



The 14th Congressional District's
Santa Cruz County Student Advisory Board

Electoral Reform

2005 Annual Report

Sunday, May 22, 2005

TABLE OF CONTENTS

Committee	Page
<i>Introduction.....</i>	<i>2</i>
<i>Get Out the Vote Drives</i>	<i>3</i>
<i>Protecting Your Vote</i>	<i>5</i>
<i>Voter Intimidation.....</i>	<i>7</i>
<i>Military Absentee Voting.....</i>	<i>9</i>
<i>Funding for HAVA.....</i>	<i>10</i>
<i>Recounts.....</i>	<i>14</i>
<i>Electoral College.....</i>	<i>17</i>
<i>Conclusion</i>	<i>19</i>
<i>List of 2005 Student Advisory Board Members</i>	<i>20</i>

Introduction

Nick Huber, Student Advisory Board Chair

*Sail, sail thy best, ship of Democracy
Of value is thy freight, 'tis not the Present only,
The Past is also stored in thee,
Thou holdest not the venture of thyself alone,
not of the Western continent alone
Earth's resume entire floats on thy keel, O ship, is
steadied by thy spars,
With thee Time voyages in trust, the antecedent
nations sink or swim with thee,
With all their ancient struggles, martyrs, heroes, epics
wars, thou bear'st the other continents,
Theirs, theirs as much as thine, the destination-port
triumphant...*

Walt Whitman
Thou Mother with Thy Equal Brood, 1872

As Walt Whitman's "ship of Democracy" traverses the rocky seas that constitute modern politics, it is the duty of elected officials to use the will of the people as a compass to direct their efforts. With this in mind, the 14th Congressional District Student Advisory Board has compiled a comprehensive report on the implementation of modern democracy—the election. The report encompasses the major aspects that comprise an election and questions that will become relevant for the future of American democracy: voter registration, the role of local and state officials, voter intimidation, implementation of new voting technology, analysis of the Help America Vote Act (HAVA), judicial recount procedures, and the Electoral College. In a time when the nation is so closely divided on political, cultural, religious and social issues, the election emerges as the one truly public activity that can unify where there is a division, build bridges where there is a partition, and make partners where there is a rift. In the spirit of democracy, an election must be fairly administered with the interests of all in mind. Election reform, an activity in which all Americans can participate regardless of state lines or localities, is an issue that should not be ignored by Congress and the federal government. As the United States spreads the ideals of freedom and democracy abroad, we must maintain them at home in the strength of our democracy. Manning and maintaining the "ship of Democracy" is no easy task and often embroiled in partisanship, but far-reaching, proactive solutions that benefit all Americans must be put into practice for the sake of the millions of Americans unborn.

Get Out the Vote Drives

Get Out the Vote Drives

Two of this nation's biggest electoral crises are the increasingly stark voter turnouts and the growing political apathy over the past twenty years. While overall voter turnout was up approximately fifteen percent in 2004 from the presidential election in 2000 (*FEC Online public records*), there will likely be an anemic voter turnout for the midterm elections in 2006.

Voter registration drives are now a staple of the American voting process but have seemingly done little to curb the trend of lower voter turnout and registration. Voters are the heartbeat of the American democracy, but for one reason or another nearly half of all eligible are not exercising this sacrosanct right. As a nation, we should be promoting our democracy to the citizens both passionately and persistently, not just trumpeting it every four years.

From the Voting Rights Act (1965) to the Help America Vote Act (2002), the federal government has helped to promote and protect the rights of citizens trying to register to vote. In 1993, President Bill Clinton signed into law the National Voter Registration Act or the Motor Voter Act, which helped make registering to vote easier by allowing citizens to register while applying for or renewing a driver's license. While this seemingly accommodating legislation helped to increase registrations in the three subsequent presidential elections, voter turnout actually decreased in 1996 (*FEC*). We need to do all we can to demonstrate to potential voters that registering is easy and safe and that voting is both an honor and a privilege that is not realized by billions worldwide.

Additionally, Congress must do more in order to protect the integrity of our electoral process concerning registrations. During the last election cycle, counties in Ohio were flooded with fraudulent registration forms; hundreds of Mary Poppins were registered to vote, along with several other celebrities and fictitious individuals (*CNN, "Mary Poppins prompts investigation"*). The ability of these criminals to defraud the electoral process has continued unabated for far too long. It is not easy nor is it cheap to secure the stability of our democracy but it is absolutely vital that we do so. Our ingenuity and advancements in technology should be an ally in this battle.

We should begin dealing with this problem by first making voter education a priority. Money should be appropriated for promotional events and services like public service announcements that inform the populace how easy it is to register and why it is integral they do so. One of the more beneficial inclusions in HAVA is an allotment of funds for "student programs", which among other things, is used to encourage youth involvement by funding the National Student and Parent Mock Election (*CRS Report for Congress, Election Reform: The Help America Vote Act and Issues for Congress*). By teaching children to be involved in the political process early, we are ensuring the stability of our democracy for tomorrow. We need to continue funding and promoting these training-wheel programs because they help teach the children who participate responsibilities and the importance of being involved in the electoral process.

Furthermore, the Congress should be implementing stricter punishments for people violating federal law by fraudulently registering to vote and to people hindering, tampering with, or destroying registration forms of innocent citizens. We cannot tolerate Mary Poppins at the poles come November.

While HAVA has aided the review process for registration forms by mandating that states have a computerized list of eligible voters, the states unfortunately postponed this form of review until 2006. More federal legislation and oversight is clearly needed to make sure states take HAVA seriously. There is a need for careful, continuing review of the registration process and get out the vote drives, not a scotch-tape solution.

Protecting Your Vote

In our country today the proper counting of votes during an election is a major issue, especially after the two recent presidential elections in 2000 and 2004. A commonly used innovation to help prevent fraud and reduce abuse is called the DRE. DREs, introduced in the 1970s, are the first voting machines to be completely computerized. These machines are efficient and are arguably the most user-friendly. The Help America Vote Act (HAVA) of 2002 is responsible for the increase in DREs, which will be seen in the future. In fact, in the year 2006, each polling place will have a voting machine fully accessible to people with disabilities.

There are many problems with DREs that must be addressed. One major problem is that the voter only sees a representation of the ballot and votes are registered electronically. Some experts believe that this makes them vulnerable to tampering due to the prevalence of hacking and other illegal acts in the world we live in today. Although there have not been any reported cases of hacking in any elections the common expert opinion is that DREs and other computer-assisted devices must become more secure. To improve the machines four ideas have been suggested: (1) insuring that security protocols are followed correctly, (2) improving security standards and certification of voting systems, (3) use of open-source computer code, and (4) improvements in transparency. The decision of how to implement these suggestions will be in the hands of the Election Assistance Commission established by HAVA.

Another major concern in electronic voting today is the fact that only a few companies dominate the market of computerized voting machines. We do not know who is in control of our elections. In fact, Vikant Corp., a Chicago-area company owned by Alex Kantarovick supplies the all-important 'control cards' to Election Systems & Software (ES&S), the world's largest election management company, writes reporter Christopher Bollyn. According to ES&S, they have "handled more than 40,000 of the world's most important events and elections." ES&S systems have counted approximately 60% of the U.S. national vote for the past four presidential elections. In the U.S. 2000 general election, ES&S systems counted over 100 million ballots." An interesting fact is that all of ES&S's touch screen machines contain modems, "allowing them to communicate—and be communicated with—while they are in operation," reports Bollyn. That communication capability includes satellites. "Even computers not connected to modems or an electronic network can still be manipulated offsite, not during the election, but certainly before or after," says voting systems expert Dr. Rebecca Mercuri.

ES&S also does not have the best track record. They supplied touch-screens to Miami-Dade and Brower counties in the 2000 Florida elections and this is where the worst machine failures occurred. It was not only the butterfly ballot which caused problems. In addition, while I understand he is a controversial figure, the president of Venezuela and head of board on elections also accused the company of trying to control the democratic election process in Venezuela. In the US four states have reported problems with the company's equipment and faulty equipment in 1998 caused Hawaii to have its first recount ever.

We must enforce the HAVA requirements and also use the suggested improvements to make DREs more secure. In addition, the paper trail is a needed improvement which you, Congresswoman Eshoo, and Congressman Holt's bill have sponsored and we ask you to continue to support this. We must also keep the companies that supply elections with voting machines on tight leashes. In the democracy we live in we must protect every single person's vote.

Voter Intimidation
Roxanne Scher

On-site Intimidation: An Investigation into the Democratic Process
Vice-Chairwoman Roxanne Scher

In the November 2004 Presidential Election, twenty-three out of fifty of our nation's states reported election irregularities or problems, thirteen of which consisted of voter intimidation.¹ This intimidation and suppression took place in the days and months leading up to November 2nd, and on-site at the polling places. Leading up to the election, individuals and affiliated groups relied on voter inexperience, allegedly "altered" precincts, and "dirty tricks" to ensure that some citizens would not get their vote cast. Individuals received recorded phone calls across the nation, reminding them to vote on November 3rd. In Pennsylvania, an official-looking flyer was posted and circulated stating that to "create a peaceful voting environment" Democrats were to vote on November 3rd while Republicans were to vote on the 2nd. On the actual election day, voters reported everything from felt pens that bled, thus disqualifying their ballot, to being told that their polling place had changed when they had been voting there for twenty years.

These problems and tricks, whether malicious or not, are nevertheless impeding the United States citizen's right to vote. Perhaps most disturbing about the voter intimidation issue is that all too often groups are being targeted based on race. In the 2000 Presidential Election, thousands of people in Florida on a list of supposed felons whose names were taken off the voting rolls were in fact eligible to vote, and almost all of these wronged citizens were African-American.² This tactic was once again attempted in the 2004 elections, but the news media exposed the scandal, causing the state to abandon its plan.

As one might surmise, there are legislations that address these racial concerns and atrocities, dating all the way back to the Voting Rights Act of 1965, introduced under the Johnson administration.³ This Act was originally introduced to protect the rights of African-American voters, but has been extended to protecting voters of all races and ethnicities. The Voting Rights Act, along with the amendments made in 1970, 1975, and 1982, makes provisions against any and all intimidation that could occur at the polling place. All the United States Federal government needs to do is enforce it. If the Federal government takes the responsibility of an increased amount of involvement in the implementation and endorsement of these laws, then the amount of harassed voters will significantly decrease.

In conjunction with a more serious enforcement of the laws already in place, the Federal government could form a Federal Commission whose sole purpose is to investigate and to

¹ Voter Intimidation and Suppression Stories,
http://www.electionprotection2004.org/archives/cat_voter_intimidation_and_suppression.html

² The Long Shadow of Jim Crow: Voter Intimidation and Suppression in America Today,
<http://www.pfaw.org/pfaw/general/default.aspx?oId=16368>

³ United States Department of Justice, Civil Rights Division, Voting Section: Introduction To Federal Voting Rights Laws

eradicate voter intimidation. So much money is being spent abroad to promote and spread democracy; the Federal government should use a portion of that sum to assure that our own country remains a democracy where every eighteen year-old is allowed to easily vote on whichever candidate they wish. Besides exploring the subject of voter intimidation and brainstorming ideas of how to implement laws and legislations, the politicians of this commission would identify polling places across the country that are intimidation “hot spots.” The trusted officials would observe these polling places during an election, and could be an encouraging presence as well. The citizens of the United States would feel like their vote matters to the Federal government, and would be assured that they would not encounter any problems of intimidation at their own polling place.

Finally, I propose that stricter penalties be placed on the perpetrators of voter intimidation. As outlined in the proposed Voter Protection Act of 2005 sponsored by Senator Mitch McConnell of Kentucky and four cosponsors, sections 302 and 303, intimidators would either need to pay a fine or go to jail, or, in some cases, do both.⁴ If the Federal government does not take voting seriously, then how can they expect the people to understand the seriousness and importance of free voting?

The truth is that they cannot. Increased voter apathy is only the beginning of the problems within the United States democratic process, and problems will continue to increase until the government steps in and enforces forty year-old legislations, as well as implement newer, more relevant actions. It does not matter what color skin someone has, whether or not they can read, or which political party they align themselves with, because everything boils down to one simple truth: every adult citizen in the United States of America possesses the inalienable right to cast their personal vote.

⁴ Cosponsors of this bill are Senators Christopher Bond of Missouri, Thad Cochran of Mississippi, Johnny Isakson of Georgia, and Richard Lugar of Indiana. Information for bill found at <http://thomas.loc.gov/> and <http://www.govtrack.us/congress/bill.xpd?bill=s109-414>.

Military Absentee Voting

The Uniform and Overseas Citizens Absentee Voting Act of 1986 required that states permit military personnel and their dependents as well as overseas citizens to vote absentee in federal elections. Many states have worked with the Department of Defense's Federal Voting Assistance Program to take some initiative and make it easier for military personnel and overseas citizens to register, obtain ballots and vote.⁵ Yet, there are still concerns expressed by military and overseas voters, such as⁶:

- varied state and local requirements for absentee voting
- The lack of feedback from local jurisdiction about their status of their applications for registration or ballots
- the short times frame provided by many states and local jurisdiction for sending and returning ballots

The Federal Voting Assistant Program aims to provide its Voting Assistant Officers with information on absentee voting.⁷ However, in an experiment conducted by the United States General Accounting Office, out of 970 service members, 40 percent were unaware of the Voter Assistance Guide, 50 percent were unaware of the website and 74 were unaware of the toll free number. These tools provide valuable information in regards to voting rights. To fix these issues, voting assistance programs need to be improved. There should be a sufficient number of Voting Assistance Officers who are trained and educated in their field. It was found that want of the officers were not aware of the service requirements. 85 percent of the 154 officers who the GAO spoke to were self taught, and 48 percent of the ones they spoke to had participated in one of the 70 training workshop⁸. Also, voting materials should be more readily available to citizens. Voting Assistance Officers should not be spread thin. Sailors are charged \$1 per minute for calling the toll- free number, which can be discouraging when obtaining voting information.

Also, there are many variations in registration and balloting systems in regards to absentee

⁵Walker, David M. Issues Affecting Military and Overseas Absentee Voters.

<http://www.gao.gov/new.items/d01704t.pdf>

⁶Based on questionnaires and discussion groups held with 970 officer and enlisted active duty service members, 284 Department of Defense civilians and dependents of active duty

⁷FAM 1500: Federal Voting Assistance Program

⁸Walker, David M. Issues Affecting Military and Overseas Absentee Voters.

<http://www.gao.gov/new.items/d01704t.pdf>

voting. This can lead to misinformation, which creates many incorrect and late ballots. Also, states interpret requirements differently. To aide this issue, there should be standardized registration and absentee balloting systems for all states. Making a uniformed system for absentee voting would make the voting process easier for many abroad, and minimize confusion.

There are not fair opportunities to registered voters abroad. 179 local jurisdictions showed the most common reason ballots were disqualified was because the ballots arrived after the established deadline. It is *recommend* by the FVAP that there be a 45-day interval between mailing ballots to voters and the deadline for receipt of voter ballots. However this is not uniform. Some states don't allow ballots to be available 30 days before the election, and others extend the deadline past the election, while others want it before. Extended deadlines give more flexibility for voters overseas, but it is required that the ballot be postmarked no later than election day. This leads to complicating administrative requirements. To make the process more fair, time frames should be uniform and cohesive. The FVAP should require that there be a 45 day interval between mailing ballots to voters and the deadline. The deadline should be the same for all voters, whether abroad or not: Election Day.

Funding for the Help America Vote Act

The outcome of the Bush/Gore presidential election in 2000 was decided by several hundred votes – many of which were contested. This election brought attention to the need for reforms to protect the integrity of our electoral process. In October of 2002, Congress enacted the Help America Vote Act (HAVA, P.L. 107-252) to help address the problems which came to light in the Bush/Gore election. The Help America Vote Act or “HAVA” established the Election Assistance Commission (EAC) and mandated federal requirements for election administration including voting systems, provisional ballots, voter information, voter registration and identification for certain voters¹. Due to time and funding problems, many of the needed changes were not enacted by the 2004 election, thus causing disputed results and complaints once again. Changes to HAVA to be considered for the 109th Congress include, but are not limited to, the issues of funding, deadlines and requirements.

Payments towards States

The success of HAVA is dependent upon adequate funding. Without proper funding, states will be unable to comply with the requirements of Title II of HAVA. \$650,000,000 has already been paid to the states to improve election administration and to replace punch-card and lever-machine voting systems for more accurate machines such as computerized voting systems. Three billion dollars is to be transferred over 3 years to the states to help meet and maintain the requirements set out by HAVA. As of March 10, 2005, \$2,328,200,000 has been appropriated through FY2003 and FY2004 and \$1,718,045,488 has been disbursed. \$601,315,132 remains to be disbursed to the states for the remainder of the year. This money must be in the hands of the states within the next 9 months to meet HAVA’s goal of compliance by January 1, 2006.

Even if the remaining funds are disbursed to the states immediately, there is a serious question as to whether the funds appropriated are sufficient to bring the states into compliance with HAVA’s requirements. In a recent survey² by the National Association of Secretaries of State, 78% of the responding states³ said that they will still meet HAVA deadlines even if Congress does not provide all the promised funding. However, only half

¹ **CRS Report RL32685**, *Election Reform: The Help America Vote Act and Issues for Congress*

²<http://www.nass.org/Survey%20Summary%20HAVA.pdf>

³ States that responded to survey: AL, AR, CA, CO, CT, DE, FL, GA, ID, IL, IN, IA, KS, KY,

MD, MO, NE, NH, ND, OH, OR, PA, SD, UT, WV, WI, WA

of the states said they would be able to “fulfill all the elements of their state plans with the reduced federal funds” and “For those that will have to scale back on their plans, the elements that will be cut will be voter education initiatives, training of election officials and poll workers and a reduction in the amount of equipment purchased.”

One thing Congress could do to ease the burden of budget problems and the release of funding on time is to have the states that have sufficient funds to meet needs properly give the remainder of their funds to states that do not have enough funding⁴. This way, requirements are still met by the states and every state will have enough funds to meet goals and deadlines. States that transfer funds to other states would be reimbursed when more money is available.

Other HAVA Programs

Through HAVA there is a \$100 million program for accessibility during elections for people with disabilities. There is also a \$10 million program per state for protection and advocacy systems for voter participation for those with disabilities. There also exists \$20 million grant for research and a \$10 million grant for pilot programs for improved voting technology, but no funds have been appropriated. Three small programs for student participation in elections have been only partially funded. These programs are very important for election improvement, but the lack of funds available at the moment means that these programs will most likely be delayed until beyond the 2006 elections.

Voting Machines and HAVA Funding

As part of HAVA’s conditions, by January 1, 2006, voting machines used in Federal elections must meet strict requirements. The voting system must have error correction available for the voter, manual auditing, accessibility for the disabled (at least one fully accessible system per poll site), alternative languages and a federal machine error-rate standard met. In addition, the system must allow for voter and ballot confidentiality. Direct Recording Electronic systems, known as DREs, have passed these requirements

⁴ It should be noted that under Title IV of the Help America Vote Act, Pub. L. No. 107-252, Sec. 401 and Sec. 402, it states that if states do not comply with HAVA’s requirements, including requirements for accessibility for people with disabilities, then the states must establish a complaint procedure to receive funding (that varies by state) and if this procedure fails, then the Attorney General can file a civil action that makes sure the requirements are met.

and are now being sought out for use in elections. However, there is much controversy as to the use and safety of these machines⁵.

Each state is given funds for compliance with HAVA's requirements for computerized voting machines. However, the security and reliability of these systems is still in question. While funding for computerized voting systems has already begun to be disbursed, before any more money is sent out for the use of these machines, more research must take place to assess the machine's strengths and weaknesses. It would be a shame to spend such large sums of money on these voting systems to only recall the machines or find them to be inadequate for elections in the future.

HAVA's Future

In order for HAVA to be successful in reforming elections, Congress and the EAC must ensure that states adhere to the requirements. All states should be encouraged and assisted in meeting the goals of HAVA in order to end bickering over election results, make sure every vote is counted correctly, and see that every eligible voter is able to vote properly. HAVA can only be successful if it has the proper funding necessary to operate. Funding for the Election Assistance Committee and HAVA programs is authorized at the moment through FY2005.

The progress that the EAC and states make in respect to meeting HAVA's goals should also be taken into consideration when modifying funding. Funding may be insufficient for requirements to be met by 2006. The importance of HAVA should be expressed more often to the public and Congress. The integrity of our electoral system is contingent upon safeguarding and improving elections. Funding HAVA to help meet goals of voter safety and participation will make this possible.

⁵ See "Protecting Your Vote" by Alok Pandey

Recounts
Nick Huber

*Recounts: A Policy Analysis on Judicial Procedures and Legislative
Solutions in Disputed Elections*
Chairman Nick Huber

During the last two presidential elections, the results have been close enough to merit recounts in several key locations. Surely, the prospect of close elections will not go away in the near future, ergo, it is critical that we establish guidelines to address future recounts today to preserve our democracy tomorrow.

The purpose of a recount is to ensure that the results of the election were accurately tabulated and the will of the people is upheld. As the United States spreads the ideals of democracy and freedom abroad, we must maintain them at home as well.

Although every state varies in its election law, the variations are small enough to merit the use of Ohio as a case example for a typical recount scenario (such as 2004). Even after the passage of the Help America Vote Act (HAVA), determinations regarding election procedures—including recounts—is left to state and local officials. However, several key problems deserve and require federal attention.

Pleading Burdens

- Inclusion of Non-Consequential Recount Petitions

Although accuracy is obviously a paramount concern of the recount process, recent trends indicate that expediency has become the principal concern. For example, in Ohio, to contest the results of an election, the litigant must prove that (1) that one or more election regularities occurred and (2) that the irregularity or irregularities affect enough votes to change or make uncertain the results of the election.⁹ Following the 2004 presidential race, Senator Kerry faced legal opposition because it was publicly acknowledged that his claims for a recount would not alter the outcome in Ohio. However, as citizens of a nation that purports “liberty and justice for all,” we must do everything to ensure that all votes are counted. In a time when voter turnout is below 50%, we must promote true democratic ideals and make sure that votes are not completely disregarded. Even if one vote does not alter the outcome of the race, it is the voice of an American citizen and it must be heard.

- Equalizing the Burden of Proof

⁹ *In re Election Contest of Democratic Primary Election Held May 4, 1999 for Nomination of Clerk, Youngstown Municipal Court*, 717 N.E.2d 701, 702 (Ohio 1999)

Although generally recount petitions are examined with the doctrine of notice pleading, which states that the litigants must allege the elements of an election contest with sufficient particularity so that reasonable notice is given to opposing parties, a fraud allegation must be adjudicated with heightened pleading in which specific facts must be proven through discovery.¹⁰ Often, fraud claims encompass the vast majority of litigants' allegations and such claims must be subject to the same level of scrutiny for the sake of fairness and consistency lest, according to Moritz Associate Law Professor Christopher Fairman, "[it] could lead to dismissal for failure to state a claim—significantly different outcome from the typical challenge to an election contest petition under notice petition."¹¹ Notice pleading provides significant scrutiny, but also opens the court to hear compelling claims of fraud that simply could not be logistically proven under heightened pleading. No one wants a federal standard of an incredibly lower burden of proof for a recount, but it cannot be so insuperable that legitimate claims are dismissed on procedural grounds.

- Easily Amendable Petitions

Furthermore, all irregularities must be listed in the litigant's petition, otherwise, irregularities found in the period of discovery cannot be presented in court.¹² In the case of *In re Election Contest for Youngstown Clerk*, it was held that because irregularities were found at later date during discovery that the petition "did not set forth the election irregularities that he now claims on appeal, it did not comport with the requirements of R.C. 3515.09" thereby violating the "set forth the grounds' provision."¹³ However, once again this process values expediency over accuracy by ignoring a recount petition on a minor technicality. The United States Congress should adopt provisions that state that an election irregularity petition—as an element of a unique form of a civil lawsuit—can be easily amended due to the need for timeliness, rather than totally disregarding newly found irregularities.

Federal "safe harbor"

Under current federal law, if a State has contested election results, they can set up processes of election dispute resolution—usually judicially—in order to gain the federal safe harbor in the form of incontestable results if those processes of dispute resolution reach a final determination 35 days after the presidential popular vote.¹⁴ The federal safe harbor protects the state from outside federal pressure to reach an outcome. Furthermore, if the State meets all of the necessary provisions, it ensures an incontestable result. However, with the increasing use of absentee ballots that can stream in days after the election coupled with an expanding electorate with more recount petition claims, if the

¹⁰ See Rule Fed. Civ. P. 9(b) and *Pleading and Discovery in an Ohio Election Contest*; Fairman, Christopher.

¹¹ Fairman, Christopher. *Pleading and Discovery in an Ohio Election Contest*

¹² Ohio R.C. 3515.09 *In re Election Contest of Democratic Primary Election Held May 4, 1999 for Nomination of Clerk, Youngstown Municipal Court*

¹³ Fairman, Christopher. *Pleading and Discovery in an Ohio Election Contest*

¹⁴ Platt, Joseph and Morris, Porter. *Meshing State and Federal Presidential Election Law: The Need for Reform*

federal safe harbor is to truly provide accurate results, it must be extended to allow for maximum dispute resolution. No one wants a drawn out partisan legal battle, but the prospect of a democracy without an accurately represented populace is even more frightening. States must be given adequate time and protection from outside scrutiny to reach a fair, incontestable result.

Conclusion

Questions of law that are divided along the lines of the role of the judiciary and the role of the legislature will inherently be riddled with conflict. In spite of the increased judicial activism in the case of *Bush v. Gore* to resolve a narrow election, the legislature must step in as the democratic advocates of the people and protect the American democracy. We cannot and should not expect every close election to be determined by the Supreme Court for it adds an unnecessary politicizing element to the Court. Congress must take on this issue and provide a federal standard to which all states can, should and must obey. Although it is tempting to dismiss recounts as partisan claims and the laments of sore losers, a desire for the accuracy and legitimacy of our democracy must be held above all else. Federal recount procedure should have:

- non-consequential recount petitions considered as legitimate
- streamlined judicial procedures to determine a petition's merit in a timely fashion (including, but not limited to easily amendable recount petitions and an equalized burden of proof for fraud allegations)
- the period of "safe harbor" extended to allow all ballots to be counted with precision and care.

Electoral College

Electoral College is the current system we use every four years to elect the president of the United States. In it, citizens vote on electors to vote for a certain candidate as the next chief executive. The Constitution assigns a certain number of electors to each state equal to that states' combined number of senators and delegates to the House of Representatives. Currently, there are a total of 538 electors in the entirety of the United States with ranges from three to 55 in any one state. Each voter will get one vote that goes to that state's electors and then that state will cast its ballots for its choice candidate.

There are many evident problems to this method. First of all, the current Electoral College method discourages voter turnout by making voters think their vote doesn't actually count. Voters might skip voting if, for instance they hear from exit polls that candidate X is already bound to win their state. In the famed election of 2000, over 18 million people got their votes ignored if they were in one of the 29 states Bush won, over 22 million people got their votes ignored if they were in one of the 21 states Gore won and over 3 million voters got their vote ignored in all the states by simply voting independent. With the current system, one must vote the way others do in their state for it to even matter. Furthermore, each state gets the same amount of votes regardless of the turnout so there is no incentive for states to encourage large turnouts.

It violates the one person one vote ideal at the very heart of American democracy. Each state gets at least three votes regardless of the size of the state. As an effect, voters in smaller states have a larger influence than residents of larger states. For example, each electoral vote in Alaska is approximately worth 112,000 people while one electoral vote in New York is approximately worth 404,000. The value of a small state vote is in many cases two to four times more influential than those from larger states.

We must also not forget that the Electoral College works against the minorities in America. It is a major source of inequality and injustice in this nation and works against racial, cultural and ethnic groups. Hispanics, for example, usually reside in highly populated areas and their value in the vote is therefore diminished. The vote value of the average Hispanic is significantly lower than that of the average white voter.

If the election is undecided even after the electoral votes are counted than the election is thrown to the House of Representatives and the people are skipped altogether. This isn't a vote of the people but a vote of representatives. The election has been thrown to the House two times so far in 1800 and 1824 and it has never been good, often becoming purely a partisan battle.

The Electoral College also has been seen to enforce the two party system currently dominating the United States. Third party choices are often seen as "spoilers" instead of

as real choices and nobody wants the vote to go to the House so a third party's chance of getting elected is virtually nothing. The framers did not plan for a two party system to arise and I am confident that if they had, they would have framed it much differently.

Although rare, there is also the possibility of a "faithless elector." There is no requirement for an elector to vote for the candidate he said he would. Even after the people came out and voted the elector could just ignore the people and vote for whoever he wanted. This actually did happen in 1988 when an elector voted Lloyd Bentsen for president instead of Michael Dukakis as he said he would.

There is a major problem when the very nation that is supposedly spearheading the world movement for democracy has an unfair and undemocratic election process. A candidate could win an election by simply winning a slim majority of the seven most populous states, even if the candidate wins less than half the votes in those states.

There are two straightforward possibilities that could be used as alternatives to the Electoral College. The first one is a direct popular election which would be excellent because not a single vote would go ignored and everyone would begin to believe that their vote mattered. It would also mean a larger sense of racial, cultural and ethnical equality throughout the Union. Some of the minuses for this plan include that if a recount was needed for a close election, etc. it might require doing so throughout the entire nation instead of in singular states as is common practice in today's system. A candidate could win without a majority and even in today's elections, popular and Electoral College votes rarely point at different candidates.

Another choice to solve America's dilemma is the runoff election. In this type of election the voters rank their choice candidates from 1st to second to third and so on. It works the same from there as the direct popular election does but if someone does not win the majority after the first choice than they count the second choices and continue until one of the candidates has a majority. This process would be highly beneficial to the citizens of the United States but would also require recounting the entire nation in the case of a recount. One must ask himself though whether time and money were more important than a fair and justifiable system to choose the president of the most powerful nation on Earth.

Conclusion
Roxanne Scher

Conclusion

The 14th Congressional District Student Advisory Board set out in November of 2004 to accomplish something great: seven high school students were going to put the democratic process of the entire United States of America to rights, and in a mere six months of biweekly meetings over pizza. While our humble board certainly did not reach this sweeping, world-changing goal, we accomplished a feat that is perhaps just as important. Seven high school students realized that someday we could, in fact, make a difference. We researched, discussed, and dissected our topics, coming up with questions and ideas that are relevant as well as fresh and new. Mr. Huber reviewed the judicial procedures and solutions in a disputed election, and concluded with the components of a federal recount procedure. Mr. Gutman re-enlightened us with the age-old ideals of the educated and informed voter, while also adding the suggestion of student mock elections, to help instill the importance of voting in young minds. Mr. Pandey informed us of the danger of DREs and stressed the necessity of increased security in voting methods. I researched incidents of voter intimidation, and introduced new ideas to help voters remain safe and confident throughout the voting process. Ms. O' Leary wrote a report on absentee voting, its shortcomings, and what can be done, while Ms. Mehr outlined the Help America Vote Act, informing us of its increased effectiveness if all states were to follow the act's guidelines. Finally, Mr. Adams revealed the archaic nature of the Electoral College, and set out alternative plans that would further promote democracy in the United States.

While our ideas and suggestions are only a small contribution to the United States government at large, we learned more than we ever thought possible about our country, the election process, and congressional research and planning. It was a wonderful experience to work among those who share a love of politics and law, and each one of us grew to command a better understanding of the world around us. The importance of democracy became even more apparent to us, and we shall all go forward with the hopes for freedom cried out by our ancestors ringing in our ears. Perhaps everyone involved in the democratic process should ask themselves these important questions:

*“If I am not for myself, who will be for me?
If I am not for others, what am I?
And if not now, when?”*

Rabbi Hillel
Pirke Avot

May the words of those that are wise guide our hearts in the realm of tomorrow.

Roxanne Scher

2004-2005 Student Advisory Board Members

Nick Huber, Chair

Roxanne Scher, Vice-Chair

Lindsey O'Leary, Secretary

Alok Pandey

Brandon Adams

Hila Mehr

Simon Gutman

Scotts Valley High School

Scotts Valley High School

Scotts Valley High School

Santa Cruz High School

Scotts Valley High School

Santa Cruz High School

Scotts Valley High School