

Florida Sets the Stage in 2000

Unlike the 2004 election, the 2000 election prompted major investigations by U.S. news organizations. Hundreds of journalists in investigative teams descended on the southern part of the state and stayed there for months. The information that resulted from that reporting spike has provided a context in which to view the 2004 election and the allegations of election fraud—and by election fraud we mean an organized effort to alter the actual vote count to the benefit of one candidate or another—surrounding it.

The 2000 presidential election in Florida has been widely viewed as a blemish on American democracy, an anomalous confluence of an uncannily close contest and an unusual assortment of errors in a highly atypical state. Palm Beach County bumper stickers from the period help recall the public assessment:

“We put the ‘duh’ in Florida.”

“If you think we can’t vote, wait till you see us drive.”

“Honk if you voted for Gore. That’s the big button in the middle of your steering wheel.”

“It ain’t over ’til your brother counts the votes.”

But Florida 2000 was not an anomaly. Rather, it exposed the willingness and ability of Bush-Cheney Campaign officials to subvert the will of the electorate.

The lengths to which the state Republican Party, board-of-elections officials, and a major data-gathering company went prior to the election to remove voters likely to support Gore should have served as evidence that something was afoot. If we think that it's inconceivable that a significant number of people in positions of civic and political responsibility would resort to fraud on a scale that could change the outcome of a presidential election, we should just remember what happened in Florida 2000 with the felon scrub list.

In 2000, Florida legally deprived more than 800,000 citizens who had been convicted of felonies of the right to vote.⁴⁸ This represents more than 7% of the Florida voting-age population—a larger percentage than in any other state. And that figure happens to include 31% of the state's voting-age African American males.⁴⁹

Loss of voting privileges in Florida is not simply a collateral consequence of a felony conviction. Historically, the denial of voting privilege has been used as a means to suppress black political power. Like many states, Florida first adopted a felon disenfranchisement statute during Reconstruction when the Fifteenth Amendment and its extension of voting rights to African Americans were ardently contested.⁵⁰

Racial motivations were openly admitted throughout the South. At the 1901 Alabama Constitutional Convention, John B. Knox, president of this gathering, warned the assembled white people of “the menace of negro domination.”⁵¹ As a remedy, he advocated “manipulation of the ballot” by expanding the state's disenfranchisement law to include crimes of “moral turpitude,” crimes that included misdemeanors, and even actions that were not punishable by law. And in 1916, the Mississippi Supreme Court upheld the state's felon disenfranchisement law and ruled, “Restrained by the federal constitution from discriminating against the negro race,

the convention discriminated against its characteristics and the offenses to which its criminal members are prone.”⁵²

Most states subsequently have repealed such restrictions. Florida is one of fourteen that has not, and one of ten that disenfranchise ex-felons for life.⁵³ Although a few other countries deny voting rights to prison inmates, the United States is unique in restricting the rights of nonincarcerated former felons.

The United States is also exceptional for the rate at which it issues felony convictions. In Florida, an offender who receives probation for a single sale of drugs can face a lifetime of disenfranchisement.⁵⁴ Further, felon disenfranchisement has increased dramatically as sentencing rates have surged. The United States presently has the highest incarceration rate in the world; 7 out of every 1,000 Americans are in prison, compared with 1 out of every 1,000 Canadians and less than .5 of every 1,000 Japanese.⁵⁵ Indeed, sociologists Christopher Uggen and Jeff Manza calculate that if former felons had been disenfranchised in 1960 at 2000 rates, John F. Kennedy’s 119,000-popular-vote victory margin in the 1960 presidential election would have disintegrated, and Richard Nixon would have won with a plurality of more than 100,000 votes.

Uggen and Manza calculate that in 2000, Florida disenfranchised 827,200 felons and ex-felons—7.03% of a voting-age population of 11,774,000. Based on felon voting rates in other states and the voting behavior of Floridians matching felons in terms of gender, race, age, income, labor-force status, marital status, and education, they estimate that 155,000 of these felons would have voted for Gore in 2000 and 70,000 would have voted for Bush, resulting in 85,000 net votes for Gore in Florida.⁵⁶

FAUX FELONS DISENFRANCHISED

In 1999, shortly after Jeb Bush became governor and Katherine Harris took over as secretary of state, Florida embarked on a proj-

ect to produce a master list of former felons who would then be scrubbed from voter rolls. Florida devoted unprecedented resources to the task. In 1998, under the purview of Katherine Harris's predecessor, the Florida Department of Elections gave Database Technologies Inc. (DBT) a contract for a first-year fee of \$2,317,800 to scrub the voter rolls. (The firm previously doing the work for the Florida Board of Elections had been awarded the job for a bid of \$5,700.) The terms of this contract were not publicly disclosed.⁵⁷

Greg Palast reports that even for an ambitious effort, this payment on a per-record basis was more than ten times industry norms.⁵⁸ The state and DBT justified this unusually high figure based on contract requirements that called for "manual verification using telephone calls and statistical sampling."⁵⁹ However, it appears that DBT was paid such a grand sum precisely *not* to verify names. One list from DBT included 8,000 names from Texas supplied by George Bush's state officials. These 8,000 Florida voters were all listed as having been felons in Texas. As it turns out, almost none were felons. Nearly all had committed only minor violations and misdemeanors. Typical was Reverend Willie Whiting, who was removed from the voting rolls for a speeding ticket twenty-five years earlier.⁶⁰

Under orders from Harris's office, DBT provided matches of anyone with a close name. Thus, for example, John Jackson is a black man who had served time in Texas, so Johnny Jackson Jr., a black man in Florida with the same birth date, was purged from the registration rolls.⁶¹ DBT used lists of former felons that included names and birth dates and race, but counted as a "match" names that were only approximate. DBT specifically wrote Harris's office to say that their name-match criteria would include a lot of non-felons, and Harris's office advised them in writing to lower the name-match criterion further to 85%. All told, DBT generated a list of 82,389 voters to purge from registries.⁶²

DBT subsequently tried to defend their lists by claiming they were 85% accurate.⁶³ But that would still mean that well over 10,000

mostly minority, poor, and Democratic Floridians were illegally disenfranchised—more than twenty times Bush’s margin of victory in the state. Plus, where verification was attempted, the accuracy of the list was nowhere near 85%. Officials in Leon County, Florida, tried to verify the 694 names on the list from Tallahassee and found only 34 to be a match—a 5% accuracy rate.⁶⁴

Robert E. Pierre reported in the *Washington Post* that responsibility for this faulty voter purge lies with Harris’s office, not DBT.

From the beginning, Database Technologies raised serious concerns that non-felons could be misidentified. . . . “Obviously, we want to capture more names that possibly aren’t matches,” said Emmett “Bucky” Mitchell, who headed the state purge effort, in a March 1999 e-mail to Database Technologies product manager Marlene Thorogood, who had warned him of possible mistakes. . . . Clay Roberts, director of the state’s division of elections, confirmed the policy. . . . “The decision was made to do the match in such a way as not to be terribly strict on the name.” “We warned them,” said James E. Lee, vice president of communications for the company. “The list was exactly what the state wanted. They said, ‘The counties will verify the information, so you don’t have to.’”

Florida officials neither sought reimbursement nor penalty, but rather awarded DBT another contract renewal, bringing total fees to over \$4 million.⁶⁵

EFFORTS TO SUPPRESS THE AFRICAN AMERICAN VOTE

Following the election, the United States Commission on Civil Rights (USCCR) and the National Association for the

Advancement of Colored People (NAACP) issued reports that documented a wide variety of vote-suppression measures targeting black voters.⁶⁶

In south Florida in 2000, the state's most Democratic region, early voting was hampered by a lack of preparation and staffing.⁶⁷ Polling places did not open on time, equipment did not work, and the systems could not handle the volume of voters. Predominately white precincts got laptop computers to correct bureaucratic errors; black precincts did not. In Tampa, ten white precincts got laptops; none went to districts with large black populations. Clerks trying to call the office of the state supervisor of elections were often unable to get through.⁶⁸

Those voters whose names did not appear on the registration rolls because of felon scrub lists should have been offered affidavit ballots, but testimony indicates that voters who requested the provisional ballots were often denied them.⁶⁹

The Leadership Conference on Civil Rights reported that poll workers in minority neighborhoods "were instructed by elections officials to be particularly strict in challenging voter qualifications because of 'aggressive' voter registration and turnout efforts."⁷⁰ In Osceola County, for example, Hispanic voters were told to produce two forms of identification, even though under state law only one is required. A Palm Beach County resident testified that black voters were asked to show photo identification while she and other white voters were waved through with no such requests. Stacy Powers, a news director at Tampa's WTMP, challenged the poll manager's actions to prevent those without such identification from voting. "She told me not to get snippy with her," said Powers, who was forced to leave the polling place.⁷¹

The USCCR report documents polling places moving without notification and closing early, and people in line by 7:00 p.m. not being permitted to vote. Julian Borger of the *Guardian* of London reported several forms of police harassment, subsequently corrob-

orated by USCCR hearings, including a police vehicle-inspection blockade near a polling place in a black precinct outside of Tallahassee.⁷²

BAD BALLOTS

In 2000 Florida had a significant exit-poll discrepancy, and as it did in 2004 the discrepancy favored Bush. Suppressed votes aside, 2000 Florida exit polls projected a 7.3% Gore victory. What happened to that projected victory margin? As in 2004, we see questionable practices involving ballots and voting technologies, and an exit poll whose data has never been fully reviewed or explained. The problems in Florida with the butterfly ballots, punch-card ballots, and the incompletely detached chads were reported at length. But the real issue both then and now is not about technology alone, but rather how public officials can use their power to manipulate technology and thereby the vote counts.

In *Jews for Buchanan*, John Nichols notes the sad irony of elderly Holocaust survivors miscasting their votes for a politician whose politics are tinged with anti-Semitism. Republicans subsequently denied the butterfly ballot had any impact. Karl Rove claimed that Buchanan's Reform Party had 16,695 registered voters in Palm Beach County, when it had only 700.⁷³ Bill O'Reilly dismissed the voters as "morons." "Are you supposed to go in and pull the ballot for them?" he asked.⁷⁴ Of course, lever "pull" ballots are only used in the Northeast, and poll workers are, in fact, supposed to help confused voters. Ann Coulter presented another Bush-team spin:

I love these jackasses claiming they meant to vote for Gore but—whoops!—slipped and pulled the lever for Buchanan instead! Oh really. Let's pretend that's true. Sorry, but that's one of the disabilities of being a political party that preys on

the stupid. Sometimes your “base” forgets it’s Election Day, too. Live by demagoguing to the feeble-minded, die by demagoguing to the feeble-minded.⁷⁵

The problem wasn’t the voter. Don A. Dillman, who has researched the design of paper questionnaires, made the following observation the day after the election:

I’ve never seen one set up like this. It’s very confusing the way they have put things on the right side together with things on the left side. . . . If you passed over the first candidate to go for the second candidate, it’s logical that you’d punch the second hole.⁷⁶

The butterfly ballot cost Al Gore more than 15,000 net votes. It cost him more than 2,000 votes attributed to Buchanan, whose punch hole was located between that of Bush and Gore, and to Socialist candidate David McReynolds, whose punch hole was located to the right of and below Lieberman’s name. Buchanan was awarded 3,407 Palm Beach County votes; he himself estimated his true vote to be 300 to 400.⁷⁷ Buchanan’s estimate corresponds with statistical analyses comparing his Palm Beach vote with other Florida counties and projections based on his absentee votes, which did not use the butterfly ballot. McReynolds received almost as many votes in the county (302) as in the whole rest of the state put together (320), even though Palm Beach County represented only 7% of the Florida electorate.

Although Palm Beach County punch-card instructions read, “Vote for Group” (meaning the presidential and vice presidential candidates), if a voter made two punches this would result in a rejected ballot. In the county, 15,371 ballots contained votes for Gore and another candidate; 3,751 contained Bush and another candidate. Thus, the poor design of the ballot cost Gore between 11,000

and 12,000 net overvotes in rejected ballots, in addition to the votes miscast for Buchanan and McReynolds.

UNCOUNTED VOTES

When Harris certified a 537-vote victory for George Bush in the Florida presidential election, 175,010 Election Day ballots were still uncounted. These uncounted ballots were rejected by tabulating machines as having no vote cast for president (undervotes) or as having more than one vote cast for president (overvotes). And they remained uncounted despite Florida law and legal precedent⁷⁸ because the U.S. Supreme Court intervened to stop the manual count ordered by the Florida Supreme Court.

The uncounted ballots have since been analyzed independently, most thoroughly by the National Opinion Research Center (NORC), a nonprofit research group based at the University of Chicago. The NORC data reveals that despite all the legally and illegally disenfranchised voters, and despite the other obstacles faced by Democratic voters, including the butterfly ballot and blockades, Gore would not only have won, but would have done so by a large margin, almost 50,000 votes.

TABLE 2.1: THE UNCOUNTED VOTES

	BUSH	GORE	OTHERS, UNMARKED OR UNATTRIBUTABLE	TOTAL
UNDERVOTES	13,055	14,332	33,803	61,190
OVERVOTES	24,288	70,020	19,512	113,820
TOTALS	37,343	84,352	53,315	175,010

Source for the data: See tables 2.2, 2.3, 2.4.

The numbers in table 2.1 indicate a net gain of more than 47,000 votes for Gore based on a liberal standard for attributing votes; that is, any indication of a vote for either Gore or Bush.

But no matter what standard is used, Gore would have emerged victorious.

Consider first the undervotes, ballots for which, according to the machines that tabulated the votes, a choice for president was not properly entered. These ballots were the ones that were the focus of so much media attention in the weeks after the 2000 election.

The accounting firm BDO Seidman conducted an audit of the undervotes for the *Miami Herald*, *Knight Ridder*, and *USA Today*. According to the audit, 54,350 of the undervotes came from punch-card ballots. Of these ballots, 23,856 indicate no mark for president or partial marks for more than one candidate (the latter were subsequently reclassified as overvotes); the remainder fall into the categories indicated in tables 2.2 and 2.3.

TABLE 2.2: MARKED PUNCH CARD BALLOT UNDERVOTES IN FLORIDA,
2000 PRESIDENTIAL ELECTION

	DIMPLE	PINPRICK	DETACHED 1 CORNER	DETACHED 2 CORNER	DETACHED 3 CORNER	PUNCHED CLEANLY	TOTAL BALLOTS
BLANK	322	115	16	66	60	3,275	3,854
BUSH	10,004	750	132	304	512	456	12,158
GORE	10,745	807	79	255	297	970	13,153
OTHERS	991	230	7	11	9	81	1,329
TOTAL	22,062	1,902	234	636	878	4,782	30,494

Source for the data: *The Miami Herald Report*, p. 231. See Further Readings.

The remainder of the undervotes, 6,761, came from optical-scan ballots; 4,419 of these ballots indicate no mark for president. The rest fall into the categories indicated in table 2.3.

TABLE 2.3: MARKED OPTICAL-SCAN BALLOT UNDERVOTES IN FLORIDA,
2000 PRESIDENTIAL ELECTION

	CIRCLED OR MARKED CANDIDATE OR PARTY	UNDER- LINED CAND- IDATE	CIRCLED OR PARTIALLY FILLED BUBBLE OR ARROW	MARKED X OR CHECKED	ERROR WITH WRITING INSTRU- MENT	WRITE-INS	TOTAL BALLOTS
BLANK	0	0	0	1	0	7	8
BUSH	198	32	105	274	216	35	860
GORE	369	40	161	367	187	55	1,179
OTHERS	33	1	5	23	14	219	295
TOTAL	600	73	271	665	417	316	2,342

Source for the data: *The Miami Herald Report*, p. 232.

The reason so few people know the degree to which the failure to count the votes distorted the official certification numbers is that politicians, litigants, and the press incorrectly focused exclusively on these undervotes. Undervotes, in particular incompletely punched chads, were the subject of most of the media coverage, many of the lawsuits, and the Florida Supreme Court ruling.

Two ballot studies completed before the NORC study focused exclusively on undervotes. The *Miami Herald* recount examined 10,000 undervotes in Miami-Dade County, counting missed “clean punches,” and found that Gore would have gained no more than 49 votes if a recount of Miami-Dade ballots had been allowed. “That would have been 140 too few to overcome Bush’s lead, even when joined with Gore gains in Volusia, Palm Beach and Broward counties—the three other counties where Gore had requested manual recounts,” the *Herald* reported.⁷⁹ The *Miami Herald* erred, however, in the conclusions it drew from its Miami-Dade recount. The *Palm Beach Post* completed a manual recount of undervotes in Palm Beach County on January 27, 2001, and reported a net gain of 682 votes for Al Gore. Along with the 49 votes found in Miami-Dade, Bush’s 537-vote victory turns into a 194-vote defeat.

As mentioned above, the *Miami Herald* also sponsored, along with *Knight Ridder* and *USA Today*, a statewide study of undervotes conducted by the accounting firm of BDO Seidman. These BDO Seidman findings were reported in much the same way. Newspapers presented several scenarios. In some of them, Gore would have failed to make up the 537-vote certified Bush margin of victory. This is especially true in scenarios in which manual counts take place only in the four counties in which Gore sued.

Most newspapers tended to emphasize this scenario. But it's difficult to see why, other than to provide an excuse to legitimize the election. After all, the four-county recount requested by Al Gore was rejected by the Florida Supreme Court's ruling on December 8, 2000, which instead ordered a statewide recount.

Lance deHaven-Smith, a professor of public policy at Florida State University, observed that, under any of the five most reasonable interpretations of the Florida Supreme Court ruling, Gore does, in fact, more than make up the deficit:⁸⁰

- ▶ Prevailing statewide standard—for punch cards, accept a single-corner-detached chad; for op-scan, any affirmative mark, as indicators of voter intent. Gore wins by 9 votes.
- ▶ County-by-county standards, which were in use at the time. Gore wins by 56 votes.
- ▶ Two-corner-detached statewide—requires at least two corners detached as indicator of voter intent. Gore wins by 146 votes.
- ▶ Most restrictive. Accepts only perfect ballots that machines missed or ballots with unambiguous expressions of voter intent, including punch-card ballots where voters made choices with pencil markings. Gore wins by 156 votes.
- ▶ Most inclusive. Applies a uniform standard of dimple or

better to punch cards statewide; for op-scan, any affirmative mark, as indicators of voter intent. Gore wins by 148 votes.

The story that was really missed, however, is the ignoring of the overvotes. Neither logic nor Florida law suggest why overvotes should not be assessed for determining voter intent. And, in fact, Judge Terry Allen, the judge authorized to oversee the state count, issued a ruling to that effect hours before the U.S. Supreme Court shot down the effort. In interviews, Allen reiterated his position: “Logically, everything the Florida Supreme Court said was, ‘You have to look at the clear intent of the voter.’ Lewis said, ‘Logically, if you can look at a ballot and see, this is a vote for Bush or this is a vote for Gore, then you would have to count it. . . . Logically, why wouldn’t you count it?’”⁸¹

Unlike the earlier studies, NORC, which was commissioned to do the work by a media consortium of eight news organizations (*New York Times*, *Wall Street Journal*, *Tribune Company*, *Washington Post*, *Associated Press*, *St. Petersburg Times*, *Palm Beach Post*, and CNN) focused equally on overvotes. They found that 19,512 of the 113,820 rejected overvotes contained no marks for either Bush or Gore, or marks for both. The remaining 94,308 fall into the categories reported in table 2.4.

TABLE 2.4: ALLOCABLE OVERVOTES IN FLORIDA, 2000 PRESIDENTIAL ELECTION

	UNCOUNTED WRITE-IN VOTES	TWO-MARK OVERVOTES	MULTIPLE- MARK OVERVOTES	ALL ALLOCABLE OVERVOTES	
BUSH	697	15,236	8,355	24,288	26%
GORE	1,544	39,148	29,328	70,020	74%
TOTAL	2,241	54,384	37,683	94,308	

Source for the data: National Opinion Research Center. “NORC Florida Ballots Project.” See Further Readings.

Write-ins are ballots on which there is a mark for either Bush or Gore, and that candidate’s name is also written in. Two-mark over-

votes are ballots on which either Bush or Gore is marked and one other mark for president is also on the ballot. Multiple-mark overvotes are ballots on which either Bush or Gore is marked and more than one other mark for president is also on the ballot.

While it's possible that in some cases these allocations may not represent the intent of the voter, the great bulk undoubtedly do. In most cases, it's easy to understand both the intent and why the "error" was made. On the butterfly ballots in Palm Beach County, for example, it said "vote for the group," so punches were made both next to the presidential candidate and below, next to the vice presidential candidate. In others, the ballot itself gave incorrect instructions. More than 20% of ballots in black precincts of Duval County were rejected because the listing of presidential candidates was split over two pages, and on the sample ballot, voters were instructed to mark every page. Had the most reasonable interpretation for the broad majority of overvotes been accepted, Gore would have won by more than 40,000 votes, despite all the other problems with ballots that cut into his totals. Even had only those ballots been counted in which the voter emphatically tried to ensure the vote by writing in Gore's name as well as marking it, Gore still would have won.

Unfortunately, most news organizations reporting on the audit chose to bury the story about overvotes. Deep within the *New York Times* article, "Study of Disputed Florida Ballots Finds Justices Did Not Cast the Deciding Vote," reporters Ford Fessenden and John M. Broder write, "More than 113,000 Florida voters cast ballots for two or more presidential candidates. Of those, 75,000 chose Mr. Gore and a minor candidate; 29,000 chose Mr. Bush and a minor candidate. Because there was no clear indication of what the voters intended, those numbers were not included in the consortium's final tabulations."⁸²

As part of the historical context in which the 2004 election took place, it's important to highlight the nonrandom nature of the

“errors.” If the missed votes were a function of clerical error or out-dated technology, errors would be distributed almost equally, in the same percentage as the counted votes. But they’re not. Counties and precincts more likely to support Bush disproportionately had technologies where errors would be brought to voters’ attention so that they could be corrected and votes would be counted. Counties and precincts with large African American populations, which were more likely to support Gore, had technologies where ballots would predictably go uncounted. The U.S. Commission on Civil Rights (USCCR) study concludes that although blacks made up 11% of Florida’s voting population, they cast 54% of the uncounted ballots.⁸³

ILLEGALLY COUNTED ABSENTEE BALLOTS

Bush also picked up votes, and Gore lost votes, because of the disparate ways in which absentee ballots were counted. In Republican-majority counties, absentee ballots cast by the military and by Republicans (in Florida, party identification is displayed on the outside of envelope) were much more often accepted than absentee ballots cast by civilians and by Democrats in Democratic-majority counties.

Jeffrey Toobin, in his book on the Florida recount, *Too Close to Call: The Thirty-Six-Day Battle to Decide the 2000 Election*, reports that lawyers for the 2000 Bush-Cheney Campaign successfully pressured county officials to accept illegal absentee ballots that lacked valid postmarks, witness signatures, proof of date, or other errors on expected Bush votes while urging rejection of those same types of ballots when on suspected Gore votes.

In an analysis of 2,500 overseas absentee ballots, the *New York Times* found that 680 were questionable. Of those, 80% came from voters registered in counties carried by Bush. In Bush counties, 62% of ballots that provided no proof they were mailed before Election

Day were counted, while in Gore counties only 18% of ballots that lacked such proof were counted.

As for domestic absentee ballots, in Bush counties, 71% of ballots with domestic postmarks that were received after November 7 were counted, compared to 31% of those received in Gore counties.

While Secretary of State Harris and the 2000 Bush-Cheney Campaign representatives insisted that the election had to be certified seven days afterward, Florida election officials continued to count absentee ballots received up to ten days after the election. Indeed, half of the 4,256 overseas ballots that were received after November 7 were received on November 16 and 17, raising the question of whether they were illegally cast after Election Day.⁸⁴

Absentee ballots have long been recognized as vulnerable to fraud because it is difficult to ensure that the ballots are cast by the voters who are identified as casting the ballots and because the secrecy of the ballot can be compromised.

Indeed, absentee ballots were the source of the fraud in the 1998 Miami election of Xavier Suarez as mayor. Investigative reporting by the *Miami Herald* uncovered forged signatures, fake addresses, paid vote brokers, ballot tampering, and absentee ballots filed on behalf of dead people, which prompted investigation into the accusations and the removal of mayor-elect Xavier Suarez from office. Suarez was forced to step down after 111 days in office and the *Miami Herald* would go on and win a Pulitzer Prize for investigative reporting.

Suarez, who had been a Democrat, switched party affiliation and in 2000 worked in Florida to elect George W. Bush. On November 8, 2000, he told Evan Shapiro of Feedmag.com that he “helped fill out absentee ballot forms and enlist Republican absentee voters in Miami-Dade County” for the 2000 presidential election. “Dade County Republicans have a very specific expertise in getting out absentee ballots. I obviously have specific experience in this myself,” he said.⁸⁵

HOW ACCURATE WERE THE MACHINES THAT TABULATED THE BALLOTS?

A final, important, remarkably overlooked set of questions concerns the ballots that the machines did count: were they accurately tabulated?

The exit polls indicated a 7.3-point Gore victory. Voter News Service (in 2000 VNS was the predecessor to NEP) explained away the error as due to a combination of overstating Democratic voters and other errors, but Mitofsky, who worked that election as an analyst on the CBS/CNN decision team, said, “Of the thousands of races I have participated in, this is only the second time I have seen this much solid evidence for a projection that turned out wrong.”⁸⁶

Commentators like Jeffrey Toobin, who have looked at the uncounted and problematic ballots, have presumed that they are the cause of the discrepancy between the exit polls and the official count.⁸⁷ Accounting for the documented, but uncounted ballots, leads to a 50,000 vote victory for Gore, but that 50,000 represents a small part of the 7.3-point exit-poll discrepancy. Even if we suspect that as many as 10,000 Bush-Cheney absentee ballots are illegitimate, that still amounts to a victory margin of only 60,000, or less than 1 percentage point. A victory margin of 7.3% of Florida’s electorate would represent 435,000 votes.

Four days after the election, James Baker and the Bush team began to state dismissively that the votes had already been counted and recounted, and that Bush was the winner of both counts.⁸⁸ But this was a lie. The only thing “recounted” was the lie itself. The automatic machine recount to which Baker referred was never completed. Rather, one quarter of the votes—sixteen counties, representing 1.25 million votes—were never even retabulated.⁸⁹

TABLE 2.5: ADDING IN THE LOST VOTES

	BUSH CHENEY	GORE LIEBERMAN	OTHERS	TOTAL
CERTIFIED RESULTS	2,912,790 48.85%	2,912,253 48.84%	138,067 2.32%	5,963,110
BUTTERFLY BALLOTS		3,300	(3,300)	5,963,110
UNDervOTE— PUNCH CARDS	12,158	13,153	1,329	5,989,750
UNDervOTE— OPTICAL SCAN	860	1,179	295	5,992,084
OVERVOTES WITH INTENT	23,802	68,620	1,886	6,086,392
SUM	2,948,982 48.46%	2,998,505 49.27%	138,277 2.27%	6,085,764

Source for the data: See tables 2.2, 2.3, 2.4.

Manual counts were performed in only three out of sixty-two counties. Elsewhere, there was no systematic check of the machines against paper ballots to ensure that they were, in fact, tabulating the votes accurately. In Miami-Dade, the Democratic county with the most suspicious results, the manual count was stopped and never completed, having been halted by the infamous “Brooks Brothers” mob of Republican congressional staffers.⁹⁰ It is disturbing that in an election so close no one demanded to verify the accuracy of the tabulating machines, given the exit-poll discrepancy and some particularly suspicious numbers. For example, a VNS memo stated, “The exit poll in Tampa was off by 16% due to an overstatement of the vote for Gore.”⁹¹

Two “errors” caused the networks to call the election for Bush, which in turn led Gore initially to concede. These errors involved mistabulations by machines manufactured by Global Elections Management Systems, Diebold Election Systems’ predecessor. One apparent data-entry error in Brevard County led to 4,000 votes

being lopped off the Gore total. The other, larger error subtracted 16,022 votes from Gore's total in Volusia County and distributed it to other candidates, including Bush. The *Washington Post* and CBS reported that this was due to a "faulty memory card."⁹²

Based on these numbers, the Fox News election decision team, led by John Ellis, first cousin of George W. and John Ellis (Jeb) Bush, called Florida for Bush at 2:16 a.m. Other networks soon followed, and Gore called Bush to concede, setting up the post-election media portrayal of Bush as the president-in-waiting and Gore as the tarrying loser unwilling to get off stage. Computer scientists say, however, that a faulty memory card would be extremely unlikely to cause the Volusia County subtraction of Gore votes. A memory card is like floppy disk. When a disk goes bad, your computer will fail to read the file, and will crash or give you an error message. It won't replace one number with another. Bev Harris, author of *Black Box Voting*, obtained Diebold internal memos that cast doubt on this "explanation." For example, Ken Clark, Diebold's manager of research and development, in a January 18, 2001, 1:41 p.m. e-mail, wrote:

My understanding is that the card was not corrupt after (or before) upload. They fixed the problem by clearing the precinct and re-uploading the same card. So neither of these explanations washes. That's not to say I have any idea what actually happened, it's just not either of those. . . . The problem is, it's going to be very hard to collect enough data to really know what happened. The card isn't corrupt so we can't post-mortem it (it's not mort).⁹³

PARTISAN USE OF POWER

According to Senator Richard Lugar, the 2004 U.S. exit-poll discrepancy is not comparable to the Ukraine exit-poll discrepancy that

was decried as evidence of fraud, because the United States is a mature democracy, whereas Ukraine is a “nascent democracy” where we have concrete physical fraud such as voter intimidation.⁹⁴

But for a blunt, blatant disruption of the democratic process, one need look no further than the “Brooks Brothers” mob that stopped Miami-Dade’s 2000 vote recount. In the early morning of November 22, as Broward completed a manual count and Palm Beach plodded forward erratically, Miami-Dade’s recount had just gotten started. By midmorning, that count had yielded a net gain for Gore of 157 votes.⁹⁵ The party officials doing the recount were prevented from continuing their work, however, by a mob subsequently identified as congressional staffers organized by then–Republican House majority whip Tom DeLay of Texas. Rep. John Sweeney (R.-N.Y.), himself indebted to DeLay for campaign and assignment support,⁹⁶ helped lead the charge, screaming, “Shut [the count] down!”⁹⁷ As John Nichols reported, cameras captured the scene that followed:

Dozens of neatly attired, carefully coiffed “radicals” stormed through the hallways of the Clark Building, punching and kicking local Democrats, trampling people, and ultimately crowding into a narrow hallway outside the glass doors of the office of the Miami-Dade supervisor of elections. . . . “Stop the count” they screamed as their leaders banged fists on the glass. Rumors came from the mob that a thousand angry Cuban Americans were massing outside the building to storm it—no idle threat in Miami, a town still raw with tension from the Elian Gonzalez clashes of earlier in the year.⁹⁸

The county-canvassing board then terminated the count in Miami-Dade, and Katherine Harris ruled that the official vote would revert to the machine tallies, discarding even the votes already counted—the 157 net gain for Gore.

SUPREME DECISION

Despite a month of Bush team bullying and Gore team prevaricating, the Florida court system fashioned a plan for a reasonable, statewide count of ballots the machines missed. Under the direction of Leon County Circuit Court Judge Terry Lewis, the entire state was on target for a statewide count of Florida's undervotes. Then the U.S. Supreme Court intervened.

When the Bush campaign initiated proceedings in federal court, few legal scholars thought there was any chance that the U.S. Supreme Court would take up the case. Solicitor General Theodore Olsen represented Bush before the Supreme Court only because no one of higher stature would accept the case. James Baker's first choice had been John Danforth, the highly regarded former senator from Missouri. Jeffrey Toobin in *Too Close to Call* writes, "Danforth was appalled. . . . He predicted that Bush's chance of winning in federal court was 'close to zero.' Federal courts just don't tell states how to run their elections, especially before a candidate has proved that the process harmed him in a particular way."⁹⁹

The reasons the court should not have taken the case go well beyond Danforth's reservations. Justice John Paul Stevens wrote in his dissent on stopping the count, "The Florida court's ruling reflects the basic principle, inherent in our Constitution and our democracy, that every legal vote should be counted." Justice David Souter in his dissent of the final decree wrote, "The Court should not have reviewed either *Bush v. Palm Beach County Canvassing Board* . . . or this case, and should not have stopped Florida's attempt to recount all undervote ballots." And Justice Stephen Breyer added, "And whether, under Florida law, Florida could or could not take further action is obviously a matter for Florida courts, not this Court, to decide."

But the Supreme Court did take up the case, overruled the Florida court, and stopped the recount, awarding the presidency to

George W. Bush. The decree stopped a fair and orderly count, based on a painful twisting of the equal-protection clause of the Fourteenth Amendment, a bitter irony given the disenfranchisement of the black Americans the amendment was originally passed to protect. Alan Dershowitz of Harvard Law School called it “the single most corrupt decision in Supreme Court history,” a decision based not on law but on the desire for “partisan advantage” and “personal gain.”¹⁰⁰

Indeed, the ruling was so bizarre it stumped the correspondents who were reporting the decision. They couldn’t understand for whom the court had ruled. Bush himself, watching CNN, complained of the terrible ruling until Rove informed him that the court had ruled for him.¹⁰¹

Jamin B. Raskin, professor of constitutional law at American University, wrote, “[The decision was] demonstrably the worst Supreme Court decision in history. *Bush v. Gore* changes everything in American law and politics. . . . Dred Scott was, by comparison, a brilliantly reasoned and logically coherent decision.”¹⁰² Salon summed up the high court’s attitude in its headline: “Supreme Court to Democracy: Drop Dead.”¹⁰³

But no one summed up the majority’s ruling better than Justice Stevens. He wrote:

Although we may never know with complete certainty the identity of the winner of this year’s Presidential election, the identity of the loser is perfectly clear. It is the Nation’s confidence in the judge as an impartial guardian of the rule of law.