

**Reports of**  
**The Task Force on the Federal Election System**

**Mark Hansen, Coordinator**

## **Preface to the Reports of the Task Force on the Federal Election System**

The National Commission on Federal Election Reform charged the Task Force on the Federal Election System with two responsibilities, first to provide information about current practices in federal elections and second to analyze the effects of current practices and the possibilities for reform. With a substantive mandate that ranged from voter registration to polling hours, the work of the Task Force seemed best divided into a series of reports on discrete topics. Accordingly, the final product of the Task Force comprises nine reports. The longest address voter registration and early, mail, and unrestricted absentee voting; the shortest consider felony disfranchisement and verification of voter identity in polling places. All of the reports combine a description of current practice with an overview of the best scholarly research into election systems and voter behavior.

The Task Force enjoyed the cooperation of numerous scholars, analysts, and election officials who took our phone calls, answered our e-mails, and in some cases plied us with data. Often they did not realize that in so doing they became Task Force participants. Raymond E. Wolfinger of the University of California at Berkeley, Stephen Ansolabehere of the Massachusetts Institute of Technology, Tracy Warren of the Constitution Project, and Conny McCormack, the Registrar-Recorder and County Clerk of Los Angeles County, made sustained contributions to our work. We especially thank about 20 people who took time from busy schedules on short notice to participate in a critically informative conference on voter registration, conducted jointly with the Task Force on Election Administration. Nothing has been more valuable in this work than to see elections from the vantage point of the people who administer them. We have emerged with a new appreciation of their talents, and their patience.

The staff of the Task Force on the Federal Election System tracked and compiled and culled and summarized and helped to figure it all out. The chief responsibilities for implementing our inquiry fell to Michael A. Neblo, now a Robert Wood Johnson Fellow in Health at the University of Michigan and Assistant Professor at the Ohio State University. Neblo helped to shape every Task Force report with his research and his critical eye, and he authored one himself. Meredith Rolfe and Nealon Scoones provided careful and timely assistance with the research. Thad Hall and Tova Wang of the Century Foundation and Leonard Shambon of Wilmer, Cutler & Pickering contributed significant help and insight.

Finally, the University of Chicago and especially its Provost, Geoffrey R. Stone, allowed us the time to contribute to an effort that will, we hope, make elections work a little better.

John Mark Hansen,  
*Coordinator*

John Mark Hansen is now Professor of Government at Harvard University. Until 2001, he was the William R. Kenan Jr. Professor in Political Science and the College at the University of Chicago, where he also served as Associate Provost for Research and Education. Hansen studies interest group politics, legislative politics, public opinion, and political participation. He is the author of two books, *Gaining access: Congress and the farm lobby, 1919-1981*, and *Mobilization, participation, and democracy in America* (with Steven J. Rosenstone), and numerous articles. He is also a member of the Board of Overseers of the American National Election Studies. Hansen received his B.A. in Political Science and Economics at the University of Kansas in 1981 and his Ph.D. in Political Science from Yale University in 1987.

## **I. Sizing the Problem**

## Sizing the Problem

Task Force on the Federal Election System  
John Mark Hansen  
July 2001

### *Summary of conclusions*

1. If an election for which the margin of victory is less than a percentage point is within the current technological margin of error, then elections within the error margin are common occurrences. In an average presidential election, the results in two or three states are within the margin of error. Razor-close races for the Senate are just as common, and extremely close contests for governor are even more common. In the last half century, every state but two has had at least one federal or gubernatorial election that was within the one-percent margin of error.
2. Elections that are within the margin of error tax the legitimacy of the federal election system. Overall, Americans express levels of satisfaction with the conduct of democracy that are among the highest in the democratic world. Americans are much less convinced, however, that elections in the United States are conducted fairly. In 2000, in fact, Americans' rating of the fairness of the election was nearly the lowest in all the democratic countries. Unsurprisingly, the perceived fairness of the election is influenced by partisanship. But substantial numbers of Republicans questioned the fairness of the 2000 election, as did women and a majority of blacks. Large margins of error in close elections put a strain on the electoral system that undermines public confidence in the electoral process.

### *The frequency of close federal and statewide elections*

The 2000 presidential election exposed to the nation what local election administrators have long known, that the process of casting and counting ballots is riddled with error. In most circumstances, the error is inconsequential because it is too small to have any plausible effect on the outcome. Most elections in the United States are simply not very close. In a very tight election, however, even a small margin of error in the balloting can mean the difference between winning and losing, as it was in Florida in the 2000 presidential contest.

In Florida and after, the nation learned that a voter's choice cannot readily be determined from something between 1.5 and 2.5 percent of the ballots cast in federal elections. The technical problems involve choices that did not register—the “undervote”—and multiple choices that did—the “overvote.” As a matter of determining the election outcome, neither problem would be very worrisome if the candidate preferences of voters ensnared by technical problems in the balloting simply paralleled

the preferences of all the other voters.<sup>1</sup> But the events in Florida and other analyses suggest otherwise. No matter what the method of balloting, less educated voters will find it harder to cast a ballot correctly than better educated voters. Moreover, depending upon the type of balloting and the availability of assistance, marking a ballot correctly will present special problems for language minorities, the elderly, and persons with physical disabilities.

As a way to size the problem of Election Day mistakes in casting and counting ballots, let us adopt one percent as the level of error that might be consequential in federal elections. If the true "residual vote" (undervote plus overvote) is 1.5 percent, a one percent margin of victory might produce an incorrect outcome if the people whose votes were not counted preferred one candidate over the other by a ratio of five to one. If the true residual vote is 2.5 percent, a one percent margin of victory might produce an incorrect outcome if people affected by the undervote and overvote preferred one candidate over the other by a ratio of 3 to 2. Supposing, then, that an election decided by less than one percent of the votes cast is within the technical margin of error, how widespread is the potential problem?

As the table following shows, the incidence of federal elections decided by less than a percentage point is far more widespread than Florida in 2000. Since 1948, elections for presidential electors have been decided by less than one percent of votes cast 31 times (and by less than two percent 70 times). In 1968, 1972, and 1988, presidential electors were chosen in no states by a margin of less than one percent, but in 1960 six were and in 1948 and 2000 five were. In the 14 presidential elections since 1948, 22 states have seen presidential contests decided within a percentage point (and 40 states have had presidential contests within two points). In a given year, there is a 90 percent likelihood that at least one state will have a presidential election within the one-percent technical margin of error. Presidential elections within the one-percent technical margin of error occur all the time.

**Federal and statewide elections decided by less than two percent and less than one percent (bold) of votes cast, 1948-2000**

State	Presidential	Senatorial	Congressional	Gubernatorial
Alabama	1980	1962, 1986	5, 6	1994
Alaska	1960		0, 0	1960, 1974
Arizona	1964, 1992	1980	2, 1	1950, 1970, 1974, 1990, 1994
Arkansas	1980		0, 0	
California	1948, 1960, 1976	1986	9, 20	1982
Colorado	1996	1956, 1972, 1980, 1986	5, 3	1998
Connecticut	1948	1988	10, 7	1948, 1950, 1952
Delaware	1948, 1960	1960, 1972	2, 1	1968
Florida	1992, 2000	1988	2, 5	1994
Georgia	1992, 1996	1980, 1986, 1992, 1996	3, 1	1966

<sup>1</sup> As a matter of public satisfaction with the electoral process, even randomly distributed errors in the balloting may be consequential. People who have gone to the trouble of voting do not like to hear that their votes may not have been counted.

Hawaii	1960, 1980		2, 0	1998
Idaho	1964	1948, 1980	3, 1	1958, 1982, 1986
Illinois	1948, 1960, 1976	1984	11, 8	1956, 1972, 1982
Indiana	1948	1962, 1970	13, 7	1960
Iowa	1976, 2000	1968	4, 6	
Kansas		1974	1, 4	1974
Kentucky	1952, 1980, 1996	1956, 1984	5, 3	1963
Louisiana		1996	0, 1	
Maine	1976		3, 0	1962, 1970
Maryland	1948, 1968	1958	3, 2	1994
Massachusetts	1980	1954	4, 2	1952, 1962, 1964
Michigan	1948	1952, 1954, 2000	7, 6	1950, 1952, 1960, 1970, 1990
Minnesota	1960, 1984		6, 6	1960, 1962
Mississippi	1976, 1980		0, 2	
Missouri	1952, 1956, 1960, 1968	1982	4, 4	1976, 2000
Montana		1954, 1960	1, 5	1952
Nebraska			2, 1	1958, 1982, 1990
Nevada	1996	1964, 1974, 1998	2, 1	
New Hampshire	1992, 2000	1974	2, 0	1970
New Jersey	1960	1954	2, 5	1961, 1981, 1993, 1997
New Mexico	1960, 2000		6, 2	1958, 1960, 1968, 1974, 1978
New York	1948	1970, 1980, 1992	11, 9	
North Carolina	1956, 1992	1980	7, 7	
North Dakota		1974, 1986	2, 4	1962
Ohio	1948, 1976, 1992	1964	4, 10	1974, 1978
Oklahoma	1976	1974	2, 1	1970
Oregon	1976, 2000	1954, 1968	2, 2	
Pennsylvania		1956, 1964	15, 11	1958
Rhode Island	1952		0, 2	1956, 1962, 1970
South Carolina	1952, 1980		0, 0	
South Dakota	1976	1956, 1962	1, 0	1960
Tennessee	1952, 1956, 1980		1, 4	
Texas	1968	1978	2, 2	1978
Utah		1978	2, 2	1988
Vermont		1980	0, 0	1958, 1984
Virginia	1976, 1996	1978	5, 9	1973
Washington	1988	1986, 2000	6, 4	1960
West Virginia		1978	2, 0	1968
Wisconsin	1976, 2000	1980	0, 5	1962, 1964
Wyoming		1958, 1988	1, 1	1954, 1978
<b>Total</b>				
Less than 1% margin	31 elections in 22 states	32 elections in 26 states	182	41 elections in 25 states
Less than 2% margin	70 elections in 40 states	63 elections in 40 states	365	75 elections in 40 states

Razor-close elections are no less common in elections for other federal offices or for governor. Over 50 years, about 4 percent of all senatorial elections, and about 2 percent of all congressional elections, have been decided by less than one percent of the

popular vote.<sup>2</sup> Over 50 years, about 5 percent of gubernatorial elections have had victory margins below one percent. In any given election year, the likelihood that there is at least one election within the one-percent technical margin of error is 71 percent for senatorial elections and more than 99 percent for congressional elections. In the last half century, only two states, Mississippi and South Carolina, have not had a federal or gubernatorial election decided by less than one percent of ballots cast. It is frequently the case in federal and statewide elections that technical problems in the balloting could be consequential to the outcome.

*The effect of close elections on the legitimacy of the federal election process*

Of course, what was unusual in the 2000 presidential election was not only that the contest in Florida was so excruciatingly close but also that the 2000 election pivoted on Florida and its 25 electoral votes. The 2000 presidential election revealed nearly every imperfection in the federal election system to the nation. What effect did the news have on the American people and their confidence in the democratic process in the United States?

As it happens, Americans as a people express an unusual level of satisfaction with the conduct of their democratic government. As the following table shows, Americans stand near the top of the world's democracies in the pleasure they express in the way their government works. Although the less fortunate tend to feel less satisfaction with American democracy than the most fortunate, Americans nonetheless express high levels of satisfaction across class, race, and gender lines. The difficulties of the 2000 election had no real effect on Americans' attitudes toward their democratic system as a whole. Events such as occurred in Florida seem not to have had any bearing on the American people's regard for the democratic system, at least in the short run.

Satisfaction with the democratic process in 19 democracies

Nation	Percent Satisfied or Fairly Satisfied	Percent Satisfied
Norway	90.3	28.2
Netherlands	88.3	13.0
United States, 2000	80.7	32.1
United States, 1996	80.5	27.7
Australia	78.0	30.9
Great Britain	74.8	16.4
New Zealand	68.5	19.3
Japan	63.5	5.3
Germany	63.4	6.4

<sup>2</sup> The counts for senatorial, congressional, and gubernatorial elections do not include special elections, which tend to be more competitive than scheduled elections because they almost never involve an incumbent.



Poland	63.1	5.8
Spain	62.8	13.9
Czech Republic	61.1	3.7
Israel	53.4	26.8
Republic of China	46.9	36.7
Romania	43.9	20.4
Argentina	42.4	10.1
Hungary	42.2	1.4
Mexico	41.6	9.7
Lithuania	34.5	12.9
Ukraine	9.2	2.2

Source: Comparative Study of Electoral Systems and American National Election Studies, 1996 and 2000.

Americans' confidence in the electoral process is a different matter. In 1996, three quarters of the public expressed confidence that the last election was conducted "fairly," and only 10 percent described it as having been "unfair." In 2000, on the other hand, barely a majority of the electorate concluded that the election had been very fair, and 37 percent decided that it had been unfair.<sup>3</sup> The events in Florida had a clear impact on the faith Americans have in the electoral process.

Was the last election in the United States conducted fairly?

	1996	2000
Very fair	49.3	22.7
Somewhat fair	26.0	29.3
Neither fair or unfair	15.0	10.9
Somewhat unfair	6.1	21.8
Very unfair	3.6	15.3
Total	100.0%	100.0%
(N)	(1513)	(1418)

Source: American National Election Study, 1996 and 2000.

To be sure, one part of people's perception of fairness was agreement with the outcome. In 1996, Democrats were about nine percentage points more likely to conclude that the election was fair than Republicans, presumably because the Democratic candidate had won. In 2000, the partisan divisions turned the other direction, but much more sharply, with Republicans 24 percentage points more likely to think the election fair than Democrats. But Republicans had their qualms about the fairness of the process in 2000 also. In 1996, just 12 percent of Republicans branded the election unfair; in 2000, nearly twice as many did.<sup>4</sup> Among Independents, concerns about fairness increased more than threefold.

Fairness of the last United States election, by partisanship

<sup>3</sup> The questions were asked as part of the 1996 and 2000 American National Election Studies, a nationwide sample of eligible voters. In both years, the interviews were completed in November and December.

<sup>4</sup> We do not know, however, whether Republicans, Democrats, and Independents all thought that the election was unfair in the same way.

	1996			2000		
	Democrats	Independents	Republicans	Democrats	Independents	Republicans
Very fair	55.5	44.0	47.3	15.7	20.2	37.0
Somewhat fair	26.1	26.3	25.6	29.8	26.7	32.9
Neither fair or unfair	12.0	18.3	15.2	9.9	12.3	9.3
Somewhat unfair	4.2	7.3	7.0	24.5	25.1	12.9
Very unfair	2.2	4.2	4.9	20.1	15.8	8.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
(N)	(593)	(480)	(429)	(477)	(551)	(365)

Source: American National Election Studies, 1996 and 2000.

But questions about the legitimacy of the federal election process in the wake of the 2000 campaign were not only, or even primarily, partisan sour grapes. In 1996, the most prominent difference between people who believed the election fair and people who did not was not partisanship (which had only a small effect on beliefs) but participation in the electoral system. Voters were more satisfied with the process than non-voters.<sup>5</sup>

In 2000, partisanship still had only a small effect on beliefs, and voters were still more convinced than non-voters that the process was fair. But women and blacks in 2000 found the process deeply suspect. As the tables following show, in 1996 there were virtually no differences between women and men and blacks and whites in their assessments of the fairness of the election. In 2000 the differences were dramatic. Women were about 14 percent more likely than men to conclude that the process was unfair. Blacks were 22 percent more likely than whites to question the fairness of the process. In fact, as one of the latest instances of the perceptual divide between blacks and whites in America, beliefs about the fairness of the 2000 election were perfectly symmetric: 55 percent of whites believed that the 2000 election was conducted fairly and 56 percent of blacks believed that it was conducted unfairly. The 2000 election undermined the public's faith in the electoral process, at least temporarily, and especially within the more disadvantaged segments of American society.<sup>6</sup>

Fairness of the last United States election, by gender

	1996		2000	
	Men	Women	Men	Women
Very fair	49.8	48.9	29.7	17.3
Somewhat fair	25.8	26.3	31.3	27.7
Neither fair or unfair	14.6	15.4	9.2	12.3
Somewhat unfair	6.6	5.6	16.3	26.0
Very unfair	3.2	3.8	13.4	16.8
Total	100.0%	100.0%	100.0%	100.0%
(N)	(679)	(834)	(619)	(799)

<sup>5</sup> This paragraph and the next report results from an analysis that takes into account the other characteristics of individuals, such as their partisanship. In 1996, and again in 2000, people with higher incomes and higher levels of education also professed more faith in the fairness of the electoral process than people with lower levels. Society's haves find more to like in the electoral process than society's have-nots.

<sup>6</sup> Latinos were also less convinced that the election was fair, but the divisions were not as dramatic.

Source: American National Election Studies, 1996 and 2000.

## Fairness of the last United States election, by race

	1996		2000	
	Whites	Blacks	Whites	Blacks
Very fair	48.6	54.8	24.8	8.3
Somewhat fair	26.9	19.6	30.5	24.8
Neither fair or unfair	14.8	16.0	11.1	11.0
Somewhat unfair	6.2	5.4	21.6	21.4
Very unfair	3.5	4.2	12.0	34.5
Total	100.0%	100.0%	100.0%	100.0%
(N)	(1302)	(168)	(1132)	(145)

Source: American National Election Studies, 1996 and 2000.

Already in 1996, the United States was only in the middle among democracies in the faith of its citizens in the fairness of its elections. But in 2000, the United States dropped nearly to the bottom, the dissatisfaction of its citizenry exceeded only by the monumentally disgruntled citizens of Israel.

## The public's view of the fairness of the most recent election in 18 democracies

Nation	Percent who say Somewhat Unfair or Very Unfair	Percent who say Very Fair or Somewhat Fair
Netherlands	1.9	91.7
Germany	2.0	90.6
Norway	3.1	93.2
Great Britain	4.2	80.5
Czech Republic	4.6	79.8
Hungary	4.9	81.9
New Zealand	6.7	76.9
Romania	9.2	81.6
United States, 1996	9.7	75.3
Poland	9.7	72.0
Spain	11.2	80.0
Republic of China	14.0	62.2
Argentina	17.4	48.8
Mexico	23.0	56.1
Lithuania	26.7	55.3
Japan	27.2	42.3
Ukraine	34.8	37.0
United States, 2000	37.1	52.0
Israel	62.6	19.7

Source: Comparative Study of Electoral Systems and American National Election Studies, 1996 and 2000.

Americans' faith in the electoral process will surely survive the 2000 election. But 2000 also makes clear just how much the public legitimacy of the process depends upon the circumstances of the election, and in particular, upon how well federal elections appear to be conducted.

**Testimony of Richard L. Hasen  
William H. Hannon Distinguished Professor of Law  
Loyola Law School, Los Angeles**

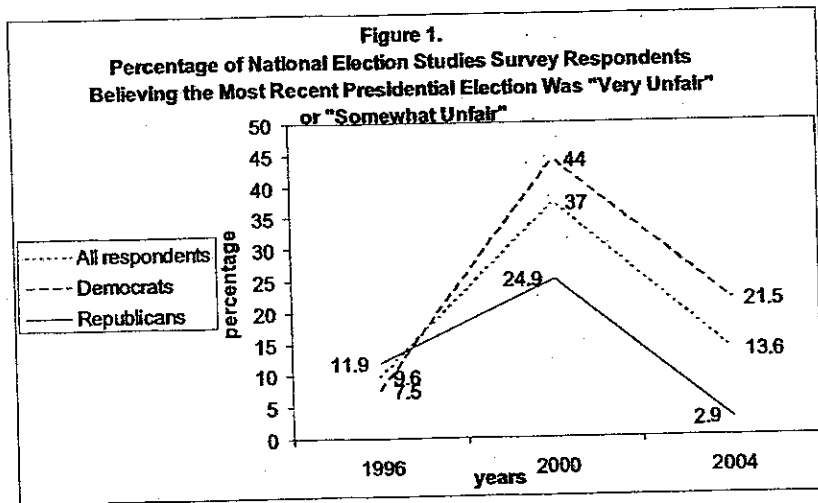
**Before the Commission on Federal Election Reform (Carter-Baker Commission),  
April 18, 2005 Hearing, American University, Washington D.C.**

Note: These remarks and data are based upon my forthcoming article, *Beyond the Margin of Litigation: Reforming U.S. Election Administration to Avoid Electoral Meltdown*, 62 WASHINGTON AND LEE LAW REVIEW (forthcoming 2005). A complete draft of the article is available at: <http://ssrn.com/abstract=698201>.

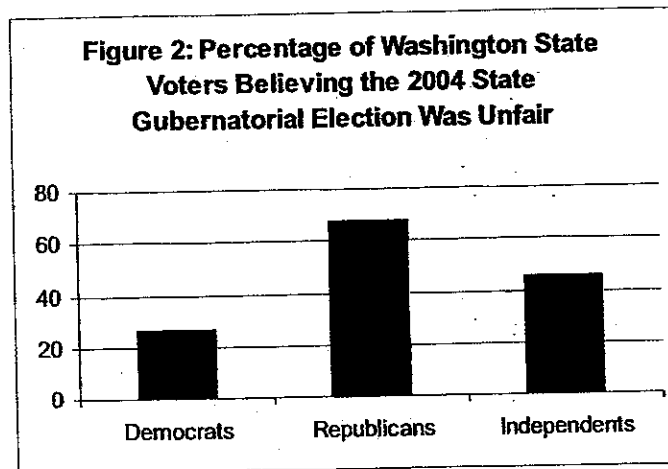
President Carter, Secretary Baker, distinguished members of the Commission on Federal Election Reform, and guests:

Thank you so much for the opportunity to address you today on vital election reform issues. In the 2004 presidential election, the United States came much closer to electoral meltdown, violence in the streets, and constitutional crisis than most people realize. Less than a 2% swing among Ohio voters (about 100,000 voters) toward Democratic candidate for President John Kerry and away from incumbent Republican President George W. Bush would have placed the Ohio—and national—election for president well within the “margin of litigation,” and it would have gotten ugly very quickly. Allegations of voter fraud and voter suppression were rampant on both sides, and even though Kerry conceded the election on the day after Election Day, public confidence in the U.S. system of American administration is now quite low.

It should go without saying that public faith in the integrity of the election system is a cornerstone of democratic government. Yet, the data are quite worrisome. According to a post-election NBC News/*Wall Street Journal* poll, more than a quarter of Americans worried the vote count for president in 2004 was unfair. Just before the election, a Rasmussen Reports poll showed 59% of American voters believing there was “a lot” or “some” fraud in American elections. And there is a partisan dimension to the issue. Consider the trends in Figure 1, which shows that in the most recent election, 13.6 percent of Americans believe the most recent presidential election was somewhat or very unfair, with Democrats much more likely than Republicans to believe there is a problem.

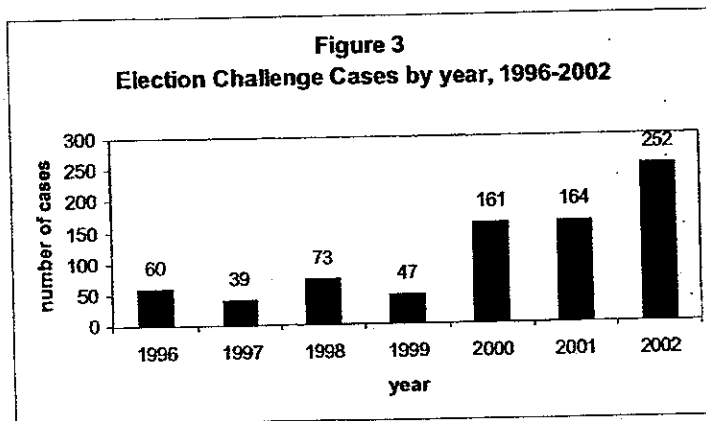


But this is not just a Democratic problem. Consider the views of Washington State Republicans, where a bitter election contest has left the Democratic candidate for governor, at least for now, in the governor's seat. A January 2005 poll of Washington state voters found that 68% of Republicans thought the state election process was unfair, compared to 27% of Democrats and 46% of Independents. See Figure 2. It is hard to escape the conclusion that views about the fairness of the process are driven, at least in part, by the outcome that recent elections have produced. If that's so, we should not be surprised to see large numbers of Republicans indicating a lack of faith in the national election process if the next close election features a Democrat squeaking by to gain the presidency.



The bad news from the story of Election 2004 is that things likely won't get better enough in 2008. Although voting technology has improved and continues to improve,

the extreme partisanship and close division of the American electorate, coupled with the Electoral College system, make the possibility of another razor-close presidential election in one or more battleground states fairly likely. Add to that mix election administration incompetence and a widely decentralized system of election administration with a patchwork of inconsistent rules—13,000 separate election jurisdictions, according to the Carter-Ford Commission. What's worse, since *Bush v. Gore*, losing candidates have become more willing to resort to election law as part of a political strategy: the number of election-law related cases in the lower courts has risen dramatically compared to the period before Florida 2000. See Figure 3.



It all adds up to a recipe for electoral meltdown. To avoid litigation, a close election requires an election administration system close to perfection; yet we are far from perfection.

I argue for three reforms that could significantly lower the risk of electoral meltdown. First, I advocate registration reform, in particular universal voter registration conducted by the government coupled with a voter identification program. Registration issues appear to be the single largest subject for election-related litigation. For example, 32 of 52 cases on Electionline's 2004 litigation survey involved registration issues.

There has been a wide partisan divide in the election administration debate between Democrats who have expressed concern about voter suppression and Republicans who have expressed concern about voter fraud. The registration reform I advocate can alleviate both of those concerns, minimize the potential for and political rhetoric regarding voter fraud, and eliminate a great majority of potential litigation surrounding presidential election administration

Under my proposal, the federal government would take on the task of voter registration, much like it does in conducting the census, in reaching out to register all eligible voters. It would then issue voter registration cards with biometric information such as fingerprints, as is done today in Mexico. The nationwide database will eliminate

double registrations, assist in quickly identifying voters for purposes of provisional ballots, and help restore faith in the election process. Because the cards would contain biometric information, voters could show up without i.d. at the polls and still have their votes counted. The cards certainly raise privacy concerns. But as I argue in my paper, the incremental privacy costs of the card are small compared to the potential gain in voter confidence they likely would achieve.

Second, I advocate a transition to nonpartisan election administration. The nonpartisan solution aims to create both the actuality and appearance of neutrality in election administration, thereby bolstering the public's faith in the process. Australia and Canada serve as good models for reform in this regard, though not necessarily their nationalization of election administration. States should adopt rules that are consistent with non-partisan administration, such as the Code of Conduct set forth by IDEA, the International Institute for Democracy and Electoral Assistance. The IDEA Code would prevent, for example, a Secretary of State or other chief elections officer from being co-chair of his or her party's presidential election committee, or from taking a position on a pending ballot measure in a state.

To assure a truly nonpartisan Chief Elections Officer, I advocate that such administrators be chosen statewide through a nomination of each state's governor, subject to a 75% approval of both houses of the state legislature. The broad supermajority requirement will insure that the person is one of great integrity, who could garner support from both Democrats and Republicans in the state. Trust in the system will increase public confidence as well as minimize litigation by giving courts a reason to defer to election administrators. Public faith in nonpartisan election administration will also lessen the heat over questions such as whether states should move to electronic voting systems.

Finally, courts have an important role to play in minimizing electoral meltdown. The key here is to encourage courts to be more willing to entertain *pre*-election litigation and much more chary of entertaining *post*-election litigation. To the extent election administration problems can be recognized in advance, pre-election judicial review prevents future harm from occurring, rather than putting courts in the position of trying to undo the bad effects of a past harm. Just think of someone going to court *before* anyone voted in Palm Beach County in 2000 claiming that the "butterfly ballot" was overly confusing. In addition, the costs of post-election review are large: the pressure put on courts to decide arcane election law questions when the outcome of an election—especially a presidential election—is huge, and the appearance of partisan decisionmaking is inevitable.

These three changes—registration reform, non-partisan election administration, and a shift in the timing of court challenges—will not eliminate close elections. But they will lessen the possibility of election meltdown to a great extent, and increase the public's confidence in free and fair elections.

Thank you for your time.



### 58% Worried About 2004 Voting Debacle

<b>How worried are you that a Florida-style mess could happen again this year?</b>	
Very Worried	29%
Somewhat Worried	29%
Not Very Worried	26%
Not at All Worried	14%
RasmussenReports.com	

<b>Are Elections Fair to Voters?</b>	
Yes	56%
No	30%
RasmussenReports.com	

<b>Should people be required to show photo ID before voting?</b>	
Yes	85%
No	10%
RasmussenReports.com	

October 19, 2004—Fifty-eight percent (58%) of American voters are worried that another Florida-style mess could mar Election 2004. That includes 29% who are very worried about such a possibility.

Those figures represent a significant increase from the 44% who worried about such an outcome in June.

There are stark partisan differences on this question. A Rasmussen Reports survey found that **73% of Democrats are worried about a repeat debacle**, including 42% who are very worried about such an outcome. **Among Republicans, just 39% are worried about the possibility**, including just 11% who are very worried.

Those not affiliated with either major party fall in between. Among unaffiliated voters, 60% are worried about another post-Election mess (including 32% who are very worried).

The survey also found that 56% believe that, generally speaking, elections are fair to voters. With one exception, this is the highest level of belief in electoral fairness we have found in surveys dating back to the mid-90s. At some points, belief in the fairness of elections have fallen to the low 40 percent range.

However, in all cases, the party losing the White House has less faith in elections than the victorious party. In the 1990s, Democrats tended to believe in the fairness of elections while Republicans were less convinced. Today, that has reversed. Eighty-one percent (81%) of Republican voters believe elections are fair to voters. That view is shared by 40% of Democrats.

Supplemental data is available for  
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The Rasmussen Reports survey also found that 85% of voters favor the idea of requiring voters to show a drivers license or other photo ID before voting. Just 10% are opposed. Support for this reform cuts across partisan and demographic lines.

Fourteen percent (14%) of voters believe there is "a lot" of fraud in American elections. Forty-five percent (45%) believe there is some fraud while 28% say hardly any or none at all.

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Most Republicans believe that voting problems are most likely to result from people who are not eligible to vote being allowed to vote. Most Democrats say the most likely problem is that people who should be allowed to vote will be denied the right to do so.

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The national telephone survey of 1,000 Likely voters was conducted by Rasmussen Reports October 18, 2004. Margin of sampling error is +/- 3 percentage points with a 95% level of confidence. [Methodology](#)

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## STATEMENT of

John Samples, PhD  
Director, Center for Representative Government  
The Cato Institute

On the Motor Voter Act and Voter Fraud  
before the

Committee on Rules and Administration  
United States Senate

**The Motor Voter Act and Voter Fraud**  
March 14, 2001

Mr. Chairman, distinguished members of the committee:

My name is John Samples. I am Director of the Center for Representative Government at The Cato Institute.

I want to thank you Mr. Chairman for inviting me to testify before the committee about election reform.

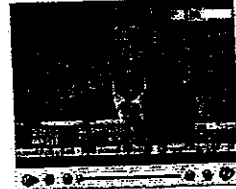
Mr. Chairman, the United States of America is the greatest example of what James Madison called "popular rule." We enjoy a legacy of democratic rights and obligations that remains the envy of the world. Differences notwithstanding, we all agree that the franchise is sacred and should be above mere partisan or individual advantage. At the same time, in the spirit of the Founding Fathers, we seek to improve our political system when necessary and possible. I appreciate the opportunity to testify today about some shortcomings of our current electoral system.

In 1994, Congress passed the National Voter Registration Act (popularly known as the "Motor Voter Act"). Congress succinctly stated the aims of the law:

- to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office;
- to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;
- to protect the integrity of the electoral process;
- to ensure that accurate and current voter registration rolls are maintained.

November 26,  
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The National Voter Registration Act has clearly fulfilled one of those purposes. Registration rolls grew by 20 percent from 1994 to 1998. Yet enhanced voter registration was never an end in itself. Many activists and experts believed the United States suffered from declining voter participation and that increasing registration would lead to higher voter turnout. Both of these beliefs have turned out to be wrong.

For many years political scientists saw a steady decline in the electoral turnout of the voting age population and as a percentage of registered voters. Leaders in the discipline also thought that reducing the costs of voting - primarily through easier registration - would arrest this steady decline and fortify American democracy. The National Voter Registration Act thus grew out of the findings of political science.

Political scientists have traditionally measured voting turnout as a percentage of the voting age population. Recently political scientists Samuel Popkin and Michael McDonald have shown that "voting age population" is an inaccurate gauge for measuring turnout. The Census Bureau's estimate of the voting age population includes several categories of persons ineligible to vote: non-citizens, disenfranchised felons, persons who have moved to a new residence after registration closed, and the mentally incompetent. Popkin and McDonald have produced a new and more accurate measure of the American population eligible to vote. Figure 1 shows Popkin and McDonald's revised turnout during Presidential elections as percentage of those eligible to vote. Figure 2 indicates revised turnout during off-year elections as proportion of those eligible to vote.

[View Images](#)

The United States did see a decline in voting turnout among eligible voters around 1972. Since 1974, the trend in voting turnout in national elections has been basically flat during presidential years and slightly upward during non-presidential election years. Conventional wisdom to the contrary, the United States had experienced steady turnout at the polls for about three decades. There has been no steady decline, nor a crisis of legitimacy for the American republic. The National Voter Registration Act aimed to solve a problem that did not exist.

"Motor Voter" has also failed to increase voting turnout. Looking at Popkin and McDonald's revised numbers in Figures 1 and 2, we see that turnout after 1994 is similar to turnout prior to the law. Participation in the Presidential election of 1996 was the lowest since 1948 while estimates of turnout in 2000 suggest an average performance. The same can be said of the off year elections in 1994 and 1998. The world of voting turnout before and after "Motor Voter" looks much the same. This is not really surprising. As the political scientist Martin Wattenberg has pointed out, states like North Dakota, Minnesota and Wisconsin have no or very lenient registration requirements, and yet all have seen declines in voting turnout.

In summary, we have received few of the benefits promised by the National Voter Registration Act. While registration has

increased, the law has not enhanced "the participation of eligible citizens as voters in elections for Federal office." Moreover, the basic premise of "Motor Voter" - reducing the costs of registration would increase voter turnout - now seems disproved by experience. The plus side of the ledger for "Motor Voter" seems empty.

Unfortunately, the same cannot be said of the negative side of the ledger. The costs of "Motor Voter" should be measured by the other goals of the law. Congress intended for "Motor Voter" to both protect the integrity of the electoral process and to ensure officials could maintain "accurate and clean" registration rolls. Neither goal has been met.

The Motor Voter Act allowed citizens to register to vote simultaneously with an application for a driver's license, by mail, or in person. The Act made it harder to verify the identity of voters seeking to register. It also considerably complicated the states' task of keeping the registration rolls clean. For example, to remove a voter who has moved from the rolls of a voting district, the local jurisdiction has two choices. First, they could get written confirmation of the move from the citizen. Lacking that, the jurisdiction had to send a notice to the voter. If the notice card was not returned and the person did not vote in two general elections for Federal office after the notice was sent, then the jurisdiction could remove their name from the rolls.

The cost of these mailings is significant. In Indiana, for example, such a mailing would have a price tag of about \$2 million or about twice the Election Division's entire annual budget. Given this price tag and the limited resources of most local election boards, we should not be surprised that the registration rolls throughout the nation are enormously inaccurate. In some counties, election administrators report, the voting roll numbers are bigger than the voting-age population.

In the short time since Election 2000, we have seen startling new evidence of the disorder of registration rolls in several states. In Indiana, for example, the Indianapolis Star looked closely at the rolls. They concluded that tens of thousands of people appear on the voter rolls more than once, that more than 300 dead people were registered, and that three convicted killers and two convicted child molesters were on the rolls. In general, experts believe one in five names on the rolls in Indiana do not belong there. A recent study in Georgia found more than 15,000 dead people on active voting rolls statewide. Alaska, according to Federal Election Commission, had 502,968 names on its voter rolls in 1998. The census estimates only 437,000 people of voting age were living in the state that year. Similar studies in other states would no doubt return similar data.

In the balance of my testimony, I would like to focus on the events in St. Louis, Missouri, both during the election of 2000 and thereafter. I believe these events point out the real costs "Motor Voter" has imposed on the United States.

Since last fall, "Operation Big Vote" has been active in the St. Louis area as part of a national campaign -- promoted by Democrats -- to register more African-American voters and get

them to the polling booth. This effort delivered 3,800 voter registration cards to the St. Louis Elections Board on the February 7, 2001, the deadline for the March mayoral primary in that city.

A cursory check of the registration cards turned up questionable names. Shortly thereafter, election board workers spent an entire day calling the names listed on the cards and found that nearly all of them were fraudulent. Many of them sought to register prominent people, dead or alive - as well as at least three deceased aldermen and a dog. The media have reported that close examinations have turned up cards that attempted to register prominent businessmen using their childhood addresses, a former deputy mayor using an old address for an alderman, and a former alderman who has been dead for years. They also found cards for convicted felons and for residents who did not seek to register themselves in the primary. The woman at the center of this vote fraud investigation "doesn't deny" that some of her canvassers may have turned in bogus voter registration cards. A grand jury convened by St. Louis Circuit Attorney Jennifer Joyce has begun interviewing witnesses regarding the 3,800 bogus registration cards. St. Louis police have obtained a warrant and searched the house of the Operation Big Vote director for evidence.

Not surprisingly, many St. Louis residents are angry that someone had registered them and knew information such as their Social Security numbers. Some of the people registered by the bogus cards told Election Board workers that someone calling himself "Big Mike" came to their homes and said he was with the Election Board and wanted to register them.

This is not the first time Operation Big Vote has been at the center of a voter registration controversy. In 1994, the director of Operation Big Vote was the subject of a similar investigation into fraudulent voter registration cards found among the 14,000 that the group had collected to aid a statewide campaign to allow riverboat casinos. No one was indicted.

The implications of the registration fraud scandal in St. Louis are not limited to current events. St. Louis Election Board officials now want to examine 29,500 voter registration cards that came in shortly before the deadline for the November 7 election, in light of discovering that most of 3,800 cards submitted in February were bogus. John Hancock, executive director of the Missouri Republican Party, called for another look at the last-minute registrations made for November's election. He also said he preferred that U.S. Attorney Audrey Fleissig take charge "because I think the federal government can bring more force to bear on an investigation of vote fraud." The last-minute registrations last fall could throw into question the close November election in Missouri if a sizable number were fraudulent. Democrat Bob Holden won the Missouri contest for governor by about 21,000 votes statewide. In this way, the loose registration process set up by "Motor Voter" has cast doubt on the integrity and outcome of elections in Missouri last year.

Many will recall the election night controversy in St. Louis. A judge ordered that voting places be kept open late only to be overruled

shortly thereafter by a Federal appeals court. The initial ruling accepted the claims of local activists who maintained that thousands of voters had been wrongly placed on an inactive list. As it turned out, local officials had acted properly in composing the inactive list. Missed in the controversy was the fact that up to 400 unqualified voters cast ballots in St. Louis in the 2000 election.

I turn now to the costs paid by the nation as a result of the National Voter Registration Act. I begin with concrete dollars estimates, but I would add that I think perhaps the more important costs have been imposed on the civic culture of the United States.

The clogged rolls have cost taxpayers thousands of dollars in cleanup costs and additional election expenses. For example, the Indiana Election Division has conducted its statewide duplicate program four times at a total cost of about \$900,000. Moreover, several county officials in Indiana have increased the number of voting sites unnecessarily because the lists are so inaccurate. The county that includes the transient student population of Indiana University at Bloomington has added about a half dozen precincts since "Motor Voter" became law. Each new precinct costs county taxpayers \$10,000 for two voting machines and about \$500 per election for additional poll workers and supplies. Statewide in Indiana, more than 200 precincts have been added since the law went into effect, according to state election officials. Such costs are not trivial, especially since the state gets nothing in return for such spending. Such costs for the nation as a whole must be large.

We have also learned about the threat of vote fraud posed by such wildly inaccurate voting rolls. Susan Morandi, Nevada's deputy secretary of state for elections, noted that the Motor Voter Act made registration easier but also made the process "much more open to voter fraud." Experts like Deborah Phillips of the Voter Integrity Project add that the trend toward mail-in and absentee voting exacerbates this problem, since those seeking to manipulate the system can pretend to be a dead person or someone who has moved, and then cast a ballot.

The evidence from St. Louis and elsewhere strongly suggests the reality of registration fraud. Looked at technically, registration fraud is not the same as vote fraud. However, as a practical matter, we should ask why anyone would go to the trouble of committing registration fraud if they did not intend to follow through and commit vote fraud. Otherwise, committing registration fraud becomes a senseless act. Are we to believe that individuals commit registration fraud for thrills or simply as a practical joke? The existence of fraudulent registrations suggests the greater threat of a corrupt election, a danger that we dismiss at our peril. Given the state of the registration rolls, a major vote fraud disaster remains a distinct possibility.

We should not presume that vote fraud is an inconsequential danger. On January 22, 2001, the Miami Herald reported that at least 2,000 illegal votes had been cast in about a third of Florida's counties -- very roughly 6,000 for the state as a whole. On January 9, 2001, it revealed that 452 felons had voted unlawfully

in Broward County alone. In Georgia, analysts found that over 5,400 dead people had voted over the past 20 years. As I mentioned, at least 400 unqualified voters cast a ballot in St. Louis last November.

The damage done by vote fraud, of course, is clear. Breaking any law, but especially laws meant to protect the integrity of the electoral process, damages our nation. Vote fraud also devalues the votes of those who register and vote properly. It also strikes many people as unfair: most citizens bear the burdens of exercising the right to vote, those who vote illegally claim the right and wish to escape the minimal burdens associated with that right.

The possibility of vote fraud also harms the nation by calling into question the integrity of our electoral system. The Supreme Court has said that the federal government may regulate campaign finance to prevent corruption or the appearance of corruption. Allow me to suggest that we should similarly be concerned about the appearance of our electoral process. The lax standards for registration encouraged by "Motor Voter" have left the voter rolls in a shambles in many states. As St. Louis shows, the uncertainty surrounding the rolls breeds mistrust and can call the integrity of the system into question. "Motor Voter" has fomented "the appearance of corruption" that has, fairly or not, done real damage to American government. Political scientists have charted the decline in trust in government over the past four decades. I believe "Motor Voter" has been part of that problem, not part of its solution.

The inflation of the registration rolls has also clearly misled Americans about the state of their democracy. Inflated and inaccurate rolls give a false measure of voting turnout as a proportion of registered voters. In fact, we now know that voting turnout as a percentage of registered voters is much higher than we believed because registration rolls are so inflated. In that sense, the news about voting is much better than we thought, and I suspect that we have seen no decline in voting as a percentage of registered voters. We may even have seen a rise in that measure of voter participation.

Finally, politics is about cooperation as well as conflict. The American people expect their representatives to fight hard for a cause but also to make compromises that serve the public good. The general uncertainty surrounding registration procedures - an uncertainty exacerbated by "Motor Voter" - has increased mistrust between the two political parties in Missouri and perhaps elsewhere. Missouri Republicans now believe with plausible reason that some Democrats tried to commit vote fraud last election day. Democrats, on the other hand, suggest Republicans wish to disenfranchise their constituents. Such conflict inevitably weakens our political system and actuates unnecessary partisan rancor that precludes potential bipartisan agreement on some issues.

Mr. Chairman, judged by its purposes, the National Voter Registration Act should be judged a failure. The Act has brought about a substantial increase in the number of registered voters.



The Motor Voter Act and Voter Fraud

However, that increase has been bought at a high price. Specifically, the Act has made it difficult if not impossible to maintain clean registration rolls, a major purpose of the law. Moreover, the inaccuracy in the rolls caused by the Act has thrown into doubt the integrity of our electoral system. Finally, the Act has also failed to achieve its other purpose of increasing voter turnout. In sum, the National Voter Registration Act has provided few of its promised benefits and imposed significant costs on the nation. For that reason, "Motor Voter" seems ripe for reform.

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