

Crisis of Trust Over Voting Difficulties Must Be Addressed

By Richard L. Hasen

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It is two months after Election Day, and we still do not know with certainty the winner of the gubernatorial election in [Washington State](#), or the mayoral race in [San Diego](#). The election in [Puerto Rico](#) for governor was just resolved. Meanwhile, the Internet is [swimming](#) with conspiracy theories that Republicans (mostly in Ohio and Florida) stole the presidential election for George W. Bush.

Post-election controversies are usually the stuff of close elections, and this year is no exception: the Washington gubernatorial race features a 130-vote margin out of almost 3 million votes cast. The results in San Diego will be reversed [if a court rules](#) that election officials should have counted the votes of about 5,000 voters who wrote in the name of a write-in candidate but failed to bubble in the space on the ballot next to the candidate's name. The Puerto Rico election turned on the question whether ballots with 3 "X"s rather than two should count under the Commonwealth's unique voting system. And the Electoral College outcome for President turned on the results in Ohio.

But this year's election season is qualitatively different from earlier ones in that those on the losing side of close elections increasingly are alleging fraud in the election process. The claims in turn appear to be undermining the public's faith in the electoral process, creating a much more dangerous situation than most people realize and requiring some radical changes in the way we run elections in this country.

The claims are quite incendiary, with both Democrats and Republicans comparing our most recent election to the Nov. 21 Ukrainian presidential election invalidated by the Ukrainian Supreme Court [amid fraud allegations](#). John K. Galbraith [wrote](#) that “if the Ukraine standard were applied to Ohio --- as it should be --- then the late lamented U.S. election was certainly stolen.” And protesters in Washington State, who did not want the state Supreme Court to order 573 erroneously-rejected ballots from Democratic-leaning King County to be counted, [held signs](#) reading “Welcome to Ukraine.” (The court later [ruled unanimously](#) that the ballots should be counted.) The Republican gubernatorial candidate himself has said the election was not “clean” and his supporters have [alleged fraud](#).

Some fraud [apparently occurred](#) in the 2004 election related to voter registrations, but no one yet has found any evidence of substantial fraud so as to change election outcomes. (Mary Poppins, it seems, doesn’t turn out to vote even if she is registered 100 times.) Much of what gets called fraud these days is rather good old fashioned election administration incompetence. Thus, the 573 contested King County absentee ballots were originally not counted because election workers had erroneously coded them as lacking a signature on file. Such problems are widespread, though until recently virtually unreported. [According to the Associated Press](#), “[m]ore than 4,500 votes have been lost in one North Carolina county because officials believed a computer that stored ballots electronically could hold more data than it did.” North Carolina officials are [trying to decide what to do](#) about a statewide race that hangs in the balance as a result of the glitch.

Florida again was beset with voting problems, despite [the widespread belief](#) that the election there was a success. According to [an Electionline.org report](#), the following problems occurred: almost 40 votes on electronic voting machines were lost in Boynton Beach because of a power failure; 14,000 votes had to be recounted in Volusia County after a memory card failed; a ballot tabulator in Broward County started counting backwards after reaching 32,000 ballots; computer error gave wrong figures to Escambia county voting officials; and nearly 270 votes were found in a box in Pinellas County two weeks after the election (with 12 more ballots found later).

Now it is easy to see where “fraud” allegations can come from. Imagine if these Florida problems had occurred at the same time that (as in 2000) a 537-vote margin separated the Democratic and Republican candidates for President in Florida. Each of these problems would have been the focus of a major investigation and litigation. Some of those on the losing side would have had an incentive—even absent any evidence—to undermine the legitimacy of the election by pointing to these incidents and claiming voter fraud. Many supporters of the losing candidate would have been inclined to believe it, if only as a means of wishful thinking that the results could be reversed.

In no place has this election been subject to more frequent and vocal fraud allegations than Ohio. Yet recent extensive investigations by the [Washington Post](#) and the [New York Times](#) and scholarly investigations by the very well respected [Social Science Research Council](#) and the [Caltech-MIT Voting Technology Project](#) have debunked many of the claims of the conspiracy theorists.

Though it is mostly Democrats alleging fraud now in relation to the presidential vote, Republicans clearly were [getting ready](#) to play the fraud card had George W. Bush lost by a narrow margin, even if such fraud allegations have in the past [proven spurious](#).

Allegations of fraud are adversely affecting Americans' views of the electoral process. According to a recent NBC News/*Wall Street Journal* [poll](#), more than a quarter of Americans worry the vote count for president was unfair. And there is a partisan and racial dimension to the issue. John Harwood [reports](#) that just “one-third of African-Americans call the vote ‘accurate and fair,’ while 91% of Republicans do.” A similar dynamic occurred in a post-election Florida [poll](#).

It is hardly surprising that the winners have more faith in the process than the losers. But just before the election, a [Rasmussen Reports poll](#) showed 59% of American voters believing there was “a lot’ or “some” fraud in American elections.

It should go without saying that free and fair elections are essential to a well-functioning democracy, and that an eroding public faith in the electoral process is worrisome. Had the margin in Ohio been 100,000 votes closer and the outcome determined by a set of provisional ballots to be judged and counted post-election by partisan election officials, we would have seen crowds in the street as we saw in the Ukraine. The election was polarizing and heated, and it would have gotten worse. Fraud allegations would have been rampant, and violence was not out of the question.

Part of the solution to the fraud-legitimacy problem is additional resources to minimize election administration incompetence. Ted Selker of the Caltech-MIT Voting Project [recommends](#) improved voter registration procedures, better ballot design, and more careful polling place procedures. The Social Science Research Council argues for

greater transparency of the elections process so that allegations of fraud can be quickly investigated and debunked or remedial steps taken.

But the more fundamental question is that of trust. In many parts of the United States, the Chief Elections Officer of the state is a Secretary of State who runs in a partisan election and is involved in partisan activities. This is intolerable. How can Democratic voters in Ohio trust Kenneth Blackwell, the Ohio Secretary of State, who co-chaired the Ohio campaign to reelect President Bush? How can Republican voters in California trust Kevin Shelley, California's Secretary of State, who took federal money earmarked for voter education [to promote Democratic causes](#)?

The issue of trust in election administration is especially important when it comes to electronic voting, which is increasingly being used in the United States. Those of us lacking technical sophistication cannot judge how secure such systems are from hackers. Although an auditable paper trail may help, the real solution is a cadre of professional election officials with loyalty to the process, not the candidates. Professionalism and nonpartisanship is the model used in [Australia](#) and [Canada](#), and that's how we should do it in the United States.

Professionalization will not only eliminate the appearance of fraud and make actual fraud itself that much more difficult to pull off. It also will depoliticize discretionary decisions made by election officials that, in the post-[Bush v. Gore](#) era, all but invite litigation. Thus, when Ohio's Secretary Blackwell decided not to count provisional ballots cast in the wrong precinct, or Florida's Secretary of State Gloria Hood refused to accept the registration materials of voters who failed to check a box affirming that the voter is a citizen (despite signing an affidavit confirming citizenship on the same

form), these decisions were attacked (perhaps rightly) as politically motivated decisions. Professional elections officials would decide such questions so as to maximize the chances that eligible voters can cast a vote that counts, minimize the potential for election fraud, and keep the costs of elections down--not to assist in the election or defeat of a particular candidate.

We cannot eliminate close elections, and, since *Bush v. Gore*, we cannot avoid post-election litigation as part of a strategy for losing candidates. But there are steps we can take to restore the people's faith in the democratic process and make allegations of fraud laughable again. We can start by taking the politics out of the administration of elections.

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