

Fall 2001

Reforms in Florida after the 2000 Presidential Election

Jon L. Mills

University of Florida Levin College of Law, mills@law.ufl.edu

Follow this and additional works at: <http://scholarship.law.ufl.edu/facultypub>



Part of the [Election Law Commons](#), and the [Politics Commons](#)

Recommended Citation

Jon Mills, *Reforms in Florida after the 2000 Presidential Election*, 13 U. Fla. J.L. & Pub. Pol'y 69 (2001), available at <http://scholarship.law.ufl.edu/facultypub/582>

This Article is brought to you for free and open access by the Faculty Scholarship at UF Law Scholarship Repository. It has been accepted for inclusion in UF Law Faculty Publications by an authorized administrator of UF Law Scholarship Repository. For more information, please contact outler@law.ufl.edu.

REFORMS IN FLORIDA AFTER THE 2000 PRESIDENTIAL ELECTION

*Jon Mills**

I.	INTRODUCTION	69
II.	HOW FLORIDA ENTERED THE FRAY: THE ESSENTIAL FACTORS	70
III.	THE “WILL OF THE VOTERS” MEANS COUNTING THE VOTES ..	72
IV.	THE LITIGATION ENSUES	73
V.	LOOKING BACK AT THE POST-ELECTION PERIOD	74
VI.	LOOKING FORWARD TO REFORM	75
VII.	THE FLORIDA ELECTION REFORM ACT OF 2001	76
	A. <i>Voting Technology: Improving Balloting Accuracy and Understandability</i>	77
	B. <i>Maximizing Voter Participation</i>	77
	C. <i>Minimizing Voter Mistakes and Maximizing Accuracy</i>	78
	D. <i>Improving Statutes to Make Them More Consistent, Logical, and Adequate</i>	78
	E. <i>Technical Compliance with Election Law Requirements</i> ..	79
VIII.	CONCLUSION	79

I. INTRODUCTION

Much has been written concerning the Florida recount, and the final U.S. Supreme Court decision in *Bush v. Gore*.¹ Moreover, the popular

* Dean and Professor of Law, University of Florida Levin College of Law. Dean Mills is also the Founding Director of the Center for Governmental Responsibility.

1. See, e.g., Jack M. Balkin, *Bush v. Gore and the Boundary Between Law and Politics*, 110 YALE L.J. 1407 (2001); Erwin Chemerinsky, *Bush v. Gore Was Not Justiciable*, 75 NOTRE DAME L. REV. 1093 (2001); Richard A. Epstein, *In Such Manner as the Legislature Thereof May Direct: the Outcome of Bush v. Gore Defended*, 68 U. CHI. L. REV. 613 (2001); Linda Greenhouse, *Learning to Live with Bush v. Gore*, 4 GREENBAG 381 (2001); Theresa H. Hammond, *Judicial Jabberwocky in the Presidential Election 2000: When Law and Facts Collide with Politics*, 52 MERCER L. REV. 1567 (2001); Gerald P. Moran, *Bush v. Gore: A Renaissance of Legal Realism*,

media has mostly focused on the negatives of the Florida recount without delving into the exact reasons why Florida became the epicenter of this controversy. Not much has been written pinpointing the actual circumstances precipitating Florida's position after the election, nor discussing the theoretical underpinning of Florida election law, which embraces a broad liberal concept of respecting the "will of the voter."²

By examining both the actual circumstances surrounding Florida in 2000 and recognizing that Florida election jurisprudence actually encourages broad judicial interpretations to include as many votes as possible, one can better understand the situation and not merely dismiss Florida as a state "where people don't know how to vote." Surrounded with unanticipated factors, Florida's election laws, which aimed to include as many as possible in its elections, allowed time extensions for manual recounts of certain votes³ and accepted overseas ballots that did not technically comply with Florida law.⁴ This Article addresses these little noticed factors and elucidates the theoretical underpinning of Florida election jurisprudence: respecting the "will of the voter."⁵

Also, not much has been written that addresses the actual constructive reforms that have been enacted by the Florida Legislature since *Bush v. Gore*. This short Article addresses the movement for reform in Florida, which to date has yielded the recently enacted Florida Election Reform Act of 2001.⁶ This Article will also address this recent reform and analyze some of the most pertinent sections for such election reform.

II. HOW FLORIDA ENTERED THE FRAY: THE ESSENTIAL FACTORS

Florida became the center of the controversy of the 2000 Election because of the closeness of the election and several other factors. The following series of circumstances dictated that Florida become the center of the election maelstrom of 2000.⁷

2 FLA. COASTAL L.J. 347 (2001); Cass R. Sunstein, *Order Without Law*, 68 U. CHI. L. REV. 757 (2001).

2. See FLA. STAT. § 101.5614(5) (2000) (stating that "no vote shall be declared invalid or void if there is a clear indication of the intent of the voter as determined by the canvassing board").

3. Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1220 (Fla. 2000).

4. Bush v. Hillsborough County Canvassing Bd., 123 F. Supp. 2d 1305 (N.D. Fla. 2000).

5. See FLA. STAT. § 101.5614(5) (2000).

6. The Florida Election Reform Act of 2001, 2001 Fla. Laws ch. 2001-40 (2001).

7. Prof. Richard Scher further argues that the existence of multiple minor party candidates, twelve in all, contributed to around 137,000 votes, which many would have gone to either Bush or Gore, but for the presence of these candidates on the ballot. For example, he cites in Alachua

First, the Florida election was a statistical dead heat between Bush and Gore.⁸ As several observers put it: “The margin of error exceeded the margin of victory.”⁹

Second, Florida was a critical state concerning electoral votes. The state gives the presidential victor 25 of 270 necessary electoral votes. The winner of these electoral votes would win the election.

Third, the existence of flawed voting machines across Florida provided a valid concern for accuracy and lost votes. For example, Alachua County machines disqualified only 0.48% of presidential votes, whereas Duval County disqualified over 9% of presidential votes.¹⁰ Consequently, based on the machines, the statement that “the margin of error exceeded the margin of victory”¹¹ was credible.

Fourth, Florida election laws, which included time frames and recount schedules, were not adequate for a dead heat presidential election. As the Florida Supreme Court concluded, the period of time for recounts in the protest was statutorily too short to allow the ballots in larger counties to be recounted.¹² Observers of this election with a background in Florida election law felt these laws were not designed for presidential elections, but rather state and local elections.¹³

Fifth, because this race was a presidential election, legal disputes were compelled to finish before December 12th in the 2000 election because of the existence of the “Safe Harbor” provision.¹⁴ This date specifically affected Florida election law and the pace of the dispute in Florida.

County, Green Party candidate Ralph Nader received 3,226 of his total 97,488 statewide total. As of Apr. 20, 2001, Alachua County only has 247 registered Green Party members. See Richard K. Scher, *Grasping at Straws, Rushing to Judgment: Election Reforms in Florida, 2001*, 13 U. FLA. J.L. & PUB. POL'Y 81 (2001).

8. See generally Alan Agresti & Brett Presnell, *Statistical Issues in the 2000 Presidential Election in Florida*, 13 U. FLA. J.L. & PUB. POL'Y 117 (2001).

9. Transcript, UF Law Election Forum, Thom Rumberger, at 10. Pam Iiorio, Pres. Fla. Supervisors of Elections (on file with Jon Mills).

10. *Presidential Votes Disqualified in Florida* (2000), available at <http://www.sun-sentinel.com/news/badvotes.htm> (last visited 11/15/2000); see also *Problem Precincts*, MIAMI HERALD (2000), available at <http://www.herald.com/content/archive/news/flacount/photoart/badvote1228.gif> (last visited Jan. 9, 2001) (showing ballots were spoiled more often in precincts that were black, poor, less-educated, and Democratic).

11. *Supra* note 9.

12. Palm Beach County Canvassing Bd. v. Harris, 772 So. 2d 1220, 1233 (Fla. 2000).

13. David Cardwell, former Staff Director House Elections Committee and former Director, Florida Division of Elections, *Florida Election 2000: Insiders at the Intersection of Law, Politics and the Media*, Symposium Before Levin College of Law (Feb. 26, 2001), at 29.

14. 3 U.S.C. § 5 (2000).

If any one of these circumstances did not exist at the time of the 2000 Presidential Election, then Florida probably would not have been on trial concerning the finality of the outcome. Moreover, Florida's election jurisprudence for counting the votes and respecting the "will of the voter"¹⁵ meant that once a clear winner could not be declared, all votes that could possibly be counted were surely enquired.

III. THE "WILL OF THE VOTERS" MEANS COUNTING THE VOTES

First, the history of Florida election law has sought the intent of the voter and has recognized each voter's fundamental right to vote.¹⁶ The Florida Constitution explicitly states that the right to vote is fundamental and "all political power is inherent in the people."¹⁷ Florida election laws are general and apply to local, state, and federal elections. Although these laws cover all elections, as mentioned before, expert observers doubted the legislature actually directly considered the application of the Florida statutes, deadlines, and standards to a presidential election.¹⁸

In election controversies, the theory articulated in *Beckstrom v. Volusia County Canvassing Board*¹⁹ and prior Florida cases²⁰ supports a general commitment to respecting the "will of the voter." This philosophy in Florida is based upon democratic principles, repeated in the first *Harris* case, which sought to allow voters to cast flawed ballots, but not illegal or fraudulent ones.²¹ This principle is not abstract. For example, absentee ballots that were clearly illegal were discarded in the 1996 Miami mayoral

15. See FLA. STAT. § 101.5614(5) (2000).

16. See *Boardman v. Esteva*, 323 So. 2d 259 (Fla. 1975) (holding that real parties in interest are voters concerning the contest of an election); *State ex rel. Carpenter v. Barber*, 189 So. 49 (Fla. 1940) (holding that courts in construing statutes relating to elections should give a liberal construction in favor of the citizen whose right to vote they tend to restrict).

17. FLA. CONST. art. I, § 1.

18. Cardwell, *supra* note 13.

19. 707 So. 2d 720, 725 (Fla. 1998) (holding that a court can void a contested election even in the absence of fraud or intentional wrongdoing if there is reasonable doubt that the election did not express the will of the voters).

20. See *Boardman*, 323 So. 2d at 263 (holding that real parties in interest are voters concerning the contest of an election); *State ex rel. Carpenter*, 189 So. at 51 (Fla. 1940) (holding that court's in construing statutes relating to elections, should give a liberal construction in favor of the citizen whose right to vote they tend to restrict).

21. *Palm Beach County Canvassing Bd. v. Harris*, 772 So. 2d 1220, 1237 (Fla. 2000). "It is the intention of the law to obtain an honest expression of the will or desire of the voter." *Id.* at 1237.

election controversy.²² Discarding corrupt or illegal ballots is consistent with views of other states.²³ The amount of litigation surrounding the unaccounted votes is not surprising, considering the fact that Florida jurisprudence includes votes to accommodate the “will of the voter.”²⁴

IV. THE LITIGATION ENSUES

The press focused on several areas in Florida’s election process:

The butterfly ballot presented a confusing and misleading ballot;²⁵ the punchcard machines left thousands of votes in doubt; Florida laws relating to recounts conflicted with Florida law relating to election certification;²⁶ absentee ballots which might be technically illegal were allowed to be counted;²⁷ and the U.S. Supreme Court found the standards of laws relating to recounts insufficient and violations of equal protection.²⁸

The overall timeline for the conflict was important because of the operation of the “Safe Harbor” provision, a federal election reform passed after the election controversy of 1876.²⁹ After the 1876 election, the concern was delay and this reform established a deadline for electors to submit votes to the Electoral College or it would be subject to challenge.³⁰ This “safe harbor,” while a federal rather than a state law, affected the litigation and conflict in fundamental ways.

The first *Bush v. Gore* case allowed recounting to continue past a potential statutory deadline because the Florida Supreme Court interpreted

22. *In re The Matter of the Protest of Election Returns & Absentee Ballots in the Nov. 4, 1997 Election for the City of Miami*, 707 So. 2d 1170, 1174 (3d Fla. Dist. Ct. App. 1998) (holding that despite the massive absentee voter fraud, the legally appropriate remedy is to invalidate all absentee ballots and not call a new election).

23. *See, e.g., Rogers v. Holder*, 636 So. 2d 645, 648 (Miss. 1994) (holding that invalidation of all absentee ballots is improper if only 12 absentee ballots are corrupt).

24. *See* FLA. STAT. § 101.5614(5) (2000).

25. *Fladell v. Palm Beach County Canvassing Bd.*, No. CL-00-10965 AB (Cir. Ct.), *aff’d*, 772 So. 2d 1240 (Fla. 2000).

26. *Id.* at 1228.

27. *See Bush v. Hillsborough County Canvassing Bd.*, 123 F. Supp. 2d 1305, 1317 (N.D. Fla. 2000); *Jacobs v. Seminole County Canvassing Bd.*, 2000 WL 1793429 (Fla. Cir. Ct.), *aff’d* 773 So. 2d 519 (Fla. 2000); *Taylor v. Martin County Canvassing Bd.*, 2000 WL 1793409 (Fla. Cir. Ct.), *aff’d*, 773 So. 2d 517 (Fla. 2000).

28. *Bush v. Gore*, 531 U.S. 98 (2000).

29. 3 U.S.C. § 5 (2000).

30. *See supra* note 8.

the deadline to be part of Florida law.³¹ The thirty-six days of the conflict contained multiple appellate arguments, trial arguments, and court decisions, which were prepared virtually overnight. The pace, combined with the magnitude of the situation was unprecedented.

V. LOOKING BACK AT THE POST-ELECTION PERIOD

The most visible problems of Election 2000 were the failure of voting machines to count all the ballots and the trouble concerning “hanging chads.”³² The direct result was that the most tumultuous election in American history with a final result of a one electoral vote margin based on a 537-popular vote margin in Florida. That is .002% difference between the presidential candidates in Florida.

After the election, the course of the controversy was intense and unpredictable. But if we look back, knowing the final decision of the U.S. Supreme Court,³³ the result was inevitable. The standards for a recount were unacceptable³⁴ and, based on the requirements of the “Safe Harbor” provision,³⁵ those standards could not be corrected. Hence, no legal recount was ever going to be possible. That conclusion does not mean, however, that the Florida election fulfilled the basic principles of an effective election system: those principles include maximizing the number of people voting and counting those votes fairly and accurately.

31. *Bush v. Palm Beach Canvassing Bd.*, 531 U.S. 70 (2000) (per curiam).

32. A chad is a small piece of a punchcard ballot that is intended to detach from the ballot when punched with a stylus by a voter. A hanging chad is a chad which is detached in three corners.

33. *Bush v. Gore*, 531 U.S. 98 (2000).

34. *Id.* at 110 (stating that “[Dec. 12] is upon us, and there is no recount procedure in place . . . that comports with minimal constitutional standards”).

35. 3 U.S.C. § 5 (2000). This provides that,

[I]f any State shall have provided, by laws enacted prior to the day fixed for the appointment of the electors, for its final determination of any controversy or contest concerning the appointment of all or any of the electors of such State, by judicial or other methods or procedures, and such determination shall have been made at least six days before the time fixed for the meeting of the electors, such determination made pursuant to such law so existing on said day and made at least six days prior to said time of meeting of the electors, shall be conclusive and shall govern in the counting of the electoral votes as provided in the Constitution, and as hereinafter regulated, so far as the ascertainment of the electors appointed by such State is concerned.

3 U.S.C. § 5 (2000) (emphasis added).

On the contrary; at least 110,000 people who voted for president overvoted,³⁶ and as a result, their votes did not count. Thousands who believed they voted incorrectly in Palm Beach County on a butterfly ballot³⁷ and could not have their votes count as intended.³⁸ Persons were turned away from the polls believing they had the right to vote and did not see their votes register at all. An unknown number of people voted on punchcard and machines; however, their votes did not count because their efforts only left dimpled and hanging chads. Undoubtedly, if everyone who wanted to vote had their vote counted the way they intended, there surely would have been a different vote total. Therefore, there existed a serious and obvious need to reform the system of elections in Florida.

VI. LOOKING FORWARD TO REFORM

Election reform in Florida was critical not only because it was the center of the election controversy, but also because state laws provide the fundamental rules for elections in the United States.³⁹ As Judge Middlebrooks stated in *Siegel v. LePore*,⁴⁰ "Simply put, [f]ederal courts are not the bosses in state election disputes unless extraordinary circumstances affecting the integrity of the state's election process are clearly present in a high degree."⁴¹ Moreover, U.S. Supreme Court precedent has held that the power of the states to decide the method of selecting electors is plenary.⁴² Since it is firmly entrenched that Florida would be primarily responsible for its own election reforms, many national and statewide groups made their proposals and critiques very clear to our state. There have been a series of commissions, committees, and task forces promulgating suggestions for reform.⁴³ Suggestions range from prohibiting

36. An overvote is a ballot on which the voter chose more than one candidate for president.

37. The butterfly ballot was the ballot used in Palm Beach County consisting of two leaves in book form, with the "chad" to be punched out from the center.

38. *Fladell v. Palm Beach County Canvassing Bd.*, 772 So. 2d 1240 (Fla. 2000) (holding that plaintiffs claiming butterfly ballot confused voters and caused them to vote wrongly were not entitled to revote).

39. Jon Mills, *Federalism in the 2000 Election – Florida on Trial*, STAN. L. & POL'Y REV. (forthcoming March 2002) (discussing the role of federalism and state elections in the course of the 2000 Presidential Election).

40. 120 F. Supp. 2d 1041 (S.D. Fla. 2000).

41. *Id.* at 1051 (citing *Roe v. Evans*, 43 F. 3d 574, 585 (11th Cir. 1995)).

42. *MacPherson v. Blacker*, 146 U.S. 1, 10 (1892).

43. These include Florida Governor Bush's Special Task Force on Election Reform, the U.S. Commission on Civil Rights, the National Association of State Legislatures, and the National Commission on Federal Election Reform.

election officials from participation in campaign activities⁴⁴ to making Election Day a holiday.⁴⁵

VII. THE FLORIDA ELECTION REFORM ACT OF 2001

In response to many of the reforms suggested, the Florida Legislature enacted a lengthy bill covering a range of reforms from improving voting machines to overseas ballots on May 9, 2001.⁴⁶ One can say that the Legislature reacted comprehensively to the Presidential debacle of 2000. Like the city commission that places a stoplight where a fatal accident occurs, the Legislator's reaction was swift but too late to help the last victims. The bill has not been without critics. Recently, the idea of the voter's bill of rights,⁴⁷ which includes an obligation for voters to study the ballot and the candidates, has been challenged in court as a modern-day analogy to unconstitutional literacy tests.⁴⁸ Notwithstanding, the ultimate legislative reforms focused on areas where the largest and most visible problems occurred.

Intended to respond to the critical deficiencies in the Florida election laws, voter reform in the bill can be categorized into five areas.

44. Both the National Association of State Legislatures and Florida Governor Bush's Special Task Force on Election Reform suggested this critical reform.

45. The National Commission on Federal Election Reform led by former Presidents Carter and Ford specifically made this suggested reform in their report.

46. The Florida Election Reform Act of 2001, 2001 Fla. Laws ch. 2001-40 (2001).

47. *Id.* (codified at FLA. STAT. § 101.031(2) (2001)). The new act requires a 10-point list of voter's rights be published and posted inside every precinct in the state. *Id.* The Voter's Bill of Rights includes the right of a voter to 1) vote and have his or her vote accurately counted; 2) cast a vote if he or she is in line when the polls are closing; 3) ask for and receive assistance in voting; 4) receive up to two replacement ballots if he or she makes a mistake prior to the ballot being cast; 5) an explanation if his or her registration is in question; 6) if his or her registration is in question, cast a provisional ballot; 7) prove his or her identity by signing an affidavit if election officials doubt the voter's identity; 8) written instructions to use when voting, and, upon request, oral instructions in voting from election officers; 9) vote free from coercion or intimidation by election officers or any other person; and 10) vote on a voting system that is in working condition and that will allow votes to be accurately cast. *Id.*

The act also enumerates a list of voter responsibilities, which include the responsibility to 1) study and know candidates and issues; 2) keep his or her voter address current; 3) know his or her precinct and its hours of operation; 4) bring proper identification to the polling station; 5) know how to operate voting equipment properly; 6) treat precinct workers with courtesy; 7) respect the privacy of other voters; 8) report problems or violations of election law; 9) ask questions when confused; and 10) check his or her completed ballot for accuracy. *Id.*

48. Alisa Ulferts, *Lawsuit: 'Jim Crow' Taints Vote Law*, ST. PETERSBURG TIMES, Aug. 16, 2001.

A. *Voting Technology: Improving Balloting Accuracy and Understandability*

Arguably, the major villain of the 2000 election was the punchcard machine used in forty Florida counties, which failed to record many voters in an accurate fashion. The bill has addressed this problem by requiring local Supervisors of Elections to use better voting systems.⁴⁹ Since this requirement necessitates substantial capital, the Legislature has provided some funding.⁵⁰ Moreover, the Legislature restricts acceptable voting systems to touch-screen and scanning machines,⁵¹ provided that the Florida Division of Elections reviews and certifies each system to be utilized in each county.⁵²

One of the hallmarks of this Act is the abolition of punchcard voting.⁵³ After the bill, the two authorized modes of voting are (1) scanner voting, which has been available in some Florida counties and (2) touch-screen voting.⁵⁴ Touch-screen voting has the advantage of being simple, but is also quite expensive. Interestingly, touch-screen voting is in place in Brazil and was used in the country's last national election. Florida will see how this process works as early as 2002's general election. Moreover, the Secretary of State of Florida is obligated under the new bill to review the machines, the systems, to certify them and to certify procedures.⁵⁵ The Secretary is also charged with certifying procedures for any recounts.⁵⁶

B. *Maximizing Voter Participation*

There were charges of voter purges that wrongfully denied citizens their right to vote. The reforms establish provisional voting that will allow a voter to execute a ballot while at the polls, which will be later checked for validation.⁵⁷ Provisional voting would allow individuals who are not found to be registered in any given precinct the ability to vote provisionally. Their registration would later be reviewed and determined if they in fact were registered and then allowed to vote if they had not been properly registered then their vote would be discarded.⁵⁸

49. 2001 Fla. Laws ch. 2001-40.

50. *Id.*

51. *Id.* (codified at FLA. STAT. § 101.5603(4) (2001)).

52. *Id.*

53. *Id.*

54. *Id.* (codified at FLA. STAT. § 101.5603(4) (2001)).

55. *Id.* (codified at FLA. STAT. § 102.166(3)(a) (2001)).

56. *Id.* (codified at FLA. STAT. § 102.166(5)(c) (2001)).

57. 2001 Fla. Laws ch. 2001-40 (codified at FLA. STAT. § 101.048(2) (2001)).

58. *Id.*

C. *Minimizing Voter Mistakes and Maximizing Accuracy*

Voters believed they voted incorrectly, as the Palm Beach butterfly ballot card evidence indicated. Undervotes and overvotes left votes uncounted. Some voters marked their presidential ballots twice, following incorrect directions instructing them to vote on each page of the Duval County ballot.⁵⁹

Improvements are also sought by more focus on training poll workers.⁶⁰ Further, all proposed ballots are to be reviewed by the State Election Division to establish some uniformity.⁶¹ This manner seeks to avoid another butterfly ballot fiasco. Lastly, a voter bill of rights seeks to place some responsibility on the voter in a “bill of rights.”⁶²

D. *Improving Statutes to Make Them More Consistent, Logical, and Adequate*

The conflicting time frames of the protest phase and election certification has been addressed. Certification of votes takes longer and recounts are automatic. The term “protest” is removed and standards are set for recounts, which narrow the broader standard of “intent of the voter” to a more specific standard designated as a “definite choice.”⁶³ Specific standards will be established for each voting system working with the Division of Elections.⁶⁴

One of the major changes in the post-election process is the abolition of the term protest.⁶⁵ There will be an automatic recount based on any election closer than .25% in a specific jurisdiction.⁶⁶ Those recount procedures will be established by the Secretary of State in advance.

Another major change is the establishment of concrete standards for recounts. This would clearly be a significant change from the law in place at the time of the 2000 Election, which only considered the amorphous “intent of the voter” standard. However, the contest provision remains the same, which therefore allows a challenge based on some of the same issues that existed at the time of the past election.

59. Scher, *supra* note 7.

60. 2001 Fla. Laws ch. 2001-40 (codified at FLA. STAT. § 102.014 (2001)).

61. *Id.* (codified at FLA. STAT. § 101.151(8)(a) (2001)).

62. *Id.* (codified at FLA. STAT. § 101.031(2) (2001)).

63. 2001 Fla. Laws ch. 2001-40.

64. *Id.* (codified at FLA. STAT. § 102.166(5)(b) (2001)).

65. *Id.*

66. *Id.* (codified at FLA. STAT. § 102.166(1) (2001)).

E. Technical Compliance with Election Law Requirements

With respect to the overseas absentee ballots and absentee ballots in Martin and Seminole Counties, the votes were ultimately accepted as in substantial compliance with election laws. The legislative response was to specify standards for overseas ballots which are less restrictive and make them easier to count. The actual language allows electronic voting and reduces the information required for an overseas ballot.⁶⁷

A potential problem is the reliance on computers. While fraud was not an apparent part of this election crisis, election dishonesty likely still exists in the human condition. I think a major concern with substantial reliance on computers in the twenty-first century is that computers are not perfect. A reform instituted in 2001, relying heavily on computers, is somewhat ironic if one remembers the rebellious computer "HAL" in Stanley Kubrick's movie "2001, A Space Odyssey."

Of course, all overseas absentee ballots are still affected by federal laws.⁶⁸ The Florida laws affecting domestic absentees, which previously demanded that voter numbers and social security numbers be included are now no longer needed. Thus, the technical requirements that invalidated many absentee votes will no longer exist.

VIII. CONCLUSION

What was left undone by the Act? Critically, the Act did not address the issue of potential conflicts of interest generated by individuals involved in the political process who are also election officials.⁶⁹ Despite this oversight, the Florida Election Reform Act is a vast improvement. It may in many ways be a nation-wide model.

There is definitely a focus on the areas where the greatest and glaring areas of need appeared, including faulty machines and post-election processes. Punchcard machines will be gone, and post-election processes now have standards and are automatic. However, the contest provision remains in place.

All of these reforms should operate to encourage people to vote because it enhances two important criteria of an honest voting process. First, it allows and encourages more people to vote; second it counts their

67. 2001 Fla. Laws ch. 2001-40 (codified at FLA. STAT. § 101.6951 (2001)).

68. Uniformed and Overseas Citizen Absentee Voting Act, 18 U.S.C. §§ 608-609 (2000).

69. There was some issue to the fact that Secretary of State Harris and Florida Governor Bush were highly involved in George W. Bush's campaign.

votes more accurately. The lingering question is whether the expansive use of computers raises the possibility of a different kind of election crisis than 2000.

If these reforms were in place on November 7, 2000, would the election results be different? Absolutely. The vote totals certainly would be different — more votes would have counted. Whether there would be a different winner is total speculation.