

Elections Must Be About More Than Winning

By Lillie Coney

Elections are about who wins, but increasingly they also are about how candidates lose. Controversial election outcomes occur if margins of victory are too close for the media to declare a definitive winner within hours of polls closing.

The 2000 presidential election's balloting debacle in Florida has become symbolic of the ways that a candidate wins and loses: systemic problems with election management results in a frustrated ballot-counting process, voting machine failures, central physical ballot count errors, flawed felon voter roll purges, poor ballot design, and partisan politics infecting election administration. The 2000 Florida election brought these problems to national attention—Congress responded with the Help America Vote Act (HAVA). The law establishes a federal agency to assist states with federal election administration, provided a one-time grant to states to purchase new voting machines, and created independent voting rights for persons with disabilities. Unfortunately, HAVA did not end the controversies associated with close elections.

Election management for many jurisdictions is too complicated to manage—outsourcing administration of election technology is common. New electronic voting system problems raise questions about who won or lost an election. In 2004, a Broward, Florida, vote counting error turned a losing gambling measure—to legalize gambling—into a winner by adding thousands of erroneous absentee ballot votes, which were later discovered and corrected.

The Ways a Candidate Can Lose an Election

Although money helps, candidates must outperform their opponents in persuading contributors, volunteers, and voters to support a campaign. A candidate can lose an election by not having the right message or strategy, by not enough or inefficient use of resources, or through

events that are outside the control of the candidate or campaign.

A candidate also can lose an election through system failures: eligible voters prevented from voting, cast votes not counted as having been cast, voting technology failures, human error, or people in official election duties creating an advantage for one candidate over another. Government employees are not above acting under official authority to influence elections such as reports of police hindering access to polling locations by minority voters. Voting system technicians' intentional or unintentional actions can preference one candidate over another. In 2006, there were 18,000 more votes cast on other ballot items in one county within Florida's Thirteenth Congressional District than in that congressional race with a 369 margin of victory. After investigation, the problem was a flaw in the electronic ballot design that placed part of the race for the Florida's Thirteenth Congressional District description on one screen and the candidate names on the next screen.

Election administration responsibilities can be political parties or city, county, or state governments. Election administrators often have little political power over government resources to address known weaknesses in election administration. They are also the people who are most likely to receive blame should something go wrong. Despite technological advances, elections still are human-centric: human error—whether caused by administrators, poll workers, or voters—can happen at any stage of the election process.

Why Is Electronic Voting System Transparency Critical to Election Integrity?

Candidates have sued over close election results of local and state elections in order to gain access to the software and firmware used in voting machines, with no success. Courts are reluctant

to challenge the determinations of election administrators. For example, a 2004 contested election in New Mexico resulted in a very close election between two candidates vying for the same seat. *Patricia Rosas Lopategui v. Rebecca Vigil-Giron* sought a "meaningful inspection of their electronic voting machines" to verify that the reported results for the race were correct. In that election, voters reported seeing on the ballot screen their vote switch from the candidate they supported to another candidate.

Recommendations for Election 2012

Suggestions on ways to improve elections and confidence in their outcome might include

- Depoliticize election administration—arbitrators cannot routinely engage in conduct that might call their judgment into doubt.
- Create a set of election auditing best practices and laws to protect the integrity of digital and physical ballots. Financial systems auditing may hold lessons for methods of developing better auditing mechanisms for public elections.
- Adopt software independence protocols, which means that election outcomes do not rely on the accuracy of voting system software or firmware.
- Promote poll worker volunteers—the nation requires 1.2 million poll workers for November 6, 2012.
- Deal effectively with the media's demands for early election results—it may take two to three days for election technology glitches or problems to surface.

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