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# Election Reform in Virginia: Deliberation and Incremental Change

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# Election Reform in Virginia: Deliberation and Incremental Change

*Daniel J. Palazzolo, John T. Whelan,  
and Elizabeth Peiffer*

Several key factors explain the incremental approach to election law after the 2000 presidential election. The close election in Florida spurred lawmakers in Virginia to create the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies. This special subcommittee was formed to learn more about the capacity of election administration. Through that process, Virginia officials concluded that the election system was fundamentally sound, though they identified a need for additional resources to increase staff, improve polling place access for disabled voters, and clean up registration rolls. A declining fiscal outlook limited budget resources and constrained the legislature from adopting the joint subcommittee's modest recommendations for additional spending. Interestingly, partisan differences over the most controversial issue—recounting ballots—were overcome as a result of deliberation. The joint subcommittee's study created a forum within which a leading Republican senator changed his initial preference for how to recount ballots, and his view prevailed against the wishes of the Republican majority in the House of Delegates. Thus, in the case of Virginia, the deliberative process altered the policy views of a key committee leader, who in turn affected the outcome of the legislative process during the 2002 session. The legislature continued to pass incremental changes to upgrade the electoral system during 2003.

## INCREMENTAL POLICY CHANGES

Over the three years following the 2000 election, Virginia made numerous changes in election law, all of which ultimately passed with overwhelming support from members of both parties. In the 2001 session, eighty-four bills

and resolutions were introduced in both the House and the Senate, and thirty-two passed both chambers and were signed into law (see table 7.1). Over half of the bills enacted into law dealt with changes in absentee voting and another 30 percent dealt with voter registration. The remainder of the bills dealt with ballot counting and requirements for registrars. Perhaps the three most important legislative actions in 2001 were provisions that (1) limited recounts from ballots cast by electronic devices to overvotes and undervotes, (2) empowered the State Board of Elections to define standards for recounted ballots, and (3) created a joint subcommittee to study the election process.<sup>1</sup> The joint subcommittee was composed of sixteen members and had jurisdiction to study a wide range of issues. It also formed the setting for legislators to learn more about an issue with which most of them were unfamiliar—the administrative details of election law.

The joint subcommittee's work formed the backdrop for legislation passed in the 2002 session. Altogether, of the thirty-four bills introduced in 2002, thirteen were signed into law; six of these stemmed from the recommendations of the joint subcommittee. Most of the approved bills unrelated to the joint subcommittee's work tinkered with existing laws concerning absentee ballots, conditional voting, and record keeping. The joint subcommittee's recommendations were embodied in legislation dealing with the voter registration system, poll worker training, and, most importantly, rules and procedures for conducting recounts.

The legislature continued to make a variety of modest changes in election law during the 2003 session. Of the fifty-seven bills and resolutions introduced in 2003, twenty were enacted by the General Assembly. The Assembly sought to improve poll worker recruitment by allowing both paid and unpaid assistant registrars and election officers to work in localities where they are not currently registered to vote, provided they are registered to vote in the state of Virginia. Several changes were also made with respect to balloting. For instance, a new law increased the notice of withdrawal of a party nominee from forty-five days to sixty days prior to the election. The purpose of this law was to provide sufficient time to print accurate ballots. Another new law allows voters who apply in person for an absentee ballot within five days of the election to have the ballot mailed to them. The prior law required the applicants to vote in person at the time they applied for the absentee ballot. Voters who want to cast a conditional ballot and who are not on the

**Table 7.1. Election Legislation in Virginia, 2001–2003**

<i>Bills and Resolutions</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
Introduced	84	51	57
Enacted	37	18	20

Source: National Conference of State Legislatures, [www.ncsl.org](http://www.ncsl.org)

precinct voter registration list must provide identification or sign a statement that they are the named registered voter who they claim to be.

In the area of voter registration, the term for retaining cancelled voter registration records decreased from four to two years. Additionally, the voter registration lists will now be merged with the “poll book,” the record of those who voted. The local electoral board, with the approval of the state board, now has the ability to modify the distance of the prohibited area around polling places in the case of an emergency declared by the president or the governor. The Assembly and the governor also abolished the National Voter Registration Coordinating Committee created in 1999, citing that the committee had made no recommendations to date. A few other changes included: modifying notifications for voter registration and special elections, moving forward the date for the presidential primary, clarifying absentee ballot instructions, and shortening the timetable for completing a recount or contest after a presidential election. The legislature passed a resolution encouraging the secretary of the Board of Elections to lead the state’s planning efforts required to comply with the Help America Vote Act.

As we discuss further when we review the effects of fiscal constraints and partisan composition on election reform, several joint subcommittee recommendations failed to garner enough support to be enacted into law.<sup>2</sup> Thus, in the two legislative terms following the 2000 presidential election, Virginia responded with incremental changes in the process of voting but stopped short of passing major changes in legislation that would increase opportunities for voting or make significant, qualitative improvements in the electoral system. In the third year, Virginia continued to make modest improvements in election law, some of which were directed toward satisfying the federal guidelines established by the HAVA, while others were reactions to requests and concerns of local registrars and election boards.<sup>3</sup>

## EXPLAINING ELECTION REFORM IN VIRGINIA

Seven of the nine factors in the framework for explaining election reform had their intended effects: the threat of a close election, the capacity of election law prior to the 2000 election, the fiscal situation, commission recommendations, stakeholders, leadership, and external forces. Considering how these factors apply to Virginia, it is not surprising that the General Assembly took an incremental approach to election reform. We discovered that the role of party was mixed; the majority party was more influential in blocking possible reforms than affecting legislation that passed the General Assembly. In fact, preexisting partisan differences over recount rules were submerged in committee deliberations that caused at least one prominent Republican legislator to change his viewpoint on how to conduct recounts.

## The Threat of a Close Election

Unlike Florida, Virginia normally votes Republican by reasonably safe margins in presidential elections. Though Bill Clinton lost by only 2 percent to Bob Dole in 1996, George Bush won the state 52 percent to 44 percent in 2000. Virginia has experienced some close statewide elections, most recently in 1989 when the gubernatorial election required a recount (see Sabato 1991). Yet this dispute was settled without litigation and Virginia generally is not considered a battleground in presidential politics. So, when the General Assembly met in 2001, the state did not face a near term threat of a Florida-like debacle. Nonetheless, the electoral problems on display in Florida did prompt legislators to assess Virginia's election laws.

The effect of Florida's election crisis on Virginia is found in two areas: (1) an increase in bills dealing with election administration during the 2001 legislative session, and (2) the creation of a joint committee to study the electoral process. The number of bills related to election law increased from forty-seven in 2000 (and an average of thirty-nine from 1996 to 2000) to seventy-seven in 2001. The number of bills receded back to thirty-three in 2002. This pattern is similar to the aggregate trend for all states. According to the National Conference of State Legislatures, in 2001, 2,088 election reform-related bills were introduced, compared with 1,537 in 2002 (National Conference of State Legislatures 2002b).

A second important consequence of the Florida election was the creation of a Joint Subcommittee Studying Virginia's Election Process and Voting Technologies. House Republican Delegate James K. "Jay" O'Brien, the primary sponsor of a resolution to conduct a study and the eventual cochair of the joint subcommittee, remarked:

Florida was the driver behind the Joint Subcommittee bill. We needed to assess where we were. Legislators knew how to campaign and how to get elected, but only a few were familiar with recounts. So we needed to assess the situation because we didn't know if Virginia was as susceptible as Florida was. The idea was to prevent a Florida; bring in the experts and see what they knew.<sup>4</sup>

Republican Senator Bill Bolling, the other cochair of the joint subcommittee also indicated that Florida was the motivating factor in creating the joint subcommittee: "We needed to make sure Virginia could avoid the Florida debacle. Florida was 'flying by the seat of its pants,' especially with respect to recounts. We wanted to make sure that didn't happen here."<sup>5</sup>

Virginia was not alone in this respect. Through state-level commissions, policy makers could develop a better understanding of the election problems within their respective states and make recommendations about how to improve elections. We will return to the effect of the joint subcommittee on election law legislation later in the chapter. At this point, it is worth recognizing

that the close election in Florida and the ensuing problems unmasked in the process of trying to find a winner prompted Virginia to take a careful look at the status of its electoral systems.

### Capacity of Election Law

Though Virginia's election system is far from perfect, its election laws and practices were better than those of most other states. Prior to the 2000 election, Virginia was one of only a dozen states that made available provisional ballots for voters whose names did not appear on the registration rolls (electionline.org and the Constitution Project 2001b, 5). Although the Virginia registration system needed to be updated, Virginia was one of the first states to have a statewide database and one of only ten states to have a unified database shared by state and local governments. In terms of voting technology, Virginia counties use the five standard types of equipment. The largest percentage of counties use lever systems (43 percent), followed by punch cards (20.4), electronic (19.6), optical scan (16.9), and paper ballots (.1) (Ansolabehere and Stewart 2002). It is important to recognize that Virginia had recently made several legislative and administrative improvements in its electoral system in response to a 1999 study by the Joint Legislative and Audit Review Commission (JLARC). The JLARC found that the equipment for maintaining records in the registration system was outdated, the "motor voter" law had created challenges for administering voter registration, and the State Board of Elections was suffering from poor management (Joint Legislative and Audit Review Commission 1999; see also Whitley 1999). Several improvements in election administration followed from the JLARC report. The Assembly passed legislation to address several of JLARC's recommendations and relations between the State Board and the Department of Motor Vehicles improved under Cameron Quinn, who was appointed secretary of the State Board of Elections (SBE) in January 1999.<sup>6</sup>

After the Joint Subcommittee on Election Process and Voting Technologies completed its work, its report reached the following conclusion: "The Joint Subcommittee heard numerous comments pointing to existing laws and practices in Virginia that are being touted on the national scene as steps to improve elections and avoid the problems that plagued Florida and other states in the aftermath of the 2000 presidential election. It is worth noting that a number of these assets are already in place in Virginia's election process" (Report of the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies 2002, 3). Specifically, the report highlighted Virginia's centralized statewide registration system, provisional or conditional ballots, and recount procedures and standards. These fundamental attributes of the system may explain why Virginia's residual vote rate (1.91 percent) was below the national rate (1.94 percent) (Edley et al. 2002).<sup>7</sup>

The prevailing status of election administration certainly affected the incremental pace of election reform in Virginia. With provisional balloting, a statewide registration database, effective administrative leadership at the SBE, and ongoing improvements in registration procedures all in place prior to the 2000 election, most felt there was little need for major reform in election administration. Our interviews with the cochairs of the joint committee—House Delegate O'Brien and Senator Bolling—affirmed that view. Both legislators began the process with the aim of learning the degree to which Virginia needed to improve the electoral system, and both came away with confidence that the fundamentals were in place. Particularly compared with other states, Virginia did not have very much to do in the area of election administration, short of providing additional funds to improve the existing system or advancing the partisan priorities of Democratic legislators, such as restoring the right to vote for felons who had completed their sentences.<sup>8</sup> These goals were curtailed by budget constraints and partisan considerations.

### Fiscal Conditions

Virginia's fiscal situation contributed to the incremental pace of reform. As the General Assembly began to meet in 2001, Virginia was one of eleven states that forecasted revenue shortfalls (National Conference of State Legislatures 2002a). The situation worsened throughout 2001 and 2002, placing constraints on any programs that required new funding, including proposals to improve the electoral system. In the 2001 session, the governor's budget included new funds to upgrade the statewide voter registration system. But the Assembly and the governor reached a stalemate over how to balance the budget and new funding never materialized. In the 2002 session, Delegate O'Brien offered noncontroversial budget amendments stemming from the joint subcommittee report that sought funds for upgrades in the statewide registration system, a full-time staff position for the State Board of Elections, and grants to localities to improve poll place accessibility for disabled people. None of these proposals made it through the Appropriations Committee. State Board of Elections Secretary Quinn summarized the situation: "In 2001 there was no budget; and in 2002 there was no money."<sup>9</sup>

The tight fiscal situation loomed over the joint subcommittee's deliberations in the fall of 2001. According to Professor Larry Sabato of the University of Virginia, a citizen appointee to the joint subcommittee, each time an idea came forward that required funding the legislators would say, "That is a good idea, but, of course, we don't have the money."<sup>10</sup> In spite of O'Brien's interest in spending more to strengthen the system, when asked if he planned to offer any amendments during the 2003 session, he said: "No. I would if they had a chance of passing, but there is no chance."<sup>11</sup>

Spending on election administration, like any other government function, depends on the degree to which legislators view it as a priority. Resources are always scarce. Yet other factors in the framework, such as the capacity of a state to administer elections and the prospect of having a close election, might cause the state to spend more on elections, regardless of what Congress decides to do or how much funding is available. The problems with election law and the close election in Florida made election reform a priority in that state, in spite of concerns about the budgetary situation. But in Virginia, where the electoral system seemed to be in good order and the state legislature was cutting back spending in existing programs, new funds for elections were considered a luxury rather than a necessity.

### Party Control

Party control varied in the two legislative terms that followed the 2000 election. For the first time in history Republicans gained majority control of the Senate in 1998 and the House of Delegates in 2000. Thus, during the 2001 legislative session, Republicans held both chambers and the governor's office. After the 2001 elections, Democratic Governor Mark Warner replaced outgoing Republican Governor Jim Gilmore. According to our interviews, neither governor considered election reform to be a priority. Within the legislature, Republican-sponsored bills on elections succeeded at a higher rate than Democrat-sponsored bills. During the 2001 session, 20 percent of Democratic-sponsored bills and 40 percent of Republican-sponsored bills passed both houses; in the 2002 session only 12 percent of Democratic-sponsored bills compared with 65 percent of Republican-sponsored bills passed both houses; and in the 2003 session 27 percent of Democratic-sponsored bills compared with 36 percent of Republican-sponsored bills passed both houses. However, all of the bills passed by the Assembly received bipartisan support on final passage and most bills were approved with unanimous support in both houses.

The effect of Republican control is seen most on bills sponsored by Democrats that tried to remove barriers to voting or that advantaged potentially Democratic voting constituencies. Attempts by Democratic members to pass legislation allowing for "no excuse" early voting and restoring the voting rights of convicted felons who served their sentences never emerged from committee.

Partisan considerations also came into play in the creation of the joint subcommittee. The joint subcommittee's sixteen members consisted of six House members and four Senators, and six nonlegislators (a local electoral board member, a voter registrar, two citizen members, and the Secretary of the State Board of Elections and the Secretary of Technology, or their designees). Reflecting their historic ascendancy to majority status, Republicans

controlled the joint subcommittee and former Speaker of the House S. Vance Wilkins Jr. played a key role in its makeup. The Republican speaker made his presence felt, appointing all six House members (four Republicans and two Democrats), the local electoral board member, and a citizen member, and selecting as chair one of his close allies. Even the Democratic citizen member, Anthony F. Troy, a former Democratic attorney general and one of the state's leading lobbyists, had close ties to the speaker.<sup>12</sup> Altogether Republicans constituted ten of the sixteen subcommittee members, controlling for the first time a major legislative inquiry into the state's electoral process.

Yet, while Republicans held control over the joint subcommittee and succeeded in keeping certain Democratic initiatives from passing in the legislative process, they were not able to change the law for recounting ballots. Under existing state law, recount procedures must follow the "intent of the voter." Ultimately, the "Republican" position on recount legislation was defeated, largely because Republican Senator Bolling, cochair of the joint subcommittee, changed his position after learning more about the foibles of overvotes and undervotes. Thus, the joint subcommittee played a key role in mitigating the potential effects of Republican control.

### Joint Subcommittee Studying Virginia's Election Process and Voting Technologies

Virginia's version of a commission was the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies. The joint subcommittee was created for two reasons: the need for information about the status of electoral systems (as noted above) and workload considerations. Like other studies conducted by ad hoc bodies, this subcommittee did not conduct its work during the session. The Assembly, operating under one of the shortest meeting schedules in the country, with sessions normally lasting forty-six calendar days in the odd-numbered years and sixty in the even-numbered years, conducts such studies during the interim period.<sup>13</sup> In addition, the 2001 session, meeting in the second year of the biennium, faced a heavy agenda that included crafting a plan to balance the deteriorating budget.

The joint subcommittee was given a wide-ranging jurisdiction: fifteen specific charges and a final open-ended directive to "make any other recommendations for changes that may be desirable to advance the certainty of, and fairness in establishing, the outcome of elections in the Commonwealth" (Report of the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies 2002, 4).<sup>14</sup> The joint subcommittee also had been directed to consider the studies of commissions appointed in other states.

Therefore, the joint subcommittee was in position to serve as the primary deliberative body on an issue about which very few legislators could claim expertise. Delegate O'Brien noted: "Unless a member had been involved in a

close election that involved a recount, they had no reason to be experts in election law."<sup>15</sup> Dividing itself into two task forces, one on technology and voting equipment, the other on voter registration and election-day processes, the subcommittee and its task forces held twelve meetings from mid-May to late November 2001.<sup>16</sup> The subcommittee solicited information from a wide range of groups and heard from state and national figures involved with election reform. In all, more than eighty persons met with the subcommittee to inform them of state and national electoral developments in the wake of Florida. Ultimately, the most influential information reviewed by the joint subcommittee came from two members: Secretary of the State Board of Elections Cameron Quinn and University of Virginia political scientist Larry Sabato. Quinn's staff prepared various illustrations of strangely marked, set-aside ballots from around the state of Virginia and Sabato brought examples from Florida. Though the ballots could not be read by machine, they clearly showed voter intent in a variety of ways. Some ballots had arrows pointing to the candidate the voter preferred, others crossed out one candidate and circled the other, and another had a note that read "I want Bush."<sup>17</sup>

As it turned out, the ballots had the effect of changing the perspective of Senator Bolling and the effect carried over into the legislative process during the 2002 session.<sup>18</sup> Before the joint subcommittee's study Bolling held the mainstream Republican position with respect to counting ballots, which held that only properly cast, machine-readable ballots should count. After seeing the ballots provided by Quinn and Sabato, Bolling learned that "the capability of voters to cast a ballot varies greatly. Voters come in all shapes and sizes. . . . By looking at the actual ballots from Florida, you could see examples in which the ballot was cast improperly, but the voter's intent was clear."<sup>19</sup> He noted examples such as arrows pointing to the candidate and, with optical scan ballots, where the bubble was circled rather than filled in.

Surprisingly, the Republican-leaning joint subcommittee recommended that voter intent in recounts be considered under certain conditions. The proposed law required that, when possible, mechanical ballot counters for optical scan and punch card systems be programmed to set aside ballots containing overvotes and undervotes. The set-aside ballots then would be manually counted (Report of the Joint Subcommittee 2002, 17 and C-6). The subcommittee approved the proposal by a close 8 to 6 vote (Whitley 2001). As expressions of opposition, Delegate O'Brien filed an "exception" to the report and the local Republican electoral board member Edward A. O'Neal wrote a "dissenting opinion" (Report of the Joint Subcommittee 2002, 19-21). Espousing a conventional Republican view, both O'Brien and O'Neal felt it was the responsibility of the voter to ensure that the ballot be cast correctly. The proposed procedures, said O'Neal, opens the process to "the potential for honest human error and for partisan manipulation" (Report of the Joint Subcommittee 2002, 21). O'Brien pointed out that the problem with hand re-

counts is that the intent of the voter is often decided by biased judges, thereby defeating the purpose of truly determining the voter's intent.<sup>20</sup>

During the 2002 session, the Republican-dominated House Privileges and Elections Committee voted 12–7, largely along party lines, to adopt recount procedures that excluded ballots containing overvotes or undervotes. The full House, again voting along partisan lines, endorsed the committee's recommendation (Whitley 2002).<sup>21</sup> In contrast, the Senate, led by Bolling, embraced the joint subcommittee's recommendation of considering voter intent in overvotes and undervotes. When the issue went to conference, Bolling's position prevailed, mainly because he stood his ground and his position adhered to existing law. In order for O'Brien to prevail, both chambers would have needed to change statutory precedent with respect to recount procedure. Bolling said he was not about to let that happen. He indicated: "I was not going to sign off on a bill without these protections."<sup>22</sup>

### Leadership

Bolling's leadership coincided with the overall approach to election reform in Virginia—improve the system incrementally. Neither Bolling nor O'Brien had the interest or the power to advance major structural changes and Virginia lacked strong executive leadership for major election reform. The secretary of the State Board of Elections is appointed by the governor and has almost no formal authority to regulate elections. Moreover, neither Governor Gilmore, nor Governor Warner made election reform a major priority. The joint subcommittee was created by the legislature to make recommendations to the legislature. Thus, leadership fell to the cochairs of the joint subcommittee, Senator Bolling and Delegate O'Brien. As noted above, neither of them thought that the electoral system needed major change. The incremental results of the legislature reflected their assessment of the problems. Bolling, of course, played a key leadership role in terms of advancing the recount provisions. As Quinn pointed out, Bolling "was the reason the voter intent position prevailed."<sup>23</sup> Yet, leadership for major change was absent from the process.

### Stakeholders

The views of interested groups and election officials were funneled through the joint subcommittee. We did not find any evidence of significant interest group activity either in favor of or against election reform. Cameron Quinn, secretary of the State Board of Education, noted that the joint subcommittee made a concerted effort "to reach out" to relevant Virginia groups, hearing from the NAACP, League of Women Voters, Common Cause, Electoral Board Association, Voter Registrars Association, and the Virginia Municipal

League. Consistent with the view that Virginia's election system was generally sound, Quinn noted that none of these groups testified that the system was experiencing grave problems.<sup>24</sup>

### External Forces

The prospect of federal legislation, the September 11 terrorist attacks, and the passage of the HAVA also affected the incremental pace of election reform in Virginia. Congress began serious discussion of election reform legislation in 2001, just as states were meeting to consider possible reforms. In December 2001, the House of Representatives passed a bill including \$2.65 billion to replace equipment and administer elections. Sabato indicated that as the members of the joint subcommittee were meeting in the fall 2001, they "didn't know what Congress would do."<sup>25</sup> It made sense for legislators to wait until they knew how much the federal government was going to spend on election reform, and how the states would be expected to spend it, before using state resources.

The September 11 terrorist attacks affected the agenda of election reform in two ways. First of all, the attacks reduced the urgency of election reform. Several members of the joint subcommittee remarked that at the study's outset concern about the state of the Virginia electoral process was one of the "hottest issues." Yet, by the time the joint subcommittee would finish its inquiry, recalled Delegate O'Brien, "9/11 blew it off the radar."<sup>26</sup> As Sabato noted, "A legislature can only handle so many issues, and after 9/11, important as it may be, election administration seemed much less important."<sup>27</sup> At the least, September 11 contributed to prevailing forces that foretold an incremental approach to election reform. Secondly, September 11 had a specific effect on the recommendations of the joint subcommittee. As a result of September 11, joint subcommittee members began to question what would happen if an attack occurred on election day, disrupting or perhaps even postponing the election. The joint subcommittee drafted an amendment to the Virginia Constitution that authorized the General Assembly to postpone an election in the case of a military attack or natural disaster.

After Congress passed the Help America Vote Act that authorized \$3.86 billion for states to improve their electoral systems, Senator O'Brien (formerly Delegate O'Brien) introduced a resolution that "encourages the Secretary of the State Board of Elections to lead Virginia's efforts to meet the requirements of the Help America Vote Act and obtain funds available through the Act for improving the voter registration and election process, including the development of a state plan for use of funds to improve voter registration procedures and the conduct of elections."<sup>28</sup> The Senate approved the resolution during the 2003 session. The HAVA plan calls for a balanced approach to spending \$64.1 million in expected federal funds. About half the funds will go toward

replacing punch cards, 20 percent will be used to upgrade the voter registration database, and another 20 percent will be committed for voter education programs. We expect the General Assembly to approve recommendations of the HAVA Planning Committee that require legislative action.

In addition to bringing new resources to the state, the HAVA reinvigorated efforts to improve administrative coordination and oversight in the election system. The administrative structure in Virginia is a hybrid of centralized and decentralized elements. The state reimburses localities for a some of the costs, but does not pay the total costs or leave localities on their own; it provides voluntary training of election officials, but does not mandate training; and it requires localities to purchase machines that have been tested and approved, but does not buy the machines. Moreover, the powers of the state board vis à vis local boards are limited (electionline.org and the Constitution Project 2002c, 10). Cameron Quinn, the secretary of the State Board of Elections in 2001, hoped that the joint subcommittee would recommend changes that were needed to improve coordination between the SBE, election registrars, and local election boards, develop more accountable procedures for managing voter registration information, and enable the state agency to manage resources more efficiently.<sup>29</sup> However, the joint subcommittee ended its work before delving deeply into the arcane details of administrative oversight and coordination. HAVA created another vehicle for bringing those issues to the forefront. After Congress passed the HAVA, some of the concerns of election administrators were dealt with during the 2003 legislative session. While the HAVA did not have major effect on Virginia's election laws, the passage of the HAVA gave election officials a vehicle for advancing their recommendations for clarifying and correcting a host of problems with election laws. Some of those changes were bundled together in Senate Bill 1107 and passed easily in both houses.<sup>30</sup>

## CONCLUSION

The threat of a close election, the capacity of election law, fiscal constraints, commission recommendations, stakeholders, leadership, and external factors explain why Virginia took an incremental approach to election reform. Party control had a mixed effect on reform efforts. Interestingly, the joint subcommittee created the platform for deliberation over the issue of whether voter intent should be considered in recounts and the subcommittee's recommendation prevailed over the partisan preferences of the majority party in the House. In this case, an influential committee leader changed his initial preferences and ultimately shaped the final terms of the legislation.

The study enables us to specify the effects and sequence of key variables that affected legislative outcomes. The main effect of the Florida election was

to draw attention to election administration and cause legislators to explore the potential problems with the system. Thus, Florida was a “wake up call” to legislators in Virginia and other states that set up commissions. The capacity of election law was a key factor in explaining why policymakers adopted incremental changes rather than major reforms. Fiscal conditions also affected the prospects of reform. The combination of a relatively positive report about the current system from the joint subcommittee and a fiscal situation that called for spending cuts to balance the budget constrained policymakers from seeking major upgrades in the voting system. Party control was less significant. The Republicans succeeded in blocking certain Democratic-sponsored bills from becoming law, and perhaps those reforms would be more likely to advance if Democrats held a majority in the legislature. But the inability to change recount rules to reflect the “Republican” position demonstrated the limits of majority party control. The joint subcommittee’s work revealed the importance of deliberation on election reform. Unlike issues that are familiar to state legislators—for example, budget, social policy, education, or crime—election administration is a relatively obscure policy area. Legislators certainly know how to campaign for office, but unless they had encountered a recount or other poll-related problems, they would not be as familiar with the details of election law. Thus, individual policy preferences on election-related issues were not well formulated or firmly held. Under those conditions, deliberation can inform or even alter legislative preferences.<sup>31</sup>

## NOTES

1 See House Bill 1843 and Senate Bill 363 (Virginia General Assembly, Legislative Information System, <http://legis.state.va.us/>).

2. These amendments included: \$200,000 for the State Board of Elections to award grants to localities for efforts to increase accessibility to the polls, especially for disabled citizens; funds to create a full time staff position for the State Board of Elections with responsibility for overseeing the certification of voting equipment, monitoring developments in voting technologies, and administering the distribution of grants to localities (\$344,819, plus \$10,525 yearly recurring costs to modify the Division of Motor Vehicles (DMV) voter registration process to allow for print-on-demand voter applications); and \$40,000 to secure and use social security deceased lists to help purge the names of deceased persons from the state registered voter list.

3. Interview with Rosanna Bencoach, agency management analyst, Virginia State Board of Elections, June 13, 2003. This point is developed further along in the chapter in the section on external forces.

4. Interview with Delegate O’Brien, May 31, 2002.

5. Interview with Senator Bolling, May 29, 2002.

6. The Assembly’s legislation had the following provisions: created a Coordinating Committee to oversee the National Voter Registration Act; gave the State Board of Elections (SBE) the responsibility to train election officials; allowed for transfer of registra-

tion data from the State Board of Elections, the Department of Motor Vehicles (DMV), and the general registrars; provided funds for personal computers and desktop printers to all 135 general registrars; required electronic linkage between the SBE and the Virginia State Police so that information regarding felons could be easily transferred. On its own initiative, the SBE took the following steps in response to JLARC's recommendations: established a linkage with the Virginia State Board of Health to allow for accurate and timely removal of deceased people from registration rolls; conducted a review and certification of new voting equipment; encouraged localities that are in compliance with the Voting Rights Act to opt for "bail out" status, which relieves them of some of the cumbersome federal requirements. The DMV developed a training manual for its employees; improved procedures for notifying people that they may register at DMV; and revised the registration application form to reduce the amount of error in filling out and processing the application. Finally, SBE and DMV worked together to create a system for allowing people to verify that they are registered to vote (Joint Legislative and Audit Review Commission 2001).

7. Policy makers and commission members seemed to overlook the fact that the residual vote rate varied across the counties for the 2000 election. Of the fifty-seven Virginia counties above the state average, twenty-eight had rates between 2.01 and 3 percent, twenty-one had rates between 3.01 and 5.49 percent, and eight had rates between 5.5 and 10 percent.

8. It is important to note that continued improvements can be sought after and may ultimately be achieved through further incremental steps. The joint subcommittee report indicated a need for a "continuing process of review and evaluation of Virginia's voter registration and election processes" (Report of the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies 2002). And Cameron Quinn, the secretary of the State Board of Elections, pointed to changes she believed needed to be made in the administrative structure (interview with State Board of Elections Secretary, Cameron Quinn, June 21, 2002). But these would be improvements on a system that is fundamentally sound.

9. Interview with Secretary Quinn.

10. Interview with Professor Larry Sabato, University of Virginia, citizen representative on the joint subcommittee, June 3, 2002.

11. Interview with Delegate O'Brien.

12. Troy represented Wilkins in a land dispute case that was eventually settled by the Virginia Supreme Court in 2001. The speaker later retained Troy to defend him in a sexual harassment case that led to the speaker's forced resignation. For these and other Wilkins-Troy connections, see, for example, Schapiro 2002, B2.

13. According to the NCSL, the national average for session length is approximately 120 calendar days per year (National Conference of State Legislatures 2000, 19).

14. The jurisdiction and legislative mandate of the Joint Committee on Elections was established in House Joint Resolution 681. The resolution

Establishes a joint subcommittee to study the election process. In conducting the study, the joint subcommittee shall (i) examine the reliability and performance of the various types of voting systems in use throughout Virginia and in other states; (ii) examine the feasibility, advisability and costs of standardizing voting systems throughout the Commonwealth; (iii) consider ways to encourage localities to purchase or phase-in upgraded voting systems, including match grant programs; (iv) examine new and developing technologies that

might advance the goals of better determining vote eligibility, ensuring voter privacy, enhancing the ability of voters to cast accurate and legal ballots and reducing the potential for election officials and individual interests to seek to interpret the intent of voters from ballots cast; (v) establish the extent to which, and the circumstances under which, spoiled ballots are cast or rescinded in elections; (vi) collect information regarding possible or actual voter misunderstanding of the ballot in elections throughout the Commonwealth; (vii) solicit the advice and experience of local electoral boards in ascertaining, establishing, and certifying the results of elections for accuracy and fairness; (viii) investigate the extent of and legality of vote-swapping strategies; (ix) examine local electoral board membership and qualification; (x) consider procedures for voter-friendly registration; (xi) examine standard procedures for assisting voters at the polls; (xii) ascertain the training needs of election officials and monitor the study by the State Board of Elections and the Weldon Cooper Center for Public Service on establishing a career development program for voter registrars; (xiii) consider procedures for standardizing absentee voting; (xiv) examine legal, technological, logistical and other related issues, including privacy involved in the handling and security of a merged pollbook; (xv) investigate the experience of, and monitor current actions in, other states; and (xvi) make any other recommendations for changes that may be desirable to advance the certainty of, and fairness in establishing, the outcome of elections in the Commonwealth. The aforementioned objectives represent the incorporation of HJR 529, HJR 621, HJR 659, HJR 798, SJR 352 and SJR 376. This resolution is identical to SJR 363.

Source: <http://legis.state.va.us>.

15. Interview with Delegate O'Brien.

16. See "Work of the Joint Subcommittee," in the Report of the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies, 2-3. A record of the joint subcommittee's meetings can be found at <http://dls.state.va.us/pubs/legisrec/2001/hjr681a.htm>.

17. Interviews with Professor Sabato and Secretary Quinn.

18. The following account is from an interview with Senator Bolling.

19. Interview with Senator Bolling.

20. Interview with Delegate O'Brien.

21. For a record of the committee and floor action on HB985, see <http://leg1.state.va.us/legp504.exe?021+ful+HB985E>.

22. Interview with Senator Bolling.

23. Interview with Secretary Quinn.

24. Interview with Secretary Quinn.

25. Interview with Professor Sabato.

26. Interview with Delegate O'Brien.

27. Interview with Professor Sabato.

28. SJ350, see <http://legis.state.va.us/>.

29. Interview with Secretary Quinn.

30. Interview with Benchoach. For more details on these changes, see *Resume of Changes to Virginia Election Laws, 2003 Regular Session*, State Board of Elections (available upon request). The full text of all legislative changes to the Code of Elections can be found at <http://leg1.state.va.us/>

31. For theoretical treatment on the role of the legislature as a deliberative body, see Bessette 1997.