

Voting Testimony 2008

Ellen Dannin
Fannie Weiss Distinguished Faculty Scholar
and Professor of Law
Penn State Dickinson School of Law
311 Beam Building
University Park, PA 16802-1912

My experience in the 2004 presidential election was an eye opener. I was an election observer in a precinct in Michigan where everything went wrong that could go wrong. Despite the problems, every voter got to cast a ballot, and every vote was counted.

That experience led me to conclude that, whatever system we vote on, it must promote three values that are fundamental to our democracy:

All voters get to vote

All votes get counted

Confidence that these two things have happened

These are values that all Americans agree with and cherish as fundamental to maintaining a democratic society. To protect these values, the system must work on election day, even under the worst circumstances. Given that goal, the question is: What method of voting best promotes these values?

1. All voters get to vote

In the precinct where I was an election observer in 2004, only half the number of voting stations were delivered as were promised. Had this been a computer system, that lack of adequate computers would have created a bottleneck so serious that many voters would have been disenfranchised. Some would have had to go to work or had young children or other responsibilities that mean they could not wait for hours to vote – though many did that day. Some who were old or disabled could not have withstood the toll it takes on their bodies to stand in line for so long.

However, since this was an optical scan paper ballot system, all anyone need to do to vote was to have a place to mark the ballot and a pencil. I saw voters just sit down on the school gymnasium floor and mark their ballots.

That election day was very stormy, and many parts of the area lost power. But since marking a paper ballot can be done even if there is no electricity, voters still could have voted. While their votes could not have been immediately scanned, they could still mark their paper ballot and then store them in a secure ballot box for later scanning in the presence of the election officials and observers.

None of this would have been possible with computer voting.

There were poorly trained election officials at the precinct who did not know how to turn

on the scanner. It took hours to get a technician to turn the scanner on. Yet, despite that, people could still vote. Their ballots were securely stored in a locked box for scanning later in the presence of observers and election officials.

A computer voting system that was not properly turned on or that failed would mean voters could not vote until it was fixed. If people were turned away or voting had to be extended into the next day or rescheduled to ensure a change to vote, there would be strong objections raised. The day we vote is fixed in US Constitution, and many would contend that those who did not vote during the posted hours were just out of luck. But there would be equally strong objections raised to disenfranchising people who showed up to vote but were denied the opportunity because the equipment had failed.

A do-over would be create not just a problem but a constitutional crisis.

One way to resolve these problems would be to ensure that an adequate supply of paper ballots were available as a backup. These would have to be given the same status as a computer vote, not that of a provisional ballot. A secure system to store them would have to be created, and, if not scannable, they would have to be hand counted in the presence of observers and officials. Hand counting is time-consuming and creates the problem of human error. This means that the election outcome would be in doubt for some time, including till there was time for a recount to verify the results.

2. All votes get counted

One of the virtues of the optical scan method is that it provides immediate feedback if there is a problem reading the voter's intent. If the scanner cannot read the ballot it is rejected. The voter then can choose to make corrections on that ballot so it can be scanned or to have it stored securely so it can be counted later if the vote is in doubt. If the ballot cannot be corrected, the voter can chose to have that ballot canceled and vote a new ballot.

As described above, even if there is no electricity, ballots can be scanned later. And even if the scanner cannot read the ballot, for example, if it is marked in ink instead of pencil or felt tip pen, humans can read it and determine the voter intent. In the 2004 election, of 688 votes cast in that precinct only four could not be read by the scanner, but a human could easily see the voter's intent.

Computer voting is much touchier, and it is impossible for humans to read the "ballot" that has been cast.

3. Confidence that these two things have happened

Faith in our electoral system is the bedrock upon which our society is built. I have had the experience of voting on every form of voting technology available, including paper ballots in New Hampshire, voting machines and optical scan in Michigan, punchcards in California, and computers in Pennsylvania. It is my conclusion that the optical scan system comes closest to meeting these core democratic values I identified. Marking paper is simple a technology with which humans have millennia of experience. It is durable, and it is easy to see the choice that has been made. For all the reasons, discussed above, the optical scan system is the best system available. While not perfect, it provides enough failsafe systems that it best assures that all voters get to vote and all votes get counted.