

Discard pile: Not every vote is counted

by [Meg Murphy-Sweeney](#) in the [November 15, 2005](#) issue

Forty-some years ago, chances were you knew it if you were being denied the right to vote. Perhaps, like Mississippi civil rights leader Fannie Lou Hamer, you climbed those courthouse steps, taking your life and livelihood in your hands, then failed to interpret the Constitution to the registrar's satisfaction.

Nowadays your registration can be denied and you may never know it. This may be more likely to happen if you're black, but it can happen to anyone, anywhere. Perhaps you filled out your voter's registration card and turned it in months ahead of the election, but when you go to your polling place on election day, you learn that your name is not on the election judge's list. You can still vote provisionally, so you do, fully expecting that your ballot will be counted. But it may not be.

In the 2000 and 2004 presidential elections, hundreds of thousands of new registrations were never processed or were wrongly rejected, and many voters were improperly purged from voting rolls. Demos, a public-policy organization based in New York City, reports that upwards of 3 million people were disfranchised this way in 2000. It estimates that at least a half-million votes were denied in 2004 by state rejection of provisional ballots alone.

Probably the foremost reason voters are disfranchised is staff error: elections officials can lose registration forms or incorrectly enter voters' addresses, for example. An investigative committee assembled after the 2004 presidential election by Representative John Conyers (D., Mich.), ranking Democrat on the House Judiciary Committee, learned that the Greater Cleveland Voter Registration Coalition tracked 10,000 registrations it had submitted before the election and found that 3.5 percent were processed incorrectly or not at all. If all new registrations in Cuyahoga County were subject to the same rate of error, 10,000 people were disfranchised in that county by worker error alone.

Registrations can also be rejected for petty reasons, as Manhattan Community College political science professor Ronald Hayduk reports in *Gatekeepers to the Franchise*, a study of election administration in New York released in June. Sometimes elections officials apply a strict, rather than a substantial, standard of compliance. For example, elections officials in Florida, Iowa and other states rejected registrations in 2004 if applicants signed an attestation that they were citizens but failed to check a box indicating the same.

In Ohio in 2004 Secretary of State Kenneth Blackwell attempted to disqualify all registrations that were not submitted on 80-pound paper stock. That's what the law required, because at one time normal-weight paper could be mangled by the machines the board of elections used to process registrations. But in 2004 registration forms could be downloaded from the Web, and people were printing them on normal-weight paper, filling them out and turning them in. Even the forms available from Blackwell's own office weren't heavy enough. Although the 80-pound-paper rule "was rescinded after intense criticism and pressure," Hayduk reports, "no one knows for sure what happened to the applications submitted that did not meet the specifications while the rule was in effect."

The Help America Vote Act, passed in 2002, requires that a voter whose name does not appear on the rolls on election day be given a provisional ballot. After the election, this provisional vote is checked against voter registration files, and if the individual is determined to have been validly registered, the vote is to be counted. But this often creates only the illusion of voting. Elections officials can apply strict compliance standards to provisional ballots just as they can to the original registration forms.

The Conyers committee found that in Ohio's Cuyahoga County provisional ballots were discarded—contrary to published verification procedures—if the voter's date of birth did not appear on the yellow packet holding the ballot. At multiprecinct polling sites, poll workers sometimes direct provisional voters to the machines for the wrong precinct. Ohio's Blackwell ordered that provisional ballots cast in the wrong precinct be discarded in 2004, even if voters cast them at the correct polling place, as nearly 500 disfranchised voters did in Hamilton County.

Many of the 1.5 million provisional ballots cast in 2004 were disqualified on the basis of the same overly restrictive rules that led to rejection of the registrations in the first place. It's no wonder some voting rights advocates call them placebo ballots.

Making information about registration status and polling sites available online is one solution to administrative disfranchisement. Election-day registration is another—and the six states that allow it have some of the highest voter turnout rates in the nation.

Administrative disfranchisement is not the only way people are losing their right to vote. Steven Carbó, of the democracy program at Demos, contends that the most pernicious challenge to voting rights is intentional, illegal suppression, such as direct intimidation of minority voters and distribution of incorrect information about polling places. Voting machine problems abound. Identification requirements are changing in many states, and enabling legislation, in Indiana for example, does not always require that voters be notified of the changes.

Voting rights advocates do have the enforcement provisions of Section 5 of the 1965 Voting Rights Act in their favor in certain jurisdictions. According to the NAACP's Legal Defense Fund, Section 5 "prevents any change in voting procedures or standards that would diminish the position of minority voters in certain states and counties that have well-established histories of voting discrimination." With these important provisions, advocates can stop discriminatory provisions before they take effect, instead of waiting until after the fact.

Section 5 has its limits, however. It has no bearing on voting-rules changes that are deemed race-neutral, and it applies primarily in jurisdictions where voting discrimination was widespread before 1965—mostly in the South. And Section 5 enforcement is increasingly at risk, Carbó contends, as the Justice Department replaces career attorneys with lawyers from the conservative Federalist Society who may not be sympathetic to discrimination cases. Congress must decide whether to keep Section 5 when it comes up for renewal in 2007. Voting rights advocates would like to see its coverage expanded to new jurisdictions.

Last February senators Hillary Clinton (D., N.Y.) and Barbara Boxer (D., Calif.) unveiled a comprehensive bill that reads like a point-by-point response to the problems Hayduk and the Conyers committee have exposed. The Count Every Vote Act provides for "a voter verified paper ballot for every vote cast in electronic voting machines, . . . mandates that this ballot be the official ballot for purposes of a recount" and "sets a uniform standard for provisional ballots." It "restricts the ability of . . . owners and senior managers of voting manufacturers to engage in certain kinds of political activity," and it "makes it a federal crime to commit deceptive

practices, such as sending flyers into minority neighborhoods telling voters the wrong voting date.” Perhaps most important for the prevention of administrative disfranchisement, it requires states to allow election-day registration. Voting rights advocates are now seeking congressional cosponsors for the Count Every Vote Act.

Meanwhile, efforts at reform have been complicated by the recommendations of the National Commission on Federal Election Reform, also known as the Carter-Baker Commission. The panel has recommended that voters nationwide be required to obtain a photo ID card. Senator Barack Obama (D., Ill.), joined by 19 of his colleagues, on September 20 introduced a Senate resolution opposing this requirement, stating that there is no evidence that ID requirements would prevent fraudulent voting—rare in any case—and that most people who lack ID are “minorities, new United States citizens, the indigent, the elderly, or the disabled.”

Although former president Jimmy Carter, who cochaired the commission with former secretary of state James Baker, contends that the ID recommendation includes safeguards and assertive measures to help people register, voting rights advocates remain skeptical. Like Obama, Demos’s Miles Rapoport wonders what will happen to people whose personal records were lost in the hurricanes. And like Representative Conyers, Rapoport thinks the commission did not do enough research. The result, Rapoport contends, “is a report based on anecdote and supposition, rather than rigorous analysis of real-world facts.” Conyers, whose committee uncovered thousands of instances of disfranchisement in Ohio, is appalled that the remedy for the nation’s election problems “cleverly repeated like a broken record” during the Carter-Baker hearings was: “photo ID, photo ID, photo ID.”

Forty years ago, the violent assault on the peaceful Selma-to-Montgomery march for voting rights was captured on television, bringing the outrage of disfranchisement into Americans’ living rooms. What will it take now to ensure that every eligible citizen can vote and that every vote will be counted?