

The Election Center

an international association of voter registration and election officials

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As a result of this year's presidential election, there is something drastically wrong with our election process and we need to change it significantly. True?

If you believe the self-appointed experts, the misinformed analysts, and the casual observers who have never really understood the process, you would think so from the coverage of this election. But the truth about how this election was conducted and whether we need to make significant changes in our processes as a result will not be known until we can get out of this period of charge and counter-charge.

We know the following for sure: this was the closest presidential election in our lifetime but not in the life of the nation. We have had similar situations in 1824, 1876 and 1888, and in each of those cases one of the candidates won the popular vote but lost the Electoral College vote and were not elected as president. Surprisingly enough, the framers of the Constitution anticipated such events and made provisions for how such situations were to be handled. To read a good, quick but fairly thorough history of the Electoral College and its advantages and disadvantages you can go to the Federal Election Commission's website at www.fec.gov and download an article by Bill Kimberling, Deputy Director of the Office of Election Administration, about the Electoral College.

But this article is not about the Electoral College, nor the Constitutional provisions which govern such situations. It is about how American elections are conducted and whether radical changes are necessary to "fix" the system.

Elections are not now, nor are they likely to ever be, a perfect process. Anything as complicated and which involves as many humans will have some imperfections. No other government office has to recruit several divisions of armies to work on Election Day. Los Angeles County will put approximately 27,000 election day workers into the field; New York City more than 20,000; Houston, Texas will put about 8,500 people in the field to work elections on election day. Even our smallest jurisdictions in the nation will become almost the single largest employer on Election Day. Some of those people are really well trained and are superb and others may be less than that. Add 100 million voters who may or may not follow instructions and you can tell just how many ways things can go astray.

While many Americans think "something" needs to be done about elections and they have a feeling that things went wrong in this election, we believe that a fair examination of the process nationwide will reveal that 99.5% of the election was extremely well done. We believe that there are some areas that will need review and even some changes will be necessary, but not as radically as has been suggested.

The nation saw virtually every wart that appears in an election during the closest presidential election in our lifetime. But to suggest that the warts are somehow cancerous and that radical surgery on the entire body is necessary to remove the wart is foolhardy. Some actions are just not wise.

Several groups have already announced that they intend to form a “Blue Ribbon Panel” of people to determine what needs to be done to correct supposed ills. So far, groups of academia have mentioned forming their own panels. An organization representing county commissioners says it will form a panel and make a report. Legislators in several states have said they will form study groups in their own respective states; and, members of Congress have indicated they will form their own panel to recommend changes.

But none of those have mentioned involving the only people who truly know how the system works -- the nation’s election administrators. There is real danger in changing processes when your own experience does not qualify you to understand how it really works in the first place. It could leave all of us with changes that may well have unintended consequences.

Elections in the United States are far more complex than almost anyone knows. Election administrators throughout the nation have made it look simple. All voters have come to take the election process for granted, without ever really understanding the process underneath. For more than the last 112 years we have not a presidential election that was so close that it warranted the nation’s attention not only to the presidential contest but also to the process of the elections.

When this election is finally over and the confusion dies down and the charges leveled by the lawyers for each side have dissipated, we do need to examine what went right and what went wrong. Where change is really necessary, we need to recommend basic changes that can be implemented to relieve the problem.

But we can make some observations now. Much has been written about the voting systems needing to be changed, meaning the type of voting equipment. Much has been said and written about “chad” (no, not the latest heartthrob on TV), which is the result of voting on a punch card voting machine. And from review of this election, the quick and easy assumption is that the voting system caused all the problems in this election and that outlawing this type of system would “fix” the problem immediately.

The truth is that almost 40 percent of Americans vote on a system similar to that used in some of the counties in Florida. The reason they are still in use in many places throughout the nation is that the system has a reputation for accuracy. It is inexpensive to buy, it is inexpensive to maintain, and it is easy and inexpensive to store between elections. It is easy to distribute to polling sites; it is easy for election workers to setup the machines on Election Day and – until this election – it has been easy for voters to understand how to use it. It produces relatively fast results when the election is over. And, when proper procedures are followed, it is highly accurate in counting votes.

If we assume that the critics are correct and that the system needs to be replaced throughout America, the question becomes “With what?” Every voting system manufactured has some advantages and disadvantages. Many have mentioned that we need to replace all of the paper based systems with the newer technology that is fully electronic as if that would have solved the problems created by such a close election. A full electronic system is indeed a fine voting machine, but so are high-speed optical scan units.

Virtually all of the voting systems manufacturers have created very capable electronic units and those units have been manufactured to meet or exceed the voluntary Federal Voting Systems Standards as published by the Federal Election Commission. And most of the manufacturers have submitted their electronic systems (hardware and software) to the independent testing authorities of the National Association of State Election Directors (NASED), for rigorous testing as specified in the Federal Voting Systems Standards.

But the systems are not inexpensive to purchase nor inexpensive to maintain. They require special storage requirements (an environmentally controlled warehouse free from insects and other pests that love electronic gear). There are some advantages to them also. They eliminate huge ballot printing costs for elections which is the single most critical element where expensive errors can occur in terms of errors in spelling of candidate names, party id, context of ballot initiatives, referendum, constitutional amendments, and the necessity of designing so many ballot “styles” where the ballot may be the same all the way except for one or two offices. The electronic systems make it more difficult for voters to vote for more candidates than they are allowed to for any given race because the unit is programmed to reject any votes that exceed the appropriate number allowed for each race. [Notice here that we did not say “make it impossible” to vote for too many candidates: voters have a way of figuring out ways to use a voting system that none of us ever intended nor anticipated.]

But even if we had such a system working nationwide, would it have prevented the close election that voters voted in this one. Obviously not. Would it have prevented recounts? Certainly, because with a full electronic system there is no such thing as a recount. Because the ballots are displayed electronically and stored electronically, every time you flip the switch to count the ballots, the results will be the same *every time*.

The Federal Voting Systems Standards require all fully electronic voting systems to maintain an audit trail and to have the ability to print a record of each ballot cast (we cannot identify who actually voted the ballot because special care is designed to make sure we can separate the vote from the voter). The results of the printout will be *identical* to the results that the electronic voting system counted the first time (or fifth time or one-hundredth time). Some feel it is an advantage that you cannot have a recount with an electronic system and others find that prospect horrifying.

But would we have been spared the spectacle of the Florida recount if we had such a close election? Probably not. Does anyone believe that the candidate who is losing a very close election is not going to file a challenge to the vote totals of *any voting system* in an election this close?

If it were a fully electronic system then the following kinds of challenges would be made in order to call the election into question. The challenger would question the method of pre-election testing of the equipment and whether such tests were uniformly and routinely performed. The challenger would question whether the equipment had been kept under strict surveillance during all times both before the election, during Election Day and immediately after election. The challenger would question whether touch screens could wear out over time; and, if some parts of the touch screen may no longer register electronic votes as well as other parts of the screen; and, whether that ever resulted in nontransmission of the voter’s selection of a candidate. The challenger would probably file suit to find out if the software had been manipulated, or if a “Trojan horse” had been initiated into the software which had changed the results of the election. These are the only immediate ones we can foresee being made. Lawyers are creative people who can develop other reasons that we have not yet imagined as challenges to these systems.

Others have suggested that if we had Internet voting, none of this would have occurred. First, we now know Internet voting from remote sites such as home, office or school, is not yet safe enough to use for voting purposes. And for those who so cavalierly claim that such a system would have prevented the faults of this election, one has to ask, “How do we know it wouldn’t have been an even larger problem...and maybe even a huge disaster?” Our experimentation with controlled access Internet voting (meaning that you use the Internet through a polling site controlled by an election official in a closed network rather than a remote site) leads us to

believe that we *may* be able to establish the concept of Internet voting safely and securely. We are still learning the right questions to ask related to this new technology and while most of us hope that it will prove viable for the future, its widespread use from remote sites is quite some time in the future. The same kinds of challenges from lawyers will result with even this technology...and may be even more effective because it will appeal to the fears of those who do not understand the technology.

The message of raising these points is that elections are complex and what appear to be simple remedies may do more damage than intended. The supposed solutions really do not resolve the issues nor prevent the challenges in an election that is this close.

Americans need to know that the election administrators of America are used to recounts and contested elections. The national prayer of all election officials is "Lord, please let the winners win in a landslide." Then no one is really concerned about the election. But the voters in America this time had significant difficulty in choosing between two highly qualified, capable, respectable and likeable candidates. Because of the closeness of the election, it has taken more time than we are used to in assuring everyone of whom really won. This is unlikely to happen again in our lifetimes (but maybe those to whom it happened in 1824 or 1876 thought it would never happen again in theirs either...but it did again in 1888).

Election administrators always try to find a way to count as many votes as they can when they can clearly identify a voter's intent in any contested election. We truly believe that every vote matters and especially so when one vote could determine the outcome. But when some voters can't, won't or don't follow instructions and they vote in such a manner that we cannot decisively determine what was their intent, we have no option but to set aside those ballots for counting purposes. Any vote which is cast and which reasonable people can disagree as to what was intended must then be presented to a court (if one of the candidates forces it) for a judge or judges to decide voter intent. That is normal and standard operating procedure for almost all election administrators in America. We should not find it unusual in a tight election that such a process will take time to resolve and that a careful accounting of any votes in question has to be resolved.

In a race where one candidate receives 80 percent of the vote and the other 20 percent of the vote (or any similar clear-cut victory), a recount is unlikely. Because it is unlikely, there is not a thorough examination of questionable ballots in such races, because to do so would unnecessarily delay the results of clearly decided races. However, if you sent a team of lawyers and partisans in to look at the ballots even in this instance they could find matters about which to complain. They don't, of course, because it is unlikely to change the outcome.

Despite the impression that most Americans gained throughout this particular election, election administrators have policies and procedures already developed and in place in the event of a recount or a contested election. They were determined long before in a time when there were no passions, no emotions and no knowledge of which race or which candidates would require those procedures. They have special counting teams who know what constitutes the definition of a vote. They will be entirely fair and consistent in interpreting those votes as an accurate reflection of the public will. No matter how a local election official got his or her job, they cease to have a partisan interest when vote counting starts. We have a very strict code of ethics that demands we place the public interest higher than any personal or partisan gain. (Readers can see the election profession's code of ethics at The Election Center website at www.electioncenter.org. Look for Principles of Our Profession and the Standards of Conduct.

We consider ourselves the public's guardian of the democratic process. We treat our role of dignifying voters as a sacred trust and it concerns us greatly when the public loses any faith in the inherent fairness of the process. But, as election administrators, we also have to follow – even when it seems unfair to do so – the laws of our respective states in determining how the rules and interpretations are applied. To do otherwise would subject the entire process to chaos. We have heard and seen some incredible comments from usually learned people in this election where they seem to believe that election laws can be ignored. If it is true that they can be ignored, it will have to be a court decision that validates that view.

As elections officials we must follow the laws of the legislature and the Congress. To do it any other way would mean that we would apply subjective judgement every time we touched any ballot and that is a sure road to the destruction of democracy. If it is true that we are a nation of laws and not of human whims, then it is the law which must be our guide when conducting recounts. And if it appears that we are conservative in our approach to the interpretation of those laws it is because we fundamentally understand just how fragile democracy can be. We want our actions as election administrators to assure all voters that we have no partisan interests so that they can have faith that their votes will be counted accurately and fairly without regard for whom they were cast.

Courts have latitudes that we as election officials cannot afford. We must be cautious in our approach and above any suspicion that we are deciding ballot interpretations on a partisan basis. But a court is a final arbiter of situations where contestants and partisans cannot agree on what constitutes an actual vote. And that is the way all Americans should want it. While we may be disappointed in the outcome and while we may question the final decisions, it is the American way. Is there anything better than that?

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The Election Center is the only organization in America that focuses strictly on voter registration and election administration issues. We singularly focus on the electoral process from an administrative point of view. We are a non-partisan, non-profit organization that works with election administrators – those government employees who make democracy function – at all levels of government from towns to cities to counties to state. Since 1985, The Election Center has been teaching and training local and state election officials all over America (and even some foreign countries) about how to do this process better. We have worked to professionalize the process. With almost 1,000 members of election administrators from all levels of government, we have become the focal point for anyone serious about the election profession and we are constantly seeking new and better methods of conducting elections.