

## PODIUM

# Bye to chads; hello to what?

By Paul M. Schwartz SPECIAL TO THE NATIONAL LAW JOURNAL

**F**LORIDA Governor Jeb Bush recently signed a state election reform law, which he announced will create a "world class elections system in Florida."

In fact, the world can continue to look elsewhere for excellence in election procedures. The 2001 election reform law is, at best, a mixed bag. The new law brings good, so-so and bad news from Tallahassee, Florida's state capital. Overall, it fails to craft a complete response to the election technology meltdown in Florida of November 2000.

In a nutshell, the good news consists of the elimination of punch-card voting, the use of new "provisional ballots" in necessary cases and funding for voter education and poll-worker training.

The first and best piece of good news concerns the punch-card ballots, which, in Florida as elsewhere in the nation, performed considerably worse than most other available technologies in the 2000 election. Florida voters will never use them again.

Instead, most Florida voters will now use optical-scanning technology to vote. This excellent technology, similar to that used on the SAT and other standardized tests, requires voters to fill in a bubble or an arrow to indicate their vote. Best of all, voters can test the validity of their ballots by feeding them into a scanner right at the polling place. That's right: Before you turn in your ballot, you can find out if a vote counting machine will be able to read it. In the November 2000 election, such optical-scanning technology outpaced all the rest by leaving the lowest fewest residual ballots (invalid and uncounted ballots).

### More good news

Also good is the requirement that "provisional ballots" be given to people who arrive at a polling place and discover that they do not appear on the voter registry. This part of the election reform law makes it clear that these individuals may vote, while allowing canvassers to verify eligibility later.

The final good news is that

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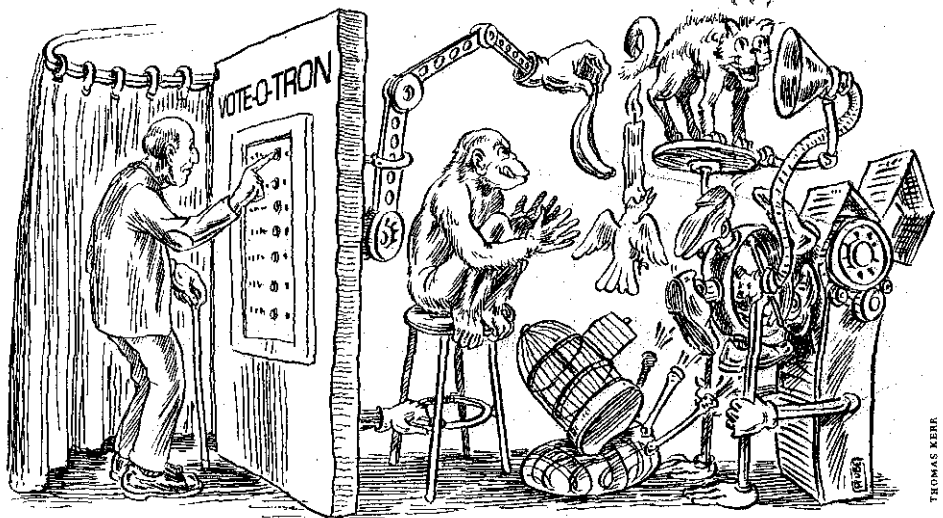
Florida will make \$5.9 million available for both voter education and training of poll workers. The low, almost nonexistent expenditures on these two areas before the November 2000 election showed mistaken priorities for a democracy. This funding is a start in the right direction. Yet, in a state willing to spend \$35 million per year advertising its lottery, larger investments in voter education and poll worker training must be required.

tion, after all, the Florida secretary of state was able to delay recounts for more than a month.

The last piece of so-so news falls into the "some things never change" category. The Florida 2001 election reform law explicitly requires hand recounts in close elections. Yes, a majority Republican Legislature voted for that requirement, and the Republican governor of Florida, the president's younger brother, has signed the bill. And, yes, Jim

worse than lever machines—a voting technology that has been in use at least since the 1920s and that was the dominant technology in the U.S. back in the 1980s.

There is no doubt that optical-scan technology performs better than DREs. The Caltech/MIT experts concluded, "Considering some of the glowing reports about electronics following the 2000 election, we expected the DREs to do well.



The so-so news begins with the creation of a statewide database that lists eligible voters. Normally, activity to increase the integrity of the voting process is a good thing. In Florida, however, the state's manipulation of voter registration information before November 2000 led to a pre-election purge of eligible voters in some counties. After its investigation, the U.S. Civil Rights Commission strongly criticized this action, which removed "non-felons from the voter registration rolls on the basis of unreliable information collected during a sweeping, state-sponsored felony purge."

Even with the new availability of provisional ballots, Florida's statewide voter list provides dangerous opportunities to undertake electronic purges. Civil rights groups should closely monitor how the state implements this new voter database.

Another piece of so-so news concerns the certification of general election results. The period for certification of results has now been increased from seven to 11 days. It is doubtful, however, that four extra days will put much pressure on Florida state officials if they are inclined to delay recounts. In the last elec-

Baker last November did tell us, over and over, that counting machines are neither Democrats nor Republicans, and that hand recounts are inherently suspect.

### Change, not improvement

Finally, the really bad news: Florida will allow touch-screen voting in counties that choose it.

One would expect this piece of information to be good news. Isn't touch-screen voting, which uses devices similar to bank ATMs, the greatest technology available? Alas, no.

At present, the verdict must be negative when it comes to touch-screen voting technologies, formally known as direct recording electronic devices (DREs). The most reliable study of voting equipment, the Caltech/MIT Voting Technology Project, compared voting results from more than 2,700 counties and municipalities in the last four U.S. presidential election cycles.

In particular, the Caltech/MIT experts studied the residual voting rate (all discarded and invalid ballots expressed as a percentage of the total vote). Their finding was that the ATM-like DREs performed considerably

They did not, especially compared (with) optically scanned paper ballots."

The scary news is that election officials in Palm Beach County, Fla., apparently always eager for an experiment, have announced that they wish to adopt these electronic machines. If beta testing of voting technology is to occur, it should not happen in Palm Beach County or anywhere else on a county-by-county basis. New voting technology should be tried only in individual precincts where it can be compared on a small scale with existing technologies. Such testing should also not take place when Florida participates in national elections.

Jeb Bush's election reform leaves certain counties in Florida with well-tested equipment and other counties with question marks.

Florida has failed to establish the gold standard for use of voting technology in the 21st century. ■

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