

## **I. Sizing the Problem**

# Sizing the Problem

Task Force on the Federal Election System

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## *Summary of conclusions*

1. If an election for which the margin of victory is less than a percentage point is within the current technological margin of error, then elections within the error margin are common occurrences. In an average presidential election, the results in two or three states are within the margin of error. Razor-close races for the Senate are just as common, and extremely close contests for governor are even more common. In the last half century, every state but two has had at least one federal or gubernatorial election that was within the one-percent margin of error.
2. Elections that are within the margin of error tax the legitimacy of the federal election system. Overall, Americans express levels of satisfaction with the conduct of democracy that are among the highest in the democratic world. Americans are much less convinced, however, that elections in the United States are conducted fairly. In 2000, in fact, Americans' rating of the fairness of the election was nearly the lowest in all the democratic countries. Unsurprisingly, the perceived fairness of the election is influenced by partisanship. But substantial numbers of Republicans questioned the fairness of the 2000 election, as did women and a majority of blacks. Large margins of error in close elections put a strain on the electoral system that undermines public confidence in the electoral process.

## *The frequency of close federal and statewide elections*

The 2000 presidential election exposed to the nation what local election administrators have long known, that the process of casting and counting ballots is riddled with error. In most circumstances, the error is inconsequential because it is too small to have any plausible effect on the outcome. Most elections in the United States are simply not very close. In a very tight election, however, even a small margin of error in the balloting can mean the difference between winning and losing, as it was in Florida in the 2000 presidential contest.

In Florida and after, the nation learned that a voter's choice cannot readily be determined from something between 1.5 and 2.5 percent of the ballots cast in federal elections. The technical problems involve choices that did not register—the “undervote”—and multiple choices that did—the “overvote.” As a matter of determining the election outcome, neither problem would be very worrisome if the candidate preferences of voters ensnared by technical problems in the balloting simply paralleled

the preferences of all the other voters.<sup>1</sup> But the events in Florida and other analyses suggest otherwise. No matter what the method of balloting, less educated voters will find it harder to cast a ballot correctly than better educated voters. Moreover, depending upon the type of balloting and the availability of assistance, marking a ballot correctly will present special problems for language minorities, the elderly, and persons with physical disabilities.

As a way to size the problem of Election Day mistakes in casting and counting ballots, let us adopt one percent as the level of error that might be consequential in federal elections. If the true “residual vote” (undervote plus overvote) is 1.5 percent, a one percent margin of victory might produce an incorrect outcome if the people whose votes were not counted preferred one candidate over the other by a ratio of five to one. If the true residual vote is 2.5 percent, a one percent margin of victory might produce an incorrect outcome if people affected by the undervote and overvote preferred one candidate over the other by a ratio of 3 to 2. Supposing, then, that an election decided by less than one percent of the votes cast is within the technical margin of error, how widespread is the potential problem?

As the table following shows, the incidence of federal elections decided by less than a percentage point is far more widespread than Florida in 2000. Since 1948, elections for presidential electors have been decided by less than one percent of votes cast 31 times (and by less than two percent 70 times). In 1968, 1972, and 1988, presidential electors were chosen in no states by a margin of less than one percent, but in 1960 six were and in 1948 and 2000 five were. In the 14 presidential elections since 1948, 22 states have seen presidential contests decided within a percentage point (and 40 states have had presidential contests within two points). In a given year, there is a 90 percent likelihood that at least one state will have a presidential election within the one-percent technical margin of error. Presidential elections within the one-percent technical margin of error occur all the time.

**Federal and statewide elections decided by less than two percent and less than one percent (bold) of votes cast, 1948–2000**

State	Presidential	Senatorial	Congressional	Gubernatorial
Alabama	1980	1962, <b>1986</b>	<b>5, 6</b>	<b>1994</b>
Alaska	1960		<b>0, 0</b>	1960, <b>1974</b>
Arizona	<b>1964</b> , 1992	1980	<b>2, 1</b>	1950, 1970, <b>1974</b> , <b>1990, 1994</b>
Arkansas	<b>1980</b>		<b>0, 0</b>	
California	<b>1948, 1960</b> , 1976	1986	<b>9, 20</b>	1982
Colorado	1996	<b>1956</b> , 1972, 1980, 1986	<b>5, 3</b>	<b>1998</b>
Connecticut	1948	<b>1988</b>	<b>10, 7</b>	<b>1948</b> , 1950, <b>1952</b>
Delaware	1948, 1960	1960, 1972	<b>2, 1</b>	1968
Florida	1992, <b>2000</b>	<b>1988</b>	<b>2, 5</b>	1994
Georgia	<b>1992</b> , 1996	1980, 1986, 1992, 1996	<b>3, 1</b>	<b>1966</b>

<sup>1</sup> As a matter of public satisfaction with the electoral process, even randomly distributed errors in the balloting may be consequential. People who have gone to the trouble of voting do not like to hear that their votes may not have been counted.

Hawaii	<b>1960, 1980</b>		<b>2, 0</b>	1998
Idaho	1964	1948, <b>1980</b>	<b>3, 1</b>	1958, 1982, <b>1986</b>
Illinois	<b>1948, 1960, 1976</b>	1984	<b>11, 8</b>	<b>1956, 1972, 1982</b>
Indiana	<b>1948</b>	<b>1962, 1970</b>	<b>13, 7</b>	1960
Iowa	1976, <b>2000</b>	<b>1968</b>	<b>4, 6</b>	
Kansas		1974	<b>1, 4</b>	1974
Kentucky	<b>1952, 1980, 1996</b>	<b>1956, 1984</b>	<b>5, 3</b>	1963
Louisiana		<b>1996</b>	<b>0, 1</b>	
Maine	<b>1976</b>		<b>3, 0</b>	<b>1962, 1970</b>
Maryland	1948, 1968	1958	<b>3, 2</b>	<b>1994</b>
Massachusetts	<b>1980</b>	1954	<b>4, 2</b>	<b>1952, 1962, 1964</b>
Michigan	1948	1952, 1954, 2000	<b>7, 6</b>	<b>1950, 1952, 1960, 1970, 1990</b>
Minnesota	1960, <b>1984</b>		<b>6, 6</b>	1960, <b>1962</b>
Mississippi	1976, 1980		<b>0, 2</b>	
Missouri	1952, <b>1956, 1960, 1968</b>	1982	<b>4, 4</b>	<b>1976, 2000</b>
Montana		<b>1954, 1960</b>	<b>1, 5</b>	1952
Nebraska			<b>2, 1</b>	<b>1958, 1982, 1990</b>
Nevada	1996	<b>1964, 1974, 1998</b>	<b>2, 1</b>	
New Hampshire	1992, 2000	<b>1974</b>	<b>2, 0</b>	1970
New Jersey	<b>1960</b>	<b>1954</b>	<b>2, 5</b>	1961, <b>1981, 1993, 1997</b>
New Mexico	<b>1960, 2000</b>		<b>6, 2</b>	<b>1958, 1960, 1968, 1974, 1978</b>
New York	<b>1948</b>	1970, 1980, 1992	<b>11, 9</b>	
North Carolina	1956, <b>1992</b>	<b>1980</b>	<b>7, 7</b>	
North Dakota		<b>1974, 1986</b>	<b>2, 4</b>	<b>1962</b>
Ohio	<b>1948, 1976, 1992</b>	<b>1964</b>	<b>4, 10</b>	<b>1974, 1978</b>
Oklahoma	1976	<b>1974</b>	<b>2, 1</b>	<b>1970</b>
Oregon	<b>1976, 2000</b>	<b>1954, 1968</b>	<b>2, 2</b>	
Pennsylvania		<b>1956, 1964</b>	<b>15, 11</b>	1958
Rhode Island	1952		<b>0, 2</b>	<b>1956, 1962, 1970</b>
South Carolina	1952, 1980		<b>0, 0</b>	
South Dakota	1976	1956, <b>1962</b>	<b>1, 0</b>	1960
Tennessee	<b>1952, 1956, 1980</b>		<b>1, 4</b>	
Texas	1968	<b>1978</b>	<b>2, 2</b>	<b>1978</b>
Utah		<b>1978</b>	<b>2, 2</b>	1988
Vermont		1980	<b>0, 0</b>	<b>1958, 1984</b>
Virginia	1976, 1996	<b>1978</b>	<b>5, 9</b>	1973
Washington	1988	1986, <b>2000</b>	<b>6, 4</b>	1960
West Virginia		<b>1978</b>	<b>2, 0</b>	1968
Wisconsin	1976, <b>2000</b>	1980	<b>0, 5</b>	<b>1962, 1964</b>
Wyoming		1958, <b>1988</b>	<b>1, 1</b>	<b>1954, 1978</b>
Total				
Less than 1% margin	<b>31</b> elections in 22 states	<b>32</b> elections in 26 states	<b>182</b>	<b>41</b> elections in 25 states
Less than 2% margin	70 elections in 40 states	63 elections in 40 states	365	75 elections in 40 states

Razor-close elections are no less common in elections for other federal offices or for governor. Over 50 years, about 4 percent of all senatorial elections, and about 2 percent of all congressional elections, have been decided by less than one percent of the

popular vote.<sup>2</sup> Over 50 years, about 5 percent of gubernatorial elections have had victory margins below one percent. In any given election year, the likelihood that there is at least one election within the one-percent technical margin of error is 71 percent for senatorial elections and more than 99 percent for congressional elections. In the last half century, only two states, Mississippi and South Carolina, have not had a federal or gubernatorial election decided by less than one percent of ballots cast. It is frequently the case in federal and statewide elections that technical problems in the balloting could be consequential to the outcome.

*The effect of close elections on the legitimacy of the federal election process*

Of course, what was unusual in the 2000 presidential election was not only that the contest in Florida was so excruciatingly close but also that the 2000 election pivoted on Florida and its 25 electoral votes. The 2000 presidential election revealed nearly every imperfection in the federal election system to the nation. What effect did the news have on the American people and their confidence in the democratic process in the United States?

As it happens, Americans as a people express an unusual level of satisfaction with the conduct of their democratic government. As the following table shows, Americans stand near the top of the world’s democracies in the pleasure they express in the way their government works. Although the less fortunate tend to feel less satisfaction with American democracy than the most fortunate, Americans nonetheless express high levels of satisfaction across class, race, and gender lines. The difficulties of the 2000 election had no real effect on Americans’ attitudes toward their democratic system as a whole. Events such as occurred in Florida seem not to have had any bearing on the American people’s regard for the democratic system, at least in the short run.

Satisfaction with the democratic process in 19 democracies

Nation	Percent Satisfied or Fairly Satisfied	Percent Satisfied
Norway	90.3	28.2
Netherlands	88.3	13.0
<b>United States, 2000</b>	80.7	32.1
<b>United States, 1996</b>	80.5	27.7
Australia	78.0	30.9
Great Britain	74.8	16.4
New Zealand	68.5	19.3
Japan	63.5	5.3
Germany	63.4	6.4

<sup>2</sup> The counts for senatorial, congressional, and gubernatorial elections do not include special elections, which tend to be more competitive than scheduled elections because they almost never involve an incumbent.

Poland	63.1	5.8
Spain	62.8	13.9
Czech Republic	61.1	3.7
Israel	53.4	26.8
Republic of China	46.9	36.7
Romania	43.9	20.4
Argentina	42.4	10.1
Hungary	42.2	1.4
Mexico	41.6	9.7
Lithuania	34.5	12.9
Ukraine	9.2	2.2

Source: Comparative Study of Electoral Systems and American National Election Studies, 1996 and 2000.

Americans' confidence in the electoral process is a different matter. In 1996, three quarters of the public expressed confidence that the last election was conducted "fairly," and only 10 percent described it as having been "unfair." In 2000, on the other hand, barely a majority of the electorate concluded that the election had been very fair, and 37 percent decided that it had been unfair.<sup>3</sup> The events in Florida had a clear impact on the faith Americans have in the electoral process.

Was the last election in the United States conducted fairly?

	1996	2000
Very fair	49.3	22.7
Somewhat fair	26.0	29.3
Neither fair or unfair	15.0	10.9
Somewhat unfair	6.1	21.8
Very unfair	3.6	15.3
Total	100.0%	100.0%
(N)	(1513)	(1418)

Source: American National Election Study, 1996 and 2000.

To be sure, one part of people's perception of fairness was agreement with the outcome. In 1996, Democrats were about nine percentage points more likely to conclude that the election was fair than Republicans, presumably because the Democratic candidate had won. In 2000, the partisan divisions turned the other direction, but much more sharply, with Republicans 24 percentage points more likely to think the election fair than Democrats. But Republicans had their qualms about the fairness of the process in 2000 also. In 1996, just 12 percent of Republicans branded the election unfair; in 2000, nearly twice as many did.<sup>4</sup> Among Independents, concerns about fairness increased more than threefold.

Fairness of the last United States election, by partisanship

<sup>3</sup> The questions were asked as part of the 1996 and 2000 American National Election Studies, a nationwide sample of eligible voters. In both years, the interviews were completed in November and December.

<sup>4</sup> We do not know, however, whether Republicans, Democrats, and Independents all thought that the election was unfair in the same way.

	1996			2000		
	Democrats	Independents	Republicans	Democrats	Independents	Republicans
Very fair	55.5	44.0	47.3	15.7	20.2	37.0
Somewhat fair	26.1	26.3	25.6	29.8	26.7	32.9
Neither fair or unfair	12.0	18.3	15.2	9.9	12.3	9.3
Somewhat unfair	4.2	7.3	7.0	24.5	25.1	12.9
Very unfair	2.2	4.2	4.9	20.1	15.8	8.0
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
(N)	(593)	(480)	(429)	(477)	(551)	(365)

Source: American National Election Studies, 1996 and 2000.

But questions about the legitimacy of the federal election process in the wake of the 2000 campaign were not only, or even primarily, partisan sour grapes. In 1996, the most prominent difference between people who believed the election fair and people who did not was not partisanship (which had only a small effect on beliefs) but participation in the electoral system. Voters were more satisfied with the process than non-voters.<sup>5</sup>

In 2000, partisanship still had only a small effect on beliefs, and voters were still more convinced than non-voters that the process was fair. But women and blacks in 2000 found the process deeply suspect. As the tables following show, in 1996 there were virtually no differences between women and men and blacks and whites in their assessments of the fairness of the election. In 2000 the differences were dramatic. Women were about 14 percent more likely than men to conclude that the process was unfair. Blacks were 22 percent more likely than whites to question the fairness of the process. In fact, as one of the latest instances of the perceptual divide between blacks and whites in America, beliefs about the fairness of the 2000 election were perfectly symmetric: 55 percent of whites believed that the 2000 election was conducted fairly and 56 percent of blacks believed that it was conducted unfairly. The 2000 election undermined the public's faith in the electoral process, at least temporarily, and especially within the more disadvantaged segments of American society.<sup>6</sup>

Fairness of the last United States election, by gender

	1996		2000	
	Men	Women	Men	Women
Very fair	49.8	48.9	29.7	17.3
Somewhat fair	25.8	26.3	31.3	27.7
Neither fair or unfair	14.6	15.4	9.2	12.3
Somewhat unfair	6.6	5.6	16.3	26.0
Very unfair	3.2	3.8	13.4	16.8
Total	100.0%	100.0%	100.0%	100.0%
(N)	(679)	(834)	(619)	(799)

<sup>5</sup> This paragraph and the next report results from an analysis that takes into account the other characteristics of individuals, such as their partisanship. In 1996, and again in 2000, people with higher incomes and higher levels of education also professed more faith in the fairness of the electoral process than people with lower levels. Society's haves find more to like in the electoral process than society's have-nots.

<sup>6</sup> Latinos were also less convinced that the election was fair, but the divisions were not as dramatic.

Source: American National Election Studies, 1996 and 2000.

Fairness of the last United States election, by race

	1996		2000	
	Whites	Blacks	Whites	Blacks
Very fair	48.6	54.8	24.8	8.3
Somewhat fair	26.9	19.6	30.5	24.8
Neither fair or unfair	14.8	16.0	11.1	11.0
Somewhat unfair	6.2	5.4	21.6	21.4
Very unfair	3.5	4.2	12.0	34.5
Total	100.0%	100.0%	100.0%	100.0%
(N)	(1302)	(168)	(1132)	(145)

Source: American National Election Studies, 1996 and 2000.

Already in 1996, the United States was only in the middle among democracies in the faith of its citizens in the fairness of its elections. But in 2000, the United States dropped nearly to the bottom, the dissatisfaction of its citizenry exceeded only by the monumentally disgruntled citizens of Israel.

The public's view of the fairness of the most recent election in 18 democracies

Nation	Percent who say Somewhat Unfair or Very Unfair	Percent who say Very Fair or Somewhat Fair
Netherlands	1.9	91.7
Germany	2.0	90.6
Norway	3.1	93.2
Great Britain	4.2	80.5
Czech Republic	4.6	79.8
Hungary	4.9	81.9
New Zealand	6.7	76.9
Romania	9.2	81.6
<b>United States, 1996</b>	9.7	75.3
Poland	9.7	72.0
Spain	11.2	80.0
Republic of China	14.0	62.2
Argentina	17.4	48.8
Mexico	23.0	56.1
Lithuania	26.7	55.3
Japan	27.2	42.3
Ukraine	34.8	37.0
<b>United States, 2000</b>	37.1	52.0
Israel	62.6	19.7

Source: Comparative Study of Electoral Systems and American National Election Studies, 1996 and 2000.

Americans' faith in the electoral process will surely survive the 2000 election. But 2000 also makes clear just how much the public legitimacy of the process depends upon the circumstances of the election, and in particular, upon how well federal elections appear to be conducted.

