

REPRESENTATION AND ELECTORAL SYSTEMS

Section on Representation and Electoral Systems

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ANNUAL MEETING PROGRAM

Section Program Chairman Richard E. Matland of the University of Houston announced the Section will sponsor the following panels and poster sessions at the annual meeting of The American Political Science Association in Washington, D.C., September 1-4, 2005

<u>Panel Title</u>	Electoral System Effects on Political Corruption: An International Survey
<u>Panel Chair</u>	Lawrence LeDuc
<u>Panel Participants</u>	Sarah Birch, "Perceptions of Electoral Fairness and Electoral Participation" Margit Tavits, "Corruption and Electoral Systems in East and West" Ray Christensen and Kyle Colvin, "Stealing Elections on Election Night, a Comparison of Statistical Evidence from Japan, Canada, and the United States" Alberto Simpser, "Political Culture and Democratic Accountability: an Equilibrium Approach"
<u>Panel Discussant</u>	Lawrence LeDuc

<u>Panel Title</u>	Policy and Representational Consequences of Electoral System Design
<u>Panel Chair</u>	Leslie Schwindt-Bayer
<u>Panel Participants</u>	Dennis Patterson, "The Strategy of Dominant Party Politics: Electoral Institutions and Outcomes in Africa" Lawrence Ezrow, "Parties' Policy Programmes and the Dog that didn't Bark: No Evidence that Proportional Systems Promote Dispersed Party Positioning" Meghan Elizabeth Giulino, "Electoral Systems and Representation in the Ethnically Divided Societies of Latin America" Lise Togeby, "The Electoral System and Representation of Ethnic Minorities"
<u>Panel Discussants</u>	Ken Kollman Mark P. Jones

<u>Panel Title</u>	The Effects of Electoral Systems on Public Spending
Panel Chair	Burt Monroe
<u>Panel Participants</u>	Francois Gelineau and Sébastien Dubé, “Are There Policy Consequences to Political Malapportionment? Evidence From Argentina and Brazil.” Martin S. Edwards and Frank C. Thames, “ <i>Personal Votes</i> and Public Expenditure” Benjamin P. Nyblade, “Delegation and Accountability in Developed Non-European Parliamentary Democracies” HeeMin Kim and Emilia Powell, “Do Institutions Matter? Political Institutions and Democratic Performance in Western Democracies”
<u>Panel Discussant</u>	Kathleen Bawn

Panel Title	Electoral System Changes Compared: Current Developments
Panel Chair	R. Kenneth Carty
Panel Participants	Jack Vowles, “Back From the Dead: STV and the 2004 Local Government Elections in New Zealand” André Blais and R. Kenneth Carty, “When Citizens Design an Electoral System: Different People, Different Priorities” Louis Massicotte, “Towards A Mixed-Member Proportional System in Quebec?” Henk van der Kolk, “Electoral System Change In The Netherlands: The Road From PR To PR” Jeffrey A. Karp, “Reforming the Electoral College: The Role of Self-Interest, Political Attitudes, and Democratic Values”
Panel Discussant	Richard S. Katz

Panel Title	Congressional Redistricting in the 19th, 20th, and 21st Century
Panel Participants	Richard G. Forgette and John Winkle, “Legislatures, Courts, and Redistricting: The Un-Principled Politics of Congressional Redistricting?” Thomas L. Brunell, “In Defense of Packed Congressional Districts: The Relationship Between Ideological Homogeneity and Satisfaction with Representation” Steven Douglas Elliott, “Are Uncompetitive Elections Producing a Distrustful Public?” Erik J. Engstrom, “Strategic Redistricting and Competitive Congressional Elections, 1840-1900”
Panel Discussant	Bruce E. Cain

Panel Title	Selecting an Electoral System
Panel Participants	David M. Farrell and Shaun Bowler, "Something about MMP: Expert Judgements on Electoral System Design" Marat R. Akopian, "Toward General Theory of the Choice of Electoral Systems" John C. Courtney and Drew Wilby, "Staying the Course or Changing? Perceptions of Electoral Reform of Parliamentary Candidates in the 2004 Federal Election in Canada" Clemente Quinones, "The Role of Globalization and Domestic Socioeconomic Factors in Explaining Electoral Systems: The Case of Mexico"
Panel Discussant	Donley T. Studlar

<u>Panel Title</u>	Legislative Representation of Constituent Opinion
<u>Panel Participants</u>	Martin Gilens, "Economic Inequality and Democratic Responsiveness: A Vicious Circle?" David K. Park, "Constituency and Representation in the US House of Representatives" Grace Cho, "Representing Non-Citizens: Potential Voters or Ignored Constituents?" Georg Lutz, "Political Elites and Voter Mobilization in Direct Democracy"
<u>Panel Discussant</u>	Patrick Egan

<u>Panel Title</u>	Electoral Institutions in Ethnically Divided Societies
<u>Panel Chair</u>	Kris Deschouwer
<u>Panel Participants</u>	Pippa Norris, "Ethnic Pluralism and Consensus Democracy Revisited" Robert G. Moser, "Ethnic Diversity and Party Fragmentation" Erika Moreno, and Karleen Jones, "The Institutional Determinants of Identity Politics in Colombia and Ecuador" Dawn Brancati, "The Impact of Political Decentralization on Ethnic Conflict and Secessionism" Chin-en Wu, and Feng-yu Lee, "Mixed Electoral Systems and The Moderation of Ethnic Conflicts"

<u>Panel Title</u>	Strategic Voting Under Varying Electoral Systems
<u>Panel Chair</u>	Ray Duch
<u>Panel Participants</u>	John H. Aldrich and Paul R. Abramson, "Strategic Voting under PR and Plurality Rule" Thomas Gschwend, "Identifiability of Coalitions and District Magnitude as Determinants of Strategic Voting"

Holger Lutz Kern, “Electoral Balancing, Divided Government, and Midterm Loss in German State Elections”
 Insun Kang and Seok-ju Cho, “Political Representation under Alternative Electoral Systems”

Panel Discussants Shaun Bowler

Panel Title Voting Sophistication and Electoral Systems

Panel Chair Jeff Karp

Panel Participants David Brockington, “Compulsory Voting and Political Information: A Cross-National Examination”
 Kenneth W. Sheppard, “Expected Presidential Outcomes and Sophisticated Intentional Voting for Divided Government”
 Laura C. Lucas, “The Institutional Determinants of Political Sophistication”
 Lorelei Moosbrugger, “The Institutional Determinants Of Political Sophistication: How Voter Information Needs Shape Politics and Influence Policy”

Panel Discussant Phil Paolino

Panel Title How Electoral Institutions Affect Voter Evaluations of Women Candidates

Panel Chair Karen Beckwith

Panel Participants Maria C. Escobar-Lemmon and Roberto Loureiro, “Women in Municipal Elections in Costa Rica: The Role of Grassroots Parties”
 Gail McElroy and Michael Marsh, “Candidate Gender and Voter Choice”
 Gregory D. Schmidt, “The Devil's in the Details: Open List Voting and Gender Quotas in Brazil and Peru”
 Raminta Stockute, “Choosing the Right Party: Key to Women’s Success in Post-Soviet SMDs”

Panel Discussant Richard E. Matland

Panel Title Demobilizing Democracy?: Redistricting’s Effect on Democratic Responsiveness

Panel Chair Richard Engstrom

Panel Participants Laura E. Miller, “Crossing the Line: Electoral Consequences of Redistricting Across County Boundaries”
 Micah Altman and Karin MacDonald, “How Computing Has Changed Redistricting”
 Michael D. McDonald, “A Manageable Standard for Detecting Gerrymanders”
 Sean M. Theriault, “Redistricting and Party Polarization in Congress”

Panel Discussant Jonathan Katz

Panel Title Changing the Rules of the Game in New Democracies: Political Participation and Electoral Regime Change in Eastern Europe and Latin America

Panel Chair Ernesto F. Calvo

Panel Participants Joshua A. Tucker and Alexander C. Pacek, “The Vanishing Electorate: Macroeconomic Conditions, Institutional Change and Voter Turnout in Post-Communist Countries, 1990-2004”
 Ernesto F. Calvo, “Partisan Effect of Electoral Reforms in Latin America”
 Scott W. Desposato, “How Robust are Electoral Institutions? An Agent-Based Test of Electoral Rules and Ideal Points”
 Bryon J. Moraski, “More ‘Proportional,’ but Less Fair: What did Putin Learn from Russia’s 2003 Duma Election?”
 Gabriel L. Negretto, “The Game that Sets the Rules: Parties, Military Rulers and the Making of Constitutions in Latin America”

Panel Discussant Bernard N. Grofman

Panel Title Trends in Voter Turnout

Panel Chair Henry Milner

Panel Participants Mark N. Franklin, “Electoral Competition and Voter Participation: Effects of Variations in the Character of Elections on New and Established Voters”
 Jorgen Elklit and Palle Svensson, “Why is Voter Turnout in Denmark Not Declining?”
 Anders Westholm, “Expressing Attachments, Fulfilling Norms: Explaining Turnout and Its Decline in Sweden”
 Kimmo Gronlund and Maija Setälä, “Political Trust, Democratic Legitimacy and Turnout”

Panel Discussant Henry Milner

Panel Title Vehicles for Electoral Reform: Legislation, Litigation, Initiatives

Panel Chair Michael A. Fitts

Panel Participants Stephen D. Ansolabehere, “Primary Elections and the Incumbency Advantage: How a Progressive Reform Led to the Personal Vote”
 Richard L. Hasen, “Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown”
 Melissa Cully Anderson, “Regulating Democracy Through Democracy: The Use of Direct Legislation in Election Law Reform”

Panel Discussants Bruce E. Cain
 Daniel H. Lowenstein

Poster Sessions

Michiko Ueda

“Minority Representation and its Impact on State Policy Outcomes”

Tim Meinke

“State Ballot Initiatives: Who is Speaking? The State’s Citizens or National Elites?”

Matthew Singer

“Intra-Nation Evidence for Duverger’s Hypothesis”

Jessica Luce Trounstine and Melody Ellis Valdini

“America versus the World: The Conditions Under Which Single Member Districts Increase Diversity”

Timothy J. Power and James C. Garand

“Explaining Invalid Voting in Latin America, 1980-2005”

David A Hopkins and Darshan J. Goux

“The Consequences of Electoral College Reform”

Csaba Nikolenyi

“The Number of Parties in Mixed-Member Systems: The Puzzling Contrast Between Hungary and Lithuania”

Martin Battle

“Party System and Local Campaigning: Evidence from Post-War British Elections”

PROGRAM CHAIRMAN

Section Chairman Richard Katz appointed Shaun Bowler of the University of California, Riverside as Section Program Chairman for the 2006 annual meeting of the American Political Science Association.

DEMOCRACY AT LARGE

This monthly news magazine is published by IFES, a foundation formerly known as the International Foundation for election Systems.

The volume 1, number 2, issue of 2005 has articles on “Kleptocracy: A Post-Communist Syndrome,” “Civic Journalism in Central Areas,” “Post-Communism’s Next Generation,” A

Catalyst for Change in New Democracies,” and brief reports on developments in Burundi, Ivory Coast, Libya, Malaysia, Palestine, Romania, Ukraine, and Venezuela.

The issue also includes *Elections today* (vol. 12, no. 4, 2005) containing articles on “Voting Machines and the 2004 U.S. Elections,” “Under Adverse Conditions in 2004 Election Officials Perform Well,” “2004 U.S. Election Results Delivered Successfully,” and “Ukraine’s 2004 Presidential Election: The Orange Revolution.”

Subscriptions to *Democracy at Large* are \$15US and should be sent to Democracy at Large, Attn: Subscriptions, 1101 15th Street, NW, Suite 300, Washington, DC 20005, USA. Telephone: 1-202-350-6733. Facsimile: 1-202-822-9744. Web Site: www.ifes.org/dal

FEDERAL ELECTION COMMISSION

On March 28, 2005, the Commission sent sixteen legislative change recommendations to the President and Congress as required annually by 2 U.S.C. §439(A)(9). The following five recommendations were identified as legislative priorities:

- Adding the Commission to the list of agencies authorized to issue immunity orders under provisions of Title 18 of the United States Code.
- Increasing the record retention period from three to five years.
- Providing that any person may be named a respondent later if the person is found, during an enforcement action, to have aided or abetted another party in violating the *Federal Election Act*.
- Requiring Senate candidates to file electronic reports with the Commission.

Other recommendations include stabilizing the Presidential Public Funding Program and indexing for inflation both the limit on contributions by one authorized committee to another committee and the contribution limitations applicable to multi-candidate political committees.

The Commission also issued a number of advisory opinions (AO). AO 2004-19 advises an incorporated web site operator may receive and forward earmarked contributions to candidates for federal office because it satisfies both the “commercial vendor” exception to the ban on corporate facilitations of contributions at 11 CFR (Code of Federal Regulations) 114.2(f)(1) and the “Commercial Fundraising firm” exception to the definition of “conduit or intermediary” in 11 CFR 110.6(b)(2).

AO 2004-24 advises NGP Software, Incorporated may not use information about contributors, other than political committees, obtained from Commission reports in its campaign software product. The *Federal Election Campaign Act* (2 U.S.C. §438(a)(4), 11 CFR 104.15(a) forbids use of FEC information on contributors for commercial purposes.

AO 2004-27 informs Quale 2000 Incorporated that it may not use its remaining campaign funds

to pay a salary to campaign workers who agreed to work as volunteers.

AO 2004-28 informed the Iowa Ethics and Campaign Disclosure Board that it may require Iowa state party committees to disclose donors to the committees’ nonfederal office building funds as the *Federal Election Campaign Act* and Commission regulations specifically allow a state to require disclosure of donors to such funds (2 U.S.C. §453, 11 CFR 300.35).

U.S. Representative Todd Akin of Missouri was advised by AO 2004-29 that he may support or oppose ballot initiatives by using his campaign funds and may refer to the initiatives in solicitations for his principal campaign committee.

The Libertarian Party of Virginia, under AO 2004-34 meets the requirements for state committee status. The *Federal Election Campaign Act* defines a state committee as an “organization which, by virtue of the bylaws of a political party, is responsible for day-to-day operation of such political party at the State level, as determined by the Commission.” 11 U.S.C. §r31(5).

On October 28, 2004, the Commission concluded its political committee status rulemaking by approving the explanation and justification to accompany the final rules which expand the definition of contribution in a manner requiring additional organizations to register and file reports with the commission commencing on January 1, 2005. The final rules are available on the Commission’s web site at www.fec.gov/law/law_rulemakings.shtml#political_committee_status.

The *Bipartisan Campaign Reform Act of 2002* indexes certain campaign contributions for inflation every two years based on the change in the cost of living since 2001, the base year for adjusting the limits. These limits are inapplicable to contributions raised to retire past campaign debts.

On January 27, 2005, the Commission approved final rules relative to contributions and donations by minors to candidates and political committees effective march 7, 2005. The rules are a response to the U.S. Supreme courts decision in *McConnell v. Federal Election Commission* holding unconstitutional a provision in the *Bipartisan Campaign Reform Act of 2002* forbidding minors to make contributions to candidates or political party committees.

The Commission has updated its electronic filing format to Version 5.2 to reflect changes in Commission regulations effective on January 1, 2005. Committees using commercial software should contact vendors for more information about the latest software release. FECFile Version 5.2.0.0, supported by the new format, is available for downloading at the Commission's web site at <http://www.fec.gov/electfil/updatelist.html>.

For additional details, contact the electronic filing office at (202) 694-1307 or 1-800-424-9530, extension 1307.

REPRESENTATION

Representation invites submission of manuscripts, normally 3,000 to 6,000 words including notes, for possible publication. Manuscripts, other than opinion ones and reports, are subject to a formal refereeing process. Use capital letters sparingly, figures and tables should have short descriptive titles and source(s), and in-text references should be used with References listed at the end of the manuscript. Manuscripts should be sent to the Managing Editor, The McDougall Trust, 6 Chancel Street, London SE1, OUX, England. Telephone: +44 (0)20 7620 1080. Facsimile: +44 (0)20 7928 1528. Electronic Mail: admin@representation.org.uk.

ELECTION LAW DEPARTMENT

Editor Winston R. Brownlow of this department is retiring and the Section is seeking a replacement. Interested individuals should contact Joseph F. Zimmerman at zimmer@albany.edu

ELECTION LAW COURT DECISIONS

Editor: Winston Richmond Brownlow
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In the time between the publication of our last newsletter and the one that you are currently reading, the United States went through the momentous and historic election of 2004, in which

Senator John Kerry was decisively beaten by incumbent President George W. Bush. Mr. Bush's wide margin of victory in this contest precluded a repeat of the unseemly judicial spectacle the nation witnessed at the conclusion of the 2000 presidential election, and allowed him to take the oath of office for a second term without the lingering cloud of illegitimacy that cast a pall over his first term as President. There were, however, several lesser-known elections which were settled by resort to the courts in the past cycle. We examine several of these cases.

DISPUTED ELECTION CASES

Westchester County, New York, experienced the lengthiest unresolved election in state history. The contest, which was largely conducted against the backdrop of the Brennan Center's call for increased democratization in New York's legislature, for the 35th State Senate District in the City of Yonkers occurred between Republican incumbent Senator Nicholas Spano and Democratic challenger Andrea Stewart-Cousins, a Westchester County Legislator. After the polls closed on November 2nd, the machine count revealed an extraordinarily close race, with Spano holding a narrow lead of several hundred votes over Stewart-Cousins in an election in which over 118,000 votes were cast. As tends to occur in these circumstances, a dispute developed between the two camps as to the legality of counting five separate categories of absentee and affidavit ballots cast by voters in the largely Democratic precincts of southwest Yonkers. The chairpersons of both the Democratic and Republican parties in Westchester instituted separate proceedings before the State Supreme Court to determine the validity of the challenged ballots. The Court's Appellate Division, hearing cross-appeals by the parties following the adverse findings of a trial justice, sided with Spano and concluded that only 65 of the challenged 678 ballots ought be counted and tabulated with the final results. New York's Court of Appeals, the state's highest court, awarded Stewart-Cousins an appeal and handed down a decision in *Matter of Rosemarie Panio v. Carolee Sunderland*, No. 72, ___ NY3d ___, on February 2nd, 2005, finalizing the resolution of the matter.

In New York, a person whose registration and/or residency is questioned who nonetheless presents

himself at the polling place and offers to cast a ballot is entitled to vote only by court order pursuant to Election Law sec. 8-302(3)(e)(i) or by affidavit ballot pursuant to Election Law sec. 8-302(3)(e)(ii). The legitimacy of the affidavit ballot is later scrutinized and the vote cast thereby counted only if it is revealed that the affiant was properly registered and actually resided in the district in which his ballot was cast, provided, however, that a facially invalid ballot must be counted notwithstanding its facial invalidity “if the court finds that ministerial error by the board of elections or any of its employees caused such ballot envelope not be valid on its face,” Election Law sec. 16-106(1). This grace provision is extended to affidavit ballots in recognition that “the risk of fraud inherent in absentee balloting is less in affidavit voting, where the voter presents himself...in person before Board personnel on Election Day,” *Matter of Gross v. Albany County Board of Elections*, 3 NY3d 251, 260 (2004) (disenfranchising hundreds of absentee voters for minor technical errors on their ballots).

The first category of disputed ballots concerned the application of this “ministerial error” standard to 160 affidavit ballots filed at the correct polling location but at the wrong election district, which in practice represents a single table attached to a single voting machine. This sort of error is colloquially referred to in New York as “right church, wrong pew” voting. The Court, in a per curiam opinion joined by Chief Judge Judith S. Kaye and Judges George Bundy Smith, Carmen Ciparick, Albert Rosenblatt, and Robert Smith, held that such an error “is the result of ministerial error on the part of the poll worker in failing to direct the voter to the correct table,” *Panio, supra* at ___ (majority slip op. at 4), and accordingly reversed the Appellate Division’s determination that insufficient evidence of ministerial error existed and ordered that these 163 be counted.

Judge Susan Phillips Read, in a dissenting opinion joined by Judge Victoria Graffeo, attacked the majority for its supposedly impermissible expansion of the ministerial error exception beyond “facial defects on ballot envelopes” of the kind recognized by *Gross, supra* at 259 n3, (citing with approval *Matter of Carney v. Niagara County Board of Elections*, 8 AD3d 1085 [Fourth Dept. 2004], as an example of ministerial error where

the Board of Elections in Lockport failed to properly date and time stamp a timely military absentee ballot), and argued, rather unconvincingly and without any citation of authority whatsoever, that the Election Law allocates the evidentiary burden of proving ministerial error to the voter, whom she contended had not satisfied their newly imposed burden. Contrary to the dissenting view, however, there is simply no textual support or policy rationale for unduly limiting cognizable ministerial error to the type found in *Carney*. Indeed, considering that the very *raison d’être* of poll workers is to assist voters in properly casting ballots at the correct table and site, one is hard pressed to characterize the failure to direct a voter to the correct table as anything other than the very epitome of ministerial error. Thus, when viewed in that light, the presumption of error recognized by the majority when a voter tenders an affidavit ballot at the wrong table within the correct polling location seems perfectly reasonable, especially considering Judge Read’s rather shocking statement that “when the candidates have, in effect, tied,” “the ‘true’ winner is essentially unknowable” and “it is arguably less important which candidate is declared the winner than it is to declare one of them a winner expeditiously,” *Panio, supra* at ___ (dissenting slip op. at 6). It is fundamentally detrimental to the constitutional right of voting, in my view, to condone the designation of a winning candidate in the name of expediency when such designation is necessarily predicated upon the disenfranchisement by ministerial error of even a single voter.

The Court was unanimous with respect to the proper disposition of the four remaining categories of disputed ballots. The second category involved 450 affidavit ballots cast by voters at the wrong polling place, and thus also in the wrong election district. The Court of Appeals affirmed the rejection of these ballots on the theory that the failure to direct voters to their proper polling places is not ministerial error in that it would be “unreasonable to require poll workers to ensure that voters are in their proper polling site,” *Panio, supra* at ___ (maj. slip op. at 5). Though the majority did not explain the distinction, for purposes of ministerial error, between directing a voter to the proper table and directing a voter to the proper polling site, it seems to me that any increased burden associated with directing a voter to their proper polling place pales in comparison to the

burden imposed on the voter of having their otherwise lawfully cast ballot excluded in such a close contest.

With respect to the remaining categories of contested ballots, the Court affirmed the Appellate Division's order to count 45 special ballots cast by poll workers who provided the requisite certification of their poll worker status pursuant to Election Law sec. 11-302. The majority held that the Board of Elections had erred as a matter of law in requiring poll workers to apply for their special ballots with absentee ballot applications; as the statute only required the written statement filed by the poll workers and nothing else, the poll workers had in fact complied with the statute and the Court found that there was no legal basis to exclude the ballots. A similar conclusion was reached with respect to the 20 affidavit ballots cast by otherwise eligible voters in the proper election district whose ballots were excluded because the election district number was not written by the poll worker in correct line and the post-it note identifying the election district had become dislodged. The Court held that "[s]uch mishandling plainly reflects ministerial error," *Panio, supra* at ___ (maj. slip op. at 6). For the last category of disputed ballots, the Court affirmed the exclusion of three affidavit ballots filed by individuals in whose name ballots the ledger reflected had already been cast on a machine. There being a strong inference of fraud in such circumstances, the majority held that the only recourse for such a voter was a court order.

As a follow-up note, after the matter was remanded to the Westchester County Board of Elections for the counting of the remaining ballots as ordered by the Court of Appeals, Senator Spano was reelected by a single digit margin.

The second case today arises out of New Jersey Governor James McGreevey's announcement in August of 2004 that he is a "gay-American" and that he intended to resign his office effective on November 15th, 2004, thereby dispensing with the need to carry out a special

election to determine his successor. Such an election would have been required by Article V, Sec. 1 of the New Jersey Constitution had his resignation occurred more than 60 days prior to the 2004 general election. A coalition of plaintiffs, led by Bruce Afran of Princeton, sued the State in the United States District Court for the District of New Jersey, contending that a vacancy was created by operation of law upon the announcement of the Governor's intent to resign and that the failure to hold a special election violated their rights to free speech and due process of law under the 1st, 5th, and 14th Amendments to the United States Constitution. Judge Brown, hearing the matter in Trenton, initially declined to dismiss the matter on 11th Amendment comity grounds, *Afran v. McGreevey*, 336 F.Supp.2d 404, 409 (DNJ 2004). Though he acknowledged that *Pennhurst State School v. Halderman*, 465 U.S. 89 (1984), precludes a federal court, on 11th Amendment grounds, from directly ordering a state official to comply with state law, the due process clause of the 14th Amendment nonetheless independently prohibits a state from "disenfranchising voters...by failing to hold an election mandated by state law," *Duncan v. Poythress*, 657 F.2d 691, 704 (5th Cir. 1981).

As so formulated, the issue boiled down to whether or not the New Jersey Constitution actually created a vacancy in office at the moment in August when Governor McGreevey announced his intent to resign at a future date. Bearing in mind that principles of federalism require a state constitutional provision to be construed by a federal court only "in accordance with the plain meaning of its language," *United States v. Apfelbaum*, 445 U.S. 115, 121), the Court concluded, after consulting several dictionaries, that the term vacancy applied only to the physical and actual absence of a sitting Governor, and that, until November 15th, 2004, Mr. McGreevey continued to function as Governor notwithstanding his intention to resign on that date. As such, Judge Brown concluded that the plaintiffs could not prove any set of facts upon which their proposed mandatory injunction could be granted, see generally *Conley v. Gibson*, 355 U.S. 41 (1957), and accordingly their petition was dismissed.

BOOK REVIEWS

Editor: J. Paul Johnston
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Editor Johnston is seeking volunteers to review books. Please contact him at one of the above addresses.

Guidebook to Direct Democracy in Switzerland and Beyond. Amsterdam: The Initiative & Referendum Institute Europe, 2005. 275 pp. € 50 (paper).

The Institute (Entrepodok 91A, 1018 AD Amsterdam, Netherlands. E-Mail: info@iri-europe.org) has published a useful volume focusing primarily upon the initiative and the referendum, including their origin and history in Switzerland. A distinction is made between a plebiscite and a referendum. The former is called by a Government and the latter by citizens who circulate petitions.

Switzerland is a federation composed of a national government and twenty-six cantonal governments. The book explains: "The Federation principally takes on those tasks which require uniformity of provision. The rest is within the power of the cantons themselves. Put another way: Swiss government is (only) as centralized as is necessary—and as decentralized as is possible" (p. 42). A distinction is made between the Swiss conception of federalism and the European Union's principle of subsidiarity holding decisions should be made at the plane of government closest to the people. In Switzerland, the national government only can establish "as a uniform rule what has previously been approved by a majority of the citizens and of the cantons in an obligatory constitutional referendum" (p. 42). In effect, the Swiss constitution permits the national

government to establish general guidelines, but implementation of the guidelines is a decision made by each cantonal government.

Data reveal Swiss voters accept approximately eighty percent of the recommendations of the Government and Parliament with an average voter turnout of fifty percent. Referendum voters typically include twenty percent of the approximately 450,000 citizens residing outside the confines of Switzerland. The conclusion is drawn "direct democracy in Switzerland is far less a disrupting element in politics than it is a way of enlivening it and keeping it on its toes" (p. 51). Pressure is placed on the Government and its organs to provide information and explain their policy choices to citizens.

A case study of the creation of the Jura Canton is presented and explains how it solve the problem resulting from the merger by the Congress of Vienna in 1815 of the French-speaking Catholics of Basel with the German-speaking protestant canton of Bern.

Are voters unable to make political decisions as competent as decisions made by parliament? The skeptics answer yes. This volume presents evidence the "myth of the incompetent citizen" should be abandoned and adds the decisions made by voters produce "much more pragmatic and cost-efficient results than the knee-jerk response common in purely parliamentary democracies" (p.79).

Pages 113-273 contain resources on the initiative and referendum, including (1) information and data on referenda in twenty-one cantons, (2) postal voting, (3) electronic voting, (4) subject matter of referenda, (5) extracts from the Constitutions of 198, 1848, 1874, and 1999, (6) Chronology of the Jura conflict, (7) votes on particular national initiative propositions, (8) restrictions on the constitutional initiative, (9) economic effects of direct democracy, (10) voting rights of Swiss citizens living abroad, (11) data on all popular votes in Switzerland since 1848, and (12) a glossary of terms.

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Bibliography on Representation and Electoral Systems

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You will notice a couple of new features in the bibliography. I used a modified search string to identify appropriate books and have divided them into English and non-English language sources. I also added relevant government publications that were listed by the Library of Congress. Comments on the bibliography are welcome via e-mail (eherron@ku.edu).

Books (English Language)

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