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University of Arkansas at Little Rock Law Review

Summer, 2007

*29 U. Ark. Little Rock L. Rev. 651***LENGTH:** 6805 words**ELECTION LAW ESSAY: ON AMERICAN VOTER CONFIDENCE****NAME:** R. Michael Alvarez, Thad E. Hall, and Morgan Llewellyn ***BIO:**

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SUMMARY:

... Similar to the 2004 situation, during the 2006 campaign season the media ran numerous stories about possible problems voters could encounter on election day. ... We have been examining public confidence in voting technology and ballot counting -- especially electronic voting -- since the fall preceding the 2004 presidential election. ... Thus, the media popularized concerns regarding voter confidence after the 2000 election when Democrats raised concern regarding the accuracy of paper ballots -- not electronic voting technologies. ... In the closing days of the 2006 midterm election, we conducted a national survey to determine if the media and special interest depiction of differences in voting accuracy along racial and political lines correlates with differences in voter confidence. ... But even if there is additional empirical study of **American voters' confidence** in the electoral process, we need to engage our theoretically oriented colleagues to help us understand the important normative question we addressed early in this essay, which comes up repeatedly in debates about voter confidence: how much confidence is sufficient to insure the legitimacy of a democratic system? On one extreme, we have assumptions like that quoted above from Senator Clinton's website: that every American voter must be confident that his or her vote is counted. ...

TEXT:

[*651]

I. Introduction

The midterm elections in November 2006 produced America's fourth consecutive highly contentious election season, with debates about election reform swirling around the nation. Similar to the 2004 situation, during the 2006 campaign season the media ran numerous stories about possible problems voters could encounter on election day. These media stories focused primarily on potential complications with the new voting technologies in several states, new voter registration systems in most states, and new election procedures across the country. n1 Recent research has shown that

such coverage is highly amplified during election years and tends to stress the problems that can arise with voting technologies. However, such coverage rarely extends beyond the election to cover how the technology actually performed in the more than 100,000 voting precincts across the country. n2 An additional complication surrounding the November 2006 midterm election was that the 2006 election was the first election conducted in which the Help America Vote Act (HAVA), the federal legislation passed to address the problems of the 2000 election, was fully in effect in most states. n3

Common in much of the contemporary public debate about the state of election administration in the United States are assertions about how confident [*652] voters are that their ballots will be counted correctly (i.e., voter confidence). Although many assertions are made about voter confidence, there is scant research about this important aspect of public opinion. For example, both of the recent reports by election reform commissions involving former President Carter (the 2001 Carter-Ford Commission and the 2005 Carter-Baker Commission) were titled in such a way as to imply that voter confidence was low and needed to be increased ("To Assure Pride and Confidence in the Electoral Process" and "Building Confidence in U.S. Elections," respectively). n4 Such reports are often the impetus for legislation that is designed to change public policy in a way that will increase confidence in the electoral process. The Help America Vote Act of 2002 is perhaps the most obvious example of such a piece of legislation, as it was intended to increase public confidence in the electoral process after the 2000 election debacle.

With all of this discussion about confidence in policy circles, it is somewhat ironic that there has been little consideration given to the normative question regarding the level of confidence that voters should have in an election and the deeper psychological question of how factors such as ideology and partisanship can lead individuals not to trust any election outcomes that do not favor their preferred candidate. n5 Researching voter confidence is complicated by the fact that there is little reliable national data that examines voter confidence across the nation outside of the 2002-2004 elections. There are data on the very broad question of confidence in the democratic process that has been asked in the American National Election Study, but these data are not informative about the specific question of the actual electoral process.

There are some recent working papers looking at voter confidence in specific geographic and electoral cases, primarily focusing on the interaction of specific polling place factors on the confidence of voters or poll workers who vote or work in a voting precinct on election day. n6 However, given the [*653] sharp rise in early and absentee voting, exit poll analyses cannot address confidence among either early/absentee voters or among non-voters. Given the intense focus that exists today on the mechanics of the electoral process, claims that the public lacks confidence are easy to make, but difficult to substantiate given the dearth of data on this question. We do not know what the historical average level of confidence has been in the mechanics of the electoral process, although we can speculate on what is an appropriate level of confidence; we also do not know how voter confidence varies across states, or even across different nations.

We have been examining public confidence in voting technology and ballot counting -- especially electronic voting -- since the fall preceding the 2004 presidential election. Since then, we have conducted three additional surveys that gauge public confidence in electronic voting technologies and in ballot counting across the country. In this article we use our recent survey research about **American voters' confidence** and report results comparing voter confidence between 2005 and 2006. When examining overall levels of confidence in the electorate, we find that voter confidence in their ballot being counted accurately declines between 2005 and 2006, but even with this decline, 75% of likely voters in our October 2006 sample reported being confident that their ballot would be counted as they desired. When we disaggregate these data, we then find that there is evidence of substantial racial and partisan "gaps" in voter confidence. These gaps raise troubling normative questions about the electoral process. We then conclude by discussing the implications of these "gaps" for the future of election reform in the United States. Before presenting these findings, we put the issue of voter confidence in context, noting linkages that exist between public attitudes, trust in government, media coverage, and public policies.

II. Voter Confidence, the Media, and Public Policy

Research on governmental trust typically examines the broad issue of whether citizens trust the government to act in the citizens' best interests. n7 One avenue of work within the trust in government literature studies the [*654] origins of trust and focuses on the identification of the citizen attributes that determine whether an individual trusts the government. A second component in the research literature on government trust looks at how trust in government has varied over time, especially in the United States. Third, some studies have examined the consequences of trust or distrust, looking at a series of outcome variables and testing hypotheses in which trust (or distrust) in government might be consequential for political behavior and attitudes (political engagement, voting behavior, compliance, cooperation, and social capital). This third avenue is of primary interest for our work, as these studies tend to discount any relationship between an individual's trust in government and voter turnout decisions. n8

Our interest is in studying the trust or confidence that citizens and voters have in the electoral process itself and not the broader issue of trust in government. Therefore, our research focuses not on democratic institutions but on the democratic process. We define trust in the electoral process as the confidence that voters have that their ballots are counted as intended. Researching voter confidence in the electoral process is distinct from previous studies on governmental trust because there is no reason to suspect a priori that individuals who lack confidence in the electoral system comprise a subset of those who lack trust in government. For instance, voters may view elected representatives as liars who will say anything to get elected and yet believe that the voting process is accurate and vice versa. Although several groups have published statistics on voter confidence rates, there is little scholarly work on this topic in the research literature. n9

The 2000 election brought the issue of election mechanics -- from voting technology to ballot counting to recounts and election challenges -- to the public's attention for the first time in recent history. The media was the primary conduit through which the public learned about election administration [*655] after 2000. Obviously, the media plays an important role in shaping voter confidence because the media frames the issue of voter confidence. Framing determines the context in which a story is told and therefore affects how people view the story and the related policy. In politics, framing allows various interests to shape the way in which a given policy is viewed. Consider the following discussion of issue framing:

Every public policy problem is usually understood, even by the politically sophisticated, in simplified and symbolic terms. Because a single policy or program may have many implications, or may affect different groups of people in different ways, different people can hold different images of the same policies Often, proponents of a policy focus on one set of images, while opponents refer more often to another set of images. n10

The goal of interests on either side of a policy debate is for their image to become dominant to the point that they can monopolize the issue. With a policy monopoly, a single image of the policy generally exists and is accepted by the general public. This monopoly can be broken only when the policy can be reframed and a new image developed. Research on policy agendas has found that the way in which a problem is defined is determined by competing groups shaping the way in which respondents view the issue of gender equity; other experimental studies of media framing and gender have found that different images and stories also shape public opinion. n11

The media acts as an arbiter in policy debates by determining which policy debates to cover and which image to stress among several competing images offered by interests on the various sides of a debate. By determining which issues get covered and which image is stressed, the media's power is based in part upon their ability to act as a gate keeper of the public flow of information. Even among the issues that get covered, the media differentiates between them, with some issues given the lead and others buried in the middle of the paper or news show. The media thus can "prime" the public to be sensitive to certain issues by running a particular story and framing that story within a specific context. Not surprisingly, experimental and traditional [*656] research has shown that the way in which the media discusses an issue affects the way the public views the issue. n12

The media plays a key role in determining confidence in various governmental and societal activities because

individuals often do not experience many risks directly, such as the risk of not having one's ballot counted correctly. Instead, the risk of a vote not being counted correctly is understood and "experienced" through the media, and many factors affect that experience. Roger and Jeanne Kasperson discuss the media factors noted previously -- framing, attention, and tone -- and also noted that the actual amount of information provided, along with the symbolism used to characterize the risk, help to determine how a given risk is perceived. n13 The medium through which information flows can also affect our risk perception, as there are differences between risk discussions that occur in mass media -- television, radio, and print newspapers -- compared to the Internet or specialized professional publications. Finally, the actual likelihood of a risk being serious can be inversely related to the amount of media coverage the risk receives. For example, the risk of dying from radiation exposure via the sun is much higher than the risk of dying from radiation exposure from an accident at a nuclear power plant, but the latter has historically received more attention than the former.

To understand the political ramifications of risk amplification and the framing therein, it is beneficial to consider how the Kaspersons describe this problem:

Risk issues are also important elements in the agenda of various social and political groups To the extent that risk becomes a central issue in a political campaign or a source of contention between social groups, it will be vigorously brought to greater public attention, often imbued with value-based interpretations. Polarization of views and escalation of rhetoric by partisans typically occur, and new recruits are drawn into the conflict. These social alignments about risk disputes often outlive a single controversy and become anchors for subsequent episodes. Indeed, they frequently remain steadfast even in the face of conflicting information. n14

[*657] The framing of the question of confidence, therefore, can have both political and policy implications and can affect public confidence in the electoral process.

Following the 2000 election, the media has focused significant attention on issues relating to voter confidence. The media's discussion of an issue is often shaped by how other (and related) issues are framed. The specific issue of voter confidence is largely dealt with in the debate surrounding voting technology, which is framed as a result of the partisan and political context of a close election that had a highly partisan and bitter conclusion. Following the 2000 Florida election, many partisans on the Democratic/liberal side of the debate argued that if all of the ballots had been counted, the outcome would have been different. The analysis conducted by the National Opinion Research Center (NORC) found that, under various scenarios, the vote count would have been different had different standards been used to conduct the recount. n15 On the Republican/conservative side, the interference by local election boards and the endless recounts were seen as efforts by Democrats to keep recounting until the Democrat candidate -- Al Gore -- won. More generally, media elites and the public recognized that voting technology and election procedures could determine the outcome of an election.

Thus, the media popularized concerns regarding voter confidence after the 2000 election when Democrats raised concern regarding the accuracy of paper ballots -- not electronic voting technologies. After all, the 2000 election crisis was prompted by an inability to count or discern voter intent on paper ballots; no electronic voting machines were used in Florida. Punch card voting and the so-called "butterfly ballot" were especially fingered as culprits in the debate over election reform. However, it should not be forgotten that the first lawsuit filed after the 2000 election was not filed in Florida; it was filed in Georgia, another state that used every voting technology except electronic voting. There, the ACLU filed suit against the Secretary of State, stating that

voters in some Georgia counties were ten times more likely than others to lose their right to vote because of a "fatally flawed" system that disproportionately affects people of color.

...

In its legal complaint, the ACLU called the state's voting system "a hodgepodge consisting of antiquated devices, confusing mechanisms, and equipment having significant error rates even when properly used."

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...

The state's failure to accurately record votes deprives its citizens of equal protection and due process as guaranteed under state law and by the United States Constitution, and violates the federal Voting Rights Act . . . n16

This lawsuit explicitly cited voting technologies, including optical scan voting, as problematic, a finding based in part on the Secretary of State's report, *The 2000 Election: A Wake-Up Call for Reform and Change*, n17 that analyzed county-level data on voting. This analysis found that the residual vote rate for optical scan voting was roughly equivalent to punch cards in Georgia, with precinct count optical scan performing only marginally better than punch cards. Moreover, a precinct level analysis that compared predominately minority population precincts in a county with predominately white precincts in the same county found relatively large racial gaps in residual vote rates even though the same technology was used. As Secretary of State Cox told the United States Senate Committee on Commerce, Science, and Transportation on March 7, 2001:

We began to study undervote (in the presidential race) percentages in precincts that had black registration percentages of 80 percent or more and compared those to predominately white precincts in the same county.

We found that, across the board, undervotes are higher in predominately black precincts than in predominately white precincts in the same county. But what is of greatest interest, and we think most significant as we consider equipment options, is that this undervote gap was higher in counties that utilized opti-scan systems than in counties that use the punch card.

I should point out that this higher undervote gap for opti-scan exists whether we look at counties individually or in aggregate. However we slice the numbers, in opti-scan counties, there is a greater gap in undervoting by blacks as compared to whites than there is in counties that use the punch card. n18

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In short, all paper-based voting technologies were under attack sometime after the 2000 election by groups such as the ACLU, the NAACP, and groups acting as advocates for individuals with disabilities. In response to these complaints, many states began to shift from paper to electronic ballots.

However, beginning in 2002 and 2003, criticisms began to arise regarding electronic voting. The primary focus of this critique was on questions of security and auditability associated with electronic voting systems. One of the first such critiques was contained in the work of the Johns Hopkins and Rice University computer scientists who analyzed the Diebold source code for problems. Their analysis of the Diebold source code applied research principles regarding the study of computer security and writing of source code in order to identify flaws and vulnerabilities in the system. Although this work has been criticized by many sources, it did clearly define the problems with one voting system, and it provided a foundation for security evaluations for other systems. It also started a thorough security review process in Maryland, which uses the Diebold AccuVote TS, including retaining security firms to evaluate the system as deployed and to ensure that management practice in implementing the system mitigated the vulnerabilities that were identified by the Johns Hopkins-Rice team.

There has been political advocacy regarding the problems associated with electronic voting that has come from two primary organizations -- Blackboxvoting.org and verifiedvoting.org -- that engaged in strong media advocacy in the debate over voting technology. These groups provided much of the advocacy efforts -- online and in the media -- that may have led to a reframing of the debate about electronic voting from a politically-neutral concern about security into concerns about a possibly politically-biased, completely insecure voting platform. The decidedly negative focus of media coverage of election technology and election reform has not abated, especially in the wake of continued issues in 2004 and 2006. The research on how the media frames policy debates, along with the generally negative tone of media coverage of election technology and election reform, leads us to hypothesize that voter confidence might be in decline since 2004.

III. Confidence in Ballot Counting

As shown above, the media and special interest groups have focused on depicting differences in the accuracy of the voting system according to racial and political identification. In the closing days of the 2006 midterm election, we conducted a national survey to determine if the media and special interest depiction of differences in voting accuracy along racial and political lines correlates with differences in voter confidence. We asked a nationally representative sample of American adults about confidence in the voting process. We conducted interviews from October 26 through October 31, 2006, among a nationally representative sample of 1084 adults, age [*660] eighteen and older including 156 Non-Hispanic African Americans. Specifically, we asked a national sample of American adults the following question:

How confident are you that your ballot in the November of 2004 presidential contest between George Bush and John Kerry was counted as you intended? Would you say that you are very confident, somewhat confident, not too confident, or not at all confident?

We report the confidence rates of adult registered voters who are likely to vote, defining "likely to vote" as either voting prior to the survey via early or absentee ballot or reporting a greater than 50% chance of voting during the 2006 election in Table 1. n19 Among registered voters who were likely to vote, 75% responded that they were confident their votes were counted as intended during the 2004 election (55% were "very confident" and 20% were "somewhat confident") and 22% responded that they lacked such confidence (12% were "not too confident" and 10% were "not at all confident"). n20 Although nearly three out of four voters were confident that their votes during the 2004 election were counted correctly, some may find it disturbing that nearly one in five respondents expressed a lack of confidence that their ballots were counted as intended in the 2004 presidential election.

Table 1: Confidence in the 2004 Election

	Not Confident	Confident	Don't know
Total Respondents	21.9	75.1	3.0
Survey by Race			
African American	44.1	54.9	1.0
White	17.7	79.4	2.9
Confidence by Gender			
Male	21.6	76.4	2.0
Female	22.1	74.0	3.9
Party Identification			

	Not Confident	Confident	Don't know
Democrat	31.0	64.6	4.4
Republican	8.7	89.8	1.5
Independent	22.0	75.2	2.8

[*661]

There is also evidence that the overall level of confidence in the outcome of the 2004 presidential election has dropped since that election, as shown in Figure 1. In early March 2005, we conducted a survey similar to the 2004 survey, and then asked those who recalled voting in the 2004 presidential election "How confident are you that your ballot for president in the 2004 election was counted as you intended?" n21 At that point in time, 88% of voters responded that they were confident (66% were "very confident" and 22% "somewhat confident"), and 11% stated that they lacked confidence in how their votes were counted (6% "not too confident" and 5% "not at all confident"). It may be that voter confidence about the 2004 election is not changing; instead, voters may be less confident in the 2006 election as compared to the 2004 election and project this lack of confidence retroactively to the 2004 election. We think that this is likely to be the case, and the data may reflect evidence that voters are becoming less confident in the electoral process overall. [*662]

Figure 1: Change in Overall Confidence 2005 to 2006

[SEE FIGURE 1 IN ORIGINAL]

Although the question we used in March 2005 was worded slightly differently than the one used in our October 2006 survey, it is intriguing to us that the overall confidence in the 2004 presidential election has declined by such a large degree since the spring of 2005. n22 There are several reasons why confidence in the process could have declined. First, the public may have become more concerned about the efficacy of the electoral process generally. Second, the public may be using this question to express "buyer's remorse" in the electoral process, expressing discontent with the Bush administration. [*663] Third, it may be that specific subpopulations have lost confidence over time, which is a factor we examine below.

A. Racial Gap in Confidence

When we disaggregate the October 2006 survey data, we find two important "confidence gaps" in the baseline data, gaps that also existed in previous surveys. First, there is a confidence gap between whites and African Americans, a "race-confidence gap." Our previous research predicted a gap in voter confidence along racial lines; therefore, we over-sampled African American respondents in the October 2006 survey so that we could better understand the attitudes of African American registered voters. As shown in Table 1, in the October 2006 survey, we found that 79% of white registered voters expressed confidence, and 18% stated a net lack of confidence. For African American registered voters, only 55% expressed confidence and 44% expressed a net lack of confidence. n23 Clearly, in the days preceding the 2006 midterm election, there was a difference between white and African American registered voters in their opinions that their ballots for the 2004 presidential election were counted correctly.

The racial gap also existed in our March 2005 survey, as shown in Figure 2. Then, 92% of white voters expressed confidence, but only 64% of African American voters expressed confidence in the 2004 election process. Certainly, these data provide evidence that African American voters are less confident overall in the electoral process. Our data does indicate, however, that the declines in confidence from March 2005 to October 2006 for white and African American voters are comparable in magnitude (white confidence has fallen by 13 points, African American confidence by 9 points), but the African American voters start at an overall lower level of confidence. [*664]

Figure 2: Confidence and Race

[SEE FIGURE 2 IN ORIGINAL]

This finding could presage a similar racial gap in confidence in the outcome of the 2006 midterm elections. However, given that the preferred party of most African American registered voters -- the Democratic Party -- was the winner nationally in the congressional elections, taking control of both branches of Congress, it may be that this gap will be less prominent in surveys conducted after the 2006 elections. Nevertheless, if the lack of confidence among African Americans reflects their broader historical experience with the electoral process -- one that includes a history of discrimination, violence, and intimidation -- then this gap may remain in place for some time.

B. Partisan Gap in Confidence

There is also a "partisan confidence gap" among Democrats, Republicans, and Independents regarding whether their votes were counted accurately in 2004. In the October 2006 survey, 90% of self-identified Republican [*665] registered voters expressed confidence compared to 65% of self-identified Democrats and 75% of self-identified Independents. As shown in Figure 3, there are marked differences among Republicans, Democrats, and Independents regarding their confidence in the vote counting in the 2004 election.

Figure 3: Confidence and Partisanship

[SEE TABLE IN ORIGINAL]

When we analyze the results of the October 2006 survey with our March 2005 survey in which a similar question was posed to those respondents who stated that they had voted in 2004, we find that in 2005 virtually all self-identified Republicans (97%) were confident in the vote counting process as compared to 86% of self-identified Democrats and 87% of self-identified Independents were confident. Comparing the two surveys, Republican [*666] confidence appears to decline between March 2005 and October 2006, but there were quite dramatic declines in the confidence of Democrats and Independents.

One possible explanation of the confidence gap along partisan lines is that it may be much easier for an individual to rationalize that her preferred candidate lost because of some sort of problem with the vote counting, and not because the other candidate was preferred by more people. As we noted about the 2006 elections, it will also be important to see if this partisan gap in confidence in the vote counting process remains after the Democratic Party's overall victory in the 2006 midterm elections. Given that winning parties and candidates -- and the supporters of these winners -- rarely claim that their candidate won through fraud or vote counting irregularities (fraud claims are almost always the cry of the loser), it will be important to determine whether this partisan gap remains or changes after the Democrats' victories.

IV. Implications and Conclusions

In the final days preceding the 2006 election, we found that a large majority of voters are confident that their votes will be counted accurately. However, there remained a sizable and possibly growing segment of the population that may have concerns regarding whether their votes will be counted accurately. Furthermore, we have documented here that there were both racial and partisan "gaps" in voter confidence prior to the 2006 election, and these differences are of concern. One key question is whether these gaps are structural or merely reflect temporal election outcomes that have not favored the preferred candidates of African American and Democratic-identifying voters.

At this point, we have yet to conduct a post-2006 election survey of voter confidence, so we do not know what the level of confidence in the 2006 election was, how that compares to confidence in the 2004 and 2000 elections, and whether the racial and partisan "gaps" still exist in voter confidence. Even if voter confidence remains high following the 2006 election, election officials and others concerned about election reform should work to improve the confidence of those who are concerned about the electoral process because voter confidence likely has important behavioral and attitudinal implications. Behaviorally, we have found in recent preliminary research that there is an important correlation between confidence in the electoral process and participation in the voting process. This implies that one

method to increase voter participation in American elections may be to increase the confidence non-voters in the United States have that their ballot will be counted as intended, if they were to register and cast a ballot. Attitudinally, we hypothesize that confidence in the electoral process is likely related to more general and more deeply held democratic values, for example, [*667] general trust in government and perceptions of the legitimacy of the democratic process. These causal connections between voter confidence and more deeply held democratic values require research; at this point, there is no published research that examines how voter confidence influences other democratic values.

Furthermore, there is much research that needs to be done to study the attitudes of different populations of Americans (for example, voters and non-voters and racial and ethnic minorities relative to whites) about all dimensions of election reform. In our recent work, we have studied voter confidence, opinions about electronic voting, attitudes about election administration, and perceptions of the difficulty of voter registration. Research like this not only helps to better inform policy debates about election reform, but it can also help election officials themselves do a better job in the future providing service to their customers -- voters and other stakeholders in the election process.

Voter confidence is at the heart of the public and policy debate about election technology and election reform. As we write this essay, two important pieces of federal legislation are under consideration in Washington. The first, S. 450 (the "Count Every Vote Act of 2005"), n24 has as its primary justification concerns about voter confidence. Senator Clinton, one of the co-sponsors of this bill, says this on her website: "In order to maintain our strong democracy, every American must be confident in his or her ability to cast a vote, verify that vote, and never doubt that the vote that he or she intends to cast is counted." n25 The second legislative effort comes from the House, in the form of H.R. 550, which focuses on voter confidence under the legislative title "Voter Confidence and Increased Accessibility Act of 2005." Whether or not these policy changes will necessarily change voter confidence is unclear; only additional research to better understand voter confidence can help determine what factors cause some voters to lack confidence and what it might take to alter those voters' opinions so that they regain their confidence in the American electoral process.

An example of this issue is the move to "voter verified paper audit trails" (VVPAT) in many states throughout America. n26 The concept of verifiability of ballots is one that is argued to improve voter confidence; thus, implementing audit trails is assumed to provide verifiability and, therefore, [*668] to improve voter confidence. n27 But the reality is that we have no evidence, yet, that the use of VVPAT devices necessarily lead to improvements in voter confidence. There is some concern that when VVPAT devices are not implemented adequately -- as may have been the case in a spring primary in 2006 in Cuyahoga County, Ohio, where a study found that nearly 10% of VVPAT ballots were somehow problematic -- VVPAT itself might not improve voter confidence, and it might instead fuel further reductions in confidence. n28 In the end, we simply are in a position in which we lack data to assess how changes like VVPAT might influence voters' perceptions about their electoral process, a situation that must be changed if we really want to understand how new technologies are affecting voter behavior and the electoral process itself.

But even if there is additional empirical study of **American voters' confidence** in the electoral process, we need to engage our theoretically oriented colleagues to help us understand the important normative question we addressed early in this essay, which comes up repeatedly in debates about voter confidence: how much confidence is sufficient to insure the legitimacy of a democratic system? On one extreme, we have assumptions like that quoted above from Senator Clinton's website: that every American voter must be confident that his or her vote is counted. At the opposite extreme, we have the view that there has to be a point at which voter confidence erodes so far that citizens then defect from the process completely, engaging in extra-constitutional means of participation that are aimed at bringing down the existing political regime. n29 Where Americans currently fall on this spectrum is not clear, but additional research is necessary to help us better understand what level of voter confidence needs to be maintained to ensure the continued legitimacy of the American electoral process.

Legal Topics:

For related research and practice materials, see the following legal topics:
 Civil Rights Law Voting Rights Voting Rights Act General Overview Governments Federal

GovernmentElectionsGovernmentsLocal GovernmentsElections

FOOTNOTES:

n1 See, e.g., Electionline.org, Election Preview 2006: What's Changed, What Hasn't and Why, <http://electionline.org/Portals/1/Publications/Annual.Report.Preview.2006.Final.pdf>. (providing a summary of pre-election coverage of the 2006 midterm elections).

n2 R. Michael Alvarez & Thad E. Hall, Policy Framing, Risk Amplification, and the Debate over Electronic Voting (2005) (unpublished paper presented at the Annual Meetings of the American Political Science Association, on file with authors).

n3 For further discussion of HAVA implementation see generally R. Michael Alvarez & Thad E. Hall, Rational and Pluralistic Models of HAVA Implementation: The Cases of Georgia and California, 35 PUBLIUS 559 (2005), available at <http://publius.oxfordjournals.org/cgi/reprint/35/4/559>.

n4 National Commission on Federal Election Reform, To Assure Pride and Confidence in the Electoral Process (July 1, 2001), available at <http://www.tcf.org/Publications/ElectionReform/99fullreport.pdf>; Commission on Federal Election Reform; Building Confidence in U.S. Elections (Sept. 2005), available at <http://www.american.edu/ia/cfer/report/fullreport.pdf>.

n5 See R. Michael Alvarez, Thad E. Hall, & Morgan Llewellyn, Election Outcomes and Voter Confidence: National, State, and Local Effects (2007) (unpublished manuscript, on file with the authors).

n6 This includes a study of voter confidence in two congressional districts in the 2006 midterm elections (New Mexico's First and Colorado's Seventh) by Lonna Rae Atkeson and Kyle L. Saunders, 2007, "The Effects of Election Administration on Voter Confidence: A Local Matter" (unpublished manuscript); a paper studying exit poll data on voter confidence collected in Franklin County, Ohio, in November 2006 by David B. Magleby, J. Quin Monson and Kelly D. Patterson, 2007, "Civic Duties in a Service Economy: Modeling Voter Confidence in the Electoral Process" (unpublished manuscript); and a paper examining both poll worker and voter confidence in the 2006 primary election in Cuyahoga County, Ohio by Thad E. Hall, "Voter and Poll Worker Confidence in Elections." All three papers were presented at the April 12-15, 2007 Annual Meeting of the Midwest Political Science Association, Chicago, Illinois. For a detailed review of the previous research on voter confidence, as well as additional analysis of our own national surveys, see R. Michael Alvarez, Thad E. Hall, & Morgan Llewellyn, Are Americans Confident Their Ballots Are Counted?, J. of POL. (forthcoming 2007).

n7 An excellent review of the academic research on trust in government in the United States is contained in the essay by Margaret Levi & Laura Stoker, Political Trust and Trustworthiness, 3 ANN. REV. POL. SCI. 475 (2000).

n8 See Jack Citrin, Comment, The Political Relevance of Trust in Government, 68 AM. POL. SCI. REV. 973 (1974); STEVEN J. ROSENSTONE & JOHN MARK HANSEN, MOBILIZATION, PARTICIPATION AND DEMOCRACY IN AMERICA (1993). But see Marc J. Hetherington, The Political Relevance of Political Trust, 92 AM. POL. SCI. REV. 791 (1998).

n9 Richard L. Hasen provides some statistics on voter confidence in his article on election reform, *Beyond the Margin of Litigation: Reforming the U.S. Election Administration to Avoid Electoral Meltdown*, 62 *WASH. & LEE L. REV.* 937 (2005). CNN exit polls report voter confidence rates in 2004 and 2006, and Susan MacManus gives the confidence rate of Florida voters following the 2002 election. CNN.com, Election Results, <http://www.cnn.com/ELECTION/2004/pages/results/states/US/P/00/epolls.0.html> (2004 results); CNN.com, Election Results, <http://www.cnn.com/ELECTION/2006/pages/results/states/US/H/00/epolls.0.html> (2006 results); Susan MacManus et al., 2002 Voter Satisfaction Study: State of Florida (2002), <http://jamesmadison.org>. The Winston Group conducted a survey in April 2004 and reported voter confidence across voting technology. Election Technology Council, (May 4, 2004), <http://www.electiontech.org/pressreleases.php?ID=3>. There are also the studies by Atkeson and Saunders (2007), Magleby et al. (2007), Hall (2007) *supra*, n.6.

n10 FRANK R. BAUMGARTNER & BRYAN D. JONES, *AGENDAS AND INSTABILITY IN PUBLIC POLICY* 26 (1993).

n11 See generally DEBORAH A. STONE, *POLICY PARADOX AND POLITICAL REASON*, (1988); Deborah A. Stone, Causal Stories and the Formation of Policy Agendas, 104 *POL. SCI. Q.* 281 (1989); Nayda Terkildsen & Frauke Schnell, How Media Frames Move Public Opinion: An Analysis of the Women's Movement, *Political Research Quarterly*, 50, 4: 879-900 (1997).

n12 See Shanto Iyengar & Donald R. Kinder, *News That Matters: Television and American Opinion* (1989); WILLIAM SALETAN, *BEARING RIGHT: HOW CONSERVATIVES WON THE ABORTION WAR* (2003); Nayda Terkildsen & Frauke Schnell, How Media Frames Move Public Opinion: An Analysis of the Women's Movement, 50 *POL. RES. Q.* 879 (1997).

n13 Roger E. Kasperson & Jeanne X. Kasperson, The Social Amplification and Attenuation of Risk, 545 *ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI.* 95, 98-99 (1996).

n14 *Id.* at 98-99.

n15 Kirk Wolter et al., Reliability of the Uncertified Ballots in the 2000 Presidential Election in Florida, 57 *AM. STATISTICIAN* 1, 1-14 (2003), available at <http://www.amstat.org/misc/PresidentialElectionBallots.pdf>.

n16 American Civil Liberties Union, ACLU Seeks to Remedy Georgia's "Fatally Flawed" Voting System, Jan. 5, 2001, available at <http://www.aclu.org/VotingRights/VotingRights.cfm?ID=7090&c=166>.

n17 CATHY COX, *SECRETARY OF STATE FOR THE STATE OF GEORGIA, THE 2000 ELECTION: A WAKE-UP CALL FOR REFORM AND CHANGE* (2001) available at <http://sos.georgia.gov/acrobat/elections/2000electionreport.pdf>.

n18 Full Committee Hearing on Election Reform: Hearing Before the S. Comm. on Commerce, Science & Technology, 107th Cong. 6 (2001) (statement of Cathy Cox, Secretary of State).

n19 We report the results of likely voters in order to promote comparability with the March 2005 survey,

which reported the confidence rates of individuals who identified themselves as having voted in the 2004 presidential election. The results for the entire October 2006 sample of registered voters is similar to those of the subsample consisting of the registered likely voters. If we were to report the results over the entire October 2006 registered voter sample, then we would actually report a lower rate of confidence (73% of registered voters stated net confidence in this survey).

n20 In addition, 4% of the registered voters had no opinion. Furthermore, sixty-two individuals report not having voted in the 2004 election, and twelve individuals refused to answer the question; both of these sets of respondents were dropped from the analysis.

n21 The March 2005 survey was conducted using a methodology identical to that used for the October 2006 survey. Between March 9 and 15, 2005, ICR, an independent research company, interviewed 2032 adults as part of its EXCEL national telephone omnibus survey, and it asked those respondents many of the same questions we utilized in the October 2006 survey. Interviews were conducted from October 26 through October 31, 2006, among a nationally representative sample of 1084 adults, age eighteen and older, including 156 Non-Hispanic African Americans. The study was part of the ICR EXCEL omnibus telephone survey. This survey's methodology consisted of interviews with approximately 1000 respondents, conducted twice a week. ICR undertakes a random-digit dialing approach to sampling telephone households, and within each sample household a single adult respondent is selected based on the adult with the most recent birthday. The ICR EXCEL survey data is then weighted to produce a nationally representative sample of the adult population; we use these population weights in all of the univariate and cross-tabulated analyses reported in this paper. Given the sample size of the ICR EXCEL survey we use, a typical survey proportion (50%-50% split) will have a 95% confidence level of approximately plus or minus three percentage points. More information about ICR can be obtained by visiting <http://www.icrsurvey.com>.

n22 Our rationale for the change in the wording of the question is twofold: (1) we believe that immediately after the 2004 election, voters treated the term 2004 presidential election as being synonymous with Bush versus Kerry, and as time passes this association weakens; and (2) given the discussion in the media regarding the 2008 presidential election, we wish to be as clear as possible regarding the particular election over which we framed the question.

n23 The remainder expressed no opinion.

n24 Count Every Vote Act of 2005, S. 450, 109th Cong. (2005).

n25 See Hillary Rodham Clinton, Election Reform, <http://clinton.senate.gov/issues/election> (last visited Mar. 18, 2007).

n26 Prior to the 2006 fall elections, Electionline.org reported that twenty-two states required that voting machines produce a VVPAT. See Electionline.org, Voter-Verified Paper Audit Trails Laws and Regulations, <http://electionline.org/Default.aspx?tabid=290>.

n27 See CALTECH/MIT VOTING TECHNOLOGY PROJECT, Ballot Security, in VOTING: WHAT IS, WHAT COULD BE 42, 43-44 (2001), available at <http://vote.caltech.edu/media/documents/july01/July01VTPVotingReportEntire.pdf>.

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n28 Election Science Institute, DRE Analysis for May 2006 Primary: Cuyahoga County, Ohio, Aug. 2006, at 6, available at <http://bocc.cuyahogacounty.us/GSC/pdf/esicuyahagofinal.pdf>.

n29 See SIDNEY TARROW, POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS (2d ed. 1998) for a detailed discussion of social movements and extra-constitutional action.