

# Election 2000: Before

From voting machines to ballot counting, elections have changed significantly in the last decade.

---

BY WENDY UNDERHILL

---

**W**ho can forget the presidential election of 2000? The one where the U.S. Supreme Court weighed in. The one that wasn't finally, firmly and forever decided until 36 days after Election Day.

In the world of election administration, 2000 wasn't just the start of a new millennium, it became the fault line between the "pre-Bush v. Gore" world and the "post-Bush v. Gore" modern era of elections. It highlighted how crucial ballot design and voting equipment are, and how important the laws and procedures governing vote counting would become.

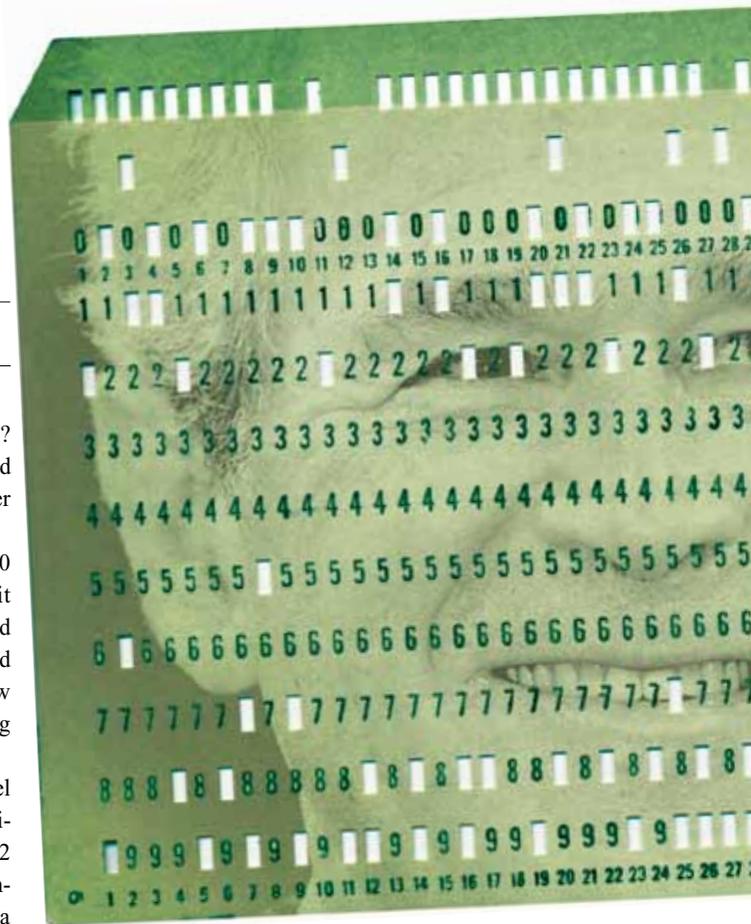
It was no surprise that 2001 ushered in many new, high-level task forces and commissions on elections procedures and policies, all producing reports and recommendations. But now, 12 years after that watershed election, these reports are mostly gathering dust, and the question is, did the counting crisis in Florida lead to permanent change in how elections are run? Put another way, how will the 2012 presidential election be different than the one in 2000—other than the candidates, of course?

## Counting and Recounting

The infamous hanging, dimpled and pregnant chads of the 2000 election spurred state legislators to review their laws on counting ballots.

"We're better off than we've ever been," says Doug Lewis, executive director of The Election Center. "States have defined these things better and that is a real and direct result of the 2000 election. It means that everybody knows going in what counts, and it makes it far more difficult to argue."

Good thing. "I recall vividly observing the recount in Palm Beach in 2000," says Bob Pastor, executive director of the Carter-Baker Commission on Federal Election Reform, which

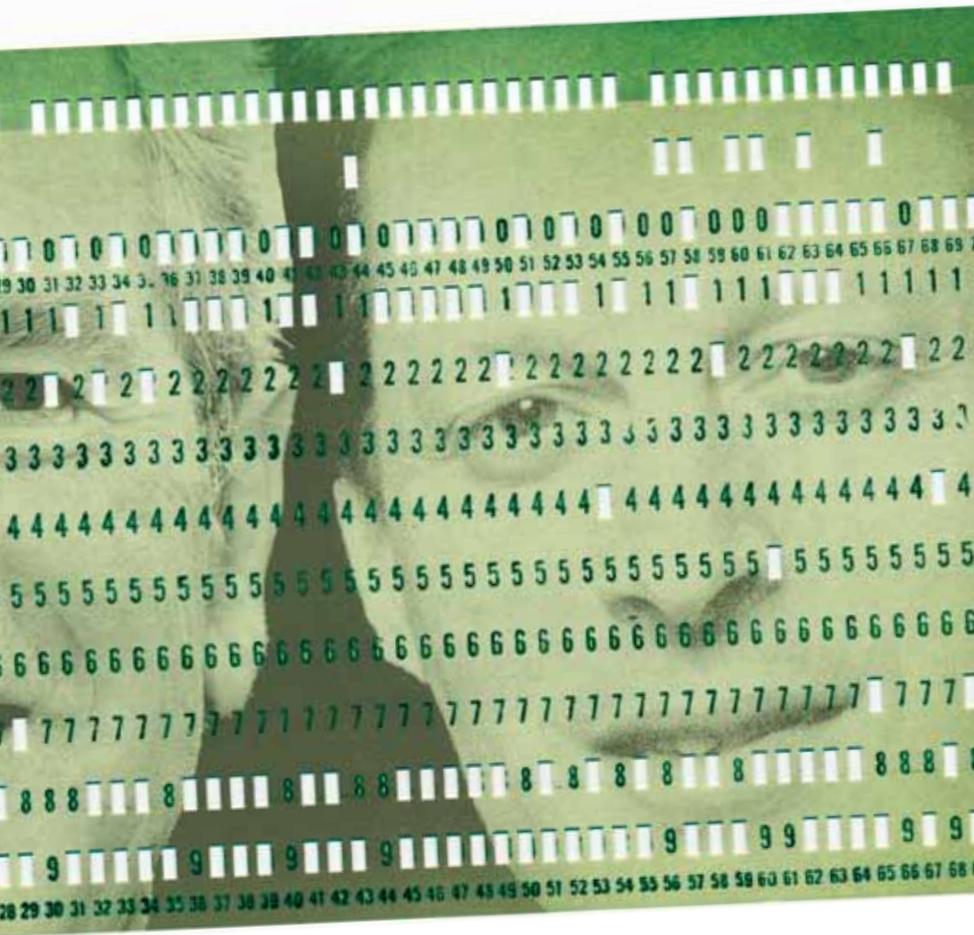


issued recommendations in 2005. "The judge responsible changed his criteria for determining voter intent three times in one day. Rules on how a recount is conducted, and how to interpret a ballot, shouldn't be established after an election. It is easy to do, and must be done, before an election."

Yet it's hard to prepare for all contingencies. Many laws are passed as a result of specific, hard-to-predict events. After the difficulties Alaskans had spelling write-in U.S. Senate candidate Lisa Murkowski's name in 2010, for instance, Alaska's lawmakers passed legislation to clarify when a write-in ballot is to be counted.

A recount is a very public and high-stakes way to test a state's election procedures. An easier way, says Charles Stewart III, a professor at the Massachusetts Institute of Technology and expert on voting technology, is to conduct a post-election audit to examine how well procedures and equipment performed in a given election.

# and After



“The goal is not to point fingers,” says Stewart. “It’s to learn from the experience, and prepare for future elections.” About half the states have election audit procedures in place, he says.

## Voting Equipment

In 2000, it wasn’t just Florida’s equipment that posed risks. All across the nation, voting machines varied in terms of type, age and function. “We were voting on an untidy landscape of flora and fauna,” says Stewart.

The 2000 election riled Congress enough to pass the Help America Vote Act of 2002, which created the U.S. Election Assistance Commission and provided money to modernize voting equipment, among other things.

States used that funding to improve voting machines, registration databases, voter education, poll worker training, provisional voting and independent voting by the

disabled. “We’ve seen upward of three-quarters of the nation’s jurisdictions change the type of equipment they use since 2000,” says Kimball

Brace, president of Election Data Services and a redistricting and elections expert.

It was out with the butterfly ballots, the levers and the punch cards, and in with electronic voting machines that look similar to ATM machines and optical scan systems that “score” hand-marked ballots in the same way that standardized tests are scored.

But the debate still rages over which is the best. Those who prefer optical scanning devices say they are cheaper and automatically create a very helpful paper trail—the marked ballot—that can be recounted if necessary. Plus,

## The Federal Role

“There is no such thing as a federal election,” says NCSL’s elections expert, Jennie Drage Bowser. The U.S. Constitution (Art. 1, Sec. 4) gives the duty and privilege of determining the “Times, Places and Manner of holding Elections” solely to the states.

Even so, the 2000 election riled Congress, which then passed the Help America Vote Act of 2002 (HAVA). The law authorized the creation of the U.S. Election Assistance Commission and provided a pot of “HAVA money” for modernizing voting equipment and other purposes.

With that money long gone and no new funding on the horizon, any federal influence on elections has all but dried up. The election commission created by HAVA is also dwindling, with all four commissioner slots vacant.

Summing up a decade of action, “the federal role went from next to nothing to incredibly significant and now back to next to nothing,” says Doug Chapin, director of the Program for Excellence in Election Administration at the University of Minnesota.

The one exception is the Military and Overseas Voter Empowerment Act of 2009 (MOVE). Most states have gotten on board with its requirements. The most significant was the requirement that ballots be transmitted to overseas voters at least 45 days before an election; in some states, this involved shifting primary dates earlier to comply. “MOVE did some real good for overseas voters, and it’s the only place that Democrats and Republicans could come together on elections in the last decade,” says Rick Hasen, elections law professor and author of this summer’s “Voting Wars.”

As for who controls elections, Hasen says that “we still have a hyper-federalized system with over 10,000 jurisdictions using different rules, and with different levels of competence and funding.” Some states exert greater control than others, but when it comes time to hand out ballots and count them, it is still local officials in charge.

paper absentee ballots can be read only on optical scans. Those who prefer electronic systems say they're faster, more accurate and more adaptable for people with disabilities.

What do voters like? Consistency.

"We've asked people what their ideal voting machine would be, and they have answered that it would be the exact kind they are already using," says Stewart.

A third type of technology, now in the earliest stages of development, will use voting software on off-the-shelf equipment such as laptops or iPads. The cost is expected to be far less than for dedicated voting equipment, but this "third wave" won't be ready for prime time until it has been thoroughly vetted for accuracy, reliability and integrity—and proven to be tamper-proof.

Whatever the options, "we can't stand still. We have to be open to change," says Angie Rogers, Louisiana's commissioner of elections. That change will come sooner rather than later. All the new equipment bought after 2000 is aging. Lewis says most of it will last through 2014, but not through the 2016 election.

### Voter ID

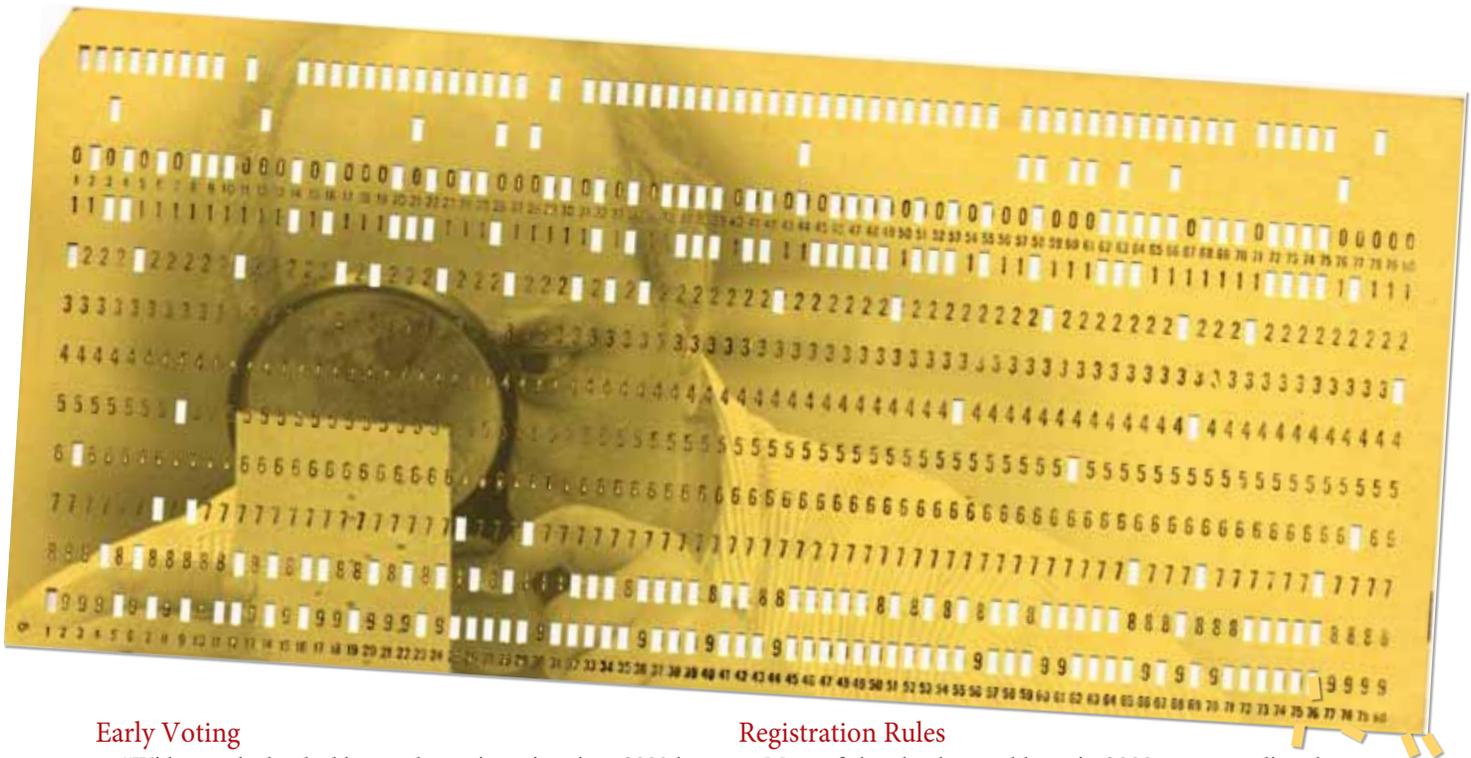
Requirements for showing identification at the poll have increased greatly since 2000. Back then only 14 states asked for an ID of any kind; now 30 do. Mississippi, New Hampshire and Wisconsin may be added to that list by November, depending on the outcome of court challenges and federal reviews. Most of

the 30 states permit voters without an ID to cast their ballot by signing an affidavit or having an election worker or other voter vouch for them. In Georgia, Indiana, Kansas, Pennsylvania and Tennessee, however, voters without an ID must use a provisional ballot, which is not counted until the voter shows proof of identity within a few days after the election. Other states have passed similar laws that are not yet in effect.

ID requirements are part of "a 40-year war that hasn't ended," says The Election Center's Lewis. The "war" is about competing values: Which is more important, maintaining access to the ballot for all eligible voters, or preventing fraud and preserving the integrity of the vote? Both are important, and both are hard to measure or evaluate.

From the administrative side, voter ID does not have to be as tricky as the two sides might suggest. "We've had the photo ID process for a lot longer than the current debate. It is second nature in Louisiana now," says Alfred "Butch" Speer, clerk of the Louisiana House of Representatives. "If you show up without a photo ID, you can execute an affidavit. It was a big change, but not a big drama."

"Technology is moving too quickly," says E. Mark Braden, former chief counsel to the Republican National Committee. "It's inconceivable to me that 10 years from now there won't be some kind of system that renders this voter ID discussion totally irrelevant."



### Early Voting

“Without a doubt, the biggest change in voting since 2000 is the rise in non-polling place voting,” says Braden.

Data back up his perspective. Before 2000, almost every voter went to the polls to cast a ballot on Election Day. Most people still do, but not all. Thirty-two states and the District of Columbia permit voters to cast their ballots in person before Election Day. Twenty-seven states plus the District of Columbia will send an absentee ballot to any voter who asks for it, without requiring a reason. These ballots can be filled out and returned any time before Election Day. Oregon and Washington now run all their elections by mail, and many other states permit all-mail elections under specific circumstances.

Some states offer a smorgasbord of early voting options. Colorado, for example, offers permanent, no-excuse absentee voting, early in-person voting and all-mail elections for all but general elections, at the discretion of the jurisdiction.

These efforts have come mostly in response to voters’ demands for convenience, political desires to increase turnout and administrative concerns about costs. And while it appears obvious that voters find it more convenient, the evidence that early voting increases turnout and lowers costs isn’t very compelling.

“Voters are simply switching from Election Day voting to early voting,” says Louisiana’s Rogers. “And it takes a lot of staff and financial resources to run early voting.”

The rise in absentee ballots has raised an additional concern. Some say absentee ballots are proving to be more susceptible to fraud and less likely to be counted than ballots cast in-person. “Lots of people will get absentee ballots, but some won’t turn them in until it’s too late,” says Braden.

As for the future, “the exodus from the Norman Rockwell polling place has been striking,” says Doug Chapin, director of the Program for Excellence in Election Administration at the University of Minnesota. “The question is: Is this the new model or just a different option?”

### Registration Rules

Most of the election problems in 2000 were not directly related to voter registration. Still, registration has changed a great deal since 2000, thanks in part to the Help America Vote Act, which required states to develop statewide databases for voter registration.

Before the federal law, in most states, local jurisdictions were responsible for maintaining their own lists of registered voters, and administrators had no way of knowing if a voter was registered in more than one place at the same time. The statewide databases are “highly integrated systems, using sophisticated technologies. Now if someone moves from one county to another, registration can be seamless,” says David Becker, the director of Election Initiatives at the Pew Center on the States.

When voters move to another state, however, the transition can be troublesome. The older registration may stay on the books for several election cycles. Some states can check their data against federal and other state data, but generally these cross-checks are episodic, not routine.

A new agreement between almost a dozen states, with support from the Pew Center on the States, is about to come on line; with it, states can share voter registration information on an ongoing basis to weed out duplicates and prevent double voting. Other states can join at any time.

Thirteen states also now allow residents to register online, at least for those who have a state-issued driver’s license or identification card. “Online registration is revolutionary,” says Becker, in that it increases the accuracy of the lists. “It definitely saves local jurisdictions significant money,” he says, by allowing election officials to spend more of their limited resources—both time and money—on preparing themselves and voters for the election itself.

What’s ahead in the world of elections? Obviously no hanging, dimpled or pregnant chads. Beyond that, we anticipate both change and continuity.