

Repairing the U.S. System of Voting 50 Concrete Steps

By Harvey Wasserman, Bob Fittrakis and Steve Rosenfeld

VOTING, LIKE FREE SPEECH, SHOULD BE A CONSTITUTIONAL RIGHT. Until we pass that constitutional amendment, a new voting rights law must be passed establishing a federal right to vote. What the 2000 and 2004 presidential elections illustrated above all else is the ability of partisan and ruthless political operatives to manipulate a haphazard system comprising 50 different state voting laws, as interpreted by secretaries of states and various county, ward and precinct officials.

In the interim, it is essential to understand that the system can be reformed. Because we have suffered through a few flawed elections does not mean it must always be so.

Below we list a number of ways voting in this country can be improved. No single solution is foolproof, final, or fully comprehensive. But there are myriad ways, major and minor, that the rights afforded by our Constitution, like equal protection, and our national faith in democracy can be guaranteed. Among them are:

1) MINIMUM STANDARDS FOR VOTING RIGHTS AND PROCEDURES MUST BE SET BY FEDERAL LAW, and those standards must be aggressively enforced by agencies that are above partisan control or influence. There are more than 3,000 counties in the United States, with more 13,000 separate election jurisdictions, each of them adopting voting practices that may or may not be enable a truly democratic electoral process. We should strive for the uniformity of all voting procedures and equipment throughout the U.S. Bottom-line standards for accessibility, fairness, and reliability must be met and must be enforced by federal agencies that are beyond even the slightest hint of partisan manipulation.

2) ELECTIONS MUST NOT BE ADMINISTERED ON THE STATE, FEDERAL, COUNTY OR LOCAL LEVEL BY PARTISAN OFFICIALS. Whatever one may think of the outcome, the fact that the elections of 2000 and 2004 were decided in states where the vote counts were supervised by partisan Secretaries of State, serving simultaneously as campaign co-chairs for presidential candidates, cannot inspire confidence in our system of democracy. Elections must be run by non-partisan commissions chosen by non-partisan means. The power of secretaries of state to run elections must be eliminated, by federal statute if necessary.

3) COUNTY BOARDS OF ELECTIONS, WHICH ARE KEY TO THE ADMINISTRATION OF FEDERAL ELECTIONS AT THIS POINT IN OUR HISTORY, MUST BE GENUINELY NON-PARTISAN. The day-to-day work of maintaining a truly democratic system cannot be controlled by one party or another, as has been the rule in Ohio. Our democracy cannot expect to thrive where all county election boards are subject to the control of a partisan secretary of state. Nor can "minor" parties justly be shut out of the process. Instead, there must be a non-partisan selection system to make sure no county, or statewide network of counties, is anything but fully transparent and open to participation from citizens from all parties.

4) PARTISAN CHALLENGERS SHOULD BE ELIMINATED FROM VOTING STATIONS. The insertion of such challengers into Ohio polling places in 2004 proved to be intimidating, and seriously compromised the performance of the voting process. It gratuitously delayed the flow of voters for hours in areas where one party clearly perceived the possibility of partisan gain. As a result, thousands of American citizens were effectively denied their vote. Voting should be sacred in our democracy, such practices are unacceptable in a democracy, and should be banned by federal law. Our polling places must be kept free from outside influences, but not outside observers – such as the media and the public.

5) ALL AMERICAN CITIZENS SHOULD BE AUTOMATICALLY REGISTERED TO VOTE UPON TURNING 18 AND SUPPLIED AT THAT TIME WITH A UNIVERSAL REGISTRATION CARD SIMILAR TO A SOCIAL SECURITY CARD. Those who move or find other reason to register or re-register must have a smooth and easy path to doing so. We do not advocate the Australian system of making voting mandatory. But we do believe that all Americans who wish to vote should be encouraged by making registration as automatic and simple as possible.

6) NEWLY NATURALIZED AMERICAN CITIZENS SHOULD BE AUTOMATICALLY REGISTERED TO VOTE. The same voting rights afforded to U.S. citizens should be accorded to those who qualify for citizenship, instead of a patchwork system of state-issued voter identify cards and other laws now emerging across. The new laws are not only barriers to political participation for minorities, but are proving to be unconstitutional in recent litigation.

7) VOTER REGISTRATION FORMS MUST BE WIDELY AVAILABLE, EASILY ACCESSED, AND NON-RESTRICTIVE. The mid-stream requirement by the Ohio Secretary of State that voter registration forms be printed on 80-pound paper was suppressive and inappropriate. Forms printed on newsprint in newspapers and other types of paper in magazines and other publications should be accepted by county election boards. Democracies should make access to voter registration forms as easy and widespread as possible to all eligible citizens. Also, some states already offer receipts in the form of perforated tear cards that could serve as a same day voter registration if properly filled out and verified.

8) LIVING CITIZENS SHOULD NOT BE REMOVED FROM VOTER ROLLS, UNLESS THEY CHOOSE TO HAVE THAT HAPPEN. The systematic removal of convicted felons has no real social value, and the process has proven too corruptible to be tolerated in a society committed to free and fair elections, In short, the practice can be unevenly applied, and too easily used for partisan purposes. Accordingly, the up-to 34,000 ex-felons and alleged ex-felons that have been purged from the voter rolls in Ohio should be restored, as should the tens of thousands purged in Florida and elsewhere.

The practice of banning felons and ex-felons from voting began in the Reconstruction Era after the Civil War for racist and partisan reasons. It has no place in our democracy. Nor is there justification for removing voters from the rolls merely because they have not voted in two previous elections, as has been done in Ohio.

9) FEDERAL LAW SHOULD BAR MASS PURGES AND THE POSTAL SERVICE SHOULD BE INTEGRATED INTO THE REGISTRATION PROCESS. Once

registered, the right to vote must be protected by federal law. Only a death certificate or certified renunciation of citizenship should be deemed acceptable as proof that a name should be removed from the voter rolls. The more than 500,000 voters purged from the registration rolls in Ohio since 2000 should be restored; similar steps should be taken in other states where mass purges have been conducted. The U.S. Postal Service should be integrated into the voting registration process with their change of address forms.

10) ABANDON ELECTRONIC VOTING. We believe a system built around paper ballots is best suited to guarantee the integrity of the voting process. The experiences in Florida 2000 and Ohio 2004 – and many other states - strongly indicate that electronic voting is far too vulnerable to manipulation to be reliably used in future elections. Independent reports from the office of U.S. Rep. John Conyers, D-MI, the Government Accountability Office, Blackboxvoting.com and numerous other agencies, the media and public interest organizations clearly indicate that thousands of the voting machines now operating in the U.S. can easily be hacked or even accidentally disenfranchise millions of Americans by the time their ballots are to be counted. This cannot continue.

The proliferation of ballot initiatives in a number of states might make paper ballots seem unacceptably complex. But advances have been made, particularly in Switzerland, in the use of multiple-part, variously colored ballot components that make both casting and counting votes far clearer and simpler than is widely believed possible in the United States. The universal adoption of such ballots would go a long way to guaranteeing a fair system of casting and tallying the votes in this country.

11) PAPER BALLOTS SHOULD BE UNIFORMLY DESIGNED THROUGHOUT EACH STATE ON STATE-WIDE ISSUES. Obviously there will be variations within counties, cities and townships on issues pertaining to those locales. But in all events, the form of the ballot should be published and publicized to the greatest extent possible no later than 30 days before the vote, so that the citizenry can properly prepare and know what to expect once in the voting booth.

12) WHEN ELECTRONIC VOTING MACHINES ARE DEPLOYED, THEIR USE MUST BE SUBJECT TO STRICT PUBLIC MONITORING AND CONTROL AND PAPER RECEIPTS MUST BE PROVIDED. While we advocate the use of paper ballots, we understand it is highly likely electronic voting machines will be in use in this country for some time to come. There must be no electronic voting machines used that do not supply the voter with a viewable paper ballot of record. Paper receipts must also be simultaneously deposited in lockboxes to which only non-partisan independent monitors can have access. All software code on all voting machines must be held in escrow by both the state and by a nonpartisan election commission. All proprietary claims by electronic voting machine manufacturers and programmers must be declared null and void before such hardware or code can be deployed. There can be no public elections conducted on privately owned machines, with secret proprietary software or using private technical staff.

13) AUDIT TRAIL AND VERIFICATION PROCEDURES FOR ELECTRONIC VOTING MACHINES MUST BE REGULATED BY FEDERAL LAW. Electronic voting machines, where used, must

have verifiable audit trails that are written into federal law and these standards must be applied nationwide. Currently, federal election law is based on a paper-voting system. This lapse in federal regulation has enabled many of the problems associated with electronic voting to continue. Federal laws must also establish procedures for handling computer memory cards and other related election records, and provide for archiving records, including paper backup, that can be audited by the public, press and campaigns.

14) PUBLIC OFFICIALS, NOT PRIVATE CONTRACTORS, MUST CONDUCT THE VOTE AND VOTE COUNT. Elections are a public activity, a public responsibility and must not be privatized. During the 2004 election and recount, numerous Ohio Boards of Election granted private contractors unfettered and unsupervised access to key central vote-counting computers. In contrast, when citizens or members of the media sought to examine ballots and other election records to verify the vote, many Boards of Election would not allow the public or its representatives to touch the actual ballots or poll books. Public officials must conduct elections, not hire private contractors to execute this duty. Privatization of elections clearly cannot be tolerated in a democracy.

15) THE ELECTRONIC VOTE COUNT PROCESS, SHOULD IT STAY WITH US IN UPCOMING ELECTIONS, MUST BE TOTALLY OPEN TO ALL INTERESTED PUBLIC MONITORS. This openness must include the right to openly observe all vote counts, and access to voting software to guard against programming errors or vote-count fraud. Voting machines must be treated with the same scrutiny as slot machines, or bank ATMs, both of which are regulated.

16) WHISTLE-BLOWER PROTECTIONS MUST BE EXTENDED TO ELECTION OFFICIALS. In at least two known instances in relation to the 2004 election, county election board employees who reported questionable tampering with voting machines were either forced to resign or fired outright. This is unacceptable in any open society. All voting board members and employees must be protected by whistleblower laws that will encourage them to report any possible violations they might witness.

17) LAWS AGAINST VOTER HARASSMENT MUST BE ZEALOUSLY ENFORCED. Targeting of voters and potential voters by groups such as the "Texas Strike Force," that reportedly called Ohio ex-felons and told them they would suffer consequences if they attempted to vote, and by individuals who drove potential voters away from Ohio polls at closing time, is illegal and must not be allowed to occur again. Federal voter rights legislation is clear: such actions are illegal, and the laws against them must be enforced.

18) THE PRACTICE OF "CAGING" IS ALSO ILLEGAL AND MUST BE STOPPED. In Ohio 2004 and possibly elsewhere, groups filled out paperwork for potential voters that led them to believe they were registered, then apparently discarded it, leaving citizens unregistered. Also, there are documented instances where people impersonating election officials picked up absentee ballots and never delivered them to the Board of Elections. These tactics are clearly illegal, but went unpunished in Ohio. Only stringent, forceful application of the law can end such practices.

19) THE PRACTICE OF KNOWINGLY SPREADING FALSE INFORMATION, BOTH BY OFFICIALS AND BY PARTISAN SABOTEURS, IS ALSO ILLEGAL AND MUST BE STOPPED. In Ohio 2004 the web site of the Secretary of State J. Kenneth Blackwell carried serious misinformation on the location of voting places. Unknown groups also spread fliers and made phone calls misdirecting potential voters about both time and places for voting. Such illegal activities are extremely serious offenses, and must not be tolerated in future elections, with harsh penalties for those who violate these laws.

20) ALL VOTER INFORMATION MUST BE MADE PUBLIC – WITHOUT CHANGES – 30 DAYS BEFORE AN ELECTION. In Ohio in 2004, the failure to finalize key categories of voter information caused needless delays at the polls and led to the disenfranchisement of tens of thousands of voters. Precinct locations, precinct voter rolls, and other key data must be finalized and made available 30 days before an election. Voters must also be notified if there is a change in their polling place location.

21) PROVISIONAL BALLOTING SHOULD BE ALLOWED ANYWHERE IN THE STATE IN WHICH A VOTER IS REGISTERED. Provisional balloting has been established to make it easier for voters who are confused about the location of their polling station, or who cannot get there on Election Day, to cast a vote that will eventually be counted. The federal Help America Vote Act of 2002 provided for this use of the provisional ballot. But in Ohio 2004, Secretary Blackwell severely restricted the use of provisional ballots, ruling they could only be accepted at a voter's own precinct. He also added frivolous requirements, such as the presentation of a birth date, without uniformly informing poll workers of the requirement. As a result, tens of thousands of provisional ballots were discarded in Ohio, disenfranchising those citizens who took the time to fill them out in good faith. Polls workers must be fully trained in their use and their submission should be minimized.

22) THE TIME IT TAKES TO VOTE MUST BE UNIFORMLY MINIMIZED AND CANNOT BE SUBJECT TO PARTISAN OR RACIAL MANIPULATION. Thousands of citizens in Ohio 2004 were denied the right to vote on a de facto basis due to shortages of both voting machines and paper ballots. As is well-known, it took thousands of citizens five hours and more to vote, and tens of thousands of people apparently failed to vote as a result of those lines. Furthermore, there were serious racial discrepancies involved with these problems, as at least one study and many first-person sworn statements indicate it took white voters far less time to vote than black voters. This is not acceptable in a democracy.

23) ABSENTEE BALLOTS SHOULD BE MADE AVAILABLE TO ALL VOTERS WHO REQUEST THEM – AND IN A TIMELY MANNER. This should be true regardless of circumstance, including whether or not they expect to be absent from the vicinity of their precinct on Election Day. This is true for senior citizens as well as college students. When absentee ballots are not available, as might occasionally happen, easily usable provisional balloting must be in place. The disenfranchisement of voters because their absentee ballots were not properly distributed is clearly unacceptable.

24) ABSENTEE BALLOTS MUST BE CLEARLY DESIGNED AND EASY TO USE. Absentee ballots distributed in Ohio 2004 were as confusing and difficult to discern, reminiscent of the

infamous butterfly ballots used in south Florida in 2000. There is no great problem devising a ballot that is clear and easy to use, and such design functions should be subject to non-partisan scrutiny and oversight.

Needless to say, absentee ballots should always contain the names of, and option of voting for, all legitimate candidates, as was not the case in Hamilton County, Ohio, in the 2004 election. They should not be sent out pre-punched for any particular candidate, as also happened in parts of Ohio in 2004, where Kerry's name was also left off the absentee ballot.

25) THE RIGHT OF STUDENTS ENROLLED AT OUT-OF-TOWN COLLEGES TO VOTE WITH ABSENTEE BALLOTS SHOULD NOT BE CHALLENGED. In Ohio 2004, the secretary of state, through the Franklin County (Columbus) Board of Elections, attempted to summon to a downtown arena thousands of students who had registered to receive absentee ballots. Fortunately, a court ruled that this was a clear infringement on the right of these students to vote, and the hearing was cancelled. It should never have been an issue in the first place. Students studying away from their home precincts have an obvious right to an absentee ballot, and such challenges to their right to vote should be explicitly disallowed in all codes of election administration. Students also have a right to register at their campus address if their intent is to reside in that community. Students should be allowed to vote with their recorded campus address being their residence.

26) THIRD PARTY PETITIONS SHOULD BE EVALUATED AND ACCEPTED OR DENIED WITHIN TWO WEEKS OF SUBMISSION. The right of third party candidates to appear on the ballot is part of our American heritage. Their petitions should be speedily evaluated, so that they may be allowed to begin their campaigns at the earliest possible moment. Otherwise, their right to wage a fair and fully competitive campaign is denied. A second reason for speedy decision-making on the validity of third-party petitions is to prevent unnecessary confusion arising from the eventual denial of such petitions. Specifically, in Ohio 2004 the unseemly delay on the part of the secretary of state in evaluating the petitions of the Nader-Camejo campaign resulted in serious ballot confusion. Because the secretary of state's office was slow in disallowing the Nader petitions, his name incorrectly appeared on a large number of Ohio ballots.

27) ALL CANDIDATES NAMES ON BALLOTS MUST BE VALID. It is not enough to post signs at polling stations saying certain candidates, whose names appear on a ballot, are not valid candidates. These names must not appear on the ballots in the first place. There is no reason why the petitions filed by would-be third party candidates cannot be fully evaluated in two weeks or less from the time they are filed - well in advance of Election Day. Ballots can and must be printed without erroneously listing candidates. Our tradition of fair elections demands it, both to guarantee the rights of the candidate to wage a competitive campaign, and to guarantee the rights of the voters not to be confronted with names on a ballot that might cause confusion that invalidates their vote.

28) ADVERTISING CAMPAIGNS ADMINISTERED BY ELECTION ADMINISTRATORS MUST CONTAIN ALL RELEVANT INFORMATION THAT MIGHT HELP THE CITIZENRY PROPERLY VOTE. In Ohio 2004, the secretary of state spent more than \$2 million in state funds on radio/TV advertising leading up to the November vote. But the ads omitted the critical fact that voters were allowed to cast their ballots at central board of election offices in each county. This fact was crucial for thousands of voters who stood in long lines at their precincts, unaware that they had another option. Omission of this information was not acceptable in a process legitimately designed to help all voters make sure their votes were properly counted.

29) THERE MUST NEVER BE A SHORTAGE OF BALLOTS OR VOTING MACHINES. For whatever reason they might occur, long lines at polling stations is an indication that voters are being disenfranchised. In Ohio in 2004, shortages of machines and ballots, confusing information or misinformation, elimination of precincts, the presence of partisan challengers, poorly trained poll workers, and a wide range of other problems resulted in very long lines and as many as 2 percent of the voting public failing to vote despite an intention to do so. This meant more than 110,000 Ohio voters were effectively disenfranchised in an election officially decided by less than 120,000 votes. This cannot stand in a true democracy. Where voting machines are predominant, there still must be paper ballots present to guard against problems. The Franklin County (Columbus) Board of Elections foresaw voting machine shortages in 2004, and requested that paper ballots be available as back-up, but were denied them by the secretary of state. This denial was in error. The presence of paper ballots and other precautions against long delays must be explicit in all election preparations in all future elections.

30) PUBLIC EDUCATION CAMPAIGNS RUN BY ELECTION OFFICIALS MUST INCLUDE ALL VOTING INFORMATION. In 2004, the secretary of state spent more than \$2 million in state funds on radio/TV advertising before the November vote. But the ads omitted the critical fact that voters were allowed to cast their ballots at central board of election offices in each county. This fact was crucial for thousands of voters, and its omission was not acceptable in a process legitimately designed to help all voters make sure their votes are properly counted.

31) VOTERS MUST BE ACCURATELY NOTIFIED OF THEIR POLLING PLACE BEFORE AN ELECTION. All voters must be notified 15 days before the election of the accurate location of their precinct/polling place. Similarly, elderly voters, handicapped voters and others needing assistance must be accommodated, including curbside voting at the precinct and by machines that are handicap accessible. Various federal laws, including the Americans with Disabilities Act, the so-called motor-voter laws and HAVA affirm the voting rights of disabled people.

32) LONGSTANDING NEIGHBORHOOD-BASED VOTING SHOULD BE PRESERVED. Centralizing voting stations by eliminating neighborhood precincts diminishes democracy by making access to the polls more difficult, and by making it easier to hack the vote counts in larger, more vulnerable voting centers. The number of neighborhood precincts should be

expanded, not contracted, and the use of large, impersonal central voting stations should be discouraged.

33) VOTING MACHINE ALLOCATIONS MUST BE MADE PUBLIC BEFORE ELECTION DAY. The long lines in Franklin County were a direct consequence of a shortage of voting machines. Steps to mitigate that problem could have been taken if the voting machine assignments were made public before the election. This information must be made available to party officials at least 30 days before an election.

34) ELECTION OFFICIALS SHOULD BE BARRED FROM ENACTING LAST-MINUTE RULE CHANGES. No election administrator, from the Secretary of State to a county board of election, may issue last-minute directives on any aspect of the election process fewer than 60 days before an election. Final poll worker training must occur within this window to review any new processes, procedures, etc., so there is not confusion, chaos and unequal treatment on Election Day.

35) BILINGUAL POLL WORKERS MUST BE PRESENT WHERE NEEDED. Clear mandates are already in place requiring that the staff at polling stations include bi-lingual workers who can communicate with potential voters who may not speak English. This was not enforced in many precincts in Ohio 2004, and resulted in the disenfranchisement of many citizens who wished to vote. This kind of disenfranchisement must not be allowed to happen again anywhere in the United States.

36) FEDERAL VOTING RIGHTS LAWS MUST BE ENFORCED IN STATES NOT CURRENTLY UNDER JUSTICE DEPARTMENT SCRUTINY. The federal Voting Rights Act subjects certain states to extra scrutiny to prevent racial discrimination in voting. Ohio was not one of those states. When clear and significant discrepancies are found between the voting conditions in urban, inner city areas and suburban/rural ones, federal enforcement and oversight must be triggered. This comprises a de facto violation of equal voting rights and must specifically be policed and prevented from happening in all future elections.

37) THE PUBLIC'S EXPERIENCE OF VOTING MUST BECOME PART OF THE PROCESS OF IMPROVING ELECTIONS. A series of hearings with citizens testifying under oath was held across Ohio by voting rights activists after the 2004 balloting. The hearings have proved essential to uncovering and documenting the true story of what happened in this election, and should become part of the legal process of monitoring and improving American elections in the future. Like exit polls, such hearings are a necessary check on the conduct of elections. They should be held as a matter of course no later than 10 days after any election, with the right to testify or present sworn statements guaranteed, with their testimony a part of the open public record.

38) POLL WORKER TRAINING MUST BE IMPROVED. Among the problems that surfaced in Ohio's cities was an inability among poll workers to reconcile the number of votes cast with the number of voters registered. This problem was experienced disproportionately in inner-city precincts, and contributed to the resignations of the director and board members of the Lucas County (Toledo) Board of Elections. Suffice it to say that the

ability of an election board to line up the number of voters signing the voting register with the number of votes counted is essential to a fair election. Part of the solution is better recruiting and training of poll workers. Typically, poll workers are senior citizens who may not be well-versed with the latest election law directives and electronic voting technology. Better recruiting and training is critical, because, if unaddressed, Ohio BOEs will turn to temporary hires and contractors working for voting machine manufacturers to fill these roles.

39) EXIT POLLS MUST BE PROTECTED AS A CRITICAL PART OF THE ELECTORAL PROCESS. Exit poll use in Ukraine, Mexico, the Congo, the Philippines and elsewhere has advanced the rise of democracy where it has previously been denied. In the midst of massive discrepancies between what the exit polls showed in Ohio and elsewhere in 2004 versus official results, it is clear that these polls must continue to be taken, and to be made public and transparent. Yet there are rumblings amongst some elected officials that steps should be taken to ban these exit polls. To do so would be to throw away an essential, irreplaceable monitor for what really happens in our electoral process. Such a ban would tell the world that the United States is not willing to provide for its own electoral process a safeguard that has become essential elsewhere throughout the world.

40) EXIT POLL DATA MUST BE MADE PUBLIC, NOT KEPT IN PRIVATE HANDS. Despite the crucial role they have played as a backdrop to official results in the 2004 election, the Edison/Mitofsky organization continues to keep secret the raw precinct data on which its polling was done. Conducting independent exit polls should be considered a public trust responsibility under laws (like broadcasting standards as administered by the FCC) and such data must be considered public property, open to all.

41) VOTE COUNT DISCREPANCIES REVEALED BY EXIT POLLS MUST BE ADDRESSED BEFORE ELECTION RESULTS CAN BE CERTIFIED. The 2004 exit polling showed a significant differential in the official presidential vote count versus the raw exit poll data. In Ohio, the greatest discrepancy between the official and exit poll results were among voters who said they had just voted for Bush, not Kerry. This suggested vote count fraud, but neither the national news media nor Ohio election officials investigated or clarified this critical discrepancy. This phenomenon deserves special attention in future elections.

42) EXIT POLLS MUST BE TREATED AS A CRUCIAL CHECK AND BALANCE ON OFFICIAL TALLIES. Thus exit polls must be treated as distinct and integral sets of data, entirely divorced from “corrections” made to account for official tallies. We raise this point because exit polls that were posted at 12:20 AM during the 2004 election night showed a clear and specific outcome for the presidential election. That outcome was at variance with the final official tally, which showed massive shifts from Kerry to Bush in 10 of 11 swing states, with Ohio, Iowa, Nevada and New Mexico all shifting from Kerry to Bush, giving Bush the presidency. Independent investigators have shown that the odds against such a shift occurring make it a virtual statistical impossibility. Along the way, the exit polls were “corrected” to confirm to the official tallies, thus compromising their integrity and raising skepticism about their accuracy and usefulness.

But exit polling has long since graduated from an art to a science. As mentioned, it has served as a critical check on elections in Ukraine, Mexico, the Philippines and elsewhere. In Germany exit polls are accurate to 0.1 percent. If made reliably independent, and freed from “corrections” to conform to official vote counts, there is no reason why they could not be equally accurate here. The clouds surrounding the outcome of the 2004 election make it more vital than ever that this powerful and important tool be readily available as a check on future American elections.

43) THE RECOUNT PROCESS MUST BE MADE OPEN AND TRANSPARENT TO THE PUBLIC. In Ohio 2004 the secretary of state reacted to public requests for a full and open recount with extreme hostility, and a formal attempt to level sanctions against the attorneys filing the request. Such behavior is incompatible with the spirit of democracy. Recounts must be timely, complete, and observable by the public, press and campaigns.

Since 2004, the Ohio legislature has passed legislation *outlawing* a public recount of statewide elections for federal office. This legislation is absolutely incompatible with any reasonable definition of democracy, and must be repealed and/or declared unconstitutional. It should not be necessary to state that there is no conceivable reason for any legislature in any democracy to deny the public a full and open recount of any election at any time. Why the Ohio legislature would pass such legislation is hard to comprehend, but it must not stand, in any form, or in any other federal, state or local book of statutes.

44) RECOUNTS MUST ALSO BE TIMELY, NOTWITHSTANDING NEW OHIO LAW TO THE CONTRARY. In 2004, the secretary of state used a series of legal loopholes to delay the beginning of a recount. He ultimately prolonged the delay to the point that it could not affect the selection of Ohio’s delegation to the Electoral College. Clearly, no outcome of any election can be definitively declared until there is a valid, fully certified recount.

45) ELECTION RECORDS MUST BE MADE PUBLIC, AS REQUIRED BY OHIO’S OPEN RECORD LAW. In addition to failing to secure the basic elements of the voting process, BOEs – at the behest of the secretary of state – illegally denied access to the poll books to independent inspectors after the election. The fact that Secretary Blackwell would violate the law (Ohio code 149.043) to keep these vital public documents away from public scrutiny, while at the same time failing to secure them in the lead-up to the election, is utterly unacceptable. All independent inspectors must have completely open access to all poll books on the part of independent inspectors after any election.

46) ELECTION RECORDS MUST BE MADE AVAILABLE IN A REASONABLE TIME AND AT A REASONABLE COST. Efforts to obtain 2004 election records varied widely from county to county in Ohio after the 2004 vote. Some jurisdictions offered to provide records for little more than the cost of postage, while others charged thousands of dollars. These records must be made available, as the law states, in a timely manner – including same-day inspection – and these standards must be uniformly applied across the state. The unlawful denial of such access should be met with full prosecution, as has not yet been done in Ohio.

47) ALL VOTES CAST IN ANY ELECTION MUST BE COUNTED. As of this writing, some 128,967 cast in the Ohio 2004 election remain uncounted. Among them are 93,873 “machine rejected” standard ballots that may not have gone properly tabulating machines and 35,094 are uncounted provisional ballots. Together they exceed George W. Bush’s official Ohio victory margin of 118,775 votes. It should be made illegal to leave any vote uncounted in any American election.

Those ballots in Ohio need to be counted and duly recorded immediately. Voter intent should be weighed without regard for the outcome of the vote. Even if that result does not affect the outcome and context of post-election politics, it must be counted regardless, if for no other reason than out of basic respect for the citizen who made the effort to cast it. Moreover, election records – such as ballots – must be preserved for at least a decade, not the 22 months now under Ohio law. That law should be repealed.

48) AMERICAN ELECTIONS MUST BE OPEN TO INTERNATIONAL OBSERVERS. Such observers are standard fixtures in elections all over the world. In places where blood is being shed to “establish democracy,” the denial of access to independent monitors would be inconceivable. But in 2004 they were banned by the Ohio secretary of state, who warned a group comprised partly of representatives from the United Nations that they would be arrested if they stepped within 100 feet of a polling station. Such conduct would be deemed a gross violation of human rights all over the world. It cannot be tolerated in Ohio. All future elections in this country must be open to certified international observers.

49) THE ELECTORAL COLLEGE SHOULD BE ABOLISHED. It was originally established to do two things: protect the rights of small states against large ones, and protect the ability of slave states to count their slaves for 3/5ths of a vote when electing a president. Neither rationale has stood the test of time. For far too long the means of counting presidential votes has resulted in the de facto disenfranchisement of millions of voters in states whose outcome seems a given. In 2004, just a dozen swing states were considered in play for both candidates. As a result, virtually all the campaigning went on in those states, to the detriment of the rest of the country. Presidents should be elected by a direct vote of the people.

If there is reason for a member of the House and Senate to challenge the seating of a delegation to the Electoral College, one that could (as was the case with Ohio in 2004) decide an entire election, then days or weeks, not hours, should be set aside for a full Congressional investigation of what really happened in the state or states in question. If the Electoral College remains, proportional allocation of electors to match the popular vote should be considered.

50) THE CONSTITUTIONAL AMENDMENT PROPOSED BY U.S. REP. JESSE JACKSON (D-IL) CONFIRMING THE RIGHT OF ALL AMERICAN CITIZENS TO VOTE MUST BE APPROVED. It is long since time that the right to vote be enshrined in the document by which our government is granted its legitimacy.

Bob Fitrakis, Harvey Wasserman and Steve Rosenfeld are co-authors of *What Happened in Ohio? A Documentary Record of Theft and Fraud in the 2004 Election*, published by the New Press, 2006. Order the book today via:

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