

TERNSTROM-REBENBAUGH REJOINDER TO LICHTMAN

SEPTEMBER 3, 2001

We are pleased that, in his July 16, 2001 statement to the Committee on Rules and Administration of the United States Senate, Dr. Lichtman has, very belatedly, made available some of the details of his analysis that we have been seeking for months. When a majority of the members of the United States Commission on Civil Rights voted on June 8, 2001 to endorse his conclusions about the Florida 2000 elections, Dr. Lichtman's statistical report--which was absolutely central to the Commission's report--was grossly inadequate. It failed to provide the regressions that he claimed to have done, regressions that any scholar would require before they could assess the quality of his analysis.

This material was not made available to us until very recently, despite our repeated request, in violation of current scholarly norms in the social sciences. And what finally appeared on the Commission's web site on August 10 is dated July 16 but was never sent to us when it was first completed. Why not? Why keep information pertinent to an ongoing controversy from its own members who have advanced serious criticisms of its report? The answer, we suggest, is that the Commission fears that providing us with this document will allow us to advance additional unwelcome criticisms

It is also noteworthy that much of the analysis Dr. Lichtman describes here was apparently done long after his original inadequate statistical report and his oral presentation of his findings at the Commission meeting of June 8. The Commission's report was not based on what is to be found in Dr. Lichtman's July 16 statement.

It is not clear when this additional work was done. At a hearing of the Senate Committee on Rules and Administration on June 27, we were struck by Dr. Lichtman's very odd response to Senator McConnell's question about the possible influence of poverty on rates of ballot spoilage. In answering the Senator, Dr. Lichtman spoke at length about his analysis of the significance of education, not of poverty. As a highly experienced expert witness, Dr. Lichtman surely knew the importance of listening carefully to questions in such situations, and we suspect that he was being deliberately evasive. Could it be that as late as the end of June Dr. Lichtman had not yet in fact run any regressions that used county-level poverty rates as a variable, for example, despite suggestions to the contrary in his original report?

Dr. Lichtman's rejoinder is very brief, and it fails to address most of the objections we raised about his June report. We had neither the advantage of being able to obtain assistance of the Commission's sizable staff or the ability to hire experts of our own. Nonetheless, we developed a thorough critique of the Commission's statistical analysis, running to more than 8,000 words, more than a third of our entire long document. We had expected that Dr. Lichtman's rejoinder would address our chief criticisms of statistical issues. To our surprise and disappointment, it fails even to

mention many of them. Before we assess what Dr. Lichtman has to say now, it will be useful to sum up the major points that he has not ever attempted to refute.

These matters, it should be noted, involve only a portion of our dissent. Close to two-thirds of the dissent is devoted to other flaws in the Commission's report. None of these criticisms has been answered by the authors of the report, although we believe that they are sufficient to lead any disinterested reader to conclude that the report is riddled with error and that its main conclusions are unproven.

I. Key Points in Our Critique of His Statistical Analysis that Dr. Lichtman Chose to Ignore

Apparently uncontested, at least for now, are the following, spelled out in detail in our dissenting opinion on the Commission's report.

1. When a voter who turned in a ballot at the November election failed to register a valid vote for President of the United States, it is absurd to conclude that this proves that he or she was "disenfranchised." A good many voters do not vote for all offices on the ballot, and some deliberately abstain from making a choice in the presidential race. Substantial numbers also deliberately vote for more than one candidate for some bizarre reason. Indeed, Civil Rights Commission Chair Mary Frances Berry herself has said in public that she sometimes deliberately "overvotes."
2. Undoubtedly, though, substantial numbers of Floridians who wanted to register a choice in the presidential contest and actually cast a ballot failed to turn in one that included a presidential vote that was actually tabulated. This is a common feature of elections everywhere. What could explain this? Amazingly, both the Commission report and the report of Dr. Lichtman on which it heavily rests studiously avoid the term "voter error," even though that is the only credible description of what happened. The Commission tries to absolve such voters of all blame by referring to ballots that were "rejected" or "spoiled," as if someone or something had improperly "rejected" or "spoiled" these ballots. But the long and elaborate investigation the Commission conducted in Florida yielded not a shred of evidence to contradict the obvious fact that the only people who "spoiled" any ballots cast in Florida last November were the individual voters who failed to fill them in in compliance with established electoral procedures. Their ballots were "rejected" because they were not properly completed.
3. We cannot determine with any precision exactly who cast the ballots in which a valid choice for president could not be determined by the counting machines, or in many places by canvassing boards conducting manual recounts. Dr. Lichtman tries to draw conclusions about the matter by looking at variations from county to county in rates of ballot spoilage and then relating those variations to variations in other characteristics of those counties, chiefly as their racial composition. Counties, though, are crude units for analysis, and his method is highly vulnerable to what statisticians term "the ecological fallacy." Many leading statisticians and social scientists, some of them cited in our

dissenting report, believe this method yields unreliable conclusions. Dr. Lichtman, regrettably, has chosen to pretend this serious methodological issue does not exist.

4. The estimate in the Commission report that received most attention in the press is the sensational claim that black voters were nine times as likely as whites to cast votes that did not count; in some places it even claims that the figure is ten to one. That figure was an absurd extrapolation that failed to control for any other variables that may have been correlated with race, such as poverty and literacy rates. We note with great interest that this estimate does not reappear in Dr. Lichtman's July 16 statement, and that the author fails to provide any explanation as to why it does not reappear. His claim that the racial disparity in ballot spoilage rates was nine to one has been silently abandoned.

5. In addition to county-level data, Dr. Lichtman also originally examined precinct-level for three Florida counties. Although precincts are much smaller units than counties and superior in that respect, the difficulty with this part of the analysis is that no socioeconomic variables other than race were examined by Dr. Lichtman. No sophisticated social scientist would ever draw conclusions about how race influenced some social phenomenon from an analysis that used race as the only independent variable. The proper question is what effects may be attributed to race when other possibly relevant variables are held constant in the analysis. Dr. Lichtman made only a feeble stab at doing this in his analysis of county-level data; he failed to do it at all in his precinct analysis. In his July 16 statement, Dr. Lichtman reports on the findings of his subsequent analysis of two additional Florida counties—Broward and Escambia. This new material has precisely the same glaring defect as his earlier work on precinct data: it looks only at the relationship between race and ballot spoilage without taking other variables into account.

6. One of the oddest, and to us most offensive, features of the analysis that Dr. Lichtman did for the Commission was his decision to dichotomize the Florida population into the categories of black and "non-black." We would have thought that everyone today understood that there are very significant distinctions between non-Hispanic whites, Hispanics, Asian Americans, and American Indians. Casually lumping all these groups together as "non-blacks" obscures important cultural differences that we would expect the U.S. Commission on Civil Rights, of all bodies, to recognize and respect. After all, people of Hispanic descent outnumber African Americans in Florida today, and the state has sizable numbers of Asian Americans and American Indians as well. It is incredible, but readers of the Commission's report would never know that. Dr. Lichtman's July 16 statement offers no explanation for this egregious failure, and indeed presents further estimates that employ the indefensible "non-black" category.

7. In a separate statistical analysis, Dr. Lichtman examined the so-called "purge list" used by some county officials to remove from the registration lists persons convicted of a felony and hence ineligible to vote by law. Our dissent examined his data carefully, and concluded that it proved just the opposite of what the Dr. Lichtman and the Commission claimed. On this issue too, Dr. Lichtman has not provided any answer to our critique

Any thoughtful reader with an open mind, we believe, would find these unanswered criticisms extremely damaging to the case the Commission attempted to make. They won't go away simply because defenders of the report pretend they don't exist.

II. Lichtman's Arguments in his July 16 Statement

We now turn to matters that Dr. Lichtman's July 16 document does address.

First, it should be noted that some of these issues are highly technical, and that readers without advanced training in statistics will find them very difficult to sort out. Our own expert, Dr. John Lott, goes into these matters in detail in his August 25, 2001 "Response to Lichtman's Comment." We will allude to some of Dr. Lott's main arguments below, but his observations should be read in their entirety.

What new evidence is presented in Dr. Lichtman's July 16 statement? Its opening pages report on his further work on precinct-level data from Broward and Escambia counties. As we have already observed above, Lichtman's failure to examine any socioeconomic or demographic variables other than race renders this exercise of little value.

Furthermore, Lichtman's discussion focuses on extreme cases—precincts that were either 90 percent or more African American or 90 percent or more “non-black,” to use Lichtman's awkward and offensive term. As pointed out in our original dissent, this method exaggerates differences between groups. Florida blacks who live in nearly all-black neighborhoods cannot be assumed to be representative of the state's black population as a whole. They very likely are poorer and less educated, on the average. And whites or other “non-blacks” who lived in neighborhoods with very few or no African American residents may not be representative of the state's white population either. No careful scholar would extrapolate a statewide pattern from inspection of such extreme cases.

Perhaps most important, even his extreme case analysis--which clearly exaggerates differences--does not support his estimate that black voters were nine times as likely as non-blacks to cast invalid ballots. The extreme case analysis he has done in five counties, in fact, show that the average disparity was not nine to one but three to one (3.1:1 to be precise). We offered this criticism in our dissent, and Dr. Lichtman has provided no answer to it. The precinct-level data from the two additional counties does not alter the results at all.

In addition, Dr. Lichtman provides three regression tables that he claims support his contention that race alone is what determined the pattern of ballot spoilage in the 2000 election in Florida. Dr. Lott has examined these very carefully, and finds many flaws in them. The findings are very sensitive to the precise specifications used, and Dr. Lott argues that those specifications are arbitrary and lack adequate explanation and justification. Even when Dr. Lott reran the numbers using Dr. Lichtman's specifications,

his results come out significantly different than those reported by Dr. Lichtman. Dr. Lott's own regressions are technically superior, we believe, and they yield entirely different conclusions.

Other experts will have to assess the technical aspects of this controversy. Instead of plunging into it more deeply, we will now shift ground and explore two vital issues that should be fully comprehensible to the lay reader. These involve the role of education and literacy levels in explaining rates of voter error, and the effect of the partisan affiliations of election officials

III. The Question of Education and Literacy Levels

Our original report argued that the voters who mistakenly spoiled their ballots in the November election were largely people who had trouble reading and following the simple instructions provided with the ballots. African Americans would fall into this category in disproportionate numbers, because the average literacy level of the black population is much lower than that of whites. The 1992 National Adult Literacy Study found that 38 percent of African Americans ranked at the lowest level in “prose literacy,” Level 1. Persons at level one were defined as lacking the reading skill to be able to “make low-level inferences based on what they read and to compare or contrast information that can easily be found in [a] text.”¹ Since blacks were nearly three times as likely as whites to be at the lowest literacy level, it would not be surprising to find that greatly disproportionate numbers of them were unable to meet the challenge of figuring out how to register a choice for a particular candidate. It hardly seems coincidental that the racial disparity in the Florida ballot spoilage rate and in levels of illiteracy nationally are so similar.

Dr. Lichtman maintains that his regressions disprove that hypothesis. He claims to have measured the effect of literacy by using two county-level measures—the proportion of county residents who were classified at the lowest literacy level and the proportion who had less than nine years of schooling. However, the most sophisticated regressions in the world will not yield meaningful results if the underlying data they employ are inadequate measures of the phenomenon they are supposed to represent. In this case, the data are grossly deficient for a number of reasons. We pointed out some of their deficiencies in our dissent, and it is disappointing that Dr. Lichtman ignores the issue altogether, blithely proceeding to crank out numbers that obscure rather than illuminate reality.

It is astonishing that Dr. Lichtman would use county-level estimates of the proportion of residents reading at Literacy Level 1 without telling his readers that the 1992 survey from which the data were drawn did not include enough cases from Florida to permit direct estimates of literacy levels. What he relied upon was a series of

¹ National Center for Education Statistics, Adult Literacy in America: A First Look at the Results of the National Adult Literacy Survey, National Center for Education Statistics (Washington, D.C.: U.S. Government Printing Office, 1993), 18, 113.

“synthetic estimates” that amount to guesses about what the level would be in light of each county’s demographic characteristics.

Even worse, the way Dr. Lichtman that uses these county-level estimates ignores the crucial fact emphasized above—that African Americans are far more likely than whites to be at the lowest literacy level. If we had good data that would be permit county-level estimates of literacy broken down by race, we are confident that a “percent black at Literacy Level 1” would prove highly significant in a regression equation.

A similar objection applies to Dr. Lichtman’s other related variable, the proportion of county residents with less than nine years of schooling. These figures are not broken down by race, so they are useless for testing the proposition that racial differences in literacy levels are the major cause of the disparities in ballot spoilage. Furthermore, this is a poor measure because less than a tenth of Florida’s population (9.6 percent) had this little education at the time of the 1990 Census, the data Lichtman uses, and the figure would have been even lower in 2000. Very few people under the age of 50 have so little education these days.

Dr. Lichtman’s introduction of this variable is very puzzling. His original report and the Commission report both claim that he did a regression that included both literacy and percent who were not high school graduates as variables. We have repeatedly requested to see the actual regression, to no avail. We still do not have it, because Dr. Lichtman has changed the schooling variable from “percentage of high school graduate” to “percent under 9th grade” education. Why the switch? Do these two measures yield different results? Surely the matter requires some explanation.

In denying that literacy and educational levels have anything to do with the pattern of non-voting he is attempting to explain, Dr. Lichtman would have us believe that prosperous and well-educated African Americans living in the suburbs or relatively integrated neighborhoods were just as likely to cast spoiled ballots as those living in inner city slums and voting in precincts that were 90 percent or more black. How could this possibly happen? We can only imagine two scenarios in which this might be true:

a. It could be true if local election officials had somehow figured out which ballots were cast by black voters and how to alter them behind the scene so as to render them invalid. This seems frankly impossible, and the Commission never found a shred of evidence even hinting at such fraudulent manipulation of ballots in its long investigation in Florida. This scenario is even harder to take seriously when we recall that the vast majority of spoiled ballots were cast in jurisdictions in which Democrats controlled the electoral machinery (a point Dr. Lichtman denies unconvincingly as we shall see shortly). These officials lacked both the means and the motive to carry out such a scheme. The idea is simply ludicrous.

b. That leaves voter error. Dr. Lichtman apparently believes--or at least would like us to believe--that well-educated African Americans do no better than functional illiterates when confronted with the challenge of reading ballot instructions and following simple

directions like "VOTE FOR ONE AND ONLY ONE." This proposition is also ludicrous.

IV. The Partisan Affiliations of Local Election Officials

We have criticized the Commission report for its partisanship. Its errors, distortions, and dubious interpretations all have same slant. The report, quite simply, was clearly designed to support the "stolen election" theory. George W. Bush only won Florida, and hence the presidency, it holds, because "countless numbers" of black residents of Florida were somehow "disenfranchised." It was all the fault of Governor Jeb Bush and Secretary of State Katherine Harris, who supposedly orchestrated the effort. The Commission report concluded that its investigation had not uncovered "conclusive evidence" that state officials were involved in a conspiracy to keep minorities from voting. This formulation makes the Commission's bias unmistakable. In fact, the Commission not only found no "conclusive evidence"; it found no evidence whatever to support this lurid charge.

In our dissent, we went beyond this obvious point and reported that Dr. Lott's statistical analysis had yielded very important findings that were impossible to square with the "stolen election" theory. We noted that in 24 of the 25 Florida counties with the highest rates of ballot spoilage, the electoral machinery was in the hands of Democratic local officials, and in the 25th the supervisor of elections was an Independent. The choice of voting technology and of counting procedures, that is, had nothing to do with Governor Bush and Secretary of State Harris. It was made by people with the same partisan affiliations as more than nine out of ten African Americans who were allegedly disenfranchised. The same holds when you look at all the state's 67 counties, as Dr. Lott did. Having a Democrat in charge of the election sharply increased the ballot spoilage rate; having a Republican in charge lowered it dramatically.

This is such a damning blow to the stolen election theory supported by the Commission report that Dr. Lichtman could not ignore it. One of his new regressions, reported in his Table 2, does include the political party of the supervisor of elections as a variable. But taking the party of the supervisor into account, he assures us, "has no discernible influence on ballot rejection rates."

Why do Dr. Lott's regressions show a very powerful influence for this variable and Dr. Lichtman none at all? The answer is Dr. Lichtman engages in a nice bit of statistical legerdemain here. He does it by slyly introducing, along with the party of the supervisor of elections, another new variable--the proportion of Democratic voters in the county. Adding this into the equation removes the effect of party of supervisor that Lott found. Why? Because the percent Democratic among voters is, of course, very strongly correlated with the likelihood that the supervisor was Democratic. Dr. Lichtman is thus saying, in effect, that "the ballot spoilage rate was much higher in counties in which Democrats controlled the electoral machinery, but they controlled the elections only because there were so many Democratic voters in those counties."

True, but utterly irrelevant. This does nothing to undermine Dr. Lott's original analysis. Dr. Lott pointed out a devastating weakness in the argument that the black vote was diluted, in some unknown fashion, by the actions of Republican state officials. It happens that the ballot spoilage rate in general, and the estimated spoilage rate for black voters, was highest in places where the people who ran the elections--the only ones in a position to do anything to discourage voters or deface ballots--were from the same party as the overwhelming majority of the state's African American voters. The fact that those same counties tended to be heavily Democratic does nothing to alter that undeniable fact.

V. Conclusion

Our harsh assessment of the U.S. Commission on Civil Rights' report on the Florida elections in 2000 remains unchanged. In its earlier history, under very different leadership, the Commission did distinguished work that was applauded by people of widely different political persuasions. The imprimatur of the Commission carried weight, and deservedly so.

The Florida report, alas, lacks credibility, and further tarnishes the Commission's once-splendid reputation. Beneath the patina of scholarship provided by Dr. Lichtman, it nothing more than a tendentious brief written to support preconceived partisan conclusions. It consistently distorts data and ignores evidence that does not fit its argument.

Furthermore, the Commission has failed miserably in its responsibility to give a respectful hearing to the voices of Commissioners who disagree with its present leadership. Repeated requests for information, most notably Dr. Lichtman's machine-readable data and the regressions he performed using it, have been stonewalled. We have been told that Dr. Lichtman had no data in his possession, suggesting either that he made up his statistical estimates out of whole cloth or that he unaccountably destroyed all his statistical files once he had done his calculations. Testifying before the Senate Rules Committee on June 27, 2001, Commission Chair Mary Frances Berry suggested that Dr. Lichtman had obtained all of his data from the Web, and that it had somehow flown back up to the Web once he had produced his tables, an absurdity no one familiar with quantitative social science could possibly believe. A few weeks later, when the material was still not forthcoming, we heard another excuse from Chair Berry. Dr. Lichtman did have what we sought, but it was scattered on four or five different computers and would be too much trouble to assemble for us. These were simply pathetic efforts to conceal the truth: that the commission sought to shelter Dr. Lichtman's shoddy and slanted analysis from the severe criticism it so richly deserved.