



The Importance of Updating the Help America Vote Act

Joseph Anthony, SUNY Cortland

The “Help America Vote Act” was passed by Congress in 2002 with strong bipartisan support in the wake of the 2000 presidential election famously plagued by voting and ballot problems in Florida. Longstanding and widespread difficulties became evident in that state – such as antiquated voting machines that lost ballots, partisan favoritism in election procedures, and wrongly-purged voter files. Notably, the 2002 law was the first in U.S. history where the federal government developed policies and provided funding for state and local elections. It did not go far enough to ensure fair ballot casting for all voters, and by now it is clear that this 15-year-old law is in many ways outdated and unfunded. An updated version is needed to ensure more accurate elections – and increase public confidence in U.S. electoral democracy.

The Current Decentralized System

Elections in the United States are decentralized, in that most decisions are made by local election authorities with little to no state or federal oversight or funding. Decisions about ballot design, voting equipment, poll worker training, voter registration procedures, the maintaining or purging of voter files, and the number and location of polling places all rest with local officials. Practices are not consistent, so voters in one place can have a completely different experience than those in different jurisdictions. Discretion for localities opens the door to variations grounded in partisan choices by elected local authorities. Yet there are some benefits as well. Separately-operating and locally-accountable arrangements make it next to impossible for any single political party, candidate, or level of government to shift the outcome of all elections at once.

Necessary Improvements

Without fully abrogating local control, ideally Congress should act to update standards and address systemic problems not addressed in the original Help America Vote Act.

- **Mandate standards for voting technology to minimize lost votes.** Different types of locally chosen voting equipment have different error rates. When I interviewed political scientist and voting expert Charles Stewart in 2014, he argued that if optical scan machines had been used instead of punch card machines in the 2000 elections, approximately 500,000 more votes for president would have been counted nationwide. That could have made an enormous difference, given that the 2000 presidential race was decided in Florida by only 537 votes. The 2002 Act banned notoriously inaccurate punch-card voting machines, but did not standardize any other aspect of election technology. Congress should adopt a policy that collects data on voting machine error rates so that, over time, standards can be developed for local election authorities to consult to purchase the most accurate voting equipment.
- **Standardize vote-counting and recount protocols.** Local election authorities determine the chain of custody of ballots, as well as the “intent of the voter” in close recount elections. In the 2000 *Bush v. Gore*

Supreme Court decision, the Justices were alarmed at the scope of variation that had emerged in the process of recounting votes from jurisdiction to jurisdiction. Updated federal legislation should include protocols to be equally applied to determine voter intent. Additionally, a thorough reform should standardize where votes are counted in each jurisdiction (at the polling place or at a central location) and also specify the official chain of custody for receiving and counting ballots.

- **Adopt universal voter registration and identification requirements.** Local election authorities often use their own discretion to determine what constitutes a valid voter registration application, and the design of registration cards varies across states. Adopting one federal voter registration form, universal identification requirements, and standard protocols to determine valid or invalid submissions would greatly reduce arbitrary or skewed exercise of local administrative discretion in determining voter eligibility. This would enable the American public to have faith that voter eligibility is determined in the same way everywhere.
- **Establish non-partisanship in election administration.** A unique aspect of U.S. elections administration is it allows for chief election officials – such as secretaries of state and county clerks – to be either popularly elected on a partisan ticket or appointed by partisan governors. Political scientist Richard Hasen found that in the 2000 election in Florida, election authorities in Republican strongholds (supervised by a Republican Secretary of State) were directed to use more liberal rules for recounting punch-card votes for George W. Bush, while election authorities in Democratic areas were directed to take a much more conservative approach in determining voter intentions during the statewide recount. Potential ways to head off such partisan skew include requiring election supervisors to run on nonpartisan tickets, having a bipartisan committee appoint a person or commission to oversee state elections, and banning election authorities from making campaign contributions or running for additional offices for some years after their terms as election supervisors have ended.
- **Increase and standardize data collection, reporting, and transparency.** No universal framework exists to evaluate the quality of elections or estimate the number of valid votes lost – making it difficult to determine exactly where and how problems occur. Collecting data and reporting the number of lost votes in each jurisdiction will add accountability to the elections process, and make it possible for policymakers to sort out episodic versus general problems.
- **Give the Elections Assistance Commission formal authority.** The “Help America Vote Act” mandated the formulation of the Elections Assistance Commission – a bipartisan commission charged with collecting information and drafting voluntary standards for elections administration at the federal level. Congress should make it a priority to fully appoint and staff the Commission, and give its members authority to require data collection and regular reporting from local and state election authorities.

Right now, the U.S. Congress may not be inclined to enact needed election improvements. Until Congress gains the will to act, legitimate votes will continue to be lost in every election and preventable problems will remain largely undocumented. Nevertheless, viable and potentially popular reforms will remain on the table, policies that could minimize and improve technology error rates, reduce partisan and inconsistent applications of election laws, and increase citizen trust. As 2016 shows, worries will persist until election reform becomes a national priority.

