

# Downside UP

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## **The 2006 Elections: Is the System Democratic? Will the Elections Be Fair?**

For most Americans, the United States is a model democracy. End of discussion. This idea is well-rooted in the world's most famous constitution and a series of laws, court rulings, and constitutional amendments clarifying and expanding upon that monumental 18<sup>th</sup> century document. Similarly, as the American system is assumed to be a model framework for democracy, its actual practices are likewise taken for granted as fulfilling the democratic ideal of the Constitution and its elaborations.

This perspective leads most Americans to assume we are the world's "greatest democracy." Such phrases appear regularly in our mass media. Specifically citing our 200 year history of democracy, our government goes so far as to preach democracy to the rest of the world. It condemns other countries for their failure to meet democratic standards and publishes an annual report on the state of democracy and human rights in the rest of the world -- specifically naming offending countries.<sup>1</sup> While admitting that the United States "may have its flaws," few Americans would consider either our system or our practices in any way so flawed as to bring our democracy itself into question. Few can actually name a critical flaw. Indeed, the admission of "flaws" in general serves more to rationalize our assumptions than to seriously address the potentiality of serious problems.

Not even the elections of 2000, 2002, and 2004 shook the assumptions of most Americans. Sure, there were "hanging chads" and other problems with vote-counting, but these were, at worst, aberrations from the norm. Congress eagerly responded to the embarrassing publicity as if the problems were merely "technical." In the Help Americans to Vote Act (HAVA), the Republican-controlled Congress applied a purely technical fix: electronic voting machines. Then it added a voter ID requirement to solve a problem few were concerned about but which in 2004 came to serve as a convenient tool for intimidating poor, uneducated, and African American voters.

In 2004, some of the media reported on problems with long lines at polling stations, people unable to vote because of messed up registrations, and the millions of felons barred for life from voting, even after serving their time in prison. The Miami Herald went so far as to count paper ballots in Florida counties where the percentage of the vote cast for John Kerry was way below the percentage of registered Democrats. The count, which proved sound, resulted from the fact that, as in the rest of the "Old South," many white voters in northern Florida used to belong to the segregationist

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<sup>1</sup> These reports are published by the State Department's Bureau of Democracy, Human Rights, and Labor which reports to the Under Secretary for Democracy and Global Affairs. [www.state.gov/g/drl/hr/](http://www.state.gov/g/drl/hr/) Relevant to post-9/11 events, one standard is "freedom from torture."

wing of the Democratic Party but now, especially in state and presidential elections, vote Republican.

Fox News's recent report on how a Princeton University group easily hacked a Diebold touch screen voting machine has raised the possibility that the mass media might start taking electoral fraud seriously. Unfortunately, The Washington Post and The New York Times focused on the controversy instead of examining the facts -- the same dismissive approach they had to the evidence of vote manipulation revealed by exit polls in both the 2000 and the 2004 elections.

Indeed, "dismissive" would be a fair description of my original reaction. Perhaps I, like even the so-called "liberal" press, was just too "establishment," too bought into established patterns of power and prestige, to imagine the possibility of American elections actually stolen. Or perhaps, like me, the media are just too unshakably committed to the idea of the United States as the world's leading democracy.

I was, in any case, wrong. Given what I knew in January/February, 2005, the evidence of a stolen election may have been inadequate, but just because I didn't perceive evidence of a stolen election doesn't mean there wasn't one.<sup>2</sup> There is a crisis in American democracy and it is not just about our long-standing constitutional structures: representation by state rather than population in the Senate, winner-take-all elections, the skewing effect of every state getting at least three votes in the electoral college which chooses the president, and the constitutional bias against uniform national electoral standards. It is not just about gerrymandered state and Congressional election districts and the increasingly important role of money in winning elections. It is not even just the evidence I reported on in the January/February, 2005, issue of systematic attempts by Republicans to disenfranchise African Americans and other likely Democratic voters.

The evidence which closes the case is in the discrepancies between exit polls – the international gold standard for judging the fairness of elections – and reported election results. Combined with the structural and constitutional problems noted above and the more recent systematic attempts to disenfranchise likely Democratic voters, the exit poll evidence exposes the United States, by 21<sup>st</sup> century international standards, as the third rate electoral democracy it is.

The following report describes three aspects of the electoral problem: (1) Structural deficiencies built into a constitution which was revolutionary 200 years ago and has changed some, but which has failed to change sufficiently. (2) An electoral process which, derived from the constitution's bias for state sovereignty, is replete with inconsistent and inequitable standards. And (3) outright fraud, corruption, and vote tampering on a horrifying scale.

Our system is not democratic and the 2006 elections are unlikely to be fair.

### **An Outmoded Constitutional Structure**

The United States was the first modern democracy. The country and its constitution remain today a beacon – and an inspiration -- to the world. But the Constitution was written in the 18<sup>th</sup> century for a particular group of people – or peoples – in particular historical circumstances. The most important of these circumstances

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<sup>2</sup> "The 2004 Presidential Election Process and Issues: What Happened and Why?"; Downside Up, pp. 4-5.

were: (1) The assumed civic inferiority of women and certain racial, ethnic, and economic groups. (2) The challenge of creating a single, unified nation out of different colonies/states with different histories, different populations, and different economies. (3) The fact that almost all of the states had long histories of running their own affairs and had just fought a revolution to free themselves from central government by then regarded as inherently despotic.

Contrary to Abraham Lincoln's Gettysburg Address, the nation was not created of the people, by the people, or for the people -- if by that one means all the people. The original Constitution left to the states the power to decide who would vote and for that assured that most of the adult population would be left out -- only 10 to 16% could vote in 1790.<sup>3</sup> This exclusion originally applied not only to women and African Americans, but also to white males without sufficient property to meet a state's property or tax-paying requirement, and white males of the wrong religion.

The religious requirement was eliminated by 1810 and almost all of the property and tax-paying requirements by 1850, but a literacy test was instituted in 1855, first in Connecticut and then in Massachusetts, to discriminate against Irish-Catholics. In 1870, the 15<sup>th</sup> Amendment to the Constitution was approved, barring states from denying the right to vote based on race. But, starting in 1889, poll taxes and literacy tests were instituted in the South to exclude African Americans from voting, and both of these barriers excluded many whites as well as African Americans, North and South.

It took the 19th amendment, ratified in 1920, to assure the right to vote for all women -- that right previously applying only to women in some states, mostly in the West. As part of an overall effort to force Indians into white society, in 1924, they were made citizens with the right to vote in federal elections.<sup>4</sup> Finally, a series of constitutional amendments, federal laws, and Supreme Court decisions based on the Constitution and federal law, banned the poll tax in federal elections (24<sup>th</sup> Amendment, 1964) and then all elections (*Harper v. Virginia Board of Elections*, 1966), and eliminated literacy tests (the Voting Right Act, 1965 and 1970, and *Oregon v. Mitchell*, 1970<sup>5</sup>).

The only change affecting all citizens together was the 17th amendment, ratified in 1913 and providing for direct election of Senators by the people rather than, as was the case in many states, by the state legislature or a special convention.

All these changes gradually responded to a changing world with changing standards of democracy, but even they had to do only with assuring the rights of individuals as citizens of the United States. Only the 17<sup>th</sup> Amendment had to do with all citizens as a group rather than just certain historically excluded groups, and it provided only for direct election of Senators. It left untouched the constitutional provision for election of the president indirectly by an "electoral college."

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<sup>3</sup> See U.S. Voting Rights, "[www.infoplease.com](http://www.infoplease.com) for this and much of the following facts in this section.

<sup>4</sup> This was the same year the exclusionary National Origins Act was passed to keep out immigrants from Southern and Eastern Europe. A summary of voting requirements can be found at [www.infoplease.com](http://www.infoplease.com). As one might expect, from this standard point of view, Indians, like women and African Americans before them, were "granted" these "rights," a self-contradictory concept since if voting were a right, everyone would have it.

<sup>5</sup> I am sure that Oregonians will be proud to learn that they were one of the last 18 states to have a literacy requirement and held onto it even after the 1965 Voting Rights Act which didn't directly apply to that state!

The members of the electoral college generally vote as they are elected but, combined with winner-take-all operating in every state except Maine and Nebraska, the electoral college allows for the possibility of electing as president a person who does not receive a plurality of the popular vote. (See below.) When we vote for president, we vote for those electors not directly for one of the candidates. In the 18<sup>th</sup> century, when compared with monarchies, this was an innovative way to choose a head of state. In the 21<sup>st</sup> century, it is an undemocratic anachronism. China uses indirect elections to maintain Communist Party control. The writers of the Constitution chose it for the very same reason: to impede the "tyranny of the mob"; that is, what we call "democracy." It is way beyond out of date.

The system for election of the president, representation in Congress, and determination of the rules for elections remains in large measure with the states. Even though Article 1, Section 4, of the Constitution allows Congress to "make or alter" regulations as to the "Times, Places and Manner of holding Elections for Senators and Representatives" and through that, effectively define the regulations for state and local elections, Congress has rarely acted to do so.<sup>6</sup> In the face of Southern control of Congressional leadership in 1964, not even the 24<sup>th</sup> Amendment applied to state and local elections. In the case of *Harper v. Virginia Board of Elections* and *Oregon v. Mitchell*, it took Supreme Court decisions to finally exclude the use of poll taxes and literacy tests in all elections.

### **State Sovereignty and the Constitution**

That the Constitution allocates considerable power to the states is neither accidental nor nefarious. The new nation's first constitution was the Articles of Confederation, born out of the necessity of bringing together to fight a revolution, 13 individual states used to running their own affairs. Their experience with England made them so wary of strong central government that they created a constitution giving each state one vote and requiring the unanimous consent of all the states for major actions -- like taxation. Getting them to accept any national authority, even for the purpose of achieving their independence, was a challenge. It was only in recognition of the new nation's demonstrated inability to enforce some of its laws or defend its boundaries against encroachment from European powers that the Constitution was created at all.

Key to approval of the new Constitution was a "Great Compromise" resolving the nearly intractable division between low population states which wanted equal representation in Congress and large population states that wanted representation by population. The result was a Senate with equal representation by state -- two senators each -- and a House of Representatives with representation by population. Many countries have two legislative bodies of different sizes, with one elected by states or provinces, but even that one still has its representation determined by population. By providing for a Senate with equal representation by state, the American Constitution built into the American system a permanent structure of inequality by population. Indeed, it built into the Constitution a kind of inequality similar to that of which the American colonists complained in the English system. Called "virtual representation," this English model pretended to the idea that even

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<sup>6</sup> Congress's power to affect House and Senate elections has the effect of applying to all elections because it would be insane, even in the United States, to try to apply different sets of rules for local and state elections going on at the exact same time and place.

those people without any vote at all were "virtually" – and we can be sure "virtuously" – represented by the few who could vote."<sup>7</sup>

The system of Senatorial inequality by population extends to the electoral college which actually elects the president. Our country not only fails to provide for direct election of the president, the Constitution grants to each state a number of electoral votes for president equal to the sum of its Representatives and its Senators. This means that Wyoming gets three electoral votes for president – one for every 150,000 citizens – while California gets 55 electoral votes – one for every 600,000+ citizens.

Given how many small population states are farm states, no wonder the country spends tens of billions of dollars on wasteful ethanol and other farm subsidies! In the 21<sup>st</sup> century, the electoral college system violates what are universally considered basic standards of democracy.

### **State Sovereignty Opens the Door to Chaos and Corruption**

Constitutional amendments, federal laws, and Supreme Court decisions have extended constitutional protections against discrimination in state and local elections, but they have not dealt with the fundamental problem of "13,000 counties and municipalities conduct[ing] elections with different ballots, standards, and machines."<sup>8</sup> Without addressing this chaotic structure, the United States can never deal with the inequities and corruption which inevitably flow from the chaos.

HAVA represents the first wholesale attempt by Congress to utilize its implicit power in Article I, Section 4, to mold the entire election system. Regrettably, focusing for the 2004 elections on provisional ballots, ID requirements, and punch-card machines, HAVA remains a largely botched effort. It is this botch which the American mass media have largely ignored, but both other U.S. and international observers covered extensively.

The following sections of this article outline several of the problems which in 2004 these observers identified and which clearly strike at the heart of American democracy. The sections draw in particular on Robert Pastor, Director of the Center for Democracy and Election Management at American University, and a report by the Organization for Security and Cooperation in Europe (OSCE) of which the United States is a member.<sup>9</sup> These organizations, along with the Carter Center, the National Democratic Institute, the Organization of American States, the African Union, and many others, monitor elections throughout the world.

### **Supervision of Elections**

Elections should be supervised by non-partisan commissions not, as they often are in the United States, by bi-partisan commissions or, even worse, thoroughly partisan officeholders. The officeholder is typically the secretary of state. In Florida in 2000

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<sup>7</sup> The English system was founded on a system of electing the nobility to represent their fiefdoms. As late as the 18<sup>th</sup> century, only about 4% of the English population could vote. As the industrial revolution developed and masses of people moved to the cities, those cities would typically have the same number of (noble) representatives (one!) as another area with 10,000 times the population.

<sup>8</sup> Robert Pastor, The American Prospect, [www.prospect.org](http://www.prospect.org), 01/04/05.

<sup>9</sup> See Pastor, above, and OCSE, Office for Democratic Institutions and Human Rights (ODIHR), "United States of America 2 November 2004 Elections," OSCE/ODIHR Election Observation Mission Final Report, Warsaw, 31 March 2005.

and Ohio in 2004, Katherine Harris and Kenneth Blackwell were also chairs of George Bush's election campaigns. Pastor calls this model, used in only 18% of aspiring democracies, "primitive." By the blatancy of their partisanship, Harris and Blackwell subjected the United States to international embarrassment and undermined public confidence in the American electoral process. It was non-partisan commissions which this year confirmed election of the conservative candidate for president in Mexico and in 2004 forced Hugo Chavez of Venezuela into a referendum on his tenure in office.

#### Registration, Identification, Voting, and Provisional Ballots

The United States registers only 55% of eligible citizens and far fewer than that vote. It is common in much of the rest of the world for over 90% of eligible citizens to register and vote. Somehow the United States goes on pretending that American democracy is prospering but more than half its citizens don't exercise even this minimal participation. Some 95% of the population is registered in Mexico and Canada.

People move and the boundaries of election districts change. This makes maintenance of voter records especially difficult for the poor and uneducated. Florida provides voter registration at the same time as driver licensing and automobile registration, but that still leaves a lot of people out. Most democracies have national ID cards but the United States doesn't even require proof of citizenship. Although I share American fears of central government represented by national ID cards, a national registration system would enable people to move without having to re-register. Between 1994 and 2000, Mexico conducted 36 national registration audits. With computers, it would be possible to access a single national voter data base and even print out a proper ballot.

HAVA requires provisional ballots to be available for people who think they are registered but are not on the rolls of the local voting district where they show up. In 2004, an unknown number were not given provisional ballots and not allowed to vote even in statewide elections. Greg Palast, who reports for BBC and The Guardian and has been a reliable source in the past, found that more than one million provisional ballots from challenged voters were dumped in the trash, uncounted, 88% from minority voters.<sup>10</sup> Election officials typically failed even to indicate how many provisional ballots had been requested or submitted.

HAVA also provides for voter challenges of registrations but the primary result of this provision in 2004 was to open up the field to voter intimidation, especially of African Americans. Republicans made up lists – called "caging lists" -- of voters in predominately African American precincts and targeted them, especially in swing states like Ohio. Rules for identification were a mishmash and targeting voters made it worse. Palast reports an unprecedented three million voters challenged in 2004. After his BBC team got a hold of a Florida caging list, the Republicans claimed it was a list of potential donors – though it included "pages of men from homeless shelters."

Caging is illegal under the Voting Rights Act of 1965 because the people targeted are chosen based on race. The GOP list in Florida also included people from Jewish retirement homes – highly likely to vote Democratic. Many of the so-called

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<sup>10</sup> "Democracy in chains," [http://commentisfree.guardian.co.uk/greg\\_palast](http://commentisfree.guardian.co.uk/greg_palast), June 23, 2006. Palast got a lots of his data from the US Election Assistance Commission.

fraudulent voters targeted were soldiers sent overseas whom the Bush campaign then accused of voting from false addresses! In Hamilton County (Cincinnati), Ohio, 14% of new voters in white areas were challenged at the polls, and 97% in African American areas.

#### Available Voting Equipment

In many locations, there were neither enough early voting opportunities nor available voting machines. Throughout the country, in predominately African American and other likely-Democratic voting districts, people waited up to 10 hours or more to vote and often never voted at all.

#### Poll Workers and Voter Education

The quality of elections should not depend upon the practices and funding of counties and municipalities. It should not depend on overworked and unpaid poll workers. If not the national government, at least the states need to ensure funding of poll workers and voter education.

#### International and Domestic Observers

The United States, by joining OSCE, committed itself to giving access to international observers and domestic non-partisan observers, but it has not fulfilled this obligation. The United States can no longer assume the world's uncritical acceptance of its electoral practices. We are now a third world country when it comes to democratic elections, in part because, in 2004, only Missouri provided unhindered access to international observers.

#### The Ballot

Even where the same technology is used to count ballots, standards vary by district. Paper ballots still make the most reliable ballots, says Pastor, who has organized election monitoring in many countries, but whatever electronic technology a country uses, a paper trail is essential. It is laughable that Diebold, the same company which makes most of the ATM's we use and provides a paper receipt for each transaction, makes its touch-screen voting machines without paper verification of the ballot. The system invites distrust. My county in Florida has introduced touch-screen machines for early voting but still uses optical scan forms for absentee ballots and on election day. Optical scan technology is old but proven in hundreds of millions of SAT and other standardized tests as well as regular school tests. The form itself is the paper ballot.

#### Ex-Felons

In many states, ex-felons are barred from voting, even after serving their sentences. These sanctions are often not proportional to the crime and appear to demonstrate discrimination against some groups – African Americans especially. Palast reports that Republicans in Florida violated the Voting Rights Act again when they carried out a "felon scrub" without having it "pre-cleared" by the Justice Department. They got away with it because Secretary of State and Bush campaign chair Harris assured the Justice Department the "scrub was just a clerical matter."

#### Gerrymandering

As the OSCE report subtly phrased it, "Consideration should be given to introduce procedures for drawing district boundaries that will be based on information other than voters' voting histories and perceived future voting intentions." Gerrymandering is the word! Non-partisan commissions is the answer.

Gerrymandering refers to the configuration of electoral districts so that election results are virtually predetermined. Democrats and Republicans both gerrymander as much as they can. They use computers to assure non-competitive districts for themselves. If one party doesn't control both the legislature and the governorship, the two parties compromise but still in favor of incumbents. In only five states – Arizona, Hawaii, Idaho, New Jersey, and Washington -- do bipartisan commissions have total responsibility for drawing voting district lines.<sup>11</sup>

Voter hostility to the war in Iraq and other Bush policies has produced more competitive Congressional districts than we have seen in years, but the usual high number is around 40 out of 435 House seats -- less than 10%. The NCEC estimates that for 2006, there are 60 House seats "in play" but only 17 "toss-ups."<sup>12</sup> In 2004, only three members of Congress were defeated outside Texas where Tom DeLay pulled a gerrymandering coup. Incumbents are already advantaged for many reasons but in the United States, 99% get reelected. It's a disgrace. Like the rest of the election process, drawing district lines belongs with non-partisan commissions.

### Winner Takes All

The winner-takes-all system works against democratic standards in both presidential and House of Representatives elections. Combined with the electoral college's distortion of the popular vote, and the counting of votes by state rather than the country as a whole, the winner-takes-all system often causes the electoral vote for president to be way out of whack from the popular vote. In 1876 and 2000, in wildly disputed elections with serious vote-counting problems, winner-takes-all caused the official winner of the popular vote not to be elected.

At the Congressional and legislative levels, winner-takes-all, especially when combined with gerrymandering, often means that parties with a given percentage of voters statewide lack equivalent representation in the House of Representative and state legislatures. Proportional representation, which distributes the number of representatives in proportion to the party's total vote in the state, would be a lot fairer.

The Bush Government tried to export the electoral college to Iraq. The Iraqi Election Commission turned instead to Mexico to learn about how to conduct elections. The United States needs to do less preaching to, and more learning from, other countries which meet far higher standards for democracy in the modern world. The United States spends more money promoting democracy abroad than supporting democracy at home. The federal government cannot run state and local elections but it can use its power described in Article 1, Section 4, of the Constitution to effectively define the regulations for state and local elections. It can do what it did with HAVA and use federal largesse to induce and support change.

Then it needs to help/make the states clean up their often miserable and corrupt electoral practices, not for partisan gain but for the good of the country.

### **Touch Screen Voting and the Corrupting Role of Money**

The immediately preceding sections of this article described how deference to constitutional traditions of state sovereignty has allowed the fracturing of our

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<sup>11</sup> "Redistricting," en.wikipedia.org

<sup>12</sup> www.ncec.org



electoral system. The ensuing chaos has opened the way to fraud, corruption, and vote manipulation. The country has long been plagued by millions of votes uncounted and "lost" in previous elections going back long before 2000. The sad reality for 2006 and the foreseeable future until Congress does something, is that the situation could become even worse.

The first of the following two sub-sections focuses on touch screen voting, called "direct recording electronic" or DRE, whose problems are exacerbated by having 13,000 voter administrations. The second sub-section deals with the role of money which permeates and corrupts every level of government.

#### Direct Recording Electronic (DRE) Equipment and the Princeton Study

Of all the issues the OSCE addresses in its report on the 2004 elections, that with the lengthiest recommendations concerns touch screen voting machines. Rumors have been circulating for a long time about the failures of this equipment and the secret visits of mysterious company programmers, often to place "patches" in the machines. Diebold the largest supplier is always at the top of the list, all the more so for its close ties to the Republican Party. There are many reports of failures in touch screen voting from switching votes to not counting any votes. Sometimes there were more votes cast than voters who signed in to vote. Sometimes there were fewer votes cast. Now a team from the Princeton University School of Engineering and Applied Science and the Woodrow Wilson School has weighed in with a demonstration of how easily they can be cracked.<sup>13</sup>

The OSCE notes that there are no "inclusive and transparent certification procedures" of DRE voting equipment and no provision for comprehensive and independent testing. In fact, absurdly, the manufacturers have used patent and copyright law to justify denying any access to their equipment and computer code, leaving public officials without the ability to verify their own voting systems.

There are serious problems with conflicts of interest on the part of DRE "vendors." Four – Diebold, Electronic Systems and Software (ESAS), Sequoia Voting Systems, and Hart InterCivic -- tally 80% of all ballots in the United States. Two of those, Diebold and ESAS, provide 80% of the equipment. Three – Diebold, ESAS, and InterCivic -- have close ties to the Republican Party. Walden O'Dell, former CEO of Diebold, the largest vendor, is a rabid supporter and major donor. His company, employees, and families since 1998 have given \$200,000 to the Republican National Committee and another \$100,000 to Republican candidates.<sup>14</sup>

HAVA requires "a permanent paper record with a manual audit capacity" but this provision has been ignored wherever state law or a purchaser did not specifically require it. Much less has there been a "voter verified auditable paper trail (VVAPT)" where the voter checks the paper before leaving the polling place.

There was no "clear division of responsibilities between vendors, certification agencies and elections administrators."

The Princeton study doesn't tell us what did happen in 2004 but it certainly tells us what could have happened and could happen again in 2006. That alone is enough to

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<sup>13</sup> Ariel J. Feldman, J. Alex Halderman, and Edward W. Felten, "Security Analysis of the Diebold AccuVote-TS Voting Machine, Center for Information Technology, Princeton University, <http://itpolicy.princeton.edu/voting>, 09/13/06.

<sup>14</sup> Robert F. Kennedy, Jr., "Will the Next Election Be Hacked?"; Rolling Stone, 10/05/06; [www.truthout.org](http://www.truthout.org).

undermine the validity of all elections using touch screen machinery. All I can do here is quote the writers' own abstract but I encourage readers to go the web site shown in the footnote. They even have videos of what they did. Their abstract says:

This paper presents a fully independent security study of a Diebold AccuVote-TS voting machine, including its hardware and software. We obtained the machine from a private party. Analysis of the machine, in light of real election procedures, shows that it is vulnerable to extremely serious attacks. For example, an attacker who gets physical access to a machine or its removable memory card for as little as one minute could install malicious code; malicious code on a machine could steal votes undetectably, modifying all records, logs, and counters to be consistent with the fraudulent vote count it creates. An attacker could also create malicious code that spreads automatically and silently from machine to machine during normal election activities—a voting-machine virus. We have constructed working demonstrations of these attacks in our lab. Mitigating these threats will require changes to the voting machine's hardware and software and the adoption of more rigorous election procedures.

Clearly, the known glitches and weaknesses in the operation of touch screen voting machines raise fundamental issues about the quality and honesty of American elections. The lack of confidence created is in turn exacerbated by the secrecy with which manufacturers veil the hardware and software, the partisan ties of the vendors, the lack of a paper trail, and the absence of independent auditing.

### **Money**

The OSCE never talks about money but it may be the bottom line of everything corrupting the American political system. In the United States, money -- corporate money -- rules elections and rules government. The media love to talk about "special interests" as if the Sierra Club and labor unions contributed as much money as corporations, but this media "evenhandedness" does nothing but muddy the waters. It is corporate money that fuels the system and it has never flowed more freely. While old-fashioned bribery still gets headlines and corporate-sponsored boondoggles are free and fast, today the rich and powerful don't buy votes. They buy candidates. That is, they choose and pay campaign costs for the candidates they already know will serve their interests. In return, they get "access," which often means the opportunity to actually write the bills they want, and they get lucrative contracts.

Indeed, there is strong evidence that the major reason the Republican controlled Congress made electronic voting its highest priority was the large campaign contributions and heavy lobbying by Diebold and other DRE equipment manufacturers. Although the corruption of the process for implementing electronic voting was not on the scale of what happened in Iraq and with Hurricane Katrina, it was large and the incompetence we are seeing is the consequence. A few politically-connected companies got a lot of money, oversight has been poor, equipment is failure-prone, there are paper trails only where mandated by the states, and the system the equipment is supposed to support is in a crisis of not only functionality but confidence.

At a minimum, to limit the role of money in the electoral process, we need a law which both gives free candidate access to FCC regulated media and limits that access to what is free.

### **Ohio: A Wholesale Assault on Democracy**

As Florida was the key swing state in 2000, Ohio was in 2004 -- except the governor was not the president's brother and the corruption far worse. Just like Florida, the Secretary of State was Bush's campaign manager. Even worse than Florida, Secretary of State and Bush re-election committee chair Kenneth Blackwell -- who is African American -- worked actively to prevent African American voters from voting. Here is a rundown of what I now believe is a fair list of Ohio and other 2004 election atrocities:<sup>15</sup>

Statewide where the presidential election was decided by 118,601 votes, at least 357,000 voters, overwhelmingly Democratic, were either not allowed to vote or their votes not counted once cast. One quarter of all registered Ohio voters found themselves not listed on the rolls when they arrived to vote. In key precincts, reported votes were so out of whack with historic patterns that the results have to be false.

Blackwell permitted election officials in Cleveland, Cincinnati, and Toledo to expunge more than 300,000 voters from the rolls because they had not voted in the last two presidential elections. In Cleveland, nearly one in four were removed. Many undoubtedly had moved or died, but there was often no notification and in Cleveland's inner city, heavily Democratic, 6C precinct more than half the voters were purged and voting was an impossibly low 7.1%.

In the 1980's, the Republican Party used "caging" -- the practice of targeting voters by race in order to challenge their registrations -- to disenfranchise 76,000 African American voters in New Jersey and Louisiana. The party signed two separate court orders agreeing to desist from the practice. But, responding to a massive increase in Democratic voter registration in Ohio, in the summer of 2004, it sent registered letters by zip code to over 200,000 newly registered and likely Democratic voters in 65 counties. After Blackwell failed to provide legally required hearings for those who did not respond, in the week before the election, letters were sent out to the same addresses the Republicans claimed were faulty. These people, who included more than 1000 homeless, people serving in the military, and college students away from home, were never notified after a court order found the practice, once again, illegal. Oh for some Mexicans to conduct 36 nationwide audits in six years!

Blackwell, after the election, authorized only one investigation of election malfeasance, in Toledo, but that revealed serious illegal actions on the part of Bernadette Noe who simultaneously chaired both the county board of elections and the county Republican Party. When, less than a month before the election, 20,000 new registrations had not been processed, she and the board decided to process mail-in cards -- mostly from the Republican suburbs -- first, and registrations dropped off in person and resulting from intensive Democratic registration drives, last.

HAVA requires that provisional ballots be made available to voters who do not appear on registration lists for the precinct where they arrive to vote. The ballots are then counted if the voter's registration later proves to be valid. Blackwell ruled that poll

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<sup>15</sup> I have used Robert Kennedy Jr.'s "Was the 2004 Election Stolen?," which appeared in the June 15, 2006, issue of Rolling Stone, as the most comprehensive report on Ohio in particular, but the sources are abundant and have filled my email box with reader references. Two of the most common are [www.truthout.org](http://www.truthout.org), and [www.commondreams.org](http://www.commondreams.org). Check them out. A follow-up from Kennedy appears in the October 5, 2006, issue of Rolling Stone, and at truthout.

workers could make on-the-spot determinations of whether a voter lived in the precinct. Ohio has 11,366 precincts, many in urban areas with huge numbers of polling sites. Precinct boundaries were redrawn just prior to the election and were not accurate even on Blackwell's own official web site. Traditionally, in Ohio, anyone who reported to a voting site within a county got their vote counted. In one case, a person's ballot was thrown out because she arrived at the right building but voted at the wrong table!

Statewide, African Americans waited an average of 52 minutes to vote; whites waited 18 minutes. All but three of the thirty wards with best voter-to-machine ratios were in predominately Bush wards; all but one of the seven worst were in Kerry wards. That Republicans sent 3,600 representatives to challenge "caged" voters in urban and African American districts on election day seriously exacerbated the already grim situation.

### **Exit Polls and the Crisis of American Democracy**

Ironically, exit polls don't even count those voters who were unable to vote. If we could count them, what we saw in Ohio would be revealed as even worse than exit polls show.

In 2000, election returns in Florida and other places began coming in with results significantly different from the results of exit polls. It was then that we saw for the first time what we have come to learn is the standard operating procedure for dealing with all who would expose the truth about Republican programs and objectives: attack the messenger.

In November of 2000, Bush's strike team attacked Florida exit polls and pollsters. The spin was that Republican voters didn't want to talk with the "liberal media" and that was why the polls showed Democrats winning when Republicans actually won. In response, the media folded without even exploring the phoniness of the rationale. They wrung their hands, apologized, and promised to try hard to make the polls more accurate next times.

The fact is that pre-election polls are extraordinarily accurate to within a few percentage points. Exit polls are so reliable to within fractions of a percentage point that international observers routinely use them to measure the honesty of elections around the world. They have been perfected to a remarkable degree. Again, the Mexican example stands out.

In 2000, the discrepancy between exit polls and reported results in Florida and other states was not the result of failed exit polls but the obvious result of failed balloting systems. Exit polls can't do anything about that. The polls ask people leaving the voting place how they voted. In South Florida, hundreds of thousands of people thought they had voted for Al Gore and the machinery failed to represent their vote. Gore won Florida and the 2000 presidential election.

So also in 2004: Rather than questioning the legitimacy of the reported election results, the media dismissed the exit polls. The exit polls showed Kerry winning in a rout with 309 electoral votes to Bush's 174. They showed Kerry ahead in 10 of 11 battleground states, including Florida and Ohio. Exit polls showed Kerry winning Ohio by 4.2% while election results had Bush winning by 2.5%. Bush received 6.5% more votes than the polls predicted in Pennsylvania and 4.9% in Florida. The discrepancies were, moreover, higher in battleground states, states with Republican

governors, and states with greater proportions of African Americans. And almost all the discrepancies were in Bush's favor.<sup>16</sup>

In Nevada, a Republican-paid consultant group doing voter registration shredded those registrations filled out by Democrats, and electronic voting machines in the two most populous Democratic-leaning counties recorded no presidential vote on 10,000 ballots. The exit polls showed Kerry winning by 7.5%; Bush won by 2.6%. In New Mexico, there were 20,000 ballots with no vote for president yet election officials recorded more presidential votes than there were voters. Kerry was ahead by 7.0% in the exit polls and lost by 0.8% in the election. In Florida, the exit polls predicted a Kerry win by 2.6%; Bush won by 5.0%. In Ohio, the exit polls gave the state to Kerry by 8.8% and Bush won by 2.1%.

Florida and Nevada have now passed laws barring exit pollsters from within 100 feet of the polls and Ohio's Blackwell, still secretary of state but now also running for governor, has put in place the same limitation. Nevada has a Democratic governor and a split legislature and no limitation has been instituted. On October 25, a federal judge declared Florida's law unconstitutional.

Exit polls are the gold standard for measuring the fairness of elections. In January/February, 2005, I concluded that the presidential election was fraudulent based solely on the evidence of Republican success in preventing African Americans from voting. But I was not sure it was stolen because the evidence of vote-tampering with electronic voting machines was still not convincing to me. Today, I see that there is no other explanation for the radical differences between exit polls and election results. The potential for electronic voting tampering has been realized. The 2004 presidential election was stolen.

Unfortunately, part of this story is that the mass media have walked away from these facts, blaming the polls and ignoring the overwhelming evidence of voter caging and vote tampering. As a result, for this issue of Downside Up, I have had to override a core principle of its writing: the idea that everything you need to know to understand what is going on in our society can be found in mainstream sources. You don't need to read the "alternative press"; all you need to do is look a little differently at widely accepted facts readily available in the mass media – The New York Times, The Washington Post, Business Week, even just the little old St. Augustine Record. Regarding the state of electoral democracy in the United States, the mainstream media have let us down and in doing so have, ironically, degraded the very purpose of press freedom in a democracy.

The United States is in fact today, by impartial standards, a third-rate democracy as measured by the quality of its electoral system. By 21<sup>st</sup> century standards, its electoral structures are outmoded and its practices corrupted.

I don't know what is going to happen this year. The surest problem is likely to be a repeat of the same kind of "caging" devices used in 2000, 2002, and 2004 to cut deeply into the number of African Americans who vote and have their votes counted. I don't know how many of those purged in 2004 have even reregistered for 2006 or what will happen to them when they get to the polls this time. Unfortunately, it will remain extremely difficult to count the number of voters unable to vote.

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<sup>16</sup> See Kennedy, *et.al.*

The surest measure of the elections will be the exit polls. This time, watch them and believe them! If they are discrepant by more than 1%, you can be sure the election results have been manipulated. If the media stops, or doesn't start, reporting them, you can be equally sure of the same.

My reading of George Bush and the fundamentalists around him is that they are no small "d" democrats. They won't just congratulate a victorious foe and move on. Bush's core supporters are religious fundamentalists who, like Bush himself, believe that God is on their side and that justifies almost any action. The Cheney-Rumsfeld types I see as people who most of all believe in power -- hanging on to it at home and exercising it abroad. If Richard Nixon's gang could believe that their ends justified any means, this crowd is even worse. As for the anti-government ideologues like Grover Norquist, president of Americans for Tax Reform, I find it hard to imagine their forsaking the opportunity to continue lowering taxes and crushing what they see as the government "beast."

For what's its worth, I have this strange notion that Karl Rove might be the only one at the top who wouldn't steal a vote even if he thought he could get away with it. Winning is his thing and he's so good at it, I'm not sure that winning by actually stealing votes would really satisfy his ego! Yet, even then, it would still leave us with a guy willing to smear a triple amputee Vietnam war hero like Georgia Senator Max Cleland as unpatriotic.

The nation is in a crisis of democracy and I fear for us all.

**Web Site:** Downside Up has had a web site, and may have one again, but I haven't figured out to create one without tying myself down with blog management. If you need a back issue, email me at [downsideup2@bellsouth.net](mailto:downsideup2@bellsouth.net).

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Ronald Woodbury is the publisher, editor, and general flunkey for all of Downside Up. While publication benefits from the editorial advice of one of his daughters, a friend, and occasional other pre-publication readers, they will, for their own privacy and sanity, remain anonymous.

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