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## ■ VOTING TECHNOLOGY

# Bridge the divide

By Paul Schwartz SPECIAL TO THE NATIONAL LAW JOURNAL

**T**HE FLORIDA debacle of November 2000 focused America's attention on its method of running elections. Since then, numerous studies have analyzed all 50 states, and the verdict is in: The election system in the United States is a mess. There is an urgent need for changes in how Americans cast their ballots, count them and organize the election process.

The Senate and House have now settled on competing federal bills. The critical choice is between H.R.3295, introduced by Rep. Robert W. Ney, R-Ohio, and S.2688, introduced by Senator Christopher Dodd, D-Conn. The latter is by far the superior piece of legislation. Yet superiority is sometimes only a matter of degree, and the Dodd bill reveals that the current political process will at best lead to incomplete voting reform. To understand how the Dodd bill falls short, we have to understand first its competition, the Ney bill.

The Ney bill is flawed because it lacks mandatory standards. The first lesson from November 2000 was that a voting technology divide exists in the United States. In November 2000, few states had unitary voting systems. The result? Large statewide differences in the amount of "residual," or unreadable, ballots. And, as a result of the slow pace of state reform, the divide is still in place. The Ney bill would not mandate closing this divide.

The bill does no better in addressing the need to provide "feedback" to voters. In the 2000 election, some voting systems let a voter know, before surrendering the ballot, whether or not a tabulating machine would read it. Yet the Ney bill focuses only on giving voters a chance to correct errors. Beyond correcting ballot mistakes, voters must also be informed, through system feedback, of errors in voting. Otherwise, the opportunity to correct one's ballot is meaningless.

### The other bill

On the other hand, the Dodd bill's standards for voting technology are mandatory. The difficulty is that the Dodd bill allows states to continue to use voting systems that do not meet the bill's standards. These states need only claim they are enhancing the noncompliant voting system to meet the binding stan-

dards. So although Election 2000 taught us which voting technology falls short, the Dodd bill permits outdated equipment to be used until the Department of Justice finally decides the "enhanced" voting system falls short of the bill's mandatory requirements and it takes action against the state.

The Dodd bill does recognize the critical role of "feedback" to voters in protecting equality of the franchise. Unfortunately, a major compromise has gutted the bill's strong language on feedback as it was originally introduced in Congress in November 2001. The original bill (S.565) required that all voters receive feedback as to the validity of their ballot. After negotiations with key Republican senators, however, Dodd added a loophole to its requirement of feedback.

The Dodd bill now allows a state that uses a paper ballot voting system or a punchcard system to avoid the "feedback" requirement by establishing a voter education program and providing voting technology that offers a chance to correct errors—two measures that do not

provide adequate recompense for voters on the wrong side of the voting technology divide.

What then is the verdict on the attempt to reform the voting process? The Ney bill would correct too few of the shortcomings of the U.S. voting process. In contrast, the Dodd bill, although watered down, at least takes steps in the right direction.

Even if the Dodd bill is enacted, however, we must do more in the pursuit of equal access to voting on Election Day. Mandatory federal standards should not contain loopholes that allow states to stall for time by tinkering with outdated equipment. And strong language, such as found in the original Dodd bill, should require that all voters have access to voting technologies that supply similar, high levels of feedback and equal opportunities to correct ballot mistakes. ■

**Don't let  
the states  
delay.**