

# 2000, The Sequel

**In theory, the Help America Vote Act was Congress' attempt to prevent the catastrophes of the last election from happening again. In fact, it may have made things even worse.**

**BY JOSHUA KURLANTZICK**

SAM HEYWARD THOUGHT HE'D PAID HIS DEBT.

A tall, soft-spoken 45-year-old man from Tallahassee, Florida, Heyward was convicted in 1981 of a felony for buying furniture he knew was stolen. He spent a year in a prison work camp and then tried to rebuild his life. He got a steady job at a Tallahassee church that involved overseeing after-school programs for kids. And he tried to become a conscientious citizen: He got his voting rights restored in 1986—felons lose the right in most states—and cast ballots in nearly every subsequent election.

It was many years later that Heyward learned from Tallahassee City Commissioner Andrew Gillum that he, an African American, and others could be purged from Florida's voting rolls before the upcoming presidential election. Across Florida, the purge list included nearly 48,000 eligible voters who were supposed to be prevented from voting because they were felons who'd not had their civil rights restored by petitioning for them. Heyward was shocked. He used to proudly show friends his Florida voter-identification card. "This part of my life [the felony conviction] was over," Heyward said softly, staring at the ground. "Now I had to tell my pastor about it ... to open up this past time of my life."

Unusually, Heyward fought back. With the help of volunteer lawyers from People for the American Way, he tried to get a copy of the purge list to protest his inclusion and to warn other people. Some of the list's names had leaked out, and apparently thousands of others may have been wrongfully listed. Yet Florida's top election officials, appointed by Governor Jeb Bush, refused to publicly release a copy. "Of course, there's going to be people on there who are not really felons," a spokeswoman for Florida's secretary of state, who runs elections, told reporters.

Worse, the purge list appeared highly partisan. Of the nearly 48,000 people on it, roughly 22,000 were African Americans, who vote mainly Democratic, and only 61 were Hispanics, who in Florida vote overwhelmingly Republican, even though each group represents about 10 percent of the Florida population. As information about the list leaked out, a head of Florida's elections division quit his job, reportedly telling friends that he was feeling too much political pressure to purge voters before November. Nearly simultaneously, a Florida appeals court ruled that Jeb Bush's administration was doing little to help felons get their civil rights back, declining applications to 125,000.

Sound familiar? In the razor-thin 2000 race, nearly 58,000 Florida voters—mostly Democrats—were kept from the polls by just such a list. But the list Heyward's name appeared on was revealed only four months ago. And it's only a small indication of the massive problems looming over November's election. Since the 2000 fiasco, Congress and the White House promised to reform the nation's broken election system, preventing the kind of intimidation, vote stealing, and chaos that marred the Bush-Gore vote. But since 2000, Republicans have actually used election reforms to ensure that the 2004 vote may be more even partisan, more disenfranchising, and more problematic than 2000. And Democrats have only themselves to blame.

AFTER NOVEMBER 2000, IN WHICH ROUGHLY 4 MILLION votes went uncounted or were damaged, popular disgust forced national leaders to address the issue. To do so, Congress in 2001 and early 2002 sculpted legislation called the Help America Vote Act (HAVA). HAVA was to be essentially the first federal legislation mandating and supervising federal voting procedures, which previously had been left up to states.

But congressional Republicans apparently saw it as an opportunity to push through measures that would, in effect, make it harder for Democratic-leaning voters to vote. One of the biggest issues was IDs. One congressional source told *The American Prospect* that, in early 2002, Republicans in Congress essentially ensured that HAVA wouldn't pass unless Congress included a provision mandating that first-time voters would have to show an ID at the polls, even if they were already on the voter rolls. GOP leaders had been trying to pass such a law since 1979, says Lionel Leach of the NAACP's Voter Fund, because they know poor, first-time minority voters—who usually vote Democratic—often don't have IDs to show and are scared off by signs at the polls (illegally) asking them for many types of identification. "In areas like Passaic County [New Jersey], in Latino districts, the Saturday before the election, [voters] get notes saying they have to have ID, and police will escort you to the polls, striking fear into everyone," says Leach. (By comparison, middle- and upper-class whites, the GOP base, have less fear and fewer ID problems.) HAVA, while not legalizing such activities, has done nothing to discourage the practice.

Not only poor minorities are likely to be affected, though.

College students in certain states historically lean Democratic—and historically have been prevented from registering where their dorms are, a dubious ban at best. “A lot of local election boards are looking to disenfranchise students,” says Neil Rosenstein, an expert on young-adult voting at the New York Public Interest Research Group. “HAVA has opened up a window of new ways to disenfranchise students.” Because student voters are predominantly first-time voters, HAVA’s first-time voter-ID requirement could potentially be a weapon used by local election boards, which could tell poll workers not to accept a student ID as proof or to use the statute to make it hard for students to prove residence, which is illegal, Rosenstein says.

In addition to requiring IDs for first-time voters, HAVA had other GOP-friendly elements. It allowed states to develop purge lists of felons without requiring that they simultaneously develop lists of former felons—usually Democrats—who’d had their voting rights restored. (Such a list would make it harder for poll workers to turn them away.) It also set no federal guidelines of who should oversee elections, allowing states to retain biased election officials—like Katherine Harris.

Lastly, the law authorized states to upgrade old lever and punch-card voting machines, which had failed in 2000, by purchasing new touchscreen machines—without ensuring that the touchscreen equipment was secure or providing paper receipts that could be used in a re-count.

This was a disaster waiting to happen. A month after the law’s passage, Georgia debuted touchscreen voting in the November 2002 elections. In that contest, Democrat Max Cleland, who was leading the senatorial race until just before election day, lost to the Republican challenger, Saxby Chambliss, by 7 points. During the voting, many machines froze, and the memory cards from heavily Democratic Fulton County mysteriously disappeared amid machine failures; computer-science experts later found that machines made by Diebold Inc., such as those used in Georgia, lacked basic security measures. The machines left no paper trail, and it turned out that Diebold was run by executives who contributed lavishly to GOP campaigns. In the weeks before Cleland’s loss, a Diebold worker had visited Georgia and changed some of the software on the voting machines.

Similarly, in Florida’s 2002 gubernatorial race, touchscreen machines failed so often that many votes in Miami-Dade County simply weren’t counted. Overall, nearly 10 states had problems with touchscreen machines between 2002 and 2004.

In Congress, Representative Rush Holt and others became so concerned about the machines, among other potential problems, that they drafted an amendment to HAVA that would require touchscreen machines to have a paper record. Bob Ney, chairman of the House Administration

Committee, has not allowed Holt’s legislation, offered in May 2003, out of committee. Meanwhile, House and Senate Republicans have introduced “smokescreen” versions of Holt’s bill that contain similar provisions but don’t call for verifiable voting until 2006.

Unfortunately, the House and Senate Democratic leadership laid down for the GOP, both in the initial HAVA debates and over the Holt amendment, knowing that Democratic interest groups were pushing hard for reform. Only Senators Hillary Rodham Clinton and Charles Schumer of New York voted against HAVA. “The House Democrats just gave up on the ID requirement,” says one congressional source. And even after the touchscreen voting-machine disasters, says the congressional source, Representative Steny Hoyer and Senator Christopher Dodd “came out with guns blazing” to defend the



**St. Louis Blues:** A judge’s order prevented citizens in mostly black areas of St. Louis from voting.

compromised law they’d written. In March, Hoyer and Dodd sent a “Dear Colleague” letter to members of Congress rebutting criticisms of HAVA. “Having the Democrats on the Dear Colleague letter gave [the GOP] some cover,” admits another congressional source.

THERE ARE SOME GOOD ELEMENTS OF HAVA THAT MIGHT have helped more voters get to the polls. But high turnout usually benefits the Democrats, and when the Republicans took control over both houses of Congress in 2002, they set about making sure that these elements were stalled as long as possible.

Key among these is the Election Assistance Commission (EAC), a new federal organization that would disburse money to states to upgrade voting systems, issue guidelines, and hold hearings to help make voting as fair as possible. The commission was supposed to be set up within 120 days of HAVA’s passage, EAC Vice Chairwoman Gracia Hillman told the *Prospect*. The White House first contacted commission appointees five months after HAVA passed, and, Hillman says, then-Senate Majority Leader Trent Lott told EAC appointees that their approval process would go slowly. “We

didn't get appointed and started until December 2003," Hillman says. "All we did between then was read papers about our health insurance and benefits of the job. ... I wanted to touch base with other commissioners [before December 2003] but the White House asked us to hold off." In fact, the EAC didn't even have office space until April 2004. "The Bush administration was so slow in getting [the EAC] off the ground—I ask myself whether this was purposeful," says Representative Marcy Kaptur, a longtime advocate of election reform.

Worst of all, the GOP severely underbudgeted the EAC and broader election reform. While the EAC's proposed budget was \$10 million for 2004, Congress gave it only \$2 million. While HAVA proposed that overall election-reform efforts be given more than \$1 billion in 2004, President Bush asked Congress for less than half that amount.

Underfunded, unorganized, blocked at every turn, the EAC could not perform its role. Its commissioners admit that the group was unable to provide enough money to states or much guidance on upgrading voting machines, standardizing voter roles, making readable ballots, and ensuring the quality of poll workers and election officials. Instead, many states went ahead and bought touchscreen machines without first

youth voting issues at the Brennan Center for Justice at New York University. In fall 2002, University of New Hampshire students who went to the polls found literature there suggesting that voting locally could harm their financial aid, though in fact it could not. In November 2003, the district attorney in the area surrounding Prairie View A&M University, a historically black college in Texas, sent students at the school a letter saying that they didn't qualify to vote locally. The district attorney then threatened to prosecute students who tried to vote, a clear violation of civil-rights law. In the subsequent election, in March 2004, relatively few Prairie View students voted.

These problems are being encouraged from all sides. Though the EAC was supposed to receive at least \$3 million for programs to help young adults vote, the White House appropriated no money for these programs in fiscal year 2003. What's more, several of the most important swing states have instituted the most restrictive laws on identification for young voters. And poll workers will be less prepared to deal with identification issues than in 2000 because so many new laws have been passed. A recent study by the Brennan Center found that in New York state, election officials in only 18 of 45 counties understood voter-ID requirements.

## **HAVA did not create nonpartisan election monitors, so in Florida, elections are run by Jeb Bush appointees. In Michigan, the top election official is a Bush-Cheney operative.**

really testing them. "The commercial [touchscreen] companies were bearing down on county officials ... but they had no standards [from the EAC]," says Kaptur. "[Local] supervisors of elections felt like we were just islands out here," agrees Ion Sancho, supervisor of elections in Florida's Leon County, a region encompassing Tallahassee.

TODAY, THE WORST NIGHTMARES OF HAVA'S CRITICS SEEM to be coming true. To begin with, in many parts of the country, GOP election officials have quietly begun to use the new voter-ID provision to disenfranchise key voting blocs.

Luther Lowe is a senior at the College of William & Mary in Williamsburg, Virginia, and a Democrat who spent the summer of 2004 interning for West Virginia Senator Robert Byrd. In fall 2003, he decided to launch a campaign to register 3,000 William & Mary students. "Williamsburg had traditionally let students vote, as long as they didn't vote in high numbers," he says. The city's position was strengthened by the federal statute backing IDs for first-time voters. After Lowe launched his voter drive, Williamsburg sent out lengthy questionnaires asking students who attempted to register for personal information. While legally students should be allowed to vote where their dorms are, the city was using the questionnaires to intimidate them and prove they weren't residents. Based on the answers to those questionnaires, some William & Mary students were prohibited from voting.

Lowe's story is hardly unique. "In many states, including ... Michigan and New Hampshire, there are laws or procedures that prevent students from registering to vote in their college communities," says Jennifer Weiser, who focuses on

Native Americans and other minorities are falling victim as well. In South Dakota, Native Americans provided a crucial voting bloc two years ago for Democratic Senator Tim Johnson, who won a very tight race. Before 2002, South Dakota had no requirements for first-time voters to show ID at the polls. After HAVA, the state passed a relatively restrictive ID law; Native Americans don't have many forms of ID, so such an ID law is tougher on them than on other voters. In the state's elections this June, the *Prospect* has learned, at least 40 Native Americans were turned away from polls because they did not show a photo ID. "County commissioners were telling [poll workers] to ask for ID," says Bret Healy, executive director of Four Directions, a nonprofit group set up to help enfranchise Native Americans. And "at the Cheyenne River reservation, there were poll watchers hired by the GOP to challenge each person who didn't have ID."

South Dakota Secretary of State Chris Nelson has vowed to investigate, but so far has done nothing. Nelson is a Republican elected official; HAVA did not create nonpartisan election monitors, and neither has South Dakota. Similarly, in Florida, elections are run by Jeb Bush appointees; in Missouri, the top election official is also taking part in the Bush-Cheney campaign; in Michigan, the top election official is one of the state chairs for George W. Bush's re-election drive. These partisans are rewriting voter rolls, potentially purging eligible voters.

As for the touchscreen voting machines, several states have responded to problems by halting their purchase of them. In some states, the machines that remain are most

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likely to be used in poor, minority areas and there will be no paper trail to look at in the case of a recall. In fact, in Florida, the 15 counties where touchscreen voting will take place in November contain 54 percent of the state's registered black voters. Election experts agree that the most reliable solution would be for as many states as possible to use optical-scan machines. But the EAC doesn't have the resources to help implement these, so most jurisdictions not using touchscreens will be going back to old punch cards and levers, especially in poor minority areas with less money to purchase optical scans. Like touchscreen voting machines, these don't leave a paper trail and they break down far more often than other machines.

Defenders of HAVA claim that if voters are worried about the safety of machines, or are turned away from the polling station, they can cast what's known as a "provisional vote." A provisional vote is a basic paper ballot filled out at the polling station. Yet HAVA offers no national guidelines for counting these provisional votes, and each state counts them differently. Shockingly, the *Prospect* has learned, some states simply don't count provisional ballots at all.

Purges also may be more common than in the 2002, 2003, and 2004 state races. Forty-one states have had to put off their 2004 deadline for creating centralized, computerized voter databases until 2006. "This raises the possibility that many voters will encounter the same obstacles as in 2000, such as being erroneously purged from registration lists," the U.S. Commission on Civil Rights recently reported. In fact, a recent study by Scripps Howard News Service found that many of the states with the worst-maintained voter lists are also the key 2004 battleground states: Pennsylvania, Missouri, and Wisconsin, among others.

THE KERRY-EDWARDS CAMPAIGN, THE DEMOCRATIC NATIONAL Committee (DNC), and a host of nonpartisan advocacy groups are desperately trying to prevent disaster. John Kerry's campaign has formed what the candidate calls a large "SWAT team" of lawyers designed to anticipate disenfranchisement before November. In Florida, the effort, headed by Miami attorney Steve Zack, will include at least 75 lawyers donating their time. In contrast to 2000, the Kerry legal team will be directly linked to the campaign, rather than filtered through state Democratic parties and the DNC. Backing the lawyers will be poll monitors and other aides, a team that will number in the thousands. "[T]here's a much more organized team on the ground for election day," says Mitch Cesar, chairman of the Broward County branch of the Florida Democratic Party. (The Bush-Cheney campaign reportedly will deploy a similarly large team of lawyers in key states.) Most important, says one source involved in the Kerry legal effort, the 2004 team will be organized to contest problems on election day rather than waiting until after the vote and



**Card Carrier:** Senators Bob Graham and Hillary Clinton have made efforts to improve HAVA.

then being lost in the post-election period.

Nonpartisan civil-rights and voting groups have launched similar efforts. Eliot Minberg, legal director of People for the American Way, says the organization will have people on the ground on election day in nine battleground states with large minority populations, including Florida, Pennsylvania, and Missouri. They will open field offices staffed with attorneys ready to contact local election officials with challenges, and the organization will also be operating an "Election Protection" hotline for people to call with reports of potential disenfranchisement. The group will have smaller presences—distributing voting-rights information and hotline numbers—in 21 other states. Leach says the NAACP and similar groups are also using massive networks of volunteers to inform people about the new voting provisions before November and to staff hotlines for voters to call on election day.

Still, these are stopgap measures. Even sources within the Kerry campaign concede that more could be done. "We are doing a fairly good job of anticipating 2004 election day, but the task is so large that we will be challenged to do well all that we need," says one source within the campaign's legal effort.

Unfortunately, all the efforts they can cook up may not be enough to fight a system that's stacked against the Democrats in Florida and other states where Republicans control the legislatures, and election administrators say that their own power remains limited. Before 2000, for instance, the Florida secretary of state and top members of the Division of Elections were elected; after *Bush v. Gore*, a bipartisan Florida task force recommended that the governor make state and county election supervisors nonpartisan. Jeb Bush rejected the recommendation, and shortly afterward the Republican-controlled Florida Legislature made all top election officials appointees of the governor. "We have no leverage—the secretary of state is toeing the Republican line," says Cesar. Again. ■

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