



**Secretary of State**  
214 State Capitol  
Atlanta, Georgia 30334

**Cathy Cox**  
SECRETARY OF STATE

**TESTIMONY OF THE HONORABLE CATHY COX**  
**GEORGIA SECRETARY OF STATE**

SUBMITTED TO THE UNITED STATES SENATE COMMITTEE ON COMMERCE,  
SCIENCE AND TRANSPORTATION  
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Mr. Chairman and Members of the Committee, thank you for the opportunity to present testimony for your consideration as you address the critically important issue of election reform. I am grateful to be asked to offer some insight into our experience in Georgia as we search for new solutions to make elections more accurate and more convenient for all of our citizens.

Let me also say Mr. Chairman that I applaud your efforts, and that of the ranking member Senator Hollings, in introducing S.368, which would provide us with valuable national consensus standards in voting equipment, authorize a study of voter participation and emerging technology, and, perhaps most importantly, create grants to states to improve voting methods.

It's a good bill. As you know, there are a number of other legislative proposals before the Congress that address these issues, both in the House and the Senate. But I believe your focus on standards, and your call to study the impact of income, minority status and other demographic variables on effective participation in the election process, are particularly desirable features. I hope they will be included in the final product that is enacted at the conclusion of this process.

I should also commend my good friend from Georgia and a member of this committee, who by the way also served with great distinction before me as our Secretary of State, Senator Max Cleland, for his aggressive work to find innovative solutions to the problems of outdated and inaccurate election systems. I know that he is preparing important legislation that addresses this issue.

As Georgia's chief elections officer, it's been interesting to watch the reaction of other election officials, from both the state and local level, to the unprecedented and very dramatic events in Florida in the days following the November 2000 election. It seems to

me that the response of most of my colleagues in the elections field falls into one of two groups.

The first group, and I am happy to say it seems to be the much smaller one, can be characterized with one word – and that word is denial.

From them you may hear the following:

“What happened in Florida couldn’t happen here.”

“The media has blown this out of proportion.”

“Some voters just make mistakes. There’s nothing you can do about it.”

“If people just followed directions, none of these problems would occur.”

“Very few elections are that close anyway. So a few errors here and there don’t really matter.”

“New technology can get you into trouble. It’s better to stick with what we already have.”

Or Finally:

“We’ve always known no election is perfect. Get over it. All of this controversy will die down in a few months.”

Now, the other group of election officials, and I certainly put myself among their number, had a very different reaction when we looked at what happened in Florida. Describing that group, it reminds me of the ambitious understudy anxiously awaiting her big chance on the Broadway stage. One day she gets the call that she’ll have to step into the leading role. Yes, she’s a little bit sorry that the star got sick, but she is also really, really glad to finally stand in the spotlight and get the full attention of the crowd.

As an election official who has been concerned for many years about the problem of antiquated and inaccurate voting and vote counting systems, I sympathize with Secretary of State Harris and the good people of Florida. I’m sorry for their misfortune. But I am also thrilled that national attention is now focused on this serious problem. And I want to make sure we make the most of our big chance.

Mr. Chairman, comparing ourselves to Florida and the problems that occurred there in the design of ballots and the counting and recounting of votes, I can only come to one conclusion.

There, but for the grace of God, go I.

Because the truth is, if the presidential margin had been razor thin in Georgia, and if our election systems had undergone the same microscopic scrutiny that Florida endured, we would have fared no better. And perhaps we would have fared even worse.

Like Florida, we have several different voting systems. Some are merely outdated. Some are true antiques tracing their origins to Thomas Edison and the 19<sup>th</sup> Century.

Like Florida, we had thousands and thousands of ballots that registered no vote in the presidential race, what we call undervotes. Nearly 94,000 voters that went to the polls in November either did not vote for president, made a mistake that voided their ballot, or did not have their vote counted by a machine.

That is an undervote percentage of 3.5 percent – a number that compares unfavorably with Florida, which had an undervote rate of 2.9 percent – and the overall national rate that has been reported at 1.9 percent.

Like Florida, we had wide variations in undervote rates from county to county. Some counties showed very low undervote totals – one half of one percent or below.

Others showed high – very disturbingly high – undervote rates of 15 percent. When more than one in ten ballots register no choice in the most important race, it doesn't take an election expert to know that something is seriously wrong with the system.

Like Florida, we had hanging chads, dimpled chads, pregnant chads and other unpleasant features of the punch card system. In fact nearly 1.2 million voters in seventeen Georgia counties, including several of our largest metropolitan counties, use the punch card.

Have we known that chads present a problem? Well, consider this. In Fulton County, our largest county that still uses the punch card system, county employees long ago gave the counting equipment a nickname. They call it the “confetti machine.” And that's because when ballots are fed into it, hundreds of chads fly into the air as the counting goes on.

Like Florida, we had recounts. And although our Georgia statute calls for machine recounts only, unless a court orders a hand recount, it was evident from the examination of ballots that many voters made inadvertent errors as they made their electoral choice.

Like Florida, we had voters turned away from the polls who had been properly registered. And we had far too many poll workers who were uninformed or poorly trained.

Like Florida, we had problems with the ballot itself. In one opti-scan county, the wrong markers were issued and officials had to scramble to recreate all the ballots that night when none of them could be counted in the machine. In another, the opti-scan ballots got damp, because it was a rainy day, and couldn't be read by their counting machine. And when the county called us, we gave them the advice we always give. Go get some hair dryers and blow dry the ballots. If the consequences were not so great, it would be funny.

And so we know very well that, yes, it could happen in Georgia. And the odds are that sometime, perhaps sometime very soon, it WILL happen in my home state unless steps are taken now to upgrade our equipment and procedures.

In the weeks following the November election, our office prepared a report for the Governor and Members of the General Assembly entitled **The 2000 Election: A Wake-Up Call for Reform and Change**. Based on new data analysis and the views, suggestions and complaints of hundreds of Georgians, from average citizens to party leaders to local elected officials, we took a “warts and all” look at the weaknesses in the current system and proposed a number of improvements to address these concerns. Our legislation, which would implement most of the reforms we believe are needed, is currently working its way through the Georgia General Assembly.

We have proposed a number of mostly administrative changes to shorten the ballot, speed up the counting of absentees, modify our Primary Election date to boost turnout, and other relatively minor changes.

We also have proposed, as we have in the past, a system of early voting to help reduce the confusion and long lines we experience at the precincts in high turnout elections.

But most importantly, we have recommended that Georgia begin now down the path towards a uniform electronic statewide voting system, with the goal of full implementation by November 2004.

We have secured funding in our current midyear budget to move forward with a pilot program, to be deployed in municipal elections this year, to field test different electronic voting systems. We believe this is particularly important since today, not one Georgia county or city uses electronic voting equipment. And we have called for a bipartisan commission to help us evaluate the successes and shortcomings of various equipment types, and identify the precise equipment we believe will be best for Georgia.

Our legislation also requires, for the very first time in the history of our state, that my office, rather than county governments, provide the necessary funding to acquire new uniform electronic equipment. As you know, Mr. Chairman, the acquisition and maintenance of election equipment has, throughout the nation, traditionally been the responsibility of local government. We want uniformity – we think it is critical both for policy and legal reasons. And yet it is simply not feasible or advisable for the state to mandate the purchase of equipment but play no role in its acquisition. Many counties in Georgia have not invested in election equipment in 40 years or more. They lack the budgetary wherewithal to make major new technology investments.

If we want to modernize elections and election equipment, the state and federal government are going to have to provide the resources. And yes, we believe funding and support from the federal government is critical. I can tell you from my conversations with state leaders and their review of the great demands already placed on our state budget, we will not reach our goal of modernized election systems by 2004 without significant federal grant support.

I would suggest to you that this is not simply a case where counties and states are asking you for federal money to solve a local problem. No, I believe there is a compelling national interest in assuring that every county and state in the nation has the capacity to insure fair and accurate outcomes in every race on the ballot – including the race for President. If we take nothing else from Florida's experience, it should be the recognition that these local decisions on equipment and procedures can have a dramatic impact on national affairs.

New public opinion data seems to bear this out. According to a recent *CBS News* poll, 65 percent of respondents said elections require “fundamental changes” or should be “completely rebuilt.” A Gallup poll found that 67 percent favored “a complete overhaul” or “major reforms.” And just last week, the *Miami Herald* reported their new poll of Floridians that showed 69 percent of Democrats and 62 percent of Republicans support Secretary of State Katherine Harris' proposal to shift to a new uniform method of touch screen voting, even though it has an eye-popping price tag of 200 million dollars.

In my discussions with Georgia citizens – young and old, male and female, black and white and brown -- in every corner of the state, I hear the same views. People think this is a problem we should fix. And they think we should fix it now.

I am reminded of Prime Minister Margaret Thatcher's favorite quote, which comes from the 19<sup>th</sup> Century French politician Alexandre Auguste Ledru –Rollin, “There go my people. I must find out where they are going so that I can lead them.”

The rationale for investing in new, more accurate voting technology is not simply its popularity or even that it is good public policy. There is a compelling legal argument as well. Stanford Law School Dean Kathleen Sullivan's analysis is right on target:

*“The Supreme Court has just handed an invitation to lawyers across the country to bring an avalanche of lawsuits claiming that existing systems that count people’s vote differently and with different rates of error in different counties violates the equal protection clause of the U. S. Constitution. If the 107<sup>th</sup> Congress does not make it a top priority to fix this, and fix it quickly, we are going to see ‘litigation city’ in 2002 and 2004. This is something that really ought not be postponed and studied to death, it ought to be acted upon and acted upon quickly.”*

Mr. Chairman, I can report to you that “litigation city” to use Dean Sullivan’s words, is already rising up in Georgia. This January, the Governor, the State Election Board and I were sued by the ACLU, representing African-American plaintiffs, claiming that Georgia’s election systems are fatally flawed, that voting equipment of all types has high error rates, and that minority citizens are disproportionately affected by these shortcomings. The suit seeks to enjoin the State of Georgia from conducting any further elections using our current voting technology.

The Attorney General’s office on behalf of the state has answered that suit, which is now in federal district court. While I cannot predict, nor can anyone, the outcome of this case, it goes without saying that if the court finds that the plaintiff’s claims have merit, the state faces the prospect of expensive, and perhaps immediate, court-imposed modifications to our election systems. And so I believe this litigation lends increased urgency to our efforts to upgrade systems in a carefully planned but expeditious manner.

Since November we have spent a great deal of time analyzing Georgia’s undervote, especially the variations that occur from county to county and from precinct to precinct. Much of the report I referenced earlier focuses on this area. Four voting systems are currently employed in Georgia: punch card, lever machine, opti-scan and paper ballot. Allow me to share with you some of our most important findings:

- There are exceedingly large variations in undervote rates between counties, and even among counties that employ the same voting technology. Punch card counties in general have the highest undervote rates, followed by lever machines and then optical scan systems.
- Although optical scan systems, the “newest” technology used in Georgia, offer satisfactory performance in some counties, in many other locations optical scan undervote rates are extremely high – well above the averages for more antiquated systems. In fact, 21 counties that use optical scan technology had undervote rates of five percent or higher, including three counties that recorded rates of 9, 10 and 15 percent respectively. And the mean average (the average of all the county percentages) of optical scan county undervotes is nearly identical to the now disparaged punch card systems.
- While complete data is not available, the numbers we have suggest that overvotes, or duplicate votes (where the voter accidentally makes more than one choice in a single contest, or perhaps where the machine improperly reads a duplicate vote that was not in fact made) represent a very substantial

majority of the variance between ballots cast and votes recorded. Some observers suggest that undervotes in the presidential race simply reflect the conscious decision of voters to skip that race and make other choices later down the ballot. Our data strongly suggests otherwise. In the 13 Georgia counties that compute duplicate votes (or overvotes) as a separate category, these inadvertent duplicate selections constituted 61.5 percent of the total undervote. Therefore, the first priority of any new technology we consider should be a feature that simply does not permit the elector to overvote.

After completion of our report to the Governor and the General Assembly, we were asked by the leader of Georgia's Black Caucus to analyze more specifically the undervote variations that exist by race. And so we began to study undervote (in the presidential race) percentages in precincts that had black registration percentages of 80 percent or more, and compared those to predominately white precincts in the same county.

We found that, across the board, undervotes are higher in predominately black precincts than in predominately white precincts in the same county. For purposes of our analysis, we have called this the "undervote gap." But what is of greatest interest, and we think most significant as we consider equipment options, is that this undervote gap was higher, that's right, higher, in counties that utilized opti-scan systems than in counties that use the punch card. I have attached, for your reference, a copy of our analysis that provides specific, county-by-county detail on these findings.

In this study we looked at 92 precincts with voter registration that is 80 percent or more African-American. And we compared those predominately black precincts to an equal number of predominately white precincts in the same counties.

In punch card counties, the undervote in white precincts averaged 4.4 percent, while the undervote in black precincts averaged 8.1 percent, for a difference of 3.7 percent – what we are calling the "undervote gap."

In counties that employ opti-scan, the undervote in predominately white precincts averaged 2.2 percent, while the undervote in predominately black precincts averaged 7.6 percent, for an undervote gap of 5.4 percent.

I should point out that this higher undervote gap for opti-scan exists whether we look at counties individually or in aggregate. However we slice the numbers, in opti-scan counties, there is a greater gap in undervoting by blacks as compared to whites than there is in counties that use the punch card.

The reasonable question one would ask when presented with these findings is "Why?" Why are voters in predominately African-American precincts more likely to cast an undervoted ballot, and why is this variance even larger in opti-scan precincts than in punch card precincts?

We simply do not know the answer. Anecdotally, we have observed the kinds of errors voters make on opti-scan ballots in precincts of all demographic profiles. Sometimes voters place a check mark or an "X" rather than blackening the circle. Sometimes voters circle the name of the candidate rather than blackening the circle or completing an arrow. (Some systems require a blackened circle, others require voters to draw a line which completes an arrow adjacent to the candidate's name.) Sometimes voters, trying hard to make sure their vote is counted, both blacken a circle by their

candidate's name AND write-in their candidate's name, thus creating what appears to the counting machine to be a duplicate vote, or overvote.

Let me acknowledge that this is data from one state only, and that we have not yet been able to complete an exhaustive analysis of undervote performance in each of the nearly 2,800 precincts in Georgia. But we believe the data we have makes a compelling argument that further deployment of opti-scan systems would be bad policy, and could perhaps even be considered a decision that disenfranchises minority voters.

Clearly, our findings cry out for more study of this racial disparity in the use of voting equipment – and for that reason especially, I applaud the emphasis in S.368 on a formal study of these types of issues.

Mr. Chairman, as you are aware, so much of the focus coming out of Florida was on the shortcomings of the punch card system. And those shortcomings are undeniable. In fact, a top priority of our statewide electronic voting initiative is to replace punch card systems first. But for Georgia, at least, we believe the data shows that replacing punch card with opti-scan would be the electoral equivalent of jumping from the frying pan into the fire. In addition to the operational shortcomings of opti-scan we already know about – high costs of ballot printing, potential errors from using the wrong marker, potential problems with moisture and other environmental conditions, the ease of making innocent mistakes that ultimately void a vote – it seems clear that some populations are far too likely to cast an incomplete or voided ballot when using the opti-scan system.

For us, this analysis reconfirms our belief that old systems – whether punch card, lever machine or opti-scan – should be replaced with current generation electronic equipment that minimizes the opportunity for the voter to make a mistake – and that has other clear advantages as well.

I believe this is a critical priority as we look to modernize our election systems. One of the most disturbing comments I have heard is the claim that every undervote is the choice or the fault of a poorly informed voter. Rather than blaming the citizens who pay our salaries and whose tax dollars buy the equipment we select, I believe every election official at every level of government should place maximum emphasis on identifying and acquiring equipment that is convenient, intuitive, easy to use and that reduces to an absolute minimum the opportunity for voter error.

Let's not forget that voting is not an act we perform every day or every week. The most conscientious of us may only vote once every year or two. And so the equipment we provide to voters should not require a detailed instruction manual in order to be utilized properly. And it should easily accommodate the needs of those with limited English proficiency, those who are visually-impaired and disabled, and other special needs populations.

Mr. Chairman, that's why I am particularly supportive of the provisions of your bill that would authorize the National Institute of Standards and Technology to study these very issues. To my knowledge, very little if any extensive analysis has been performed on the voter-ballot interface, including an evaluation of how equipment is used by different populations.

In Georgia, we believe that electronic equipment – systems that are flexible, accurate, that prevent overvoting and that feature a paper audit trail to provide an additional level of accuracy in case of a recount – offer by far the best options for

improving the reliability of our election systems. We are hopeful that the Congress will help provide the resources to assist us in achieving our goal.

Mr. Chairman, our election systems are broken. The American people expect us to step up and fix them – and fix them fast. Nothing is more important to the health of our democratic institutions than assuring that elections are fair to all and accurate in their outcomes. I am absolutely convinced that, applying our best thinking and adequate resources to the problem, we can fulfill this critical responsibility to the people we serve.

Thank you for the opportunity to share my perspective on this important issue.