

CRS Report for Congress

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Elections Reform: Overview and Issues

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Summary

The remarkable circumstances of the 2000 Presidential election are quite unlikely to be repeated, but Florida's role in determining the outcome may be remembered as a turning point with respect to the nation's election system. Previously obscure details of voting and vote counting have become the focus of public attention, and various state and national commissions have issued reports or recommendations on changing the voting process. Some states have already made plans to replace voting equipment and adopt other improvements before the 2002 election cycle, while others are considering similar changes.

As Congress considers legislation to reform the voting process, a number of issues have emerged as part of the debate: the reliability of different types of voting technologies; voting problems and irregularities in the 2000 election; problems for military and overseas voters; the electoral college; and early media projections of election results. For additional information on these issues, see the CRS Electronic Briefing Book on Election Reform. For a discussion of campaign finance reform issues, see the CRS Electronic Briefing Book on Campaign Finance Reform. This report will be updated periodically to reflect new developments.

Voting Systems

After election day 2000, the media focused attention on specific problems with punchcard voting. Since then, however, broader questions have arisen about error rates, costs, counting standards, and other issues, as election officials consider upgrading current systems. Elections in the United States are administered at the state and local level, and the federal government does not set mandatory standards for voting systems, nor does it provide funding to state and local jurisdictions for the administration of elections. While initial reactions to concerns raised by the November 2000 election tended to focus on

technological fixes such as eliminating punchcards, some consensus emerged subsequently that the issues, and the solutions needed, are more complex. Those solutions are likely to involve trade-offs among diverse goals.

Kinds of Systems. Currently, five different technologies are in use — paper ballots, lever machines, punchcards, optical scan, and electronic systems — and most states use more than one kind. Each has advantages and disadvantages with respect to error rates, cost, speed, recounts, accessibility to disabled persons, and other characteristics. Differences in actual performance in elections are difficult to measure accurately, and they depend on many factors other than the technology, such as the familiarity of voters with the equipment, the complexity and design of the ballot, local standards and practices, the condition of the equipment, and the level of competence of pollworkers.

States also have different requirements for voting systems — for example, whether the full ballot must be displayed on one page, whether votes are tabulated in the precincts or at a central location, whether straight-ticket voting is provided, and how accessibility requirements are to be met. Moreover, election jurisdictions within states differ in how they configure and use the systems to meet local needs. As a result, no clear consensus has yet emerged among election administrators and other experts on what systems are best. Many believe that a diversity of systems promotes innovation and inhibits systematic fraud, and is therefore preferable. Others believe that a uniform voting system, at least within each state, can be sufficiently secure, and would be more efficient and more likely to ensure that all voters have equal opportunity to cast their votes.

Federal Funding. A central issue for Congress is what role the federal government should play in addressing the concerns that have been raised about voting systems, particularly with respect to funding and standards. Estimates of funding needs for equipment replacement have varied, depending on goals, from about \$0.5–\$5 billion. That does not include administrative costs, voter education programs, training of pollworkers, and so forth. Some have proposed federal discretionary or formula grants for upgrading current systems, or have suggested that the federal government should contribute to defraying the cost to local governments of holding federal elections. Others believe that improvements in other aspects of election administration and in voter education would be more effective than upgrading technology. Still others state that an integrated, systemic response is needed that involves all aspects of election administration. Some observers also believe that significantly higher investment in research is needed to develop better voting systems, while others state that current knowledge and levels of investment are sufficient.

Standards. One focus of current debate is whether a need exists for more standardization. In the 1980s, the FEC developed voluntary standards for computer-based voting systems (see [<http://www.fec.gov/elections.html>]). Most states have now adopted those standards, which are currently being updated. Some have suggested that mandatory, rather than voluntary, standards be adopted nationwide for voting systems. Such standards might also be expanded to address factors such as ballot design, voter error, and election management. For example, standards might require that a voting system prevent or reduce overvotes or provide common procedures and standards for recounts. Others have proposed that standards be broadened but remain voluntary, or that the matter be left to state and local jurisdictions.

Congressional Authority. The U.S. Constitution gives Congress the authority to regulate congressional elections (see CRS Report RL30747, *Congressional Authority to Standardize National Election Procedures*). The Voting Rights Act (see 42 USC § 1973; and CRS Report 95-896, *The Voting Rights Act of 1965, As Amended: Its History and Current Issues*) prohibits discriminatory voting practices and, along with the Voting Accessibility for the Elderly and Handicapped Act, also sets some requirements for elections with respect to accessibility (see 42 USC 1973aa-1a, 6, and ee). Congress could also attach conditions to the receipt of any funding provided for voting systems or election administration.

Other Issues in the 2000 Election

Reports of problems in Florida and elsewhere during the 2000 election raised concerns about specific failures and the overall integrity of the election system: voting problems and irregularities; problems with ballots from military and overseas voters; the electoral college; and media projections of state outcomes before polls had closed.

Voting Problems and Irregularities. Allegations of voter intimidation and voting irregularities prompted several investigations, including a series of hearings conducted in Florida by the U.S. Commission on Civil Rights, with a final report issued in June 2001 (see [<http://www.usccr.gov/vote2000/stdraft1/main.htm>]). In March 2001, Attorney General Ashcroft announced a Justice Department voting rights initiative that includes increasing the number of federal monitors who oversee the voting process, hiring a new senior counsel to supervise enforcement of federal laws and recommend changes, and adding an additional eight lawyers to the voting rights staff (for more information, see [<http://www.usdoj.gov/ag/speeches/2001/0307civilrightspressconf.htm>]).

Some are concerned that the National Voter Registration Act (42 USC 1973gg et seq.), the “Motor Voter” law, may have added ineligible voters to the registration rolls. For example, there were media reports that hundreds of felons had voted in the November 2000 election, even though only a few states automatically restore voting rights for ex-offenders. There were also reports that some new motor voter registrants were unable to cast ballots on election day because their registrations could not be confirmed. And in Florida, some eligible voters reportedly were improperly purged from the voter rolls when counties checked registration lists before the election. Some bills have been introduced to amend or repeal the National Voter Registration Act.

Military and Overseas Voters. Members of the military and U.S. citizens who live abroad are eligible to vote absentee in federal elections under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act (42 USC 1973ff-6). Controversy in Florida concerning military and overseas ballots centered on two issues — the requirement that ballots must be postmarked by election day and the deadline for counting them (10 days after the election) — neither of which is addressed in federal law. Because the law leaves such details to the states, postmark requirements for returning ballots vary.

The law is administered by the Secretary of Defense through the Federal Voting Assistance Program office in the Department of Defense ([<http://www.fvap.ncr.gov>]). After the election, Secretary of Defense William S. Cohen directed the Defense Department Inspector General to investigate issues with military and overseas citizens’

ballots and to recommend changes to the law; a report (Report No. D-2001-145) was issued on June 22, 2001 (see [<http://www.dodig.osd.mil/audit/reports/01report.htm>]). In Congress, several bills would address problems with voting by those covered by the existing federal law (see CRS Report RS20764, *The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues for the 107th Congress*).

Electoral College. For the first time since 1888, the winner of the popular vote in the election did not also win a majority of the electoral college vote. President Bush is the fourth President to win the Presidency despite losing the popular vote, the others being Presidents J. Q. Adams (1824), Hayes (1876), and Harrison (1888). Vice President Gore won a plurality of 537,179 in the popular vote, but Governor Bush won 5 more electoral votes (271 versus 266) [<http://fecweb1.fec.gov/pubrec/2000presgeresults.htm>].

Hundreds of proposals to reform the electoral college have been introduced in Congress during the past century and a half, and controversy in the 2000 election renewed calls to abolish or modify it (see CRS Report RL30804, *The Electoral College: An Overview and Analysis of Reform Proposals*; for an analysis of 107th Congress legislation, see CRS Report RL30844, *The Electoral College: Reform Proposals in the 107th Congress*).

Uniform Poll Closing. There is renewed congressional interest in uniform poll closing legislation because of early and inaccurate media projections on election night. In the 2000 election, the networks projected a Gore victory in Florida before the polls had closed in the Florida panhandle, but subsequently withdrew the projection. Furthermore, proponents of uniform poll closing argue that projections of the winner in key states may depress voter turnout on the West Coast if it appears that the election is or will be decided before polls close in the West. Several uniform poll closing bills have been introduced.

Alternative Methods for Registration and Voting

Because states, rather than the federal government, have administered elections since the country was founded, laws and practices vary considerably with respect to the many complex details of the voting process. Innovations in some states, which may now be considered more broadly, include universal absentee voting, early voting, same day voter registration, declaring an election day holiday, and Internet voting.

Absentee Voting. Voters in many states can request an absentee ballot for specific reasons only, such as illness or travel, that would prevent the voter from casting a ballot in person on election day. But recent trends in some states, including California and Washington, allow any voter to request an absentee ballot, sometimes called “no fault” absentee voting. In Oregon, elections are conducted entirely by mail. All registered voters automatically receive their ballots through the Postal Service, without needing to make a ballot request, in contrast to absentee procedures in other states (see [<http://www.sos.state.or.us/executive/policy-initiatives/vbm/execvbm.htm>]).

Early Voting. In some states, voters may cast a ballot in person before election day through an early voting program. There are many varied approaches, and the number of states using it is growing. According to the Elections Reform Task Force of the National Conference of State Legislatures, 26 states now have some form of early voting (see [http://www.ncsl.org/programs/press/2001/electref0801.htm#_Toc522012607]).

Same Day Registration. Potential voters may register in person on election day in six states: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming. Election day registration accommodates those who wish to participate but failed to register by the close of the registration period. In some jurisdictions, eligible voters must go to the voter registrar's office or board of elections to complete the form, while in others, they may do so at the polling place.

Election Day Holiday. According to the FEC, 12 states designate election day as a state holiday, although whether schools are closed and state employees are off varies (see [<http://www.fec.gov/pages/faqvdayprocedures.htm>]). An additional 20 states give state employees some time off to vote, and 26 states also provide for private sector employees to take time off to vote. Bills to make election day a federal holiday have been introduced in Congress in the past, and several are pending.

Internet Voting. Internet voting was used on a very limited basis during the 2000 election cycle. The Arizona Democratic party conducted a March 2000 primary using both the Internet and traditional polling places. In the November 2000 election, the Defense Department conducted a small pilot program in which voters requested and submitted absentee ballots via the Internet. Although interest has grown, Internet voting from remote locations raises concerns about voter identification, ballot secrecy, and access for all potential voters. It is unlikely to be widely adopted until such problems are resolved (see CRS Report RS20639, *Internet Voting: Issues and Legislation*).

National and State Initiatives

After the November 2000 election, both national and state task forces and other initiatives were established to address voting issues. Recommendations for federal action were issued by ad hoc commissions such as The National Commission on Federal Election Reform ([<http://www.reformelections.org>]), chaired by former Presidents Ford and Carter; professional associations of election officials such as the Election Center ([<http://www.electioncenter.org>]); academic groups such as the Caltech/MIT Voting Project ([<http://www.vote.caltech.edu>]); and others. While emphases and proposals vary, there appears to be broad agreement among most or all on several recommendations, including

- federal funding for technology upgrades,
- use of formula grants for at least some purposes,
- conditions for receiving federal funds,
- improvements in the voting system standards;
- expansion of data collection and dissemination,
- enhancement of functions now performed by the Office of Election Administration,
- statewide, networked voter registration systems,
- broader use of provisional ballots,
- actions to facilitate voting by military and overseas citizens,
- actions to ensure equal voting opportunity and accessibility,
- improvements in voter education,
- adoption by states of specific criteria for what is a valid vote, and
- procedures to help ensure that statutory certification and other deadlines are met.

More than a dozen states established task forces or other efforts to examine election reform needs (see [http://nass.stateofthevote.org/Issues/issues_elections.html]), and some have produced recommendations. Reform legislation was considered in all 50 states on a wide range of election reform issues, with more than 1,600 bills introduced (see [<http://www.ncsl.org/programs/legman/elect/elections.cfm>]). At least six states (California, Florida, Georgia, Indiana, Maryland, and Minnesota) enacted legislation to assist in upgrading or replacing current voting systems.

The General Accounting Office has also released several reports this year on different aspects of election reform (for an overview, see *Elections: A Framework for Evaluating Reform Proposals*, GAO-02-90, 15 October 2001). They include recommendations on assistance to military and overseas voters and on voting system standards, and a framework for evaluating election reform proposals.

Legislation in the 107th Congress

More than 80 bills have been introduced in the 107th Congress to make broad-reaching changes to the electoral system or to enact more limited changes to specific aspects of the process. Several would establish an election day holiday, modify the existing law for voting by military personnel and overseas citizens, or change the National Voter Registration Act. Of the proposals that would make major changes, some would establish a commission to study the voting process and make recommendations for changes. In a few cases, a new, permanent federal agency with ongoing responsibilities would be established. Other proposals would establish a study commission or new agency and provide grant money to states and local governments for new voting equipment or other changes. A few bills would provide grants to the states but would not create a study commission. Hearings on various aspects of election reform have been held by the Administration, Armed Services, Energy and Commerce, and Science Committees in the House, and by the Senate Committees on Commerce, Science, and Transportation; Government Affairs; and Rules and Administration.

Three bills have been ordered reported. H.R. 2275 (Ehlers) would involve the National Institute of Standards and Technology (NIST) in establishing voluntary standards and certification procedures to ensure the usability, accuracy, integrity, and security of voting systems. H.R. 3295 (Ney) would establish a program to buy-out or improve the performance of punch card voting systems, a funding program to improve the administration of elections, a new agency called the Election Assistance Commission, and programs to recruit students to work at the polls on election day. It would also involve NIST in development of voluntary standards and certification of voting systems, set certain minimum standards for state and local election systems, and address some issues relating to uniformed and overseas voters. S. 565 (Dodd) would establish a commission to study and make recommendations concerning voting reform, establish a grant program to replace equipment and make improvements in election administration, and require states to meet certain standards with respect to the voting process. (For further information on legislation, see CRS Report RL30855, *Election Reform Bills in the 107th Congress: A Comparison*).