



## Overvoting In Miami-Dade's 2008 Presidential Election

### FACT SHEET

#### Problems with the DS 200 Led to Higher Overvotes Statewide

- I. The principal cause of Florida's higher invalid vote rate in 2008's presidential election, compared to 2004, was much higher rates of overvoting.
  - a. Overvoting on ballots cast by voters in person—that is, during election day and early voting—rose by 1400%, from a total of 928 statewide in 2004 to 14,999 in 2008.
  - b. This was surprising because electronic voting machines used for in-person voting are required by law to provide overvote protection in order to prevent these kinds of voter errors. Despite this fact, more than two-thirds of the state's overvotes occurred during in-person voting.
  - c. Unlike undervotes and invalid write-ins which can be the result of legitimate voter choices, overvotes are nearly always "lost" votes—that is, failed attempts by voters to cast their vote.
2. Excessive overvoting on one newly certified precinct tabulator—the ES&S intElect DS 200 used by many large, urban counties in south Florida, including Miami- Dade—accounted for the state's higher invalid vote rate.
  - a. More than 80% of the state's total overvotes occurred on the DS 200, although it was used by only 44% of the state's in-person voters.
  - b. In contrast, the Premier optical scanner served 40% of the state's in-person voters but accounted for less than 6% of the state's overvotes.
3. Poorly conceived features of the DS 200's overvote protection feature are confusing, counterintuitive, and ineffective at preventing overvoting:
  - a. Retains rather than rejects the ballot, adding an unnecessary step to the process of correcting the ballot.
  - b. Pressures the voter to act hastily because no one else can use the scanner until he has made a decision.
  - c. Uses counterintuitive and confusing messages and symbols. The green "accept" button with a check mark discards the voter's vote; the red "return" button with an X allows the voter to correct his ballot.
  - d. Problems with the DS 200 overvote feature harmed minority voters more than others.

## Overvoting in Miami-Dade Was the Highest in the State

1. Miami-Dade's overvote rate in the 2008 presidential race was the highest in the state for overall overvoting at 0.70%. More than 6,000 Miami-Dade voters lost their vote in the presidential election due to overvoting. These overvotes were largely unnecessary.
2. Miami-Dade had the highest overvote rate in the state for Election Day voting (0.87%); its rate for early voting was the fourth highest in the state (0.37%). More than 4,000 voters lost their votes even though overvote protection was supposedly provided by the DS 200.
3. Nearly half (46%) of majority-Black precincts and more than a quarter (26%) of majority Hispanic precincts in Miami-Dade had overvote rates of more than 1%. In contrast, fewer than 6% of Miami-Dade's majority white precincts had an overvote rate in excess of 1%.
4. While both Hispanic and Black voters were disproportionately harmed by problems with the DS 200, the effect on Black voters was much more severe. Preliminary research in other DS 200 counties suggests that this trend will hold up statewide.
5. Overvote rates for Miami-Dade's majority-Black precincts were much higher for their election day voters than for their early voting counterparts.
  - a. Majority-Black precincts had a summed overvote rate of 1.52% for Election Day, compared to a rate of 0.87% for the entire county.
  - b. Yet the summed overvote rate for early voters in these same precincts was nearly identical to that of the county overall—0.36% compared to 0.37% for the county.
  - c. The difference is even more striking when we compare Election Day and early voting overvote rates for the majority-Black precincts with the worst election day overvote rates. The election day overvote rate for these precincts is nearly 16 times higher than for early voters from the same precincts. (See attached table.)
  - d. The fact that black voters turned out heavily for early voting prevented an even more disastrous and disproportionate loss of votes.
6. Why were rates of overvoting so much lower for early voting than for election day?
  - a. Early voting is staffed by elections officials and poll workers who are more experienced and more familiar with the equipment and state and federal laws. Precinct poll workers are citizen volunteers with inconsistent levels of training, experience, knowledge, and commitment.
  - b. In the 2008 presidential election, the Democratic candidate concentrated on turning out his voters for early voting. Thus, early voting locations serving black populations had large contingents of attorneys, election protection activists, and campaign workers who could provide advice and assistance to inexperienced voters. Also, the campaign was immediately alerted to voting problems. It is unlikely that this level of attention existed at the individual polling places on election day.
  - c. Despite the fact that overvote rates for early voting were much lower than for election day, they were still much higher than the overvote rates for voters using other optical scanners. Miami-Dade's early voting overvote rate of 0.37% is more than 18 times the rate for the 0.02% early voting overvote rate on the Premier optical scanner.

## **Conclusions—Changes to the DS 200 Are Essential**

1. The DS 200 does not provide effective overvote protection as required by state and federal law. Without alteration of its overvote feature to comply with these laws, the DS 200 should not be used for in-person voting.
2. The problems with the DS 200 overvote protection disproportionately affect black and Hispanic voters. This disparate impact makes this a voting rights issue.
3. Confusing and counterintuitive messages and signage on the DS 200 are particularly problematic for language minorities as they may be more likely to rely on visual cues that lead to discarding one's vote and inherent problems in translating already confusing messages. This lends additional strength to the argument that this is a voting rights issue.
4. The state must address the problems with the DS 200, but in the meantime, county elections officials should take appropriate measures to mitigate these problems and reduce unnecessary vote loss (even though it cannot be entirely eliminated).

## **Recommendations—Both the State and the Counties Must Take Action**

Supervisors of Elections should actively lobby the Division of Elections to take the following actions immediately with respect to the DS 200. (A full list of recommendations is in our report at [http://www.ffec.org/documents/Invalid\\_Vote\\_Report\\_Revised\\_23June2009.pdf](http://www.ffec.org/documents/Invalid_Vote_Report_Revised_23June2009.pdf))

1. De-certify the DS 200 until suitable changes can be made to prevent vote loss.
2. Conduct a rigorous forensic investigation of the DS 200 overvote problem in the 2008 general election. Use qualified, objective, nonpartisan consultants without ties to the vendors to conduct the investigation. Make appropriate changes to certification requirements.
3. Once changes have been made to the DS 200, conduct usability testing to ensure it meets requirements of state and federal law with respect to overvote protection. Its overvote rate should be comparable to of other optical scanners used in Florida. Conduct testing with various groups, including racial and language minorities, elderly persons, new voters, low literacy persons, and others. Use qualified, objective outside consultants to conduct testing and analyze results. Make changes to certification requirements as appropriate.

Regardless of the state's actions, the counties should take the following actions immediately:

1. Disable the override (accept) button so that ballots cannot be overridden at the precinct or early voting.
2. Put all overvoted ballots aside to be examined by the canvassing board for intent. The state has very specific guidelines for determining intent in order to ensure uniformity across jurisdictions.
3. If large numbers of ballots are being set aside, immediately investigate and take appropriate remedial action, such as providing additional voter instructions or reminders to poll workers.
4. Document all cases of overvoted or spoiled ballots for forensic purposes. Communicate these results to the state via the post-election conduct of election report.

**Table 1. Election Day and Early Voting Overvote Rates, Black Majority Precincts with Worst Election Day Overvote Rate, 2008 Presidential Election, Miami-Dade County**

Prec. #	Name of Precinct	ED Ballots	ED OV	ED OV%	EV Ballots	EV OV	EV OV%
248	North Central Branch Library	780	39	5.00%	802	2	0.25%
267	Universal Truth Center	467	21	4.50%	354	0	0.00%
216	Grace United Com. Church	202	9	4.46%	1,152	2	0.17%
518	Church of God Prophecy	500	21	4.20%	641	2	0.31%
245	Bible Baptist Church	617	24	3.89%	542	2	0.37%
531	Pepper Com. Ctr.	388	15	3.87%	525	1	0.19%
252	Arcola Park	719	27	3.76%	910	3	0.33%
142	Holy Cross Christian Day School	651	23	3.53%	1,136	3	0.26%
511	Grove Baptist	510	18	3.53%	526	2	0.38%
253	Palm Court Apt.	404	14	3.47%	483	0	0.00%
220	New Way Fellowship Baptist	436	15	3.44%	795	1	0.13%
520	Meek Art Center	457	15	3.28%	643	2	0.31%
182	Griffing Senior Citizens Ctr.	155	5	3.23%	224	0	0.00%
250	Mt. Carmel Missionary Baptist	376	12	3.19%	479	0	0.00%
229	St. Timothy Lutheran	794	25	3.15%	631	3	0.48%
826	Moton elementary	354	11	3.11%	311	1	0.32%
	All of above precincts	7810	294	3.76%	10154	24	0.24%

Legend: OV = overvote; ED = election day; EV = early voting

Sources: Unofficial Results, 2008 General Election, Miami Dade, Precinct Report (EL30A, with group detail and overvotes and undervotes); Official Results, 2008 General Election, Miami Dade (details.xls).