

Post-2000 electoral changes

States Move to Replace Punch-Card Voting

The Florida recount during the 2000 presidential election revealed widespread problems with voting machines and ballots, particularly punch cards, resulting in 36 days of electoral limbo. However, officials in many states have said that if their election systems had undergone the same scrutiny as Florida's underwent, they would have fared no better. While Florida experienced a relatively high rate of residual votes — unmarked, uncounted, and spoiled ballots — several other states, including Georgia, Idaho, Illinois, South Carolina, and Wyoming, reported even higher rates, as did some cities, including Chicago and New York City.

Between 4 million and 6 million qualified votes cast in the 2000 presidential election were not recorded or counted, according to a [July 2001 report by the Voting Technology Project](#) of the Massachusetts Institute of Technology and California Institute of Technology. Ineffective equipment and poorly designed ballots were to blame for 1.5 million of those lost votes.

While this number of lost votes is not unusual in nationwide elections, the report said, election officials can cut the number of lost votes in half by using equipment already available. The report recommended that states and localities replace punch-card voting machines with optical scanning devices or with any tested and proven electronic technology. Several states, including Texas, have begun taking steps to do just that. Still at issue, however, is who will pay for voting-

technology upgrades needed in local jurisdictions across the nation.

Study recommendations

About a dozen major academic, task force, and commission studies have scrutinized the 2000 election and offered recommendations for improvement. According to the

[\(see Punch card, page 2\)](#)

Ruiz Litigation Update: Date Set for End of Federal Court Oversight

The state continues to pursue litigation to end federal court oversight of the Texas prison system, although the federal judge in the case of *Ruiz v. Estelle* has declared that his supervision of the system presumptively will end July 1, 2002. The state is appealing recent district court rulings that resulted in the court retaining oversight and imposing remedies in three areas of prison operations. Federal oversight could be prolonged past the July 1 date set by U.S. District Judge William Wayne Justice if attorneys for inmates contest the adequacy of the state's response to the court's orders.

Ruiz, originally filed in 1972 and later consolidated with other suits, alleged unconstitutional conditions and treatment in the Texas prison system. Federal court oversight of the prison system began in 1980 after Judge Justice found constitutional violations in several areas of the system. The judge ordered many changes, including reducing the population of some existing facilities; ending a system in which inmates known as "building tenders" oversaw other inmates; and increasing the availability of medical care.

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**Final vote canvass
for constitutional
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[Election Reform Information Project](#) at the University of Richmond, which surveyed and compiled results from many of these studies, the reports generally call for states to upgrade their systems to use voting machines that enable voters to correct mistakes on their ballots and to ensure accessibility for the disabled. Such systems include touch-screen machines or precinct-counted optical scan ballots. (See box, page 3.) The consensus is that any technological changes should be coupled with mandated uniform standards for voting equipment, improved voter registration processes, increased voter education, and better training and pay for poll workers.

An [August 2001 study by the National Conference of State Legislatures](#) (NCSL), “Voting In America,” presents 36 recommendations for legislatures seeking to improve their election processes, including adopting uniform standards for maintenance, operation, counting (including what constitutes a vote), and verification of voting systems. Concluding that states may need federal funds to help implement election-law changes, NCSL advocates block-grant funding not tied to mandates.

No federal agency has explicit statutory authority to develop national standards for voting equipment. The Federal Election Commission (FEC) in 1990 developed voluntary standards for computer-based systems. These standards define minimum functional and performance requirements for electronic voting equipment, such as accurately recording votes cast, but they do not address requirements for paper ballot or mechanical-lever machine voting used in many local jurisdictions. Currently, 38 states, including Texas, require that equipment used in elections meet FEC standards, either in whole or in part. The FEC began in 1997 to evaluate and update these standards and plans to issue revised standards in 2002.

The [U.S. General Accounting Office](#) (GAO) suggested in an [October 2001 report](#) that Congress assign explicit federal authority over voting-equipment standards, including testing equipment against FEC standards. GAO researchers estimated that upgrading voting machines nationwide for jurisdictions in need would cost \$191 million for optical scan machines and \$3 billion for touch-screen machines.

An [August 2001 report by the Election Center](#), a Houston-based association of state and local election administrators, suggested that most problems with elections have resulted from poorly written, conflicting, or nonexistent laws, rules, regulations, and policies, and that only a small percentage of problems have been related directly to failures by vote-tallying machines. The task force offered more than 80 recommendations for improving elections and stressed the need for consistent nationwide standards that recognize and accommodate differences in voting systems. It recommended more federal involvement in developing those standards.

State election-law changes

In January 2001, Texas Secretary of State Henry Cuellar testified before the House Elections Committee that, although Texas has a sound election system, voting systems in some parts of the state were outdated and confusing, especially punch-card voting systems. During the 2000 presidential election, 14 Texas counties — including Harris, El Paso, and Collin — used the punch-card voting system that caused problems in Florida. Even though no problems of that magnitude have occurred in Texas, Cuellar recommended phasing out punch-card systems, at an estimated cost of \$25 million.

Texas, like most other states, is waiting to see what Congress does before enacting legislation that would help pay for new voting systems. However, the 77th Legislature enacted several other measures in regard to voting systems.

- HB 1856 by Danburg prohibits local jurisdictions from acquiring or adopting new punch-card voting systems, except for early voting by mail, after September 2001. The bill also establishes procedures for the use of direct recording electronic voting machines.
- HB 1419 by J. Jones requires the secretary of state to reexamine each county’s voting systems; study innovative, available voting technologies and the effectiveness of adopting a statewide, uniform voting system; and make recommendations by December 1, 2002, for the next legislative session.

Ballot Technology

U.S. polling places use five different types of voting technology: paper ballots, mechanical lever machines, punch cards, optically scanned (fill-in-the-bubble) ballots, and direct recording electronic (DRE) or touch-screen systems. Over the past 20 years, many counties have moved away from paper ballots and lever machines toward electronic systems, particularly optically scanned ballots and DREs. Punch card, optical scanning, and DRE systems all involve computer-assisted technology.

According to the [July 2001 report of the Voting Technology Project](#), each voting system tends to be inadequate in some situations and adequate in others. For example, paper ballots work well in small jurisdictions but create an administrative burden in larger ones. Also, many factors influence the reliability of equipment, such as voter education, poll-worker training, and equipment storage and maintenance. However, the punch-card system stands out as consistently less reliable than others in terms of enabling voters to express their preferences. Punch cards resulted in a higher rate of lost votes in the 2000 presidential election than did any other system. According to the Voting Technology Project report, optical scanning, though not perfect, has the best track record of all equipment types now in use.

Electronic voting is not the same as Internet voting. An electronic voting system is not networked to a central server, so it does not use a hard drive that could “crash” or be “hacked” into by someone who wanted to change the votes. According to Travis County Clerk Dana DeBeauvoir, electronic voting systems, including touch-screen and touch-button, have multiple storage backups and can provide audit

trails for every ballot cast. No electronic link exists between the voter’s name and his or her ballot, thus ensuring a secret vote. Also, electronic voting systems can print out the face of each ballot if a manual recount is necessary.

Touch-screen technology uses a computer that resembles an automated bank teller machine and allows a voter to make selections by touching boxes on the screen. Write-in candidates can be added by typing in the name, and each vote is confirmed by the appearance of a check mark on the screen. The voter can erase his or her vote at various stages before completing the voting process. The machines are portable, so people with disabilities can use them easily. The voting program can be imaged in large text or can read ballots aloud for the benefit of blind voters using an audio feedback device. It also can provide ballots in different languages.

Touch-button technology uses a device with a dial that lets voters choose candidates and referenda and works like an electronic calculator. After the ballot is marked, a final page shows all selections and prompts the voter to verify them. The voter can make changes with the push of a button and can cast the final ballot with another push.

With any voting method, security, privacy, and auditing are the foremost concerns. Questions linger over the reliability of electronic voting systems in regard to audit trails, fraud prevention, and accuracy. Some observers predict that these systems will not become a large-scale voting alternative for some time, as there is no way to assure voters that their votes are being recorded as well as they should be.

- In the event that Congress provides funds to states to upgrade election administration, HB 2336 by Danburg requires the secretary of state to administer and distribute the funds in the most effective and appropriate manner.

According to NCSL, lawmakers in 10 other states have introduced legislation addressing voting systems. These measures include paying for upgrades or purchase of new equipment, requiring studies of voting systems, setting standards for equipment, adopting uniform voting equipment, and prescribing ballot design. Only Florida, Georgia, and Maryland have enacted requirements for statewide uniform systems.

Florida's legislation is intended to ensure that dimpled, hanging, swinging, and pregnant chads and the much maligned butterfly ballot will disappear forever. The state's Election Reform Act of 2001, estimated to cost \$32 million over two years, aims to upgrade voting equipment, create a statewide voter-registration database, recruit and train poll workers, and educate voters. By the 2002 elections, all of Florida's 67 counties must use new voting systems. So far, the only certified equipment is optical scanning technology, but the new law allows counties to seek certification for other electronic equipment as well. After next year's elections, data on undervotes (unmarked ballots) and overvotes (ballots bearing more than one vote for a given race) will allow election officials to pinpoint difficulties with specific technology or designs so that lawmakers can evaluate the effectiveness of the new systems.

Georgia has set the 2004 presidential election as the deadline for implementing a statewide electronic voting system. During the November 2001 election, the state conducted a 13-city pilot test of electronic touch-screen and touch-button voting machines. The machines received generally positive reviews from voters, and the evaluations will help determine which system Georgia will acquire. According to the secretary of state, the machines could be financed through the sale of long-term bonds and would cost between \$25 million and \$50 million.

Maryland's legislature has appropriated \$2 million for 2002 to buy new voting equipment and \$100,000 annually to train election officials. The state election board will determine which voting system to use statewide, and counties will have to split evenly with the state the cost of acquiring and operating the new system.

California's secretary of state has ordered nine counties, including Los Angeles, to stop using punch-card voting systems and convert to more reliable voting methods. By January 2006, the counties must replace a system formerly used by 55 percent of the state's voters, or 8.6 million people. Replacing Los Angeles County's system alone is estimated to cost \$100 million for the purchase of

touch-screen voting machines that can serve voters with disabilities and can display ballots in seven different languages. In March 2002, California voters will decide whether to approve a \$200 million bond measure to help pay for the conversion to more modern voting machines. If the proposal passes, counties would have to spend \$1 for every \$3 in state aid that they receive. Because replacing all existing devices in all nine counties is estimated to cost up to \$260 million, depending on the systems chosen, state election officials are hoping for federal funding support.

Lawmakers in Indiana and North Carolina prohibited the use of punch-card voting by the 2006 election. Indiana's new law creates a \$4 million fund to help the 42 counties that must switch to a new voting system. Minnesota lawmakers appropriated \$1.9 million to a state fund that will provide dollar-for-dollar matching grants for the purchase of optical scan equipment. Idaho enacted legislation requiring voting systems to meet FEC standards and to undergo independent testing authorized by the National Association of State Election Directors. Ohio, Nevada, Tennessee, and Virginia enacted laws that define what constitutes a vote on a punch-card ballot.

Several states and municipalities tested state-of-the-art voting systems in the November 6, 2001, election. In Texas, Harris, Tarrant, and Travis counties tested new

So far, only Florida, Georgia, and Maryland have enacted legislation setting requirements for statewide uniform voting systems.

electronic systems in early voting. Harris County spent \$25 million on electronic touch-button machines, which look like large desktop calculators. They will be used county-wide for the November 2002 general election. Travis County tested touch-screen and touch-button systems at four early-voting places and received an overall positive response from election judges and voters. A task force will meet during December to recommend which system to purchase. The new system, expected to cost around \$5 million, will be in place in time for early voting for the 2002 primary election and will be expanded county-wide by 2003.

Federal initiative

So far, Congress has enacted no federal election-reform legislation. Not all congressional leaders have agreed on what a reform package should include, but all agree that reforms will be expensive and that some federal funding will be necessary.

In mid-November, the House Administration Committee unanimously approved H.R. 3295 by Rep. Bob Ney (R-Ohio) and Rep. Steny Hoyer (D-Md.), called the Help America Vote Act of 2001. The bill would authorize a one-time payment of \$400 million to states or counties to help them replace punch-card voting machines in time for the November 2002 general election. The buyout would amount to \$6,000 per precinct choosing to replace punch-card technology.

H.R. 3295 also would set minimum standards for state election systems. Each state would have to establish a statewide voter-registration system; provide precinct provisional voting (allowing voters whose eligibility is

in question at polling places to vote, subject to later verification) and a system for maintaining accurate voter-registration records; develop voting systems that enable voters with disabilities to cast secret ballots; ensure that the ballots of absentee, military, and overseas voters are counted; and ensure that any new voting technology allows voters to correct their ballots before casting them. Supporters say the bill would leave implementation of these standards to the discretion of each state.

The bill would allocate \$2.6 billion in election-fund payments among the 50 states. This grant program would require a 25 percent match by states, and the funds could accrue over three years. To be eligible, a state would have to certify that it has authorized the 25-percent matching amount, has set a uniform statewide benchmark for voting-system performance, and is complying with voluntary voting-system standards, either its own or those adopted by a federal commission. The funds could be used for voter education, upgrading equipment, improving voter verification, recruiting and training poll workers, and providing access to polls for voters with disabilities. The bill also would establish an advisory commission to act as a national clearinghouse for information and review of federal election procedures.

The Bush administration has indicated that it supports the legislation.

H.R. 3295 has its detractors, however. Advocates for people with disabilities complain that it would mandate no changes that would benefit them. They say

the bill would allow states to define what is “accessible” and to set different standards for voting access. Other observers object that the bill does not specify whether federal money would be available to reimburse counties that already have purchased new voting equipment.

A bill pending in Congress would give states and counties \$400 million to replace punch-card voting systems by the November 2002 election.

— by Rita Barr

Voters Approve 19 Constitutional Amendments

Texas voters approved all 19 constitutional amendments proposed on the November 6, 2001, ballot. Official results released by the secretary of state are shown below. Including these amendments, voters have approved 409 amendments to the Texas Constitution since its adoption in 1876. Another proposed amendment (HJR 2 by Chisum, et al.), allowing counties to declare constable offices dormant, will appear on the November 5, 2002, ballot.

Prop. 1: Relinquishing state interest in land in Bastrop County

FOR	596,765	74.4%
AGAINST	205,499	25.6%

Prop. 2: Bonds for access roads to border colonias

FOR	507,357	61.4%
AGAINST	318,447	38.6%

Prop. 3: Ad valorem tax exemption for raw cocoa and green coffee held in Harris County

FOR	411,339	51.5%
AGAINST	386,931	48.5%

Prop. 4: Increasing term of fire fighters' pension commissioner

FOR	583,552	72.1%
AGAINST	226,350	27.9%

Prop. 5: Allowing cities to donate used firefighting equipment to foreign countries

FOR	595,707	71.4%
AGAINST	239,139	28.6%

Prop. 6: Requiring governor to call special legislative session to appoint presidential electors when outcome is in doubt

FOR	507,716	62.2%
AGAINST	308,643	37.8%

Prop. 7: \$500 million in bonds for veterans' housing loans and cemeteries

FOR	611,943	74.7%
AGAINST	207,484	25.3%

Prop. 8: General obligation bonds for state agency construction and repair projects

FOR	509,148	62.5%
AGAINST	305,265	37.5%

Prop. 9: Canceling special election if legislative candidate is unopposed

FOR	557,707	67.6%
AGAINST	267,724	32.4%

Prop. 10: Ad valorem tax exemption for goods in transit

FOR	499,514	63.0%
AGAINST	293,764	37.0%

Prop. 11: Allowing school teachers to receive pay for serving on local government boards

FOR	547,588	66.5%
AGAINST	275,575	33.5%

Prop. 12: Eliminating duplicative and obsolete provisions from the Constitution

FOR	619,945	76.6%
AGAINST	189,541	23.4%

Prop. 13: Allowing school districts to donate old schoolhouses for historic preservation

FOR	658,463	80.4%
AGAINST	160,048	19.6%

Prop. 14: Ad valorem tax exemption for travel trailers

FOR	408,481	51.9%
AGAINST	378,557	48.1%

Prop. 15: Creating a highway bond fund and allowing state spending on toll roads

FOR	543,759	67.7%
AGAINST	259,188	32.3%

Prop. 16: Shortening waiting period for home improvement liens, allowing homestead liens for manufactured homes

FOR	453,021	58.7%
AGAINST	318,517	41.3%

Prop. 17: Settling land-title disputes between the state and private landowners

FOR	512,163	64.3%
AGAINST	284,918	35.7%

Prop. 18: Consolidating and standardizing court fees

FOR	647,439	81.1%
AGAINST	151,213	18.9%

Prop. 19: Additional \$2 billion in general obligation bonds for water projects

FOR	506,077	63.8%
AGAINST	287,339	36.2%

Source: Secretary of State's Office.

(Ruiz, from page 1)

In 1992, the state and the inmates' attorneys, with Judge Justice's approval, signed a final judgment that ended the judge's detailed oversight of many aspects of the prison system but continued his jurisdiction in eight areas: staffing, discipline, administrative segregation, use of force, access to courts, crowding, health and psychiatric services, and death row.

State litigation

In recent years, the state has tried to use the federal Prison Litigation Reform Act (PLRA) of 1996 (18 U.S.C., sec. 3626) to end federal court jurisdiction over the Texas prison system. The PLRA was intended to help states extract themselves from federal court mandates and outlines when relief ordered by federal courts must be terminated.

In September 1996, the Office of the Attorney General (OAG) filed a motion in federal district court requesting termination of the final judgment under the PLRA. That same year, state Rep. (now U.S. Rep.) John Culberson and Sen. J.E. "Buster" Brown filed motions, also based on the PLRA, to intervene in *Ruiz*. In November 1998, the 5th U.S. Circuit Court of Appeals allowed the legislators to intervene after Congress amended the law to make it clear that individual legislators may intervene in PLRA cases.

In March 1999, Judge Justice declared the PLRA unconstitutional, refused the state's request to end federal court supervision, and found that the system remained unconstitutional with regard to the conditions imposed in administrative segregation, the use of force, and the system's failure to provide for inmate safety. The state appealed this decision to the 5th Circuit.

In March 2001, a three-judge panel of the 5th Circuit responded to the state's appeal by declaring the PLRA constitutional and giving Judge Justice 90 days to follow a requirement in the PLRA to make written findings

explaining why it was necessary for the district court to retain some oversight of the Texas prison system. Under the PLRA, federal courts must end oversight of prisons and jails unless constitutional violations exist. If oversight is necessary, the provisions must be drawn narrowly to be the least intrusive means to correct the constitutional violations.

In June and October 2001, Judge Justice responded to the 5th Circuit's decision and issued rulings that, combined with the March 1999 ruling, freed all but three areas of prison operations from court oversight. Judge Justice retained jurisdiction over the conditions in administrative segregation, inmate safety, and the use of force. The judge said these conditions resulted in cruel and unusual punishment in violation of the U.S.

Constitution. He gave reasons for retaining jurisdiction

in these three areas, including that inmates in administrative segregation, especially those with mental illness, experienced extreme deprivation and psychological harm; that excessive use of force was prevalent; and that inmates were denied safety from fellow inmates.

The state is challenging continued federal oversight of the Texas prison system in the areas of administrative segregation, inmate safety, and the use of force.

The state is challenging this continued oversight through appeals to the 5th Circuit. In general, the state argues that it runs a constitutional prison system and would continue to do so without the court's oversight, and that isolated incidents do not amount to systemwide constitutional violations. Attorneys for inmates argue that unconstitutional conditions remain in the prison system and that federal oversight is necessary to remedy them.

In practice, Judge Justice's retention of oversight in these three areas requires TDCJ to issue specific reports to the court about these areas and limits inmates' lawsuits requesting injunctive relief in these areas. For example, in early December, TDCJ and the Office of the Attorney General submitted a required report to the court on mentally ill offenders in administrative segregation. As long as the prison system remains under federal court jurisdiction, the court could find the state in contempt for failure to meet the court's last remedial orders.

Termination date

The October ruling sets July 1, 2002, as the date when federal court jurisdiction will end. The state must file a report with the court by April 1 describing steps taken to comply with the court's orders. By June 1, inmates' attorneys may file objections to the termination of court jurisdiction on the grounds that the state failed to comply with the order and that conditions in state facilities remain unconstitutional.

As the case nears a possible conclusion, the amount of fees to be paid to the inmates' attorneys by the state is in dispute. Inmates' attorneys, who have been paid about \$1 million, have requested through the federal district court another \$3.8 million. The state disputes this amount, and the district court will make an appealable ruling based on additional information from the attorneys.

— by **Kellie Dworaczyk**

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