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Election Corrections

America's voting machinery was supposed to be fixed, but the road to reform has been slow going

By Silla Brush

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That messy 2000 election was supposed to be the jolt America needed. After chronic flaws in the country's voting process became painfully public, an ambitious reform effort was supposed to make hanging chads and butterfly ballots relics of election nightmares gone by.

But nearly six years later, it hasn't turned out that way. In the state of Washington, the 2004 governor's election took more than six months to resolve--again before a court. And some liberal activists still believe that vote tampering and dirty tricks handed Ohio to the GOP, enabling President Bush to win re-election. Now, heading into the midterm congressional elections, despite the expenditure of billions of dollars, a litany of problems remains.

"We've made some substantial progress," says House Minority Whip Steny Hoyer, a Maryland Democrat who cosponsored a 2002 election reform law, "but there is a lot left to be done."

Overhaul. On the heels of the Florida debacle, the National Commission on Federal Election Reform, led by former Presidents Jimmy Carter and Gerald Ford, called for new voting machine technology, statewide voter registration databases, and voter identification provisions (box). What emerged from Congress was the Help America Vote Act, a \$3.8 billion effort--\$800 million of which still hasn't been appropriated--to revolutionize elections by January of this year.

A great deal of that money went to replace old lever voting machines and punch card systems. Those changes helped in part to record roughly 1 million votes in the 2004 election that would not have been counted in 2000, according to the Caltech/MIT Voting Technology Project. By Election Day 2006, more than 80 million Americans will cast ballots a different way than they did in 2000, according to Election Data Services, an election consulting firm; more than three times as many counties will use electronic machines.

The 2004 improvements were good news, of course, but the new electronic machines and their potential security flaws have also set off a raging debate among lawmakers, election officials, and computer experts. Some activists' concerns were confirmed when an electronic voting machine failed to record 4,400 votes in a North Carolina election in 2004. In 2005, the Government Accountability Office concluded that electronic machines "hold promise" but have security and reliability questions. Activists have sued at least seven states, including Arizona, New Mexico, and California, to block their use of electronic machines without an accompanying paper trail.

Twenty-six states have tried to allay concerns by passing laws requiring a voter-verified paper audit trail. Still, the Brennan Center for Justice at New York University School of Law recently concluded that the three most commonly used electronic machines are susceptible to more than 120 security threats; a hacker could, for example, compromise a machine by inserting corrupt software into the machine or by using a wireless device. "Looming over the American electoral system is this concern that any election could be in doubt," says Rep. Rush Holt, a New Jersey Democrat who wants every state to have a voter-verified paper record and mandate audits. David Bear, spokesman for Diebold Election Systems, the leading manufacturer of electronic machines, dismisses such concerns as "what-if scenarios"; there have been no cases of voting machines being hacked in real-life elections. *This story appears in the July 17, 2006 print edition of U.S. News & World Report.*



KEVIN HORAN FOR USN&WR
Voting machines on their way to polling places in Florida in 2004

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Voting machine concerns have dominated the debate so far, but statewide voter registration databases required by the Help America Vote Act have also proved costly and time-consuming for states. The databases are intended to prevent voters from being inadvertently left off registration lists if they move from one jurisdiction to another within a state. But 13 states missed the law's January deadline, according to *electionline.org*. The Justice Department has sued Alabama and New York for failing to comply and is reviewing the actions of other states for potential lawsuits, says Eric Holland, a Justice Department spokesman. "The big issues to watch in the coming election," says Daniel Tokaji, an elections-law professor at Ohio State University, "mostly have to do with registration."

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Overriding all the technology concerns are worries that there is no national oversight of elections. "There is no enforcement mechanism to really fix the problems we are seeing," says Heather Gerken, a professor at Yale Law School. Congress set up the U.S. Election Assistance Commission to advise states as part of the Help America Vote Act, but it took nine months to even get its members confirmed. The Rev. DeForest "Buster" Soaries, a Republican and the first head of the EAC, arrived in Washington in late 2003 and found a commission lacking real power. "Instead of hitting the ground running," says Soaries, who resigned in 2005, "we hit the ground looking for office space to borrow." Congress has since allocated more money to the commission, but critics carp that EAC still lacks regulatory power. The result: a patchwork quilt of problem-plagued state and county regulations. "You can go to 12 precincts in one county on Election Day and see 12 different procedures," says Mike Alvarez, codirector of the Caltech/MIT Voting Technology Project. "I think that will bedevil elections."

Wherever the elections are close this fall, they'll most likely be scrutinized by armies of lawyers. By setting those January 2006 deadlines for various reforms, "Congress designed it this way so we would have 2006 be our 'get experience' year," says Doug Lewis, head of the nonprofit Election Center, which trains election officials. Then everything will be smoothed out in time for the 2008 presidential election. Or that's the idea, anyway.