



## Election Reform as an Unfunded Mandate

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One year after Election 2000, the U.S. Congress is deciding whether to fund election reform despite a disappearing budget surplus. If money is found, the debate will revolve around either writing federal mandates for elections (the so-called Dodd bill) or giving money to the states for them to spend (the McConnell bill). These two aspects of election reform -- finding money and then empowering either the federal government or the states -- are at the center of every important policy conundrum. Consider the patients' bill of rights, traffic safety legislation, zoning regulations and Kindergarten curricula. Usually, whoever pays the fiddler picks the tune. What of election reform?

Local election officials are quick to say that there is no such thing as a "national" election; there are only locally run elections that occasionally include candidates for Congress and the White House. The federal government has never reimbursed state and county budgets for administering elections. A locally-run election for a federal office is the quintessential "unfunded mandate." If Congress fails to fix and fund the way elections are run, the federal courts are likely to step in, coming up with a mix of unfunded mandates all their own.

There are nearly 20,000 local election administrators in America, which is about three times the number of people who work for the federal Department of Education and about a thousand times more than the number of people who work for the federal Office of Election Administration. Despite their numbers, though, most local election administrators are part-timers who do other tasks the 3,042 counties in America. For generations, we have done elections "on the cheap."

A presidential election brings out more than 100 million voters who cast ballots on 700 thousand machines in 200 thousand precincts staffed by 1.4 million poll workers. Most of these poll workers put in 14 hour days (because working in shifts is rarely allowed), and many of them are rewarded by a sense of patriotism, by the minimum wage, or by both.

It would seem that one important lesson from the Florida debacle is that the states have largely failed to administer elections, but it is important to remember that the federal government knowingly and willingly left elections up to local administrators. And for the most part, local officials have probably done a better job than most people give them credit for. True, estimates of the number of "spoiled" presidential ballots in November

2000 range from 2 to 4 million nationally. But there is agreement among election administrators that Florida and Secretary of State Katherine Harris did *not* run the nation's worst election. That honor could just as easily go to Georgia or New Mexico, Wisconsin or Wyoming. The world's oldest and proudest democracy has some of the world's oldest and most embarrassing ways of running elections. If he who pays the fiddler picks the tune, state and county governments would seem to have lousy instruments. Yet ironically, it is the states – not the federal government – that have been awash in budget surpluses over the last decade. If elections are unfunded mandates, at least states have recently had the money to pay for them, though the lure of new snow plows often proved more tempting than upgrading voting technologies.

An odd fiction has taken hold. Many people think that the 1990s were times of great expansions in Washington's budgets as public coffers were replenished by sustained economic growth. That is a fiction, because Capitol Hill budgets have been shrinking while *state* budgets have expanded widely. When President Clinton proclaimed that the "era of big government is over," his announcement was more than a decade out of date. As a former governor, maybe President Clinton can be excused for not noticing, because spending by state governments expanded faster than inflation beginning in the early 1980s. Roads were repaired, public schools flourished, and rainy-day funds grew large enough to survive almost any drought.

In Washington, though, political pressures to draft balanced budgets dominated the scene. After setting aside money for Social Security, Medicare and other entitlements, the 1990s were a time of budget *retraction*. Federal outlays did not keep up with inflation in virtually every budget category, and the total number of federal employees shrank by several hundred thousand. Indeed, per taxpayer, there are fewer federal bureaucrats today than at any time since the end of World War II. Furthermore, by the early 1990s, federal budgets usually mandated that new programs be paid for by taking money away from established programs. The budget pie did not grow although, thankfully, the annual deficit disappeared. A zero-sum mentality seized legislators.

While state legislators spent freely, federal legislators talked about "instead of" bills. Any clever idea, any engaging bill or saving grace that needed federal money had to be done "instead of" something else. The politics of budgets centers on trading off one issue for another, and in that environment it usually proves easier to continue funding entrenched programs "instead of" upsetting the calcified policy community that had grown up to defend the status quo. Zero-sum budgets bring out the worst mix of balderdash and partisanship among politicians.

Such is the environment that will either nurture or neuter election reform over the coming months. The states still have the money to make elections better. Yet state legislators, sensing that money may ultimately come from Congress, have been shamefully idle throughout 2001. And federal legislators, running short on money, remain hung up on whether the states can be trusted to fix the mess that the states and counties have made by themselves.

For the near term, gridlock is the most likely outcome. When the 2002 congressional elections happen a year from now, news organizations will put polling places under scrutiny as never before. And reporters will find poorly maintained voting lists. They will find pockets of fraud. They will find malfunctioning machines. There is no doubt in my mind that elections will be better run than at any time in our history, despite these problems. Yet editorialists will understandably cry out for reform and wonder why more was not accomplished in the wake of Election 2000.

One year from now, if Congress still cannot act and if budgets remain short, the federal courts will step in, citing *Bush v. Gore* and calling for Equal Protection, Due Process and the American way. And only then will the states, operating under federal *court* mandates, reluctantly pay the money needed for our election infrastructure. The tradition of unfunded mandates will be entrenched, backed by the courts. If Congress and the president cannot act, after the *Bush v. Gore* decision, there will be no more "instead of" thinking clouding election reform. We should no longer tolerate poorly run elections "instead of" adhering to the Constitution.

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