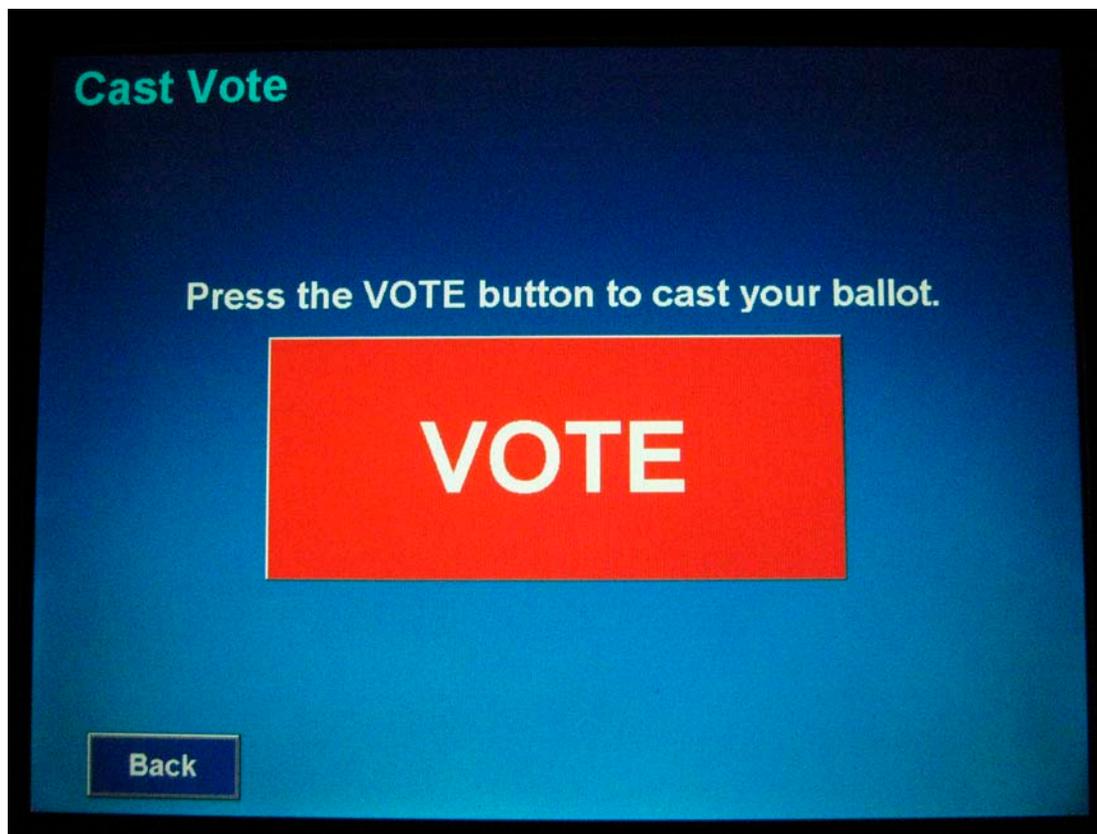


**Hope and Experience:
Election Reform through the Lens of
the AEI-Brookings Election Reform Project**



Reuters/Hyungwon Kang

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We launched the AEI-Brookings Election Reform Project (ERP) in June 2005 with the encouragement and financial support of the John S. and James L. Knight Foundation. Five years later we bring the project to a close. We take this opportunity to reflect on the state of election administration in the United States almost a decade after the extended and controversial Florida vote count in the 2000 presidential election and suggest how additional changes in technology, election law and administrative practices might further strengthen American elections in the years ahead.

The Context

As a consequence of the Florida debacle, most Americans, ourselves included, discovered how little we knew about the myriad ways in which our system of casting and counting votes threatened a bedrock of democracy, namely that those who have a right to vote are able to do so, and have their votes counted accurately. Our uniquely American election administration system – highly decentralized, lacking uniformity within and across states, and predominantly overseen by partisan officials – proved especially vulnerable in the dead-heat Florida contest, where the ultimate outcome determined the next occupant of the White House. One of the most controversial aspects of the disputed Florida vote count was the apparent disparate impact on racial, age, and partisan groups of the mechanics of registration and voting. Wide variation across the states in voting equipment, ballot design, accuracy of registration lists, number

and training of poll workers, lines at polling places, the availability of provisional ballots, the treatment of absentee ballots, and procedures for counting and recounting ballots advantaged some groups at the expense of others.

The 2000 experience produced a clarion call to document the flaws and to take decisive steps to ensure that future elections were administered consistent with the very highest standards Americans expect of their democracy. Major news organizations produced a series of informative reports on the nuts and bolts of elections that had seldom before captured the attention and resources of editors and producers. Dozens of national and state commissions, study groups, and committees analyzed shortcomings in the election system and formulated recommendations for improvement. Advocacy groups mobilized to promote changes in election law and practice. Numerous lawsuits were filed to address the problems experienced by different groups of voters. A number of states moved quickly to set new standards for voting equipment and election administration, in some cases providing financial support for machines, poll worker training, and voter education. And after months of study, debate, and uncertainty, Congress passed and President George W. Bush signed into law the Help America Vote Act of 2002 (HAVA), just days before the 2002 midterm elections.

HAVA provided the first major federal financial support for the costs of administering elections historically borne by state and local governments. It authorized \$3.86 billion to help states replace punch card and lever voting machines, improve the administration of elections, set up computerized statewide voter registration lists, guarantee certain voter

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rights (access to voting for persons with disabilities, provisional ballots, and second-chance voting), and meet a number of voting system standards (audit capacity, maximum error rates, definition of what constitutes a legal vote for each type of voting machine used in the state, and multilingual accessibility). HAVA also established the Election Assistance Commission (EAC), the first federal election administration agency.

The new law relied largely on the states to achieve uniform and nondiscriminatory administration of federal elections by arming them with resources, information, and authority to implement new federal requirements. Uniformity was sought within, rather than across, states, which were given broad discretion to implement the new requirements to fit their existing electoral systems, intergovernmental arrangements, and political contexts. Those hoping for a fundamental restructuring of administrative authority and responsibility within our federal system – including a single national voter registration list and uniform federal election ballots, voting equipment, and counting procedures – were keenly disappointed. Most analysts, however, believed that a dramatic federalization of election administration was infeasible and that the general approach taken by HAVA made sense.

HAVA implementation was halting. With delays in Washington on appropriations and the appointment of EAC members, states were left with insufficient funding and guidance in developing plans for meeting new federal requirements and upgrading their election systems. Few states had statewide voter registration databases in place for the 2004 election. Many states had new voting machines in some of their polling

places, but only a handful eliminated entirely their punch card machines in time for the presidential election. Critics raised questions about the security and integrity of paperless, direct recording electronic (DRE) voting machines, producing controversy that delayed or altered the acquisition of new voting equipment and led to demands for voter-verified paper audit trails. Two other HAVA requirements, part of the delicate partisan compromise needed to enact the new law, created problems of their own. States implemented the provision specifying that individuals arriving at polling places but not appearing on voting rolls were to be issued provisional ballots, which were then to be counted only if it was determined the voters were properly registered. But individual states adopted widely divergent rules for determining which provisional ballots were to be counted. As a consequence there was a significant variance among the states in the percentage of provisional ballots that were counted. Another controversy arose over the new provision requiring first-time voters who registered by mail without providing verification of their identity to show identification at their polling place. A number of states applied the new voter identification requirement to all voters, raising concerns about its disparate impact on groups of voters.

The partial and problematic implementation of HAVA in the 2004 election cycle kept issues of election administration squarely on the public policy agenda. Another electoral meltdown was avoided in 2004, but only barely. A swing of less than 60,000 votes in Ohio would have resulted in post-election chaos. The problems that emerged in the 2004 cycle – difficulties and errors resulting from the flood of new registrants, the large number of provisional ballots not counted in some states, very long

lines in some early and election-day precincts, machine counting errors, and reports of vote suppression and fraud – confirmed that many shortcomings remained in our system of election administration. Moreover, the uneven success of states in building computerized registration lists and persistent concerns about new voting equipment ensured continuing turmoil in election policy and administration in Washington and the fifty states.

This was the context in which we launched our Election Reform Project five years ago. Our role was to fill a critical niche in the vast array of organizations and individuals working to improve election administration. We sought to provide a centralizing, coordinating, monitoring, and facilitating presence that worked to ensure that diverse research activities – ranging over such topics as voting technology, provisional ballots, registration, voter identification, state and local administration, vote centers, early and absentee voting, overseas and military absentee voting, poll worker recruitment and training, vote suppression, and voter fraud – were leveraged on behalf of needed improvements in federal and state law and implementation.

We hoped that by facilitating communication among scholars, policymakers, election professionals, journalists and others, we could explore new ideas and innovations in election practices and election administration, focus research findings and election experiences on a post-HAVA agenda, and move elements of that agenda toward serious debate in Congress and implementation in states and localities.

Our goals were tempered by political realities. If the 2004 elections resulted in some serious controversies in close elections at the state and

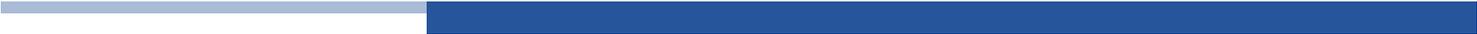
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local level, the fact that there was no meltdown comparable to 2000 meant there was little momentum in Congress for revisiting election reform. HAVA was the first serious national effort to revamp our election systems; even after the 2000 debacle, it was extraordinarily difficult to get the law passed with bipartisan support. While there was a generous appropriation attached to HAVA, the bulk of the money went for subsidies to states and localities to purchase electronic voting machines, which themselves immediately became objects of controversy. And states, having spent heavily on the new machines that many subsequently felt obliged to modify or replace, were not eager to invest more on election administration—especially as many elements of HAVA became unfunded mandates.

Project Priorities

If Congress and the states were not eager to jump with both feet into a major new effort at election reform, there were still many interesting ideas for change, and many innovations percolating in universities and local and county election jurisdictions. Our project, for example, focused on the vote centers implemented in Larimer County, Colorado, using working group sessions to explore the implementation of the idea with the voting officials from the county and analyzing the best social science research on the county's efforts compared to other places, like Harris County, Texas and Denver, Colorado, that tried their own variations of vote centers with different degrees of success.

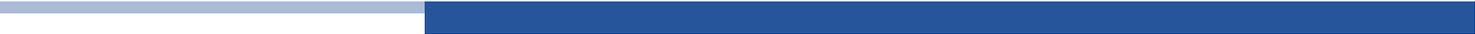
Vote centers are one aspect of the broader subject of convenience voting, which also includes early voting, absentee ballots and vote by



mail. We examined options to ease the barriers imposed upon voters when casting ballots without losing the experience of voting at the polls. Unrelated to Florida in 2000, states have been moving quickly toward adopting voting by mail and early voting at polling places. Several of our sessions focused on aspects of this phenomenon, as well as concerns about the adoption of widespread voting by mail and extended early voting windows before the formal day of elections.

We explored in depth the saga of voting machines, including the checkered history of electronic machines, the re-adoption of older technology like optical scan equipment, the innovations that could marry the two technologies, the problems with the shrinking universe of voting machine manufacturers, and the relationship of the machines themselves – and the controversies over them – to voter confidence in the election system and election outcomes, and to levels of voter error. We began a collaboration with the Open Source Digital Voting Foundation, a nonprofit project of a number of Silicon Valley entrepreneurs and philanthropists to create a new and trustworthy electronic voting system.

We also convened a task force on the voluntary voting system guidelines (VVSG) for electronic voting machines and issued a major review of the draft guidelines. Our key recommendation was to focus more attention on the usability of voting technology, whether DRE systems, optical scan or even paper ballots, and to substitute performance standards for rigid design requirements. Security concerns are of great importance, but we stressed that too narrow a focus on security distracted attention from such critical concerns as poll worker training, voter registration practices, and chain-of-custody procedures.



We spent a great deal of time working with a variety of experts on the problems and possibilities of electronic voter registration lists, including whether the HAVA mandate for statewide lists could be adapted to enable states to share information and coordinate their lists to get better information and to reduce fraud. We worked with the Pew Center on the States to improve military and overseas voting, the one major area that resulted in congressional action through the federal Military and Overseas Voter Empowerment (MOVE) Act enacted in 2009. Well over 30 states have since taken actions to implement reforms.

We also dedicated our time and resources to two topics which do not receive enough attention: the resolution of election disputes and the possibility of a disruption of an election by a natural disaster or terrorist attack. And we looked at the partisan nature of election administration, unique to the U.S. among major democracies, and its impact on voter confidence in the system. Throughout the project, we sought ways of stimulating and nurturing new research on election administration, assessing data needs of the research and policy communities, and apprising policymakers in Washington of promising developments around the country.

Then and Now

Given the continuing controversies surrounding the administration of elections and the failure to enact HAVA II, it is easy to overlook how our elections have changed over the past decade. Some of these changes were driven by HAVA but reforms at the state level were at least as

significant. And innovations and new practices unrelated to the Florida experience continued apace, especially the adoption of voting by mail, early voting at polling places, and offering voters a choice of voting locations.

Funding of Election Administration. Prior to 2000, almost no federal money had been spent on elections even though the most prominent races on the ballot were for federal offices. HAVA sent several billion dollars to states and other jurisdictions. To be sure, the funding burden subsequently returned fully to state and local governments but a precedent has been set for the federal government assuming some responsibility for financing improvements in the administration of federal elections.

Voting Equipment. Since 2000, we have seen dramatic new purchases of vote casting and counting technologies. Much of the money that Congress appropriated for election reform went toward buying new machinery. Before 2000, there were many different types of voting systems. Today, there are essentially two broad categories of voting machines, direct recording electronic systems (DREs), where voters cast their ballot on a touch screen device, and optical scan systems, where voters mark their ballots which can be read by machine. Essentially gone are the infamous punch-card systems and lever machines. And even the two systems that have come to dominate have had their own controversies, especially DREs, which some states have chosen to supplement with paper trails while others have replaced with optical scan systems.

The reduction in the residual vote rate was most striking from 2000 to 2004, but further improvements were experienced by a number of states in 2008.

Uncounted Ballots. Upgraded voting equipment contributed to a decline in the number of uncounted votes for president since 2000. (Other factors were at work as well, including improved administrative practices and fewer voter abstentions.) The reduction in the residual vote rate was most striking from 2000 to 2004 (a decline of over 40 percent), but further improvements were experienced by a number of states in 2008.

Provisional Ballots. Before HAVA, provisional ballots were offered in less than half of the states. Today they are virtually universal. Provisional ballots provide an opportunity for voters whose names are not on the registration list to cast a vote, which may be counted if it is subsequently determined that the voter was properly registered. Today, there are live controversies over how provisional voting should be administered and which provisional votes should be counted. Nonetheless, Americans successfully cast over 1.7 million provisional ballots in the 2008 election, most of which would not have been counted in 2000.

Voter Registration Databases. Prior to 2000, only seven states had statewide computerized registration databases. HAVA required that all states (with a registration requirement) create them. In our decentralized system of election administration, it was common for lists to be kept at the local level and on paper. The move toward these computerized statewide lists has been halting in a number of states, and there are still questions about the accuracy of the lists and the adequacy of the computer systems. There are significant differences in how states have constructed these databases, especially whether they are state-controlled top-down lists or locality-controlled bottom-up lists. And the controversies about how to

add and remove voters from the lists are still with us. Nonetheless, the change in this area from just a few states with statewide computerized databases to nearly universal adoption of these systems is striking.

Absentee and Early Voting. The adoption of widespread voting by mail started in a few states in the 1980s and 1990s, but has accelerated rapidly. In the 2000 presidential election, approximately 10 percent of votes were cast by mail; eight years later the percentage doubled. In a number of states, a majority of ballots are now cast by mail.

Widespread early voting at polling places is an even newer phenomenon with Texas and Tennessee leading the way in the late 1980s and early 1990s. In 2000, approximately 4 percent of votes were cast early in person; in 2008 that number jumped to roughly 13 percent. And both with early voting centers and Election Day vote centers, voters now have several options as to where to cast their vote.

Election Administration Research. One of the most striking developments over the past decade has been the emergence of an election administration research community. At the time of the 2000 Florida meltdown, election administration was a backwater of scholarly research. Scholars and policy analysts with a primary interest in voting rights or turnout often investigated aspects of the institutional arrangements for the casting and counting of ballots but many important topics were slighted or ignored altogether. Today scores of scholars at universities and independent organizations are engaged in cutting-edge research across a wide range of policy-relevant subjects. Our ERP website and newsletters document the productivity of this research community as does Richard Hasen's indispensable electionlawblog.org. The Election

Law Journal, an important resource featuring original articles, book reviews, and recent cases and materials, will soon publish its tenth anniversary issue.

A number of organizations, including the Caltech-MIT Voting Technology Project, the University of Maryland Center for American Politics and Citizenship, the Center for Democracy & Election Management at American University, the Ohio State University Moritz College of Law, the Brennan Center for Justice at the NYU Law School, and the Early Voting Information Center at Reed College have active research agendas and produce regular reports on the policy implications of their findings. The Pew Center on the States collaborates with election officials, policymakers, researchers, technology experts, businesses and other stakeholders in the election process in the conduct of research and experiments on election modernization. It also publishes electionline.org, an information clearinghouse and e-newsletter. In recent years communications between the research and policy communities have proven increasingly productive. Our project's role in fostering a vibrant community of researchers and practitioners in election administration may well have been its most valuable contribution.

The Future

Even though there is great interest in election administration, and great challenges as well, it is unlikely that we will have comprehensive election reform legislation at the federal level any time in the near future.

A common refrain on Capitol Hill is that HAVA needs time to work before another effort can take place.

The Help America Vote Act, with all of its limitations, was a high water mark for election reform in Congress. The bipartisan nature of the bill meant that it was not always wholly consistent, but also that it was possible to legislate on a wide variety of issues. The bill, however, was a product of its time, written in the aftermath of the 2000 election debacle. And having passed such legislation, a common refrain on Capitol Hill is that HAVA needs time to work before another effort can take place.

It is not impossible, however, for Congress to address some areas of election administration. The MOVE act, which passed in 2009 as an amendment to a defense authorization bill, is a recent example. But the broader policy changes are likely to occur in state legislatures or in the offices of election administrators. The provision of federal funds is also unlikely to be repeated anytime soon, which may leave many election reforms on shaky ground.

Nonetheless, the mobilization of the policy and research communities over the past decade and ongoing technological changes are certain to keep a number of issues very much on the public agenda for the next generation of election reform.

Voter Registration. Registration and registration systems have become central issues in election administration. While there has been significant change in this area, with states creating statewide computerized registration databases, there is also dissatisfaction in many quarters about the state of the registration system.

Advocates of voter access complain that a large number of eligible voters are not on the rolls, and even those who have registered may find errors and omissions on registration lists which add to the hurdles of

voting. Those who emphasize integrity in elections find fault with the accuracy of voting lists. Voters might be on lists twice, databases in different states do not talk to each other, ineligible voters can appear on the list, all of which raises worries that intentional and unintentional voting fraud by ineligible voters can take place. And independent groups, sometimes with political agendas, often play an important role in registering voters. Finally, administrators are unhappy with a system in which many new registrations arrive on their desks shortly before Election Day and the updating of voters' addresses or other small changes is inadequately done.

Improved and modernized voter registration systems may address these concerns. The three of us are members of the Committee to Modernize Voter Registration, which is exploring a variety of approaches including a more active role for state governments in registering voters, the utilization of various databases to help states improve the accuracy of their voter registration rolls, and portable registration for those who move within (and eventually between) states. The Pew Center on the States is working closely with state officials, private contractors and researchers to promote more flexible, accurate, and cost-effective registration systems.

A growing number of states have adopted or are considering same day election registration, in hopes of increasing turnout and acquiring up-to-date voter registration information.

Alternative Voting. The rapid rise of early, absentee, and mail voting shows no sign of abating. The research to date has found little evidence that these various forms of convenience voting systematically increase turnout. But they hold considerable appeal to election officials seeking

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ways of reducing costs, to parties and candidates working to get their voters to cast ballots, and to citizens looking for more convenient ways of voting. They are, however, not without costs, such as less secret ballots, opportunities for fraud, the loss of error checking on ballots, missed opportunity to take into account late-breaking campaign events, and the diminishment of the civic character of Election Day.

Vote centers and alternative voting facilities offer promising ways of reducing some of those costs.

It is crucial that scholars monitor and assess the various forms of convenience voting and that their research finds its way to policymakers.

Voting Technology. The market for voting technology has changed significantly since the passage of HAVA. Machines built by Election Systems & Software are currently in use in 43 states, and ES&S's purchase of Premier Election Solutions (currently under investigation by the Justice Department for antitrust allegations) would increase its market share to 70 percent of the country's voting machines. The elimination of market competition will inevitably raise new concerns for election officials; the dilemma of losing vendors to service their machines or purchasing new machines is inevitable if companies continue to go out of business. While the Justice Department's focus on the potential for ES&S to monopolize the system is promising, it also highlights the need for reform of the regulatory model.

While existing voting machine makers have consolidated into a few select companies, a new technology has emerged that promises a transparent and publicly-owned voting system. Open source technologies, whose designers allow users to download versions of the computer code

to review and edit for their own purposes, have recently emerged as a challenge to traditional electronic voting systems. The Open Source Digital Voting Foundation is developing such software for Los Angeles County, the largest and most complex electoral district in the country, to demonstrate its applicability to the country at large. The development, testing, and dissemination of this new technology could revolutionize the existing marketplace for voting equipment.

Election Administration. Many of the challenges facing election officials involve the interface between technology and voters, mediated by poll workers and the legal and administrative framework governing the casting, counting, recounting, and certifying of votes. These touch on considerations such as the adequacy and distribution of resources within electoral jurisdictions; the recruitment, training, and supervision of poll workers; the design of ballots; procedures for auditing election results and resolving contested elections; and contingency planning for unanticipated events or disasters.

Much work remains to be done in addressing these issues.

Conclusion

The American electoral system is in many respects an outlier among the world's democracies. The indirect election of its president through the casting of electoral votes by the states, with no federal constitutional standing for the popular vote, is perhaps the most peculiar. Another is the extraordinary range and frequency of elections, matched only by Switzerland's system. In the realm of election administration, two

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characteristics stand out: the highly decentralized nature of the system and the oversight and control of the election system by partisan elected officials.

The first has the advantages of a federal system, including the ease of adapting to local situations and the possibility of innovation and experimentation across jurisdictions. But the disadvantages are more visible to those seeking to improve the conduct of presidential and congressional elections. Authority, expertise, and budgets are concentrated in state and local governments. No uniform federal election ballot exists. The leverage for systematic reform across states is greatly constrained, for the most part limited to monetary incentives, exhortation, and the nurturing of consensus and cooperation among local officials.

The second creates serious conflicts of interest for officials expected to administer and adjudicate the conduct of elections. During this era of extreme ideological polarization of the political parties, it intensifies the politicization of election administration and makes even more difficult the fashioning of nonpartisan improvements. It was no accident that all of the states that chose to increase voter identification requirements were controlled by Republicans and those that opposed such restrictions were governed by Democrats.

The experience of the past decade, and ours during the five-year history of the Election Reform Project, confirms the power of these two forces in constraining electoral system change. And yet change did occur. Improvements large and small were achieved. Ideas, evidence, activism, publicity, and communication can and did make a difference. And they will do so again.

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