

Counting the votes

From the Editors in the [December 20, 2000](#) issue

The extraordinary presidential election ended not with a bang but with a legal whimper from the U.S. Supreme Court. The 5-4 decision in *Al Gore v. George Bush* was a mishmash, provoking four separate dissents and leaving legal scholars with many loose ends and citizens with lots of questions. The court accepted the idea of conducting a statewide manual recount in Florida, but the majority maintained that the Florida Supreme Court failed to provide a uniform standard for reviewing all votes—a failure judged to be a violation of the “equal protection” and “due process” provisions of the Constitution. And anyway, said the court, there was no time for Florida to adopt statewide standards, conduct a recount, and still meet the date for certifying electors. End of Al Gore’s case.

In short, a uniform manual recount was the fair thing to do, but there was no time left to do it. One can’t help wondering what would have happened if the Gore camp had from the start argued for—and the Florida courts had enforced—a statewide standard for recounting ballots. Would we have a different president-elect? We will never know.

The legal principle that united seven of the nine justices, and which proved decisive in shaping the majority opinion, was that votes need to be counted (or recounted) according to the same standard. “Arbitrary and disparate treatment” of different voters must be avoided, the justices said.

This seems a reasonable goal—yet, as Americans learned from the 36-day postelection struggle, it’s a goal that runs counter to the local nature of American elections. Elections are run by more than 3,000 separate counties, each of which has its own budget, its own officials, and its own methods and technology for tabulating votes.

One glaring discrepancy is the use in some counties of the infamous chad-producing punch-card machines, which fail to record voter intent on as high as 4 percent of ballots. That figure comes from a 1992 study of voting in Fulton County, Georgia, as reported by Katie Isenberg in a recent *New Republic* (December 18). By contrast,

high-tech voting machines, which feature ATM-like touch screens or optical scanners, provide a much more reliable indication of voter intent. Some of these machines can even notify voters if they make a mistake, such as voting for two candidates for the same office, and offer them the chance to correct their ballot.

Not surprisingly, the high-tech voting machines are expensive, and are mainly used in wealthy counties that can afford to buy and maintain them. Meanwhile, the cheaper punch-card machines, as Isenberg points out, are disproportionately used in poor, minority communities—which means that the votes of those communities are disproportionately diluted.

In light of the Florida controversies and the Supreme Court's ruling, governments should be motivated to reform and standardize election procedures, and to give the counties the money they need to update their machines. Granted, there are no error-free methods of tabulating votes. But the election of 2000 demonstrated that the current margin of error is too high.