Vehicles, few know that when they move and change their address on the driver’s license, the voter registry is not automatically updated. When a registered voter changes addresses with the Registry of Motor vehicles, his or her voter registration should automatically be updated. Indeed, it is possible to imagine registration automatically occurring when a teenage driver’s license holder who was a citizen turned 18. However, none of this can happen without an unambiguous way to link information between the RMV and the CVR.

Massachusetts should strive to create a system wherein a change in a driver’s license address *automatically* triggers a change in voter registration.

One needed improvement in intergovernmental coordination is outside the Commonwealth’s hands: it would be enormously helpful if United States Postal Service change-of-address orders were automatically communicated to Massachusetts election officials. However, as nationwide, the inability of the Postal Service to share this information with election officials causes voting rolls to be inaccurate and, ultimately, causes voters inconvenience on Election Day.

¹² U.S. Federal Election Commission, *Impact of the National Voter Registration Act on Federal Elections, 1999–2000*.

¹³ U.S. Census Bureau, Current Population Survey, Voting and Registration Supplement, 2000, public use data file.

RECOMMENDATION # 7. Massachusetts should adopt the federal voter registration card for its own registrations, and should allow facsimiles of the form to be used for registration.

The NVRA established a national voter registration card, mostly as a service for overseas voters seeking to register. This form, which is maintained by the Federal Election Commission, may be used by almost every state for registration. Massachusetts is one of only six states that require voter registration forms to be printed on a prescribed card stock. We do not see any purpose that this requirement serves, nor do we understand why photocopies of the state form may not be used for registration. If Georgia can deliver voter registration forms to its residents directly via Internet download, so can Massachusetts.

RECOMMENDATION # 8. Massachusetts residents should be able to confirm their voter registration quickly, online.

One way for voters to confirm that they are registered to vote—or to confirm that a change-of-address notification has been processed—is to check their registration status before Election Day. Massachusetts voters cannot currently do this directly, but must go through their local registrar. Some states (such as Georgia, North Carolina, and Virginia) and localities (such as Champaign County, Illinois; Orange County, Florida; and Utah County, Utah) allow individual voters to confirm their registration status directly online. Adding such a feature to the Election Division’s web site would bring the Commonwealth into line with nationwide “best practice.”

RECOMMENDATION # 9. Registration information should be broadly, and directly, available to precinct workers on Election Day.

There is a major disconnect between the quality of registration information available to the state and to local registrars, on the one hand, and precinct workers, on the other. The CRV lists the ward and precinct, date and place of registration of every registered voter in

the state. On the other hand, the paper printouts used to check-in voters at the polls contain only the names and addresses of active voters in *that* precinct. If someone arrives at a precinct and is not on the paper printout, there are problems. The only way to confirm that such a person is actually registered or needs to be redirected to a different precinct is to call the local election office.

Even under the best of circumstances, local registrars are swamped on Election Day. It is common for precinct workers looking to verify a voter registration to receive endless busy signals; the same is true of individual voters trying to sort out their own registration problems. In addition, some polling places, such as school gymnasiums, do not have phones, so the chief election officer on site must find an office or pay phone. During the 2002 primary election, the City of Boston rented cell phones and gave them to poll workers. This helped somewhat, but the quality of reception varied among polling places and some could not make any calls. Even with a phone nearby, however, a missing name slows down the check-in line.

Not surprisingly, stories abound of confused and frustrated voters leaving in frustration, not voting, even though broader dissemination of voter registration information at the precincts might alleviate the problem.

Voters who show up at the wrong precinct on Election Day should not have to be referred to city hall to find out where they are supposed to vote. In smaller towns and most cities, each polling place should have a comprehensive list of all registered voters in the municipality, indicating the precinct where each voter is supposed to vote. In larger cities, this sort of information could be distributed to polling places electronically. A “best practice” in this area is Orange County, Florida, which distributes laptop computers to each precinct in the county, loaded with a CD-ROM database that contains all voter registration records for the county.

Not surprisingly, stories abound of confused and frustrated voters leaving in frustration, not voting

RECOMMENDATION # 10. Massachusetts should adopt standard “provisional ballot” practices that are consistent with those in other states in the nation.

Prompted by the passage of the NVRA in 1993, many states began to adopt “fail safe” or “provisional balloting” provisions, to deal with voters who had registration problems on Election Day. This provision has been instrumental in allowing voters with registration problems to actually cast a ballot on Election Day. Massachusetts has not adopted such a practice. Similar procedures in Massachusetts, “escrow ballots” and “challenge ballots,” are inadequate to the task.

Although detailed practices vary state-to-state, the following description generally applies. Provisional ballots are used whenever a voter appears at a precinct on Election Day and there is a question about his or her registration. If the problem cannot be resolved then and there, the voter is offered a “provisional ballot,” which is marked by the voter and then sealed in an envelope, much like an absentee ballot. The outside of the envelope has pertinent information identifying the voter, so that his or her registration status can later be investigated.

Once the polls are closed, the registration status of everyone who cast a provisional ballot is ascertained in a timely fashion, before the final canvass of the vote. If the registration checks out, the ballot is opened and counted. If the registration does not check out, the ballot is discarded.

In states that have adopted aggressive provisional ballot provisions, thousands of voters who otherwise would have been sent home angry on Election Day, have had their vote eventually counted. Wake County, North Carolina in November 2000 is a good example of how provisional ballots can avert an electoral disaster. In November 2000, 30,000 people appeared at the polls in Wake County on Election Day to find their names were not on the rolls. Rather than send them to the county courthouse to resolve the situation, or send them home without casting a ballot, these individuals were allowed to vote a provisional ballot. In the weeks immediately following Election Day, the registration problem that had led to so many people being missing from the voting rolls was resolved, and most of the votes were eventually counted.

Although Massachusetts does have provisions in its election law that look like provisional ballots, they are paper shells. These ballots are almost always thrown away without being counted.

Currently, whenever a Massachusetts resident appears at a precinct and discovers that she or he is not on the voting rolls, the voter has two remedies: (1) sign a statement certifying continued residency at a voting address within the precinct; or (2) cast an “escrow ballot.”

If an escrow ballot is cast, it is then sealed and delivered to the local registrars when the polls close.¹⁴ Local registrars hold onto escrow ballots until the initial count is complete. If the total number of escrow ballots deposited with the municipality will not affect the outcome of the race, then the registrars do not have to make an investigation and include all properly cast ballots in the count.

We have yet to talk with a local election official who remembers escrow ballots actually being counted. The escrow ballot in Massachusetts is a mechanism that leads directly to the disenfranchisement of voters.

Properly registered voters who find themselves inadvertently left off the rolls should not be treated this way. By adopting a true provisional ballot, as has been done in states like California and North Carolina, Massachusetts will move a large step toward ensuring that all voters are heard. In fact, HAVA requires all states to adopt provisional balloting provisions by January 1, 2004. We urge the legislature to adopt the provision earlier than that, so that local officials can gain experience with their use before the next federal election.

Simply adopting provisional ballot provisions does not guarantee that all voters with registration problems will be offered a provisional ballot when it is appropriate. We have heard many stories nationwide of voters not being offered a provisional ballot when that was the appropriate remedy, just as we have heard many stories of escrow ballots not being offered to Massachusetts voters when that was the appropriate course of action. A critical feature of any new provisional ballot law in Massachusetts would include vigorous education of precinct workers to ensure that everyone who is entitled to vote using a provisional ballot receives one.

¹⁴ Mass Gen. L., ch 51, §59A.

Voting Technology

Throughout much of its history the only voting equipment used in Massachusetts was the hand counted paper ballot. Today, four-fifths of the municipalities in the Commonwealth, and 97% of the voters, use technology to speed the count. The first set of payments available to Massachusetts under the Help America Vote Act of 2002 will be directed toward upgrades or replacement of some of this voting equipment.

Voting equipment refers to the balloting method used for capturing, casting, and counting a voter's preferences. There are five basic types of voting equipment used in the United States: hand counted paper ballots, optically scanned ballots, punch card ballots, mechanical lever machines, and direct recording electronic devices ("DRE", "ATM-style" or "touch screen").¹⁵ The first three of these are paper-based technologies that separate the instrument used to capture a voter's preferences, the paper ballot, from the casting and counting mechanism. Lever machines and DRE's, on the other hand, are technologies that combine capturing, casting, and counting in a unified machine.

All of these types of systems, except DREs, are certified for use in Massachusetts (Table 1). Hand counted paper is used in 77, mostly rural, communities in the Commonwealth. The majority of jurisdictions rely on optical scan voting systems, in which a voter indicates his or her preference on a paper ballot that is fed into an electronic scanner to be read and tabulated.

The older mechanical lever machines, which were first introduced in Massachusetts in the mid-twentieth

There are five basic types of voting equipment used in the United States: hand counted paper ballots, optically scanned ballots, punch card ballots, mechanical lever machines, and direct recording electronic devices

century, require the voter to pull levers that record the vote on gears on the back of the machines. Only 19 municipalities, including Boston, still use lever machines, but they are slowly replacing them with optical scanning. The City of Boston recently tested optical scanners for a final election for district city councilor in Allston-Brighton and plans to transition fully to optical scanning by the 2004 presidential election.

Table 2 summarizes the change in voting technologies used by Massachusetts since 1960. Prior to 1960 only a few cities in Massachusetts used mechanical lever machines, Boston being the first in the state to adopt them. During the 1960s a few municipalities adopted the newly developed Votomatic technology, which relied on pre-scored cards to record votes. (These are the notorious devices used in Palm Beach County, Florida.)

The 1960s was primarily a time for the expansion of mechanical lever machines. During that decade, Massachusetts went from having 23% of its ballots cast on mechanical machines in 1960 to 28% in 1972.

The diffusion of mechanical lever machines ceased during the 1970s, as it did nationwide, while the spread of two types of punch card technologies increased. The most rapid growth occurred in the Votomatic machines. However, a new punch card technology was also introduced to the state—the "DataVote" technology. DataVote differed from Votomatic in that the cards were not pre-scored. Rather, with DataVote technology, the voter makes a hole to indicate his or her vote with a spring-loaded punch.¹⁶

¹⁵ Mass Gen. L., ch 51, §59A.

¹⁶ Many people have speculated that the DataVote technology is inherently superior to the Votomatic since the former has the names actually printed on the ballot, while the latter does not, and because the DataVote hole is cleaner. This speculation does not hold up to empirical scrutiny, at least in Massachusetts.

The 1980s witnessed the introduction of yet another voting technology, the optically scanned paper ballot. With the spread of the optical scanning of ballots, the development of voting technologies entered into a second, more mature phase. As before, many municipalities that used hand-counted paper ballots jumped to the new technologies. In addition, some cities and towns that had previously jumped to mechanical lever machines climbed the technological ladder even further, also upgrading to optical scanners.

This upgrading strategy received an enormous boost in the aftermath of the 10th congressional district Democratic primary in 1996.¹⁷ The particulars of the race are these: Norfolk County District Attorney William Delahunt and former state representative Philip W. Johnston faced each other in the Democratic primary in the 10th congressional district, in an open seat to replace Gerry Studds. The initial count on primary night revealed that Johnston had won by 215 votes. Delahunt demanded a recount after it was discovered that 1,555 of the 7,201 votes (22%) cast in Weymouth and Brockton, Delahunt strongholds, were blank. The recount dropped Johnston's lead to 175 votes. However, Delahunt sued in state court, arguing that 956 disputed punch-card ballots that had been counted as blanks should be examined for evidence of voter intent.

Superior Court Judge Elizabeth B. Donovan, who decided the case, inspected the 956 disputed ballots herself, determining that many of them indicated a preference for one of the two candidates. When Donovan's canvass of the disputed ballots was completed, she declared Delahunt the winner by

175 votes. Johnston appealed to the Supreme Judicial Court which, in the end, upheld Donovan's finding.¹⁸ Delahunt remained the Democratic nominee and was elected to Congress from the 10th district in November.

The story was completed in the following months. The Weymouth town meeting voted in December 1996 to replace its Votomatic system with an optical scan voting system, to the tune of \$117,000—reversing course from previous failures of the town to appropriate the money to upgrade voting equipment. Secretary of State William Galvin decertified Votomatic punch cards as voting equipment in Massachusetts in October 1997 and the legislature passed an appropriation to create a revolving loan fund to allow localities to replace punch card voting systems.

The decertification of the Votomatic devices led to the most rapid shift in voting technologies in the Commonwealth's history. Between 1996 and 2000 roughly one-quarter of Massachusetts voters saw a change in their voting technologies. This fortuitous shift allowed the Commonwealth to avoid much of the controversy over voting technologies that beset the nation following the 2000 presidential election.

In *Voting: What Is/What Could Be*, we reported on the performance of voting technologies across the country, using a measure we termed "residual vote." The

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¹⁷ The account presented here relies heavily on newspaper accounts from the *Quincy Patriot Ledger* and the *Boston Globe*. See Matt Devine and Gary Susswein, "Torn Over Recount: Aids Collect Signatures," *Patriot Ledger*, Sept. 19, 1996, p. 1. "Key Dates in 10th District Recount," *Patriot Ledger*, Oct. 5, 1996, p. 5. Matt Devine and Mark Hamblett, "Judge: Delahunt Wins; Johnston Says Election Was 'Stolen' from Him," *Patriot Ledger*, Oct. 5, 1996, p. 1. Brian C. Mooney and John Ellement, "And the Winner Is . . . ? SJC Ruling Expected Soon on Contested Ballots in 10th," *Boston Globe*, p. A1. Julie Fields, "Town Tries Again to Update Voting System," *Patriot Ledger*, Nov. 8, 1996p. 1; Julie Fields, "Town OKs New Voting System; Weymouth Drops Punch Card Ballots," *Patriot Ledger*, Nov. 13, 1996, p. 1; Eric Niiler, "Galvin Vows End to Punch-Card Voting," *Patriot Ledger*, Feb. 19, 1997, p. 10; "Galvin Ready to Ban Punch Card Ballots," *Patriot Ledger*, Apr. 8, 1997, p. 16; Colin Haley, "Punch-card Ballots Are Going Out; Must Be Replaced before September," *Patriot Ledger*, Oct. 24, 1997, p. 16; John H. Boit, "Legislature OKs \$2M for Voting Machines," *Patriot Ledger*, Dec. 19, 1997, p. 6; John H. Boit, "No More Punch Card Voting," *Patriot Ledger*, May 20, 1998, p. 1.

¹⁸ Delahunt v. Johnston, 671 N.E. 2d 1241.

residual vote is the fraction of votes in a race that are disqualified as overvotes (i.e., too many votes cast) or undervotes (no vote cast). Although this measure combines intentional abstentions with inadvertent voter mistakes, it has come to be used nationwide by policymakers and scholars in comparing the relative performance of different technologies and jurisdictions.¹⁹

Our previous research indicates that in the 2000 presidential election fewer votes were lost in Massachusetts due to the shortcomings of voting machines than in the rest of the nation. The residual vote rate in Massachusetts during the 2000 presidential election was 1.1% of all ballots cast for president compared to the nationwide residual vote rate of 1.9%.

Table 3 reports the residual vote rate for president, governor, and senator for all Massachusetts elections since 1990. Note that the residual vote rates for governor and senator tend to be higher than that

for president. This is due to differential abstention rates among voters considering these races—voters are especially loathe to blank their ballots for president, and are much more likely to abstain for the less prominent state offices. Residual vote rates also are much higher whenever there is only one major party candidate on the ballot, as occurred in 2002 in the case of U.S. senator, Attorney General, and Auditor. However, the

Before they were banned in Massachusetts in the late 1990s, punch cards of the sort that became infamous in Palm Beach County, Florida—“Votomatics”—were also the worst performers in Massachusetts.

higher residual vote rates for “down ballot” offices are also due to confusion and mistakes caused by the interfaces of the different voting technologies.

Not only does the residual vote rate in Massachusetts vary across types of races, but it also varies across types of voting equipment. This is illustrated in Table 4, which shows the residual vote rate for president, governor, and senator, broken down by the type of machine used in different communities in Massachusetts since 1990. Among the more prominent races, mechanical lever machines have tended to produce lower residual vote rates than the alternatives.

Before they were banned in Massachusetts in the late 1990s, punch cards of the sort that became infamous in Palm Beach County, Florida—“Votomatics”—were also the worst performers in Massachusetts. Table 4 masks this fact, since it combines the residual vote rates for two types of punch cards that have been used in Massachusetts—Votomatics, like those used in Florida, and “DataVote” cards, which are not perforated. In the 1996 presidential election, for instance, the residual vote rate for municipalities in Massachusetts that used Votomatics was 3.6%, compared to DataVote towns with a residual vote rate of 1.5%. The apparent improvement in the performance of punch cards in Massachusetts since 1996 is entirely due to the banning of the Votomatic devices. Nonetheless, as a general matter, the DataVote devices perform more poorly than paper, mechanical lever machines, and optical scanning.

The fact that Massachusetts banned punch cards after 1996 had a salutary effect that has often gone overlooked: The localities that were required to give up punch cards gravitated to optical scan technologies, which had much lower residual vote rates. Therefore, voters who might otherwise have voted in 2000 on the poorest-performing voting machines instead used the most reliable of the automated voting technologies. As a consequence, we estimate that 20,000 more votes

¹⁹ Operationally, what we term “residual vote” is the same as the term “blank ballots” used in Massachusetts election statistics. We use the more generic “residual vote” phrase in this report because the phrase “blank ballots” is a misnomer. “Blank ballots” in Massachusetts include over-voted ballots, plus ballots that were not read by scanning equipment but were, in fact, marked by a voter. In trying to reform election technologies, it is misleading to assume that uncounted ballots are solely due to a conscious decision by voters to abstain, which is implied by the term “blank ballots.”

...lever machines are especially poor performers when it comes to ballot questions.

were actually counted in Massachusetts for president in 2000 as a direct consequence of this switch from Votomatics to optical scan machines. Because performance differences between optical scan equipment and Votomatics in recording votes for governor

were not so great, the banning of Votomatics had practically no impact in recovering “lost votes” in the gubernatorial races of 1998 and 2002.

Because of the post-1996 reform that banned punch cards and the Bay State’s above average equipment performance, Massachusetts, unlike many other states in the country, did not undertake significant election reform following the 2000 election.²⁰

The superior performance of Massachusetts on the residual vote measure, compared with the rest of the nation, rests largely on the banning of Votomatics in 1996, but not entirely. Massachusetts tends to perform 1–1½ percentage points better on the residual vote measure, compared to nationwide averages, with all of the voting technologies currently used in the Bay State. This suggests there are systematic factors outside of voting technologies, per se, such as common administrative practices, that lead to more successful voting in Massachusetts overall than the national average.

Still, there is one performance issue related to voting machines in Massachusetts that has gone virtually unnoticed: lever machines are especially poor performers when it comes to ballot questions. This is illustrated in Table 5, which reports the residual vote rate of “Question 1” in each statewide election since 1990, broken down by voting technology. Boston, with its antiquated lever machines in 2002, saw 27% of its voters fail to record a vote for Question 1, compared to

14% in Worcester and 11% in Springfield—cities with similar set of demographics, but ones with optically scanned ballots.

This poor performance on statewide questions also extends down to performance in local questions. This is illustrated in Table 6, which reports the residual vote rate for local ballot questions in 2002, broken down by the ballot type. Although local factors no doubt influence the residual vote rates of local ballot questions, the consistently high residual vote rate among lever machine communities across question types is strong evidence that many voters in these communities are not having their opinions counted on important local matters.

There are two major problems with lever machines recording votes on ballot questions. First, the requirement that the text of ballot propositions be present in the voting machine, coupled with the requirement that the text be in two languages in some cities, has resulted in the propositions being printed in font sizes that are illegible. Second, ballot propositions are high up in the machine, where many voters simply overlook them. In one of the rare scientific studies of voting machine usage by typical voters, one researcher observed voters having to stand on their tiptoes to read ballot questions and vote on them; many other voters in this experiment simply failed to see the questions in the first place.²¹

RECOMMENDATION # 11. Massachusetts should decertify mechanical lever machines and DataVote punch cards.

Cities like Boston cannot get rid of the mechanical lever machines fast enough. Indeed, Boston is planning on doing precisely that. The other cities and towns that currently use lever machines should quickly follow suit. (Within the Boston metropolitan area, these municipalities include Newton, Waltham,

²⁰ Election Reform Information Project, *Election Reform Since November 2001: What’s Changed, What Hasn’t, and Why?*, p. 55. Available at <http://www.electionline.org/site/docs/pdf/2002annualreport.pdf>. See also, Katharine Q. Seelye and David E. Rosenbaum, “The 2002 Campaign: The Process,” *New York Times*, October 28, 2002, Monday, Late Edition, p. 1.

²¹ Susan King Roth, “Disenfranchised by Design: Voting Systems and the Election Process,” *Information Design Journal* (1998) vol. 9, no. 1 (reprint; no pagination).

and Everett.) Doing so will be expensive, but federal funds will be available through the HAVA, on a formula basis, to bear the lion's share of the cost of this upgrade. Our prior research and work with vendors suggests that the total cost to convert municipalities from lever machines to optical scanning machines will be approximately \$4 million. Our analysis of HAVA provisions suggests that the federal government will share over \$1 million of the cost.

RECOMMENDATION # 12. Massachusetts should change the election laws that make it virtually impossible to certify direct register electronic voting machines in the state.

Local governments in Massachusetts are responsible for purchasing or leasing and maintaining the equipment used within their city or town, but the Secretary of State certifies the type of technology and the exact models that may be purchased.²² The Secretary's certification duties include monitoring the performance of approved voting equipment.

Over the past two decades, there have been significant developments in fully computerizing voting machines—creating machines that are often compared to ATMs. In our report *Voting: What Is/What Could Be*, we criticize much of the first generation of these Direct Recording Electronic (DRE) designs, for many reasons: they often reflect poor user interfaces, provide no opportunity for independent paper-based audit, and are built on proprietary software. As a whole, the current set of DREs being used across America is no better than the lower-tech optical scanning equipment. Touch screen voting is no panacea for election machine woes.

Data from the 2000 election showed that DREs had a rather high residual vote rate nationwide (2.5 percent for president and 5.5 percent for Senate and governor).²³ Press reports suggest that DREs showed improved performance in Florida and Georgia during the 2002 midterm elections. However, neither state has yet to release data sufficient to scientifically assess how

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DREs performed in those states; it is quite likely that much of the improved performance in Georgia and Florida was due to the unsustainably high degree of scrutiny and vendor support associated with the 2002 equipment roll-outs.

Nonetheless, social forces are pushing Massachusetts in a direction that will

demand the Commonwealth to make DREs available to its citizens. If nothing else, HAVA explicitly requires that *every* precinct in the state have at least one DRE, for use by disabled voters, by January 1, 2006. (This will require a one-time expenditure of approximately \$6 million, most of which could be borne by the federal government.) In addition, many DREs have added features that are attractive to citizens and election administrators in our increasingly complicated age. DREs can accommodate more ballot styles and more languages than traditional paper-based systems. And DREs save tremendously on printing charges.

Up to this point there have been good reasons to exclude DREs from Massachusetts, but the fact is that DREs have been forbidden for the wrong reason—an abstruse provision in Massachusetts election law requires voting machines to allow the address of write-in candidates to be entered on the machine, not just the name. This is hardly a good reason to exclude a technology that holds such promise.

Massachusetts may not be able to wait for the perfect electronic voting machine, however. The argument made by the disability community in favor of the adoption of DRE machines—even highly flawed machines—is compelling. Even imperfect DREs

²² Mass. Gen. L., ch. 54, § 32.

²³ *Voting: What Is/What Could Be*, p. 21.

currently provide the only way for visually impaired voters, for instance, to cast an independent vote. The trick will be for the Commonwealth to certify current-generation DREs in such a way that encourages localities to upgrade their equipment once improvements are made in the next generation.

RECOMMENDATION # 13. Localities should be encouraged to lease, not buy, new voting equipment.

Localities nationwide have been painted into a corner when buying voting machines. Regarded as

Localities in Massachusetts facing the prospect of acquiring new equipment should also consider leasing, if for no other reason than localities should not foreclose the opportunity to upgrade equipment in the next decade, as innovations are made.

an investment with an infinite lifetime, voters in towns and counties across the nation have found themselves stuck voting on dinosaurs that function poorly. One under-appreciated consequence of how localities purchase voting machines is that the voting technology industry has largely stagnated and failed to innovate, since its customers tend to make major purchases rarely, and then try to keep their archaic equipment running for decades.

In the 1990s our neighbor, Rhode

Island, tried to escape this cycle by entering into a statewide contract to lease new (optical scanning) voting equipment, rather than purchase it. Localities in Massachusetts facing the prospect of acquiring new equipment should also consider leasing, if for no other reason than localities should not foreclose the opportunity to upgrade equipment in the next decade, as innovations are made. The Commonwealth could help this along tremendously by arranging for a master lease under which localities could procure

equipment. (This may be the only practical way for the smallest of towns to reasonably afford to acquire and maintain DREs.)

RECOMMENDATION # 14. Massachusetts should change the interpretation of its election laws so that optical scan voting equipment can better inform voters that they have over-voted a ballot.

Most Massachusetts towns now use optically scanned ballots. A nationally-recognized “best practice” in the use of these scanners is to: (1) have the ballots scanned in the individual precincts, at the time the ballot is cast by the voter; and (2) to set the scanner such that it “spits back” any ballot that is “over-voted” (i.e., contains more votes for an office than are allowed). Massachusetts requires neither practice—indeed, it prohibits it. This undoubtedly leads to thousands of lost votes each Election Day, due to voter error.

Precinct scanning is clearly superior to “central scanning” of ballots because it is harder to damage or lose ballots in transport. Massachusetts allows its towns to scan ballots either way. The state should insist that all users of optical scanning technologies adopt in-precinct scanning.

The most common error that voters make on optically scanned ballots is to inadvertently over-vote. Most optical scanners can be set to return such ballots to the voter, at least to verify that this was the voter’s intention. If over-voting was not the voter’s intention, she or he can be given a new ballot to complete, according to the state law. This feature gives voters an opportunity to correct a mistake that would otherwise disqualify their vote. In our larger research we have identified this “failsafe” provision as an obvious feature to protect voters against errors; many localities around the country have moved to adopt this feature—even some counties in Illinois that continue to use punch cards.

The Secretary of State of Massachusetts, however, prohibits the use of the “spit-back” because this feature allows a machine to spoil a ballot, and under Massachusetts law only a voter may spoil a ballot.²⁴ This is a curious interpretation of state law since, for instance, automatic lockout mechanisms in

...the Commonwealth would do well to constitute a statewide commission to draft a long-range strategic plan for its voting technologies

mechanical lever machines serve essentially the same purpose, as do programming features of DREs. This interpretation should be changed to reflect the nationwide best practice concerning optically scanned ballots.

Such a change is required under the HAVA, in any case.

statewide commission to draft a long-range strategic plan for its voting technologies. It is ironic that while Massachusetts has prided itself as being the home of much of the digital revolution, its voting technologies and practices have tended to be anti-revolutionary. With greater public attention to the quality of the Commonwealth's voting technologies, and to the technological development in this area, the Commonwealth could once again emerge as a leader in ensuring that every vote counts.

The Secretary of State is currently constructing such a task force. It is important that this group gets to work quickly, and that it spend great effort to publicize its fact-finding.

Massachusetts voters would be well served by having the state adopt this practice sooner rather than later.

RECOMMENDATION # 15. Massachusetts should move expeditiously to develop a statewide task force to establish a state plan for the improvement of voting technologies.

Massachusetts has used a piecemeal approach to voting equipment certification and improvements, but such an approach is neither wise nor possible, with the passage of the Help America Vote Act of 2002. To receive federal funding for voting equipment, the Secretary of State will be required to develop a state plan through a committee of election officials, stakeholders (including representatives of disability groups), and other citizens. The state would then be responsible for disbursing the funding to purchasing authorities. HAVA, therefore, affords the Secretary of State a new pro-active role in determining what voting technology should be used in the state.

Even without the requirements of HAVA prodding it, the Commonwealth would do well to constitute a

²⁴ The spoiled ballot statute reads: If a voter spoils a ballot, he may obtain two others, one at a time, upon returning each spoiled one, and all ballots so returned shall immediately be marked by an election officer "Spoiled." Mass. Gen. L. ch. 54, § 81. This ruling arguably contradicts the regulation that requires voting equipment to give special regard to the "prevention and detection of double voting" 950 CMR §50:02(2)(f).

Polling Place Practices

According to the 2000 U.S. Census, 2.8 percent of registered voters who did not vote in the last presidential election attributed their non-voting to long lines or short polling place hours. What we find especially troubling about polling place lines and closings is that voters who have done everything right are denied access to the vote. Voters who register, study the choices, make the effort to go to the polls, and arrive on time can be denied the vote because of unusually long lines at the very end of the day.

In Massachusetts, long lines and short hours are less of a problem than nationally. Only 1.2% of Massachusetts non-voters in 2000 claimed that long lines or inconvenient hours kept them from voting. This works out to over 15,000 voters in 2000 failing to vote for this reason. However, coupled with the registration problems that voters face, that we have previously discussed, and which are usually encountered in polling places, the administration of polls could still be improved in the Bay State.

Over 2.7 million Massachusetts voters turned out during the 2000 presidential election. Many voters no doubt came to the precinct, quickly checked in, voted, and then checked out. Others weren't so lucky. A letter to the editor of the *Boston Globe* from a Shrewsbury voter reflected another experience:

I drove to my polling place at 9:45 a.m. Tuesday and found a line so long I was sure I would not get through it before I had to be at work. When I returned at 7:15 p.m., the line was even longer. It took 55 minutes before I was able to vote, a one-minute process. Even worse, I then had to wait more than five minutes before my name was checked a second time and my ballot accepted.²⁵

The mission of the polling place should be to satisfy its customers...

This unhappy Bay State voter was relatively fortunate. Some Boston polling sites remained open well past 8:00 p.m. to allow voters who were in lines that snaked onto sidewalks to vote.²⁶ In other states, the backups were far worse, including five hour waits reported in Dekalb County, Georgia.²⁷

It is difficult to find an undertaking in the public or private sector comparable to polling place operations on Election Day. So much depends on 13 hours of continuous nationwide service. Polling place set-up is a logistical challenge. Polling place can handle up to 1,000 actual voters on Election Day. Many of these voters carry out this task just once every two-to-four years.

The polling place is a service system—it provides the service of voting. The voter is the customer with certain requirements. Namely, the voter wants to cast his or her vote accurately, privately, with minimal wait, and with no hassles. The mission of the polling place should be to satisfy its customers, spending the minimal number of resources needed to do so.

In our examination of voting, nationwide and in Massachusetts, we have been struck with the number of times voters *and* election officials complained about problems associated with running polling places. Voters complain about inconvenient hours and uninformed poll workers. Election officials complain about the logistics of mobilizing for Election Day and the difficulties associated with finding competent poll workers. Election officials nationwide are looking for better ways of staffing precincts, as are officials in Massachusetts. Polling place practices are unlikely to improve very much in Massachusetts, however, without the Commonwealth stepping in to change key features of how elections are actually administered.

²⁵ *Boston Globe*, p. A18, November 9, 2000, Letter from Peter Wysocan, Shrewsbury.

²⁶ Steve Marantz, *Boston Herald*, "ELECTION 2000; Poll sites go into overtime" November 8, 2000, p. 10

²⁷ Will Anderson, *Atlanta Journal and Constitution*, November 11, 2000, "NAACP calls for changes at polls; Long lines, voters turned away in southeast DeKalb County could lead to firing of workers," p. 3H

If you ask a Massachusetts election official what his or her biggest headache running elections is, you are likely to hear two words: “poll workers.” Local election officials are responsible for appointing six-to-twelve Election Officers for each precinct on Election Day. With more than 2,000 precincts in Massachusetts, this works out to more than 12,000 volunteers who need to be recruited for each statewide election.

Lining up a sufficient number of polling place workers on Election Day isn’t just a problem of numbers; it is also a problem of quality. This isn’t to say that the thousands of election workers aren’t up to the task. It is to say that election officials are finding it increasingly difficult to recruit a sufficient number

...election officials are finding it increasingly difficult to recruit a sufficient number of people who are willing to work the long hours, under often-stressful conditions, implementing increasingly complex election law.

of people who are willing to work the long hours, under often-stressful conditions, implementing increasingly complex election law. The current system is headed for a meltdown.

We have learned of innovative ways that local officials use to recruit high-quality election workers. For instance, the City of Cambridge asks its residents on the annual census form whether they would like to

work the polls on Election Day. This has produced a surplus of potential poll workers for the Cambridge Elections Commission.

Still, cities and towns mostly struggle under the constraints of state election law in staffing the polls on Election Day. To assist local officials implement the thankless task of running elections, the Commonwealth should change some of these laws.

RECOMMENDATION # 16. Massachusetts should abolish the requirement that election officials be registered to vote in the town or city where they work.

The requirement that polling officials be registered voters within that municipality stems from the days when the primary guard against voting fraud was a neighbor eyeballing everyone who requested a ballot. This is a quaint view of ensuring the integrity of elections that no longer squares with reality. Almost half of Massachusetts voters move in the four years between successive federal and state elections. In our highly mobile society, relying on election officials to personally know all of a precinct’s registered voters is a thin reed on which to rest the integrity of the ballot.

At the same time, a number of innovations have been suggested to help grant greater flexibility to local election officials in administering polling places, all of which could require the use of precinct workers who live in another town. Some of these innovations have been used in other states with great success. Others are good ideas that need to be tried. None of these innovations—which we also recommend—can be used in Massachusetts unless state election law is changed.

RECOMMENDATION # 17. All levels of government in Massachusetts should grant its employees a paid day of leave if they agree to work as an election official on Election Day.

RECOMMENDATION # 18. Cities and towns should be encouraged to use municipal clerical employees as polling place workers on Election Day.

The biggest challenge on Election Day is recruiting workers with a high degree of clerical skill to work the polls. The cities and towns of Massachusetts, along with the state government, have an army of workers who are highly skilled at clerical tasks and are already adept at handling questions from the public about basic questions of law. Many of these people would gladly volunteer on Election Day to help run the polls. Some towns already allow their workers to take a vacation day to do this. However, we believe that the

administration of the polls is important enough to actively encourage municipal and state workers to help out. Not requiring workers to take vacation time to work at the polls would be a low-cost statement about the importance of ensuring that elections are administered as well as humanly possible.

Encouraging local government employees to staff precincts on Election Day has already been used throughout the country, to great success.

Encouraging local government employees to staff precincts on Election Day has already been used throughout the country, to great success. Los Angeles County, California has a program to encourage not only government workers, but also elected officials, to staff the polls on Election Day. Orange County, Florida places county workers with computer skills in each of its precincts, allowing the county to outfit each precinct with state-of-the-art computers to run each precinct.

Although we also endorse using high school and college students to help run polls on Election Day, local election administrators have told us that they value continuity and experience in their poll workers. The best way to encourage this characteristic among poll workers is to treat it as a professional position, perhaps as an extension of one's own public employment.

RECOMMENDATION # 19. Cities and towns should be encouraged to use students as polling place workers on Election Day.

Some states have begun allowing high school and non-resident college students to help staff the polls. This practice is attractive for a number of reasons. Practically speaking, high schools and colleges increasingly have public service programs and requirements, and so there is already a willing army of potential poll workers among these ranks. Thinking long-term, many people are concerned about the

diminished civic involvement of adolescents and young adults. Enlisting young people to work the polls on Election Day, even when they are not themselves registered voters, may encourage their civic participation in the future.

Section 501 of the Help America Vote Act establishes the Help America Vote College Program, aimed at encouraging college students to assist at polling places. It also establishes the Help America Vote Foundation to encourage high school students to assist at polling places. Although it will be at least a year until these programs are fully functional, they will provide programmatic and financial assistance in helping to implement such a recommendation.

As we have previously noted, our conversations with local election officials suggest that they would prefer to rely on local professionals with the necessary public service and clerical skills, who would lend greater continuity to the staffing of polls, in recruiting poll workers. However, some officials may want to experiment with the use of local students, and they should not be hindered from doing so by state laws that restrict such assistance to registered voters.

RECOMMENDATION # 20. Massachusetts should issue statewide voter registration cards every two years, as a method to educate voters about where they should vote.

Massachusetts can make sure each voter knows where his or her polling place is located by issuing statewide voter registration cards. The state's Central Voter Registry affords city and town clerks, and even the Secretary of State, the ability to issue such cards. Registration cards should become part of the preparations for every biennial state election, not just those occurring after the decennial United States Census or a change in polling place locations.

The State Election Division should also undertake a public information campaign to let people know when they should expect a registration card and what to do if they do not receive one. Furthermore, an incentive can be given for using registration cards on Election Day—you go to a shorter queue if you bring your registration card.

RECOMMENDATION # 21. The state and municipalities should work more diligently to ensure accessibility to polling places for disabled voters.

With the national spot light on election reform in 2000, advocates for disabled voters rallied to educate election officials and lawmakers in Washington about longstanding problems with voting accessibility for disabled voters. Massachusetts is one of the states with

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The principle accommodations made to disabled voters under Massachusetts law are the right to request assistance with voting

and the absentee ballot process. The right of disabled voters to get assistance with voting is, on its face, an effort to allow all voters to cast votes no matter their ability, but it is a remedy that denies disabled voters, especially visually impaired voters, the right to a secret ballot. The absentee ballot process creates the same problem for visually disabled voters who must rely on another person to read and complete the ballot, not to mention apply for and collect the ballot from the mail for the voter.

HAVA brings important reforms to disabled voters and requires states such as Massachusetts to give disabled voters access to a secret ballot. As of 2006, at the latest, every polling place in the United States must include a manner of voting that allows disabled voters, including the blind, "...the same opportunity for access and participation (including privacy and independence) as for other voters."²⁸

We expect that there will be continued debate as to what constitutes the same "opportunity for access and participation" for disabled voters. The voting equipment industry has made some progress

developing machines that are usable by visually impaired voters. Many new DREs offer recorded instructions on how to vote. This represents a very important advance, but we know of no studies of the performance of these machines. We strongly recommend human testing of equipment for errors in voting and ease-of-use of equipment accessible to blind voters, and HAVA will direct funding to such research.

New interface designs and machine architectures may be needed to solve accessibility for visually impaired voters and for voters who need assistance reading English. Our recommendation is for the Commonwealth to refrain from making a long term commitment to any single technology to meet the requirements of HAVA, but to develop a flexible acquisition plan that affords disabled voters their right to a secret ballot, and also preserves the accuracy of those votes.

The discussion of polling place practices thus far has confined itself to traditional Election Day voting in physical precincts. It has not dealt with the other major method of voting in the Commonwealth, absentee voting, or emerging methods of voting in other states, such as early voting and mailing-in ballots.

Massachusetts has one of the most conservative absentee ballot laws in the United States. One consequence of this is that 5% of ballots cast in Massachusetts in 2000 were cast absentee, compared to 10% nationwide. In 2000, one state, Oregon, cast its ballots entirely by mail, and six other states (Arizona, Colorado, Nevada, Tennessee, Texas, and Washington) saw more than one-quarter of their ballots cast before Election Day.

Massachusetts has resisted this nationwide movement toward early voting and more liberalized absentee voting. Massachusetts is one of a dwindling number of states that still allows absentee ballots to be used only "for cause." (The allowable causes include such things as traveling on Election Day, residing in another community on Election Day, and being in a hospital on Election Day.)

From the perspective of maintaining the integrity of the ballot, this resistance to proliferating mail-in

²⁸ H.R. 3295, Help America Vote Act, Title 1, §261.

Absentee ballots are not fundamentally secret ballots; the few election fraud cases that have been publicized in recent years across the nation have tended to be related to the abuse of absentee ballots.

ballots is laudable. Absentee ballots are not fundamentally secret ballots; the few election fraud cases that have been publicized in recent years across the nation have tended to be related to the abuse of absentee ballots.

However, the current Massachusetts course is unsustainable, practically speaking. First, voters are increasingly expecting that voting should be as convenient as other services. If you can buy

a book online or download your favorite music, why can't you at least have your ballot mailed to you, for you to return by mail?²⁹ Voting absentee is more convenient to many voters, many of whom will feign a legitimate excuse in order to be mailed an absentee ballot.

Second, other states with "for cause" absentee ballot laws have seen those laws crumble in the face of determined political strategies that exploit the inconsistent implementation of absentee ballot laws across a state. One good example was Florida in 2000. Although Florida's absentee ballot law restricted absentee ballots in a way similar to Massachusetts, Republican Party operatives in a few counties, most notably Seminole County, generated thousands of requests for absentee ballots among registered Republicans. These requests, which violated the spirit (and probably the letter) of Florida's absentee ballot law, came to light when many of the absentee ballots failed to conform to the prescribed legal form, but were nonetheless counted in Florida's close presidential election.

It is only a matter of time before a campaign pursues a similar absentee ballot strategy in Massachusetts. Perhaps it has already happened. Once such a strategy is pursued and publicized, the legitimacy of an election may be thrown into doubt. The problem at that point will also be, however, that a number of voters will have discovered that absentee ballots can be more convenient than going to a precinct on Election Day, and will continue to demand to vote absentee for convenience in the future.

RECOMMENDATION # 22. The Massachusetts Secretary of State should biennially report the number of absentee ballots cast in each election, by town, in *Public Document 43*.

The number of absentee ballots cast in each municipality in the Commonwealth is unknown to the general public. Therefore, it is difficult to know whether some towns and cities are more liberal in their implementation of the current absentee voting laws. In addition, should a campaign or party committee adopt a strategy that circumvents the current "for cause" absentee ballot requirement, no one would know, since the number of absentee ballots cast in each town is not widely reported. Therefore, in the interest of helping to maintain the integrity of the Massachusetts absentee ballot laws, the number of absentee ballots cast in each town must be collected and regularly reported by the state.

RECOMMENDATION # 23. Massachusetts should adopt early voting options.

The pressure nationwide to accommodate more complicated modern lives in voting practices has led many states to expand absentee balloting unwisely. The elections system in Massachusetts will increasingly feed the pressure to make voting more convenient.

²⁹ In this report we avoid discussing one of the hottest topics in election reform, Internet voting, which may be the ultimate in convenience voting. As a general method of voting, using the Internet or other electronic modes that allow voting from home is still fraught with perils. It is a method that has already been used in Europe and with United States armed forces. As a method of accommodating many disabled voters, it may quickly emerge as a best practice in accessibility. However, Internet voting is too much in its infancy to address at length here.

A better way to make voting more convenient is not to liberalize absentee balloting, but to encourage in-person early voting, as has been done in a number of states.

A better way to make voting more convenient is not to liberalize absentee balloting, but to encourage in-person early voting, as has been done in a number of states.

Convenience voting is on the rise nationwide. Two decades ago only four percent of ballots were cast absentee or early nationwide; today that figure has grown to 14 percent.

In the 1970s and 1980s,

states began experimenting with new types of voting away from neighborhood precincts. These modes formally share many characteristics with absentee balloting, but have been implemented for new reasons: namely, for the convenience of local residents who are not out of town on Election Day. These techniques are early voting and mail voting.

Early voting can be thought of as stretching Election Day into an Election Period. States that have adopted early voting provisions generally make their election ballots available to all registered voters a couple of weeks before Election Day. How and where votes are cast varies. Most states allow voters to travel to the county courthouse to vote in person, regardless of where their neighborhood precinct is located. A few states, notably Texas, allow the establishment of satellite voting sites in government buildings and public places like shopping malls. States with early voting provisions in 2000 included Alaska, Arkansas, Colorado, Kansas, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, Tennessee, and Texas.

The easiest way for Massachusetts to adopt early voting is to amend the absentee ballot process to permit anyone to vote absentee *without an excuse* if they appear *in person* at the town clerk's office or other designated early polling site. The same procedures the clerk uses to allow an absentee ballot to be sent to a voter should be used to hand an absentee ballot to an early in-person early voter. The voter record would be

updated similarly and the ballots would be delivered to the precinct on Election Day along with the other absentee ballots for processing.

The other alternative to Election Day in-person voting is voting by mail. It operates at the initiative of election officials, who mail ballots to all registered voters, who then return the ballots to the county court house (in the case of Massachusetts, it would be sent to the town hall), most often by mail. In 2000, Oregon became the first state to conduct its general election entirely by mail. Currently at least sixteen states (Alaska, California, Colorado, Florida, Kansas, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Oregon, Utah, and Washington) allow vote-by-mail in at least some elections, although no other state has moved nearly as far as Oregon.

In *Voting: What Is/What Could Be*, we discuss the many problems associated with widespread mail-in voting. Massachusetts would do well to steer clear of this alternative.

Conclusion

It is the responsibility of the Secretary of State and local election officials to guard the most sacred of democratic rights of all Massachusetts citizens. Election officials at all levels in Massachusetts have worked tirelessly for years to ensure that every vote counts on Election Day. The fact that much of the spotlight following the 2000 presidential election fell far away from the Bay State is testimony to the hard work and diligence of these officials.

Still, voting is far from perfect in Massachusetts. Too many voters are confused on Election Day about where they should vote and how to register. Too many voters use antiquated voting machines that lead directly to lost votes. Too few poll workers can be recruited to provide the vitally important service of staffing polling places. And too many voters find voting too inconvenient.

Reforming elections in Massachusetts will require the amassing of financial resources and the political will necessary to overcome decades of entrenched administrative practice, so that Massachusetts voters have their voting rights protected as effectively as any place in this country. The need for focused leadership in this area leads us to our final recommendation.

RECOMMENDATION # 24. The Secretary of State should act quickly to appoint a permanent director of the state Elections Division.

The directorship of the Elections Division has been vacant for a number of years. Although the incumbent Secretary of State has proven to be dedicated to the cause of effective elections, there is no substitute for a political leader whose sole responsibility is ensuring

Reforming elections in Massachusetts will require the amassing of financial resources and the political will necessary to overcome decades of entrenched administrative practice, so that Massachusetts voters have their voting rights protected as effectively as any place in this country.

that the conduct of Massachusetts elections is second to none. Although many of the recommendations we have suggested will be facilitated through the promise of federal funds, others will require the changing of long-time election practices. It is our experience that the states that have been the most progressive in pursuing election reform have had a progressive political leader augmenting the Secretary of State's efforts, relentlessly prodding the state toward reform. Election reform will not happen by itself. Executive leadership, along with strong activity by the legislature, is a necessary condition for reform.

Appendix

Summary of the Help America Vote Act of 2002

The contested 2000 presidential race exposed deep weaknesses in the nation's system for administering elections. Almost immediately following that election, Congress began to debate what the federal government should do to fix the system before the next presidential election in 2004. The result was the swift passage of a sweeping reform billed called The Help America Vote Act of 2002 (HAVA). The bill calls for up to \$3.9 billion in spending by the federal government over the next three years on a mix of grant programs to help improve election systems for federal elections.

This appendix contains four sections that summarize the Help America Vote Act of 2002 and relate provisions of the Act to current Massachusetts practices.

Massachusetts Share of HAVA Funding

Many doubted whether HAVA would be fully funded this year. However, the Omnibus FY 2003 Continuing Resolution (H.J. Res. 2) that was passed February 13 contained a \$1.5 billion line item for HAVA. Nearly \$80 million could flow to the Massachusetts election system over the next three years if HAVA is fully funded every year and Massachusetts elects to participate.

The first type of HAVA funding, Title I funding, is a quick influx of money to the states to meet the immediate improvements required under the act including acquiring accessible voting machinery and replacing all punch cards and lever machines. (See Table A-1.) Massachusetts stands to receive anywhere from \$6 to \$7 million of the \$650 million directed toward funding the requirements of Title I. In order to obtain the funding, the state must agree to comply with the requirements and deadlines of the act, which range from the 2004 to 2006 federal elections. Massachusetts does not have to provide any matching funds for Title I funding.

The second type of HAVA funding, Title II funding, will be directed toward states for continued implementation of the requirements of the act. (See Table A-2.) Title II funding requires each state to match 5% of the funding supplied by the federal government with state funds. Massachusetts could receive up to \$69 million of the \$3 billion available under Title II of HAVA. The state would have to submit a plan setting forth how it intends to comply with HAVA and contribute \$3.45 million of state funds to participate. The remainder of HAVA funding is set aside for grants for accessibility improvements, research, and pilot programs. (See Table A-3.)

Title III of HAVA institutes several requirements for voting systems, to be implemented in the immediate future. Table A-4 summarizes those provisions, alongside an analysis of the degree to which Massachusetts currently complies with those requirements.

TABLE A-1
Title I Funding for Massachusetts in 2003

HAVA Grant Program	Total U.S. (2003)	Available to Massachusetts (2003)
<i>Section 101</i> Funding to meet Title III Requirements by specified deadlines	\$325,000,000	Minimum \$5,000,000 Maximum \$7,475,000*
<i>Section 102</i> Funding to Replace Punch Cards and Lever Machines	\$325,000,000	\$1,948,000#
TOTAL:	\$650,000,000	Minimum \$6,948,000 Maximum \$9,423,000

* Massachusetts may apply for up to 2.3% of the total Section 101 funding, but a minimum of \$5,000,000 will go to every state. Massachusetts's portion of the total funding is based on the voting age population (VAP) in the state, which is 2.3% if the VAP of the US. VAP Source: US Census, Projections of the Population of Voting Age, for States, by Race, Hispanic Origin, Sex, and Selected Ages: November 7, 2000, <http://www.census.gov/population/socdemo/voting/proj00/tab01.txt>

HAVA will provide states with up to \$4,000 per eligible precinct. Eligible precincts are those that used punch card or lever machine voting systems during the 2000 election. According to state election officials, Massachusetts has 487 qualifying precincts.

TABLE A-2
Title II Funding for Massachusetts

Year	Total US	Maximum Federal \$ Available to Mass.*	Max State Matching Funds (5%)	Total Elections Funding in Mass.
2003	\$1.4 billion	\$32,200,000	\$1,610,000	\$33,810,000
2004	\$1 billion	\$23,000,000	\$1,150,000	\$24,150,000
2005	\$600 million	\$13,800,000	\$690,000	\$14,490,000
TOTAL:	\$3 billion	\$69,000,000	\$3,450,000	\$72,450,000

* Massachusetts is eligible for up to 2.5% of the total. See note (*) accompanying Table A-1.

TABLE A-3
Additional HAVA Funding*

Item	2003	2004	2005	2006	Total
To fund Election Assistance Commission	\$10 million	\$10 million	\$10 million		\$30 million
Access Grants#	\$50 million	\$25 million	\$25 million		\$100 million
Research Grants	\$20 million				\$20 million
Pilot Programs	\$10 million				\$10 million
P&A Systems##	\$10 million	\$10 million	\$10 million	\$10 million	\$40 million
Student/Parent Mock Elections	\$200,000*				\$200,000
Title V College Program	\$5 million*				\$5 million
Title VI High School Program	\$5 million*				\$5 million
TOTAL:	\$110 million	\$45 million	\$45 million	\$10 million	\$210 million

NB: This table is based on the Funding Table provided in the Florida Governor's Select Task Force on Election Procedures, Standards and Technology Report, December 30, 2002.

Access grants will be administered by the US Department of Health and Human Services (HHS).

Protection and Advocacy Systems as defined in Section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 USC 15002). HHS will also administer these grants.

* Plus such sums as necessary for each succeeding fiscal year.

IMPLEMENTATION OF THE HELP AMERICA VOTE ACT (HAVA) IN MASSACHUSETTS

Note: In this section, items that may require reform to comply with HAVA are indicated with shading.

Items in which Massachusetts may already be in compliance are not shaded.

HAVA - Title III Requirements

Massachusetts Election System

VOTING SYSTEMS – Section 301³⁰

1. *General Compliance*

All voting systems must meet the following criteria:

Note: The term “Voting Systems” refers to the equipment, such as optical scanners or lever machines, that are used to capture, cast, count, and report votes. (HAVA §301(b)(1)). Voting Systems must be certified by the Secretary of State’s Election Division before they may be sold or used within the Commonwealth. (Mass. Gen. L., ch. 54, §32; 950 CMR 50).³¹ Specific brands of the following types of voting equipment are certified for use within Massachusetts as of January, 2003:

- *Optically Scanned Paper Ballots*
- *Hand Counted Paper Ballots*
- *Lever Machines**
- *DataVote punch card systems**

* HAVA funds the complete replacement of lever machines and punch card systems, including DataVote. The comments in this chart assume that Massachusetts will decertify lever and Data Vote systems upon the implementation of HAVA.

301(a)(1)(i)

Allow the voter to verify their selection.

A voting system that allows a voter to review or “go back” over the ballot and see what or whom they voted for after making the selection should meet this requirement. In Massachusetts, the two certified paper-based voting systems permit voters to verify their selections.

Massachusetts has yet to certify the newest type of voting machines, Direct Recording Electronic devices (DRE’s), also called “touch screens” or ATM-like voting machines. Some DRE’s may make verification of selections difficult for voters.

³⁰ All references to the Help America Vote Act (HAVA) are to Public Law 107-252 (107th Congress) and are cited in this chart as HAVA § ___. The Act is also contained in the United States Code at 42 USC 15301.

³¹ This chart contains parenthetical references to applicable provisions of Massachusetts’s election law. The statutes governing elections in Massachusetts are Chapters 50 through 57 of the Massachusetts General Laws and are cited herein as Mass. G.L., Ch __, §__. The regulations governing elections in Massachusetts are Chapter 950 of the Code of Massachusetts Regulations, Sections 48 – 60, and are cited herein as 950 CMR ___.

301(a)(1)(ii)

Allow voter to change the ballot or correct any error.

Voters in Massachusetts may request up to 2 additional ballots to correct spoiled ballots. (Mass. Gen. L., ch. 54, § 81)

301(a)(1)(iii)

If the voter selects or votes for more than 1 candidate (i.e., “overvotes”), notify the voter that they have overvoted and provides the voter with the opportunity to correct the ballot before the ballot is cast and counted. (For paper ballots, central-scanned ballots and absentee or mail-in ballots – the requirement may be met with a voter education program specific to that voting system including instructions for correcting the ballot and ordering a replacement ballot).

Optical scan systems as certified in Massachusetts do not permit the voter to correct an overvote. Pursuant to a ruling by the Secretary of State, optical scan ballots may not be programmed to reject or “spit back” ballots containing overvotes.

Massachusetts standards for preventing overvotes are not specific and require only that voting equipment give special regard to the “prevention and detection of double voting”. (950 CMR §50:02(2)(f)).³²

The instructions accompanying absentee ballots issued by the Secretary of State do not include instructions on how to get a replacement for a spoiled ballot.

2. Audit Capacity

All voting systems must have an audit trail that:

301(a)(2)(B)(i)

Produces a permanent paper record with a manual audit capacity for such system.

The optical scan paper-based ballot systems used in Massachusetts produce a paper tape of the electronic count and the actual paper ballot remains for a manual audit.

301(a)(2)(B)(ii)

Provides voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

Voters in Massachusetts may request up to 2 additional ballots to correct spoiled ballots before the ballot is cast. (Mass. Gen. L., ch. 54, § 81).

For centrally scanned optically scanned ballots and absentee or mail-in ballots this requirement can be met with spoiled ballot instructions.

The instructions on absentee ballots in Massachusetts do not inform voters of spoiled ballot procedures.

³² Lever Machines do prevent overvoting but these machines will be replaced under HAVA.

301(a)(2)(B)(iii)

The paper record is available as an official record for any recount

Paper Ballots are retained for use in a recount. (Mass. Gen. L., ch. 54, §§135, 135B.)

3. Accessibility of Voting System for Individuals with Disabilities

301(a)(3)(A)

Every polling place has a DRE system accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.

This would be a new requirement in Massachusetts.

DRE machines, including those equipped with nonvisual accessibility features, are not yet certified for use in the state.

4. Alternative Language Accessibility

301(a)(4)

Complies with alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa 1a)

Optically scanned paper ballots can be printed in alternative languages.

Note: as of July, 2002, the following Massachusetts jurisdictions are required to provide Spanish language ballots for Hispanic voters: Boston, Chelsea, Holyoke, Lawrence, Southbridge, and Springfield. (28 CFR 55; Federal Register / Vol. 67, No. 144 / Friday, July 26, 2002.)

5. Error Rates

301(a)(5)

Meets FEC voting system standards error rate

Massachusetts, like most states, voluntarily adopts the Voting System Standards issued by the FEC. (950 CMR 50:03(3)).

6. Uniform Definition of what Constitutes a Vote

301(a)(6)

The State has uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State

The standard for interpreting what constitutes a vote in Massachusetts is the “will of the voter”. Massachusetts has a well-settled body of case law interpreting this standard and the standard applies across the state. (See e.g., *Delahunt v. Johnston*, 671 NE.2d 1241 (Mass. 1996) *Kane v. Registrars of Voters*, 328 Mass. 511, 105 N.E. 2d 212 (Mass. 1952); *Munn v. Dabrowski*, 335 Mass. 41, 138 N.E. 2d 570 (Mass. 1956)).

The US Supreme Court’s 2000 decision in *Bush v. Gore*, cast some doubt on the “will of the voter” standard. (*Bush V. Gore*, 121 S.Ct. 525 (2000)). The Court found that voters had an equal protection right against arbitrary and disparate treatment in recount procedures. This has led some legal scholars to suggest that a “will of the voter” standard might not survive an equal protection challenge. However, the facts before the Court in *Bush v. Gore* were limited to the vote counting standards in the state of Florida in 2000. Florida, unlike Massachusetts, had no statewide standards for interpreting voter intent in 2000 and very weak and limited case law precedent.

It is expected that the courts will refine this HAVA requirement.

Section 302(a), Provision Ballot System

If a person’s name is not on the voter list or is challenged, such person can cast a provisional ballot as follows:

302(a)(1)

Election official at the polling place shall notify the individual that they may cast a provisional ballot.

Massachusetts has a limited provisional ballot called an Escrow Ballot. Escrow ballots may be given to persons who are not on the voter list and cannot be verified by an inquiry to the town clerk or registrar. (Mass. Gen. L., ch. 51, §59A). The escrow ballot statute does not expressly require that the ballot be offered. Poll worker guidelines, however, instruct polls workers to offer escrow ballots.

302(a)(2)

The person may cast a provisional ballot at that polling place upon the execution of a written affirmation by the individual before an election official at the polling place stating that the individual is — (A) a registered voter in the jurisdiction in which the individual desires to vote; and (B) eligible to vote in that election.

The affirmation for an escrow ballot is an oral oath administered by the presiding election officer. (Mass. Gen. L., ch. 51, §59A and ch. 54, §85).

302(a)(3)

The election official shall promptly take the ballot cast by the individual or the voter information contained in the written affirmation to an appropriate State or local election official for prompt verification.

Escrow ballots are not verified or counted unless "...the total number of escrow ballots may change the result of the election." (Mass. Gen. L., ch. 51, §59A.

302(a)(4)

If the appropriate State or local election official determines that the individual is eligible under State law to vote, the individual's provisional ballot shall be counted as a vote in that election.

Escrow ballots are not counted unless the race is close. Mass. Gen. L., ch. 51, §59A.

302(a)(5) (A)

When the ballot is cast the state or local official shall provide the individual with written information on how they can find out if the ballot was cast.

This would be a new requirement in Massachusetts.

302(a)(5) (B)

There is a free access system (such as a toll-free number or Internet website) for such individuals to confirm whether the vote was cast or counted and if it was not, the reason why not.

This would be a new requirement in Massachusetts.

Section 302(b), Voting Information System Requirements

302(b)(1) & (2)

(A) a sample version of the ballot that will be used for that election;

(A) Polling places in Massachusetts must have 10 or more specimen ballots on colored paper available. (Mass. Gen. L., ch.54,§48)

(B) information regarding the date of the election and the hours during which polling places will be open;

(B) Each town must publicly post the notice or warrant calling for the election but there is no express requirement in Massachusetts law to post the warrant at the polling place on Election Day even though some municipalities may do this. (Mass. Gen. L., ch. 54, §§63, 64)

(C) instructions on how to vote, including how to cast a vote and how to cast a provisional ballot

(C) Polling places in Massachusetts must post “cards of instruction” (Mass. Gen. L., ch. 54, §49). The provisional ballot instructions would be a new requirement in Massachusetts.

(D) instructions for mail-in registrants and first-time voters under section 303(b).

(D) This would be a new requirement in Massachusetts.

(E) general information on voting rights under applicable Federal and State laws, including information on the right of an individual to cast a provisional ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

(E) This would be a new requirement in Massachusetts, although polling places currently must post instructions for voters for: (i) obtaining ballots; (ii) marking ballots; (iii) obtaining assistance; and (iv) obtaining replacements for spoiled ballots. (Mass. Gen. L., ch. 54, §48).

(F) general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(F) Massachusetts law requires the posting of abstracts of laws imposing penalties upon voters as they shall deem proper. (Mass. Gen. L., ch. 54, §48).

VOTING REGISTRATION – Section 303

1. State-wide voter list

303 (a)(1)(A)

A single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State.

Massachusetts has a statewide voter list called the Central Voter Registry (CRV). (Mass. Gen. L., ch. 51, § 47C and 950 CMR 58:00).

Note: Although Massachusetts, unlike many states, has already adopted a statewide database system, there are two aspects of the CRV that warrant improvement in light of HAVA. First, HAVA requires that the statewide list be a “single” list. The Massachusetts CRV, as described by one election official, is “book of separate chapters”. Each municipality keeps its own list, which is held as a “chapter” in the CRV “book”. As a result, it is not possible in the ordinary course of business to search the entire database without knowing which municipality the voter is presently or was last registered in.

Second, the CRV assigns each voter record a unique identifier that is based on the person’s name and birth date. HAVA, as will be discussed below, encourages states to adopt a unique identifier that is a number that corresponds to another statewide database so that voter registration records can be updated as these other databases get updated. For example, if the unique identifier is the drivers license number, a change of address in the record of a certain driver’s license number would automatically trigger a change in address in the statewide voter registration database.

2. List Maintenance

303 (a)(2)(A)

If an individual is to be removed from the computerized list, such individual shall be removed in accordance with the provisions of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.)

Massachusetts’ safeguards conform to those outlined in the NVRA.

Registrars may remove a name from the CRV for only the following reasons:

- the voter has died;
- the Registrar received a duplicate registration from another city or town;
- the RMV sent the Registrar a change of address notice;
- the voter has notified the town of a change in address or has requested to be removed; or
- the voter has not voted in two consecutive biennial elections (usually a four-year period) and failed to respond to the annual local census notice.

(Mass. Gen. L., ch. 51, § 38.)

303 (a)(2)(B)

List maintenance shall be conducted in a manner that ensures that (i) the name of each registered voter appears in the computerized list (ii) only voters who are not registered or who are not eligible to vote are removed from the computerized list; and (iii) duplicate names are eliminated from the computerized list.

All registered voters appear in the CRV. For list maintenance purposes, the records are coded "A" for active voters and "I" for inactive.

A local registrar may not remove a name from the list unless they no longer meet the requirements for registration. (Mass. Gen. L., ch. 51, §§38 and 1).

Note: The Registry of Motor Vehicles and cities and towns are required to forward change of address notices to the appropriate local registrar. (950 CMR 58) but some registrars complain that this system does not work well.

3. Security

303 (a)(3)

State or local officials shall provide adequate technological security measures to prevent the unauthorized access to the computerized list.

Massachusetts restricts the distribution of voter lists. (Mass. Gen. L., ch. 51, §57). Access to the CRV is limited to authorized users only through a dedicated line.

4. Minimum standard for accuracy of state voter registration records

303 (a)(4)(A)

A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under such system, consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.), registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote.

A local registrar may remove a voter for the reasons set forth in Gen. L. ch 51, §38. They must also notify the individual prior to a removal. (Mass. Gen. L., ch. 51, § 38.)

303 (a)(4)(B)

Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

To ensure that eligible voters are not removed from the list, Massachusetts utilizes both its annual local census (the “street list”) and a separate confirmation notice. (Mass. Gen. L., ch. 51, §37). If a voter does not return the town’s annual census card, then they are sent a confirmation notice. If they do not respond to that notice and fail to vote in two consecutive federal elections, then their name will be removed from the list.

Note: While the state waits for two consecutive state or federal elections to pass (usually a four year period) before removing a name, it will put the names of those who failed to respond to the annual census and the confirmation notice on an inactive voter list. Persons on the inactive voters list are still officially registered to vote but they will be asked at the polling place to prove (by showing an ID) or attest to (by signing a form called “Certificate of Continuous Residency”) their continued residency at the address on the list before they can vote. The inactive voter lists and procedures can be confusing to voters and poll workers alike. Massachusetts should consider streamlining this procedure to expedite check-in on Election Day.

5. Verification of Registration Information**303 (a)(5)(A)**

The voter registration application asks for drivers license number of individuals with such a license, last 4 digits of social security number for those without, and if registrant has neither a drivers license number nor social security number, then the state assigns a unique numerical identifier.

This would be a new requirement.

303 (a)(5)(B)

State shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority.

The CRV does share information with the Registry of Motor Vehicles but it is not clear whether the system in place meets this requirement.

Note: A key aspect of the structure of Massachusetts state government makes database management between the Registry and the Elections Division a challenge. In some states like Michigan, which is often cited as a model for statewide voter registration database management, the Secretary of State is responsible for both issuing drivers licenses and voter registration and can easily develop compatible systems for both. In Massachusetts, however, the Registry of Motor Vehicles falls under the Governor's Office, which is a constitutionally separate department from the Secretary of State. Massachusetts must, therefore, develop innovative ways to improve the cooperation between these two separate departments. This may include sharing resources and developing mutually beneficial systems.

303 (a)(5)(C)

The official responsible for the State motor vehicle authority shall enter into an agreement with the Commissioner of Social Security under 205(r)(8) of the Social Security Act.

This would be a new requirement in Massachusetts.

6. ID requirements for voters who register by mail

303 (b)(1)-(3)

New registrants who registered by mail will be asked to present a valid photo ID the first time they go to the polls to vote or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter; or if the person votes absentee or by mail, they must submit a copy of the same with the ballot.

If the person does not have such an ID or statements, then they will be able to cast a provisional ballot. Absentee or mail-in ballots that fail to contain the ID or statement will be counted as provisional ballots.

Note: there is very wide exemption from the ID requirement for those who:

- Include the ID or statement with their registration application;
- Include their driver's license or last 4 digits of the social security number; OR
- Are entitled to an absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff 1 et seq.); Voting Accessibility for the Elderly and Handicapped Act (42 U.S.C. 1973ee 1(b)(2)(B)(ii)); or in the armed forces.

This would be a new requirement in Massachusetts.

Note: Massachusetts law does not require identification from new registrants. The law gives election officers the right to ask for "...suitable written identification..." of anyone desiring to vote. (Mass. Gen. L., ch. 54, ch. 76B). In practice, poll workers will ask this only of inactive voters and under instructions from the Clerk or Election Commission. One manual states: "Identification requests should not discriminate in any way, but should be entirely random or based on reasonable suspicion."

7. Mail-in Registration Form

303 (b)(4)(A) (i) – (iii)

Mail-in registration forms must include the following questions:

“Are you a citizen of the United States of America?”;

Will you be 18 years of age on or before election day?”; and “if you checked no to either of these do not complete form”.

This would be a new requirement in Massachusetts.

303 (b)(4)(A) (iv)

Mail-in registration forms must include ID or utility bill etc.. requirements.

This would be a new requirement in Massachusetts.

TABLE 1
Voting Equipment Certified in Massachusetts

Voting Equipment Type	Model
Optical scan	Optech Optech Eagle Accuvote
Punch card	Datavote
Lever Machine	AVM 40 AVM 50
Paper	N/A

Source: Massachusetts Elections Division.

TABLE 2
Voting Equipment Used in Massachusetts, 1960 to 2002

Year	Number of Municipalities				Percent of Voters			
	Punch cards	Lever machines	Paper	Optical scan	Punch cards	Lever machines	Paper	Optical scan
1960	0	11	340	0	—	23.0	77.0	—
1962	0	12	339	0	—	22.6	77.4	—
1964	0	19	332	0	—	24.9	75.1	—
1966	0	22	329	0	—	25.0	75.0	—
1968	13	32	306	0	8.6	27.2	64.2	—
1970	13	34	304	0	5.7	27.3	67.0	—
1972	18	45	288	0	9.3	28.4	62.3	—
1974	27	44	280	0	14.5	27.4	58.1	—
1976	38	46	267	0	19.7	27.8	52.5	—
1978	52	46	253	0	25.0	27.7	47.3	—
1980	72	46	233	0	29.9	27.6	42.5	—
1982	74	46	231	0	30.3	27.4	42.3	—
1984	90	46	216	0	36.9	20.8	42.3	—
1986	98	46	208	0	42.3	27.2	30.4	—
1988	98	42	171	40	42.9	25.7	20.9	10.5
1990	96	42	165	48	42.6	25.2	18.7	13.5
1992	92	39	161	59	41.0	24.3	17.3	17.3
1994	75	38	147	91	33.1	23.6	12.3	31.1
1996	48	27	112	164	20.7	17.4	6.4	55.6
1998	10	26	93	222	2.9	16.6	4.4	75.9
2000	4	21	81	245	1.7	15.1	3.5	79.7
2002	2	20	77	252	3.1	13.3	0.7	83.0

Source: Massachusetts Elections Division files and Secretary of State *Public Document 43*.

TABLE 3
Massachusetts Residual Vote Rate in Statewide Races, 1990 to 2002

Year	President	Senator	Governor	Attorney General	Secretary of State	Treasurer	Auditor
1990		4.4%	3.5%	7.1%	9.1%	6.4%	10.4%
1992	1.7%						
1994		2.3%	3.0%	6.4%	11.8%	6.2%	10.9%
1996	1.7%	1.7%					
1998			1.7%	5.7%	7.4%	6.9%	7.6%
2000	1.1%	4.9%					
2002		9.6%	1.2%	27.3%	10.3%	7.5%	15.7%

Source: Massachusetts Elections Division files and Secretary of State *Public Document 43*.

TABLE 4
Voting Equipment Used in Massachusetts, 1960 to 2002

Year	President				Governor				U.S. Senator			
	Punch cards	Lever machines	Paper	Optical scan	Punch cards	Lever machines	Paper	Optical scan	Punch cards	Lever machines	Paper	Optical scan
1990					3.6%	3.9%	3.3%	2.6%	5.0%	4.7%	3.3%	3.7%
1992	3.0%	1.1%	0.6%	1.0%								
1994					3.8%	3.7%	1.8%	2.3%	3.7%	1.8%	1.1%	1.8%
1996	3.1%	1.8%	0.8%	1.2%					3.1%	1.9%	0.8%	1.2%
1998					2.5%	1.9%	1.1%	1.6%				
2000	1.4%	1.5%	0.7%	1.1%					5.6%	7.6%	3.7%	4.5%
2002					1.9%	0.8%	2.0%	1.0%	11.2%	7.7%	13.6%	9.0%

Source: Secretary of State, *Public Document 43* and Massachusetts Elections Division.

TABLE 5
Residual vote rate for “Question 1” by voting machine type in each statewide election, 1990 to 2002

Year	Summary	Passed	Punch	Lever	Paper	Optical scan	Total
1990	Repeal state census	Y	8.0%	13.2%	6.3%	6.7%	8.8%
1992	Create health protection fund for tobacco use education	Y	5.4%	13.8%	3.4%	3.8%	6.8%
1994	Regulating spending on ballot question campaigns	N	9.0%	11.2%	6.6%	5.9%	8.3%
1996	Changing the trapping and hunting laws	Y	14.1%	25.7%	4.8%	13.1%	14.9%
1998	Setting the compensation of state legislators	Y	11.1%	22.7%	7.7%	9.6%	11.7%
2000	Earlier redistricting for State legislators and and Governors’ Councillors	Y	11.5%	12.3%	5.9%	7.0%	7.9%
2002	Eliminating the State personal income tax	N	8.8%	20.6%	5.1%	11.5%	11.9%
<i>Average</i>			9.7%	17.1%	5.7%	8.2%	10.0%

Source: Secretary of State, *Public Document 43* and State Election Division.

TABLE 6
Residual vote rate for local ballot questions in 2002

	All Questions	Proposition 2½	Community Pres. Act	No on Finneran	Marijuana \$100 fine	Fund Clean Elections
Lever	31.4%	—	—	33.5%	31.0%	33.1%
Paper	14.9%	9.9%	—	18.5%	8.4%	—
Punch card	19.0%	—	—	—	—	19.0%
Optical scan	13.1%	5.9%	9.0%	19.3%	13.2%	14.6%
Total	16.1%	6.0%	9.0%	20.7%	21.1%	19.3%

Source: State Elections Division.