

# **A Report on the Forum on Election Reform**

April 2, 2005  
At LeMoyne-Owen College

## ***Sponsored by***

*The Mid South Peace and Justice Center  
The League of Women Voters  
The April 4<sup>th</sup> Foundation  
The Memphis Lawyers' Chapter of the Federalist Society  
Midsouth Democrats in Action  
The National Institute for Law and Equity*

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## **About the Forum on Election Reform**

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The goal of the forum was to bring legislators, election commissioners and the public together to discuss voting issues and possible election-related reforms. This report synthesizes the information that came out of this forum. It is hoped by all coalition partners that legislators and election officials will use this report to not only keep in touch with various perspectives on the discussed election issues, but to guide future decisions regarding the relevant election-related topics.

The forum was a bi-partisan project of the Mid-South Peace and Justice Center's Democracy Project Committee, a coalition formed in the wake of the November 2, 2004 presidential election. The coalition included both organizations and individuals with interests in voter registration, education and reform. It came together to creatively address some of the problems and challenges its members faced in the process of registering, educating and protecting voters.

The forum was divided into four panels on different voting issues. They covered *Voter Enfranchisement*, *Methods of Election*, *Felon Disenfranchisement*, and *Voting Machines*. The forum ended with a Wrap Up Session to summarize the panel discussions and get feedback and additional comments from the public.

“The Issue” sections are meant to describe why the topic was included in the forum and give a little bit of background information or description to help make the subject more clear. All other sections act as a summary of the discussion that happened on each panel. Nothing is verbatim, but the ideas in these sections come directly from the panelists and have been condensed and arranged in order to make the fundamental points brought out in each discussion easily understood.

## **Panel Outline**

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### **Panel 1: Voter Enfranchisement:**

This session dealt with some of the problems that arose in the election process for the last presidential election. Reforms covered:

*Communication:*

--*Online Registration and Online Database Accessibility*

--*Laptops for every precinct and a CD ROM*

--*Poll worker training*

*Voting Process:*

--*"Vote Centers" and Extended Voting Period*

--*"No Excuse" Absentee Voting*

### **Panel 2: Methods of Election:**

This session discussed proportional representation as opposed to the current winner-take-all system. It looked at alternative methods of counting ballots and allocating votes.

Alternatives covered:

--*Instant Runoff Voting*

--*Cumulative Voting*

--*Preference Voting*

--*Proportional Allocation of Presidential Electors*

### **Panel 3: Felon Disenfranchisement:**

This session addressed the issues of restoring a citizen's right to vote. It looked at pending bills currently in the legislature and discussed the ramifications of each. Reforms covered:

--*Petition For Restoration vs. Automatic Restoration*

--*Unifying all requirements regardless of conviction timeframe*

### **Panel 4: Voting Machines:**

Shelby County is planning to update all its voting machines by 2006. This session discussed the pros and cons of the machines the county is considering for purchase.

Issues covered:

--*Optical Scan vs. DRE*

--*Accessibility*

--*Computer security*

--*Cost*

--*Paper trail*

--*Statewide Uniformity*

## **Panelists and Moderators**

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### **Panel 1: Voter Enfranchisement**

*Moderator: Steve Mulroy, University of Memphis Law School*

Panelists: James Johnson, Administrator of Elections  
O.C. Pleasant, Election Commissioner  
Janelle Treibitz, Mid-South Peace and Justice Center

### **Panel 2: Methods of Election**

*Moderator: Tomeka Hart, Memphis Board of Education*

Panelists: Steve Mulroy, University of Memphis Law School  
Rich Holden, Election Commissioner  
Rep. Beverly Marrero, TN State House of Representatives (D)

### **Panel 3: Felon Disenfranchisement**

*Moderator: Jackson Baker, Memphis Flyer*

Panelists: Rep. Tre' Hargett, TN State House of Representatives (R)  
Judge J.C. McLin, Court of Criminal Appeals  
John Ryder, Former Chairman of the Shelby County Republican Party  
Rep. Joe Towns, TN State House of Representatives (D)

### **Panel 4: Voting Machines**

*Moderator: Janice Banks, Consultant, Small Planet Works, Inc.*

Panelists: Dr. Max Garzon, Professor, University of Memphis  
James Johnson, Administrator of Elections  
Rich Holden, Election Commissioner  
Myra Stiles, Former Election Commissioner

## **Panel One: Voter Enfranchisement**

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*Moderator: Steve Mulroy, University of Memphis Law School*

*Panelists: James Johnson, Administrator of Elections*

*O.C. Pleasant, Election Commissioner*

*Janelle Treibitz, Mid-South Peace and Justice Center*

### **The Issue:**

There were many challenges that voters faced in trying to get to the polls. The following are some of the major problems encountered:

\_ Voters who did not get their registration cards on time for various reasons (cards were turned in too late for the election commission to process) thought they couldn't vote because they didn't have their cards; poll workers were challenging voters who didn't have their cards; people who didn't have their cards didn't know where they were supposed to vote

\_ The ability to communicate with the Election Commission was very difficult because precincts could not get through on the phone to the Election Commission. Poll workers were not getting their questions answered, and many voters were either turned away or given a provisional ballot not knowing where their correct precinct was. Poll workers reported waiting 45 minutes-1 hour on hold trying to get through to the Election Commission. The Mid-South Peace & Justice Center (MSPJC) and the NAACP became alternative information centers for many precincts. Precincts would call the MSPJC or NAACP to have them look up correct precincts for the voters since they had no other way to find out that information.

\_ Many poll workers were not knowledgeable about the workings of provisional ballots (they didn't know how to use them or what the rules were; people were given provisional ballots when they shouldn't have been given them; or people were allowed to vote when they should have been given provisional ballots)

### **Possible Reforms:**

#### Vote Centers

There is legislation being considered in the 104<sup>th</sup> General Assembly that would allow counties to choose consolidated "vote centers" to replace the current precinct system. The "vote centers" concept is basically an extended version of the Early Voting process. The bill is HB1117/SB1635. Summarized, this bill would:

...Authorize county election commissions to combine precincts or polling places or establish one or more "voting centers" subject to the following: (1) Voting centers and precinct polling places could not be used in the same election; (2) Use of voting centers would be mandatory in municipal elections that are not held in conjunction with a county, state, or federal election; (3) Any voting center would have to have a secure electronic connection to the county election commission's electronic voter registration information system; (4) At least four out of five elections commissioners must approve the voting center program before it could be used in a county; (5) A minimum of one voting center for every 25,000 registered voters would be

required; and (6) The voting period at any voting center would start 20 days before election day and the voting center would be closed on any intervening state holidays and Sundays. Also, the election commission would have to be open at least three consecutive hours per day on voting days during the 20-day period

If this legislation passed and Shelby County were to consider adopting it, instead of having 283 precincts, Election Commissioner O.C. Pleasant said that it would be apt to aim for 3 vote centers for every district. This would equal 51 total vote centers (as a point of comparison, there were 19 Early Voting sites for the 2004 presidential election). During the 20 day voting period, a voter could go to any vote center in Shelby County to cast his/her ballot.

Elections Administrator James Johnson posited these figures:

Elections costs for a countywide election are about \$820,000. Election day polling officials don't make much money while early voting poll workers (and thus theoretically vote center workers) make \$9.51-\$14.00 per hour. The county pays \$113,000 to \$170,000 for Early Voting election workers' wages (for 19 sites), plus \$200,000 for the Election Day poll workers' wages (for 283 sites). It is estimated that to initiate the use of vote centers it would be \$900,000 to \$1 million in start-up costs.

#### *Arguments For Vote Centers:*

\_ It is very convenient for the voter and would reduce many of the problems faced in major elections while saving money in the long run.

*Response: Administrator James Johnson mentioned that when you look at reducing costs by having vote centers, it appears that off the top it will save money because you're dealing with fewer voting sites, but when you look at it over the 20 days of voting, the savings are not as clear.*

\_ The County would have an easier and cheaper time obtaining state of the art voting machines since it would not have to buy as many if it switched to vote centers.

\_ A case study of Larimer County, Colorado is a positive example of vote centers working well: For 200,000 voters they had 31 "super precincts" (vote centers), and had a 93% voter turnout. The county saved money by using the super precincts, but it is not clear how much.

*Response: It is hard to compare across counties since there are so many different factors that go into the smooth running of an election. Though it may have worked well in Larimer County that is no guarantee it would work the same way in Shelby County.*

#### *Arguments Against Vote Centers:*

\_ Many people in Memphis do not have reliable transportation and might find it harder to vote with fewer voting sites.

*Response: "No Excuse" Absentee Voting might be a solution to take people without transportation into consideration without having to scrap the entire vote centers idea.*

\_ The Republican Party has more money than the Democratic Party and might have an unfair advantage in elections by being able to pay people to hand out candidate leaflets at more vote centers than the Democrats.

*Response: Democrats as well as Republicans will have to prioritize which districts to concentrate their efforts in. Obviously Democrats would not hire people to leaflet in Republican districts, and they can estimate in which vote centers their constituents are most likely to vote. Commissioner O.C. Pleasant added that With Early Voting candidates have to reformulate their campaign strategies anyway with 43% of Shelby County voting early. Literature needs to go out before Election Day now, so vote centers will have little difference since Early Voting is already changing the face of campaigns.*

### New Phone System

Election Commissioner O.C. Pleasant agreed that there were issues with the ability of voters to communicate with the election commission office on election day and put forth this reform:

The Election Commission needs a communication system that is independent of the county government so that when a call comes through it goes directly to the election commission (a stand-alone phone system that is not tied to the Shelby County government phone system).

Elections Administrator James Johnson added that improvements in communication are crucial. The Election Commission wants to allocate funds from the budget to develop in independent phone system. The voter would be able to call up the phone system to find out if the voter is or is not registered. The exact cost of this system is not determined, but would probably be in excess of \$100,000. This system would be feasible to allow precinct workers to check registration status of voters that arrive at precincts and do not know if they are registered to vote.

### *Arguments For/Against Phone System:*

There was no argument against having this system. The Election Commission believes having technology that would make voting easier is important. The only issue, as Commissioner Pleasant pointed out, is the matter of funding. The Election Commission has prioritized what it would like to see in the way of reforms, but it is up to the County Commission to decide what it would like to allocate funds to.

### Online Voter Access

Currently the Election Commission has a precinct locator available online that allows the voter to find out what precinct to vote in, but does not give access to the voter's registration status or information. The Election Commission would like to have an internet voter registration in place for the 2006 election.

### *Arguments For/Against Online Access:*

This is uncontroversial but is a matter of funding. The budget for implementing the phone system and online access is currently estimated at over \$200,000, but the state also has funding from HAVA (the Help America Vote Act) which may be available to fund both projects. Currently, Georgia, South Carolina, and Virginia have online systems that

enable voters to check their registration status online.

### **Comments/Questions from the Public:**

\_ All the way through the election we've been talking about election reform, but the people of my generation (20-somethings/young voters) see true election reform as making voting as accessible as going to the ATM machine or checking email. Where in your list of priorities would that type of reform fall?

*Response: That type of reform comes in phases. If you look at the majority of voters, they are not young people so the typical voter is of the traditional type. However, we must come to terms with the type of technology that is available. Using the phone or internet is a ways off. Those who make the decisions would not be comfortable because of fraud concerns.*

\_ Voting for people with disabilities is not very convenient. There are many serious problems just finding parking to visit the Election Commission office. And it has been discovered that not every polling precinct is accessible. If you have the vote centers they should be fully accessible to people with disabilities.

*Response: The Election Commission has worked with the Memphis Center for Independent Living to help ameliorate some of these issues. Please keep the Election Commission informed of any issues that arise.*

\_ Do you find that having early voting improves some of the problems that come up with elections?

*Response: Early voting provides voters with the opportunity to vote for longer hours and various locations. It provides greater convenience for voters to participate. Election Day voting still has its problems. The thing about vote centers is that it is similar to an extended early voting situation; it provides the same convenience but there are additional concerns that you have to take into consideration. But when you have presidential elections, there are a lot of people who vote once every four years and there creates additional problems. We have to create new ways to deal with these.*

\_ What was the percentage of people that voted in the last election? I am concerned with whether or not we are getting our money's worth from early voting. We need to do something to encourage people to vote and I am not sure if early voting is the way to get this done.

*Response: 56.4% of all registered voters actually voted in Shelby County. 43% of the votes that were cast were cast during early voting, and that number is expected to rise.*

\_ Oregon has voting by mail, has TN given it any consideration?

*Response: Participation by mail yields a high turnout but there are other concerns. This type of question will have to be answered by state officials.*

## **Panel Two: Methods of Election**

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*Moderator: Tomeka Hart, Memphis Board of Education*

*Panelists: Steve Mulroy, University of Memphis Law School*

*Rich Holden, Election Commissioner*

*Rep. Beverly Marrero, TN State House of Representatives (D)*

### **The Issue:**

Instant Runoff Voting (IRV), Cumulative Voting, Preference Voting, and Proportional Allocation of Presidential Electors are alternatives to the traditional way we elect candidates. It is a different way to cast and count votes that allows for more minority representation. [“Minority” in this situation refers to when any party or group is underrepresented in any given area. So this could refer to a district with very few Republicans and many Democrats or very few Independents and many Green Party members.]

These are not very complicated ideas, but hearing of them for the first time may make them hard to understand. *If you want to look up more about any of these options, visit: [www.fairvote.org](http://www.fairvote.org)*

### **Possible Reforms:**

#### Instant Runoff Voting (IRV) and Preference Voting:

Instant Runoff Voting: IRV is used to elect a candidate to a single position (president, mayor, etc...). Instead of casting one vote for the person that you like, the ballot gives you the ability to rank the candidates according to preference (and you don't have to rank all of them). The vote counting does all of the voting at once. If one candidate has more than 50% of the votes, s/he will win. If there is not a candidate who gets a majority, the preferences of votes are redistributed until one candidate receives the majority of the votes.

Preference Voting is the same concept as IRV but works for multi-seat elections.

This method is used in San Francisco, in the Utah Republican Party for nominations, in Arkansas for military overseas voters, in Cambridge, MA and Burlington, VT for their city councils, and in Ireland for presidential elections.

#### *Arguments For IRV:*

\_ It eliminates the need for runoff elections, which would save counties tons of money. We're dealing with a state where we don't have much money so this may be a good option that will save the taxpayers a little money.

\_ The Center for Voting and Democracy is an advocate for this system.

\_ It leads to much more minority representation in districts whose minorities would usually be politically discounted. For those who would feel threatened by increased minority party representation: people who are not members of the two main parties really don't impact the election process much anyway. And if you did have one member of Congress that was a member of, for example, the Green Party, s/he wouldn't get bills passed.

*Arguments Against IRV:*

\_ It injects a lot of complexity in the process of vote counting.

*Response: Any computerized voting machine (which Shelby County will have by 2006) can easily be programmed to tally the votes very quickly. It would be no more complex for the machines than the current system.*

\_ This assumes that someone is going to get more than 50%. What if there is a write in candidate?

*Response: Write ins don't rank.*

Cumulative Voting

The intent of Cumulative voting is to allow you to express the intensity of your preferences. This allows each voter to cast as many votes as there are seats, but unlike winner-take-all systems, voters are not limited to giving only one vote to a candidate. Instead, they can put multiple votes on one or more candidates.

For example, if there are five seats in your county commission to fill, you could either give five votes to five different people or you could put all your votes to one candidate. Or give two votes to one candidate and three to another. You can split your votes any way you like.

This method is used in a number of jurisdictions in Texas, North Carolina, and Alabama.

*Arguments For Cumulative Voting:*

\_ It allows groups to not get completely shut out of the election process.

\_ In terms of turnout, the data has shown that all of these alternative systems of voting make races more competitive. Whenever a race is more competitive, there is increased voter turnout.

*Arguments Against Cumulative Voting:*

\_ This would lead to political strategy. It gives the parties far more power to run their own primaries. Parties would simply put up one candidate instead of putting up four or five so that they control the election.

\_ This would make the process more difficult and would maybe lead to less voter participation.

*Response: In the places this has been done, Steve Mulroy found no data indicating voters have been confused by the method. Since these races are more competitive, you're more likely to get a higher turnout.*

### Proportional Allocation of Presidential Electors

Rather than have the allocation of electoral votes from a particular state be winner take all, we could have it be proportional. This could be passed by the state, whereas abolishing the Electoral College altogether would require a constitutional amendment.

This is done in Maine and Nebraska, allocated by congressional districts.

#### *Arguments For Proportional Allocation:*

\_ The congressional districts are heavily gerrymandered, so a proportional congressional system may be better.

\_ The winner-take-all system doesn't take into consideration all votes. It doesn't allow people to feel like their vote counts.

#### *Arguments Against Proportional Allocation:*

\_ The whole point of the electoral college is to engage the states.

\_ If you go to a popular vote system, the campaigning will center around large systems.

*Response: It may be that parties would campaign in more populated areas, but it would also encourage parties to campaign in areas in which they normally wouldn't campaign. For example, Republicans would need to campaign in California, and Democrats would need to campaign in Texas.*

### **Comments/Questions from the Public:**

\_ How does Cumulative Voting benefit the minority in a polarized location? It may get the minority organized in the first round, but how would it work after that?

*Response: There is a formula that calculates how much of the vote you need to have on Election Day if you're trying to get elected. For an example: a racial minority is 1/6 or more of the population and up for election are positions for six seats (i.e. a city council). If the minority population votes cohesively, it can get at least one candidate into office.*

\_ As far as Cumulative Voting and campaign strategy, why wouldn't every candidate just say "vote for me 5 times"?

*Response: Every candidate would, but it doesn't mean that every voter would have to obey. Cumulative voting isn't as good as preference voting.*

\_ Are we having a problem with fair representation in Memphis that we would need IRV?

*Response: People involved in third parties would say so. They feel pressured to only vote for candidates of the two main parties in order for their vote to matter. But*

*systems like IRV allow for the growth of third parties. These systems allow for people to feel like their vote counts.*

*\_ A lot of people who represent minority parties can't get the party name on the ballot and are listed as independent. I heard there was an organization proposing a house bill about third parties.*

*Response: There is HB1776 that would allow an independent candidate to choose a party label that s/he could affix to the ballot as long as it's not a label that resembles one of the existing parties.*

## **Panel Three: Felon Disenfranchisement**

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*Moderator: Jackson Baker, Memphis Flyer*

*Panelists: Rep. Tre' Hargett, TN State House of Representatives (R)*

*Judge J.C. McLin, Court of Criminal Appeals*

*John Ryder, Former Chairman of the Shelby County Republican Party*

*Rep. Joe Towns, TN State House of Representatives (D)*

### **The Issue:**

Shelby County has one of the more complicated processes to restore voting rights to be found in this country. Currently, there are five procedures for restoring a person's voting rights. Each procedure depends on the timeframe in which you were convicted (for example, if you are a felon who was convicted between July 1, 1986 and June 30 1996, you would need to fill out a Certificate of Restoration, have it signed by the proper authority, and turn it into the Election Commission).

Many voter registration drives occurred in Memphis leading up to the 2004 presidential election. For most of these drives, volunteers told the people with felonies that they could not vote. The few drives that were educated about restoration procedures could offer little help other than giving felons a phone number to free legal services. One voter drive had its volunteers, when encountering someone with felonies, explain restoration procedures for the timeframe the person was convicted. However, the volunteers did not know what to tell felons if they were convicted more than once and spanned more than one procedural timeframe (which happened often).

Under the current procedural law (for those convicted after June 30, 1996; also applies to those convicted before January 15, 1973, and for those convicted between May 18, 1981 and June 30<sup>th</sup>, 1986), people with felonies have to petition the court to restore their citizenship rights and show proof of that restoration to the Election Commission in order to be eligible to register to vote. However, to petition the court one must pay court fees. Even if using free legal services, the court fees still stand. For people who have trouble getting jobs and an education with a felony on their records, paying court fees is often not an option.

It may be expected that volunteers did not know the restoration rules, but more surprising was the discovery that felons themselves had a slew of misinformation. Many thought that rights were automatically restored after a random number of years (some said 7, some said 20, etc), and many thought that rights could never be restored.

It was brought up during this panel discussion that judges have the responsibility of informing felons that their citizenship rights are being taken away and that they can be restored in certain situations. During the question/answer session after the panel had spoken, a young woman in the audience revealed that she had once been convicted of a felony and that no one had ever told her that she could get her rights back and once she was released, she received no information about getting her rights back. She had been attending college and trying to get a decent job, and hadn't known until this panel discussion that she was able to petition for her voting rights back.

## **Possible Reforms:**

There are four bills currently being considered in the 104<sup>th</sup> General Assembly dealing with the restoration of voting rights. There is much debate on whether felons should be allowed to automatically have their rights restored upon sentence completion or whether they should have to go through the process of requesting the restoration of their rights. In practical terms, this is translated into whether felons should have their rights automatically restored, whether they should have to petition the courts for restoration, or whether they should have to use a Certificate of Restoration.

Another relevant question is whether the state should mandate uniformity in its restoration procedures rather than keeping the 5 procedural timeframes that currently exist.

*All panelists for this discussion agreed that the process for restoring rights should be more consistent and that felons should be given information about rights restoration upon release.*

### Automatic Restoration

SB0056/HB1721 and HB0573 are both trying to allow for the automatic restoration of rights for felons convicted after July 1, 2005. Summarized, these bills would:

“[Grant] automatic restoration of citizenship rights to inmates convicted of infamous crimes on or after July 1, 2005, who complete at least one year of any period of probation, who are paroled, or who complete the full sentence.”

#### *Arguments For Automatic Restoration:*

\_ The existing law places an unnecessary burden on an average citizen. The fact that you have to establish good citizenship is not unreasonable, however not by doing it through the courts, as is required now. People can't do that financially and don't know how to do so legally.

\_ The people who are convicted are forever penalized for being a convicted felon, even once their sentence is over. This is exemplified by the complicated and difficult process they have to go through to restore their voting rights. Something needs to be done about the designation of “felon” because the label strips people of the possibility of being reintegrated back into society as productive citizens. If you are going to penalize someone forever, you may as well keep them in jail.

*Response: John Ryder said he doesn't find it troubling that someone who has been convicted of a felony should have to come before a court and ask specially to have citizenship rights restored and then make a showing that they have re-entered society as a citizen and are law abiding.*

\_ The law currently makes it very difficult to make the transition to becoming a full fledged citizen after the completion of the punishment. The courts mandate a sentence that is judged to be a fair repayment of debt to society, and once that sentence is

completed, the debt to society should be considered paid. Withholding voting rights is further punishment that is unfair and unwarranted.

\_ Judge McLin said that he is not sure that taking away voting rights is even constitutional, as the constitution says that voting rights can only be taken away by a jury and done by any other way probably isn't legal.

#### *Arguments Against Automatic Restoration*

\_ It is difficult to define when a debt to society has been paid. As we watch prisons become more and more crowded, we look for other ways that the debt to society can be repaid. Looking at the behavior that is going on in our community, it is hard to say where the cutoff should be regarding punishment.

*Response: All laws under consideration still permanently take the right to vote away from people who have committed murder, rape, treason or voter fraud. TN law says that you can be a convicted felon even if you don't serve more than one year in jail. So the people under discussion here are felons for less severe reasons.*

\_ If a person wants to have his/her rights to vote restored, it is a representation of good citizenship to go through some sort of process to get them restored. Automatic restoration prevents a person from making that first step of good citizenship.

\_ We must look at how broad any bill providing for the restoration of voting rights should be and the process that should be used. This pending legislation changes either the scope or the process of restoration of rights. The question in addressing legislation is what should be the scope and what should be the process.

#### Certificate of Restoration

SB1678/HB1722 is trying to allow convicted felons to restore their voting rights by obtaining a Certificate of Restoration that, after having it filled out and signed by the relevant authority, they would turn in to the Election Commission office to be eligible to register to vote. This bill would:

“...require restoration of citizenship rights for the following by way of a certificate of restoration: (1) Persons who have been granted final release from the penitentiary or supervision by the board of probation and parole to petition; (2) Persons who have been pardoned, unless the pardon contains special conditions on voting rights; or (3) Persons who served the maximum sentence for their crime, or the maximum sentence has expired. This bill would prohibit restoration of voting rights for persons convicted of first-degree murder, aggravated rape, treason, or voter fraud... This bill only applies to the restoration of voting rights for persons convicted of an infamous crime after May 18, 1981.”

The Certificate of Restoration is currently used for the procedure to restore voting rights if the person was convicted between July 1, 1986 and June 30, 1996.

#### *Arguments For Certificate of Restoration:*

\_ This bill still requires a show of good citizenship, but does it in a matter that is accessible to people of any economic status. This makes The existing law places an unnecessary burden on an average citizen. The fact that you have to establish good

citizenship is not unreasonable, however not by doing it through the courts, as is required now. People can't do that financially and don't know how to do so legally.

\_ The people who are convicted are forever penalized for being a convicted felon, even once their sentence is over. This is exemplified by the complicated and difficult process they have to go through to restore their voting rights. Something needs to be done about the designation of "felon" because the label strips people of the possibility of being reintegrated back into society as productive citizens. If you are going to penalize someone forever, you may as well keep them in jail.

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\_ We must look at how broad any bill providing for the restoration of voting rights should be and the process that should be used. This pending legislation changes either the scope or the process of restoration of rights. The question in addressing legislation is what should be the scope and what should be the process.

#### **Comments/Questions from the Public:**

\_ [This comment from Veronica Coleman-Davis of the National Institute for Law and Equity (NILE)]: All of us would want in a civil society to have our citizens reenter society if their debt to society is paid. NILE took on the project of researching the history of TN felon disenfranchisement laws. We found that the disenfranchisement laws came about after the Civil War when the Union was trying to prevent Confederate citizens from voting. The history is not embedded in an attempt to keep minorities from voting.

However, there is sufficient evidence to suggest that there is a disproportionate minority effect.

\_ Felons are allowed to run for office without having to restore their citizenship rights. They never lose the right to hold office, but are not able to cast a ballot in their own election process. Why single out taking away voting rights when you don't have to file a law suit to influence the political process but you do have to file one to have the right to vote?

*Response: The courts have essentially found that when one commits a felony he has forfeited certain rights of citizenship. We're not talking about all felonies, but limited felonies. The process for restoration should be made more consistent and if we're going to offer that right, the process should not be so confusing as to deter people from having their rights restored.*

\_ How do you feel about the exceptions for certain crimes? (Some felonies mandate the loss of voting rights permanently.)

*Response: Judge McLin responded that he doesn't see the difference between voter fraud and theft. He doesn't think voter fraud warrants the permanent loss of voting rights. But there has to be some permanent penalties paid for crimes such as murder and rape.*

\_ In Shelby County we get about 300 felons who restore their voting rights per year, out of a few thousand who become eligible.

## **Panel Four: Voting Machines**

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*Moderator: Janice Banks, Consultant, Small Planet Works, Inc.*

*Panelists: Dr. Max Garzon, Professor, University of Memphis*

*James Johnson, Administrator of Elections*

*Rich Holden, Election Commissioner*

*Myra Stiles, Former Election Commissioner*

### **The Issue:**

Shelby County faces the task of implementing new voting technology. The Election Commission will replace all of its voting machines by the 2006 election because our current machines are not capable of handling the 2006 election (which requires a much larger, more complicated ballot). The current machines would either have to be upgraded or replaced, and it costs the same to upgrade as to replace the machines. The money will have to be spent either way.

The Help America Vote Act (HAVA) will give TN money to update voting equipment. TN will use some of this money to give Shelby County one machine per precinct (there are 283 precincts). These machines are being given to ensure that every precinct has a voting machine that is accessible to people with disabilities.

The Election Commission is planning on going to various communities to show the voting machines that they are considering and to give demonstrations of these systems.

In the panel discussion, the following topics were covered regarding the machines: Characteristics, Cost, Certification, Security, and Paper Trails.

### Characteristics

There are basically two types of machines to choose from: Optical Scan and DRE (Directly Recorded Electronic). Optical Scan is a paper ballot that is scanned by an electronic system that does the counting. DRE is electronic. The new touchscreen machines used for early voting are DRE machines.

The machines that will be replaced are the early DRE machines. There were no voting machine standards in the 1980's when they were purchased. The rest of the country is now talking about purchasing the technology that we are upgrading.

Both Optiscan and DRE machines are equipped to be accessible to people with disabilities. This is part of the HAVA's mandate. Also, any voter that needs assistance in voting can get assistance. A member of each political party will go to the machine with the person requiring assistance and will read the choices to the voter and the voter will indicate to the poll workers who s/he would like to vote for.

## Cost

There are two advantages that DRE machines hold over Optiscan machines: First, Optiscan may not be able to handle the 2006 ballot, while DRE machines will have no trouble. Second, some of the suggested reforms discussed at this forum would only be able to be implemented with a DRE system. Vote centers and early voting both require a computerized system to be able to connect in with a main central database so that people are not able to vote twice. Also, implanting Instant Runoff, Preference or Cumulative Voting would require a computerized machine to tally the votes in a acceptable amount of time.

The capital request from the Shelby County Election Commission is \$4.9 million. The Election Commission hopes it won't cost that much, but that is what they've asked for. The basic DRE would cost between \$3,000 to \$3,500. The scan system is cheaper. Precinct scanners would cost between \$3,000 to \$4,000.

## Certification

The standards and certification process of voting machines is the responsibility of the state election commission. The state election commission requires that every voting machine sold in TN meets a basic certification process. It also views the machines in operation before it allows the machine to be used. The state election commission also meets with the machine manufacturers. TN will not certify any machine until it has been certified by the Independent Testing Authority (ITA) and until the state election commission has seen the machine successfully used in other elections.

There are different phases of certification. The Independent Testing Authority (ITA), certifies the voting machines through a complicated process. First, the manufacturer submits a package to the ITA and the ITA does a preliminary review and will issue a preliminary certification. Then the machine is submitted to testing which includes testing for malicious codes or "trojan horses". Once the machine is certified, the state election commission will decide if it is the type of certification that is appropriate in the state.

## Security

A national task force has been discussing voting machine issues and has concluded that the greatest percentage of errors is not because of the machines, but is because of the people. If we had the vote centers, there would be a lesser chance of error since there would be far fewer machines.

Shelby County has an outside auditing firm that does the auditing for elections. This makes for fair and unbiased auditors. Additionally, Shelby County machines are all independent units so that the problems you hear about do not apply to our machines. And every person running for office is able to be present at the auditing process.

## Paper Trail

Currently, Shelby County does not have an individual paper trail for each individual vote. All the machines have paper trails for each individual unit that uses the machine (they

compare the number of votes with the number of voters; there is no way to match up a particular vote with a particular voter) and then a cumulative paper trail for the entire precinct. The Election Commission auditors receive those receipts.

It is not clear how much adding a paper trail would cost because there is not a voting machine with a paper trail that is certified in this state. As of the forum date (April 2, 2005) 11 states have legislation that require voter verifiable paper trails and 22 states (including TN) have proposed legislation requiring paper trails.

Paper trails can take different forms. There is one machine that prints out a voter receipt that the voter can check and then put into a secure ballot box for auditing purposes. Another allows the voter to take a receipt home. Most of the machines with paper trails keep the paper behind glass so that the voter can check it but cannot take it out of the precinct. After the voter is satisfied, the paper is stored inside the machine.

#### *Arguments For Paper Trails:*

- \_ Paper trails give the voting public a sense of security.
- \_ The voter becomes part of the auditing process.
- \_ When the county is getting ready to spend millions of dollars for voting systems, the county should take into consideration adding voter verifiable paper trails. Or even just buying machines that have the capability of paper trails, though they may be added later. There are reports that paper trails can be added for as little as \$50 per machine.

#### *Arguments Against Paper Trails:*

- \_ Getting a paper trail is not that complicated, but making one for every vote is going to require a lot of paper. The states that have used voter verifiable receipts found that voters didn't want the receipt.
- \_ The start up costs are less, but the continuing costs are significantly more.
- \_ The Election Commission comes up with a vote accuracy rate for elections. It is never 100%, but it is always in the high 90's.
- \_ We have to deal with machines that are currently certified. It is not realistic to say that we'll end up in 2006 with a certified machine in place that has a voter verifiable paper trail system.

#### **Comments/Questions from the Public:**

- \_ Is it possible to get a machine so hack proof that having a paper record would be superfluous?

*Response: Computer analysts have designed machines that are virtually fool proof. However, a computer is a tool and as a tool, it depends on the person who is using the tool. Paper trails verify that the tool is used in the way that it is intended to be used.*

*What makes the paper trail worth the money is that it ensures that the tool is being used properly.*

\_ How do we guarantee that the whole election process is valid? Does my vote as an individual count as I intended to count?

*Response: Auditing is a very difficult issue. At some point in time the auditors get too close to the people that they are auditing and they begin sharing the same interests, which is obviously a problem. There should be a completely separate mechanism by which you can verify the true winner of the election. Parallel testing would be one way to verify that the election system is running as it should. You can set up a system where you know what the election results will be and then run the election and compare the results.*

\_ I hear a lot about voting machines being “secure” and “hack proof”, that they have “source codes” and “audit trails”. But to me, as a member of the public, it means nothing. It seems like a lot of smoke and mirrors. A lot of our concern stems from the fact that we don’t understand why these machines are safe without a paper trail. No one has been able to explain exactly what it is about machines that make them hack proof. Or what about being certified makes them safe.

*Response: The integrity of the election process must be there, so it is important to educate the people who are using the process. The public needs to be educated about these issues.*

\_ A friend of mine with a disability has been to the voting machine demonstrations the Election Commission has hosted. She really liked the eSlate machine. Can you talk about why she might have preferred that one for its ability to be accessible?

*Response: The eSlate machine has wheels that you turn to make your selection, so if you have a problem with touching the screen, the DRE wouldn’t be the best choice. The eSlate machine would aid people who had diseases such as Parkinsons. If the voter is turning a wheel, it may be a little easier. Both machines have a device to enable people with hearing disabilities to make their selection.*

## **Wrap Up Session**

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First, a word on our Election Commission: Shelby County has an excellent and professional Election Commission. The structure of the commission is ideal; it is unquestionably fair and balanced. The people who work for the Election Commission are doing a phenomenal job. Many of the issues discussed in the panel have little to do with the Election Commission itself, but with lack of resources or

Educating voters is crucial. The Election Commission does not have the resources to publicize basic voter information to all the people who need to get it. We need to create a continuing coalition with local organizations interested in voter education and with media outlets. We need to streamline the information coming out of the Election Commission through the media networks to get it to the public regularly in the months leading up to an election.

Part of the HAVA money is designated for education, so the legislators have to find ways to use that money for educational purposes.

How do you weigh the demand for high integrity in the election process with the ability to pay for the election process?