

*Restoring the Foundation***State and County Reaction***by Richard G. Smolka*

The 2000 Election and its associated problems triggered the most extensive examination of the election process in the history of the United States. Among the first national groups to consider the issues involved and to make recommendations were the National Association of Secretaries of State (NASS) and the International Association of Clerks, Recorders, Election Officials and Treasurers (IACREOT). Other groups such as The National Conference of State Legislatures (NCSL), The National Association of Counties (NACo); the National Association of County Recorders, Clerks and Election Officials (NACRC); and the Election Center formed commissions and task forces to study the problem and make recommendations within the next few months.

Many state governors or state legislative committees established task forces or special commissions to look into specific aspects of the electoral process that could be troubling in their respective states. A private commission headed by former presidents Jimmy Carter and Gerald Ford is also examining election reform. All are taking into account not only the procedures that proved to be a problem in Florida, but also the language of the U.S. Supreme Court in *Bush v. Gore*.

Recommendations already adopted and those under consideration by various groups indicate clearly that the States and local governments want to improve the electoral system and want to retain responsibility for this function. Federal funds for specific problems, such as studies and updating of voting systems, will be acceptable providing they are not intrusive and do not disrupt the process of conducting state and local elections.

By Inauguration Day, January 20, 2001, IACREOT had resolutions on the way to Congress calling for approval of a supplemental budget for the Federal Election Commission. The request for supplemental funding was for the FEC to facilitate the completion of standards for voting systems and studies for improving the electoral process, as well as to discount first-class postal service by creating a new "election class" postage rate at 50% of the first-class rate.

IACREOT also called for a study of voting options before Election Day, including absentee voting and early voting, and for facilitating voting by military and overseas citizens. IACREOT advocated expansion of support and of technological innovations for the Federal Voting Assistance Program, a unit in the Department of Defense charged with facilitating military and overseas voting.

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A fifth resolution favored removing any barriers to voting now encountered by disabled citizens and announced IACREOT's willingness to serve as a resource for persons working to ensure voting without restrictions for the disabled.

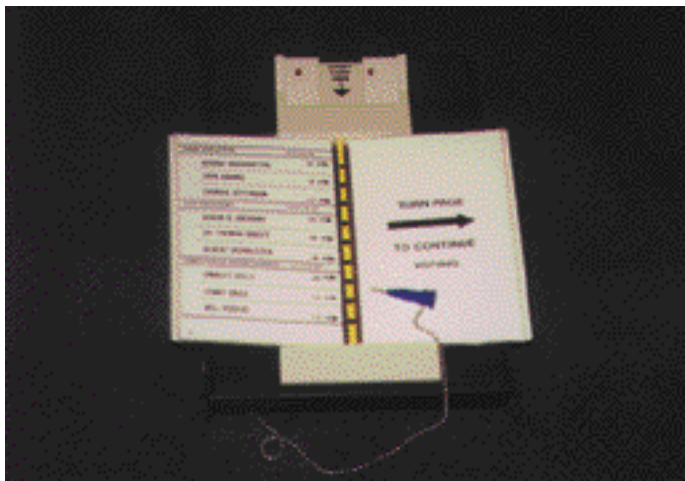
The National Association of Secretaries of State (NASS) created a task force that recommended improvements state and local governments could implement. NASS debated and adopted its proposals during a February meeting in Washington, D.C.

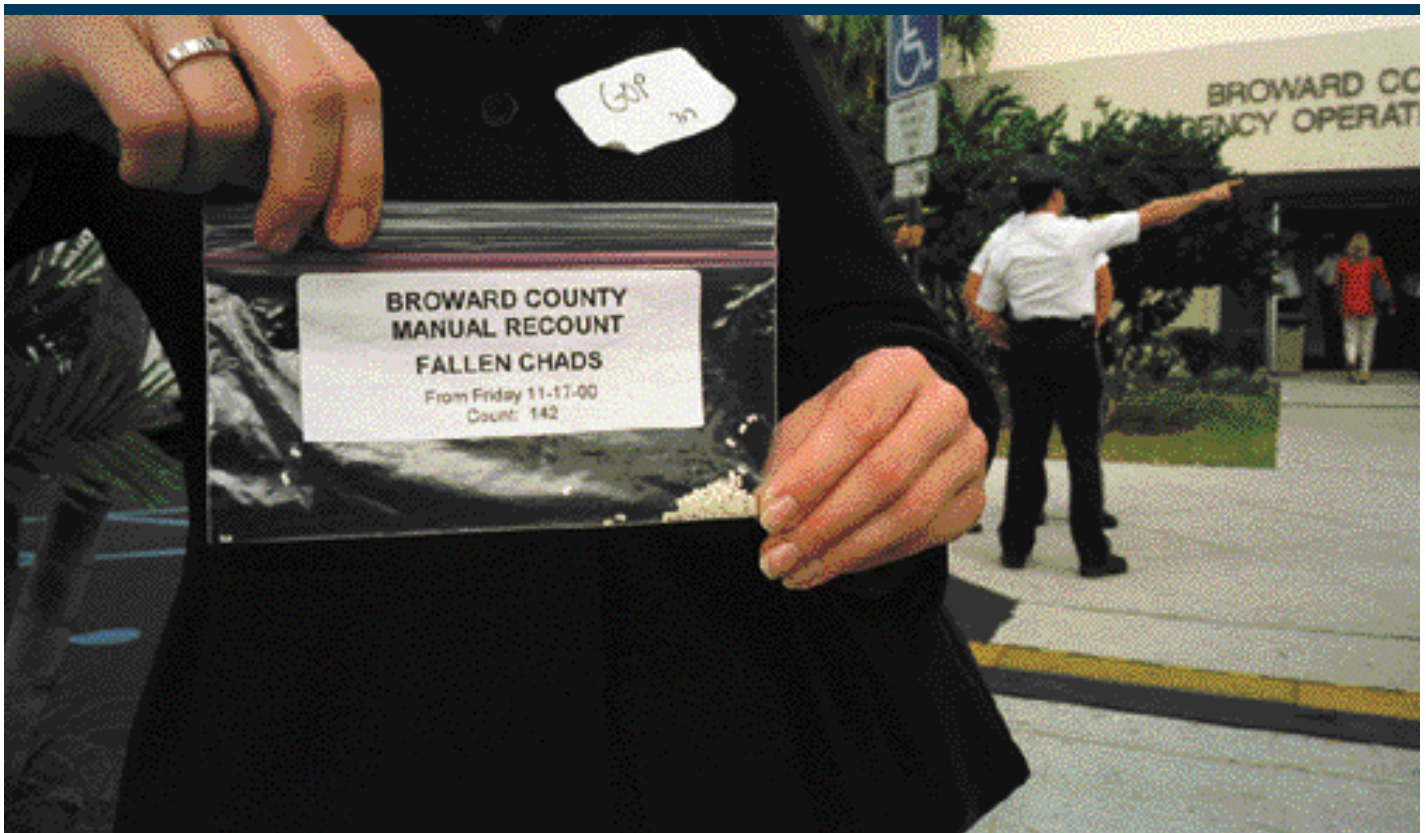
Like those of IACREOT, the recommendations of NASS emphasized meeting the needs of elderly, minority, military, and overseas citizens. NASS called for adoption and enforcement of Election Day rules and procedures to ensure equal treatment of all voters; modernization of the voting process as necessary, including voting machines, equipment, voting technologies, and systems; and implementation of well-defined, consistent standards for what counts as a vote throughout the election process.

NASS encouraged the states to adopt uniform state standards and procedures both for recounts and contested elections and to conduct aggressive, voter education and broad-based, outreach programs.

NASS also asked the States and localities to:

- expand poll-worker recruitment training by adopting the innovative practices of other states and localities
- maintain accurate voter-registration rolls within a system of intergovernmental cooperation and communication
- enhance the integrity and timeliness of absentee-ballot procedures
- adopt and adhere to the voluntary federal voting-system standards for voting systems





- provide for continuous training and certification for election officials
- collect data and information on a regular and consistent basis
- provide election officials with increased funding to implement these recommendations

Appeals by NASS to Congress were limited to money for development of voting – system standards and voluntary, management-system standards, as well as for funds to help implement its other recommendations. Finally, NASS asked Congress to promote intergovernmental cooperation and communication among state-and-local election officials to facilitate the maintenance of accurate, voter-registration rolls.

State-and-local election groups will probably agree with the preliminary findings of the Caltech-MIT Voting Project in its assessment of the human element in considering the reliability of voting equipment. The professors of the California Institute of Technology and the Massachusetts Institute of Technology stated their belief that problems with under-votes and over-votes reflect how people relate to voting-system technology more than on the technology itself. In brief, “human factors drive much of the error in voting....”

Undoubtedly, administrators will now pay far more attention to features such as ballot format, instructional language, and identification of factors that seem to cause confusion – human factors that do not lend themselves easily to legislation or to court decisions. Administrators can do only so much. The Supreme Court decision in *Bush v. Gore* was directed more to the legislatures. The majority opinion directly questioned punch-card voting and the attendant difficulties voters have in casting a ballot with this system:

This case has shown that punch-card balloting machines can produce an unfortunate number of ballots, which are not punched in a clean, complete way by the voter. After the current

counting, it is likely that legislative bodies nationwide will examine ways to improve the mechanisms and machinery for voting.

Justice John Paul Stevens, on the other hand, seemed more willing to tolerate differences – referring to them as “differing sub-standards” for determining voter intent:

As a general matter, the interpretation of constitutional principles must not be too literal... If it were otherwise, Florida’s decision to leave to each county the determination of what balloting system to employ – despite enormous differences in accuracy – might run afoul of equal protection. So too might the similar decisions of the vast majority of state legislatures to delegate to local authorities certain decisions with respect to voting systems and ballot designs.

State legislatures have been warned of potential judicial intervention in elections but what has to be done and what constitutes “equal protection of the law” is not clear. Ironically, although a uniform voting system statewide seems to be a logical answer, the impact of such a system may produce disparate effects on some protected voting groups. State legislatures now have to consider many more factors in fashioning an electoral system, including the full range of available voting machines and devices, ease of voting, over-voting and under-voting potentials and results, equal protection and equal opportunity for various groups distinguished by race, nationality, language, and disability, among others.

As one size or method does not fit all elections, even in a single state, election litigation may take a winding and seeming endless path similar to redistricting legislation until election procedures acceptable to the courts are much clearer than they are now.

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