Resolved, That the American Bar Association urges state and local election authorities to give the highest priority to ensuring the fairness and reliability of the procedures prescribed for voting, and for the tabulation of votes, in the 2004 election for President of the United States.
REPORT

The President of the United States, in signing the Help America Vote Act which followed the Bush v. Gore controversy of 2000, stated:

“The vitality of American’s democracy depends on the fairness and accuracy of America’s election. Over two centuries our country has broadened the right to vote and sealed that right in law, making our government more accountable to the people, and more representative of the people.

“When problems arise in the administration of elections we have a responsibility to fix them. Every registered voter deserves to have confidence that the system is fair and elections are honest, that every vote is recorded, and the rules are consistently applied.”

(Statement of President George W. Bush, October 29, 2002, quoted by the U.S. Commission on Civil Rights, Is America Ready to Vote?, April 2004.)

There is widespread concern as to whether many of the voting machines selected, or proposed for selection, for the 2004 Presidential election will ensure the “fairness and accuracy” for which the President called. Especially is there concern with the lack of a “paper trail” to serve as a back-up for the results reported on electronic touch-screen voting machines. Even the manufacturer of such machines (Diebold Election Systems) has been the subject of controversy as to its fairness and impartiality, because of its large contributions to one of the national political parties.

The Financial Times, which could hardly be considered a knee jerk anti-establishment publication, recently headlined:

“Ghost of 2000 haunts forthcoming US election” with the sub-headline:

“Experts warn that America’s voting system may not be up to the task of ensuring an outcome that the country can trust”. (Financial Times, April 30, 2004, p. 2; article by Henry Hamman.)

An April 2004 staff study of the U.S. Commission on Civil Rights urges:

“The federal government must ensure that voters are not disenfranchised in November 2004, whether using advanced electronic technology or a punch card system…To ensure that all votes are counted, the government should require
certification that any voting technology used is nondiscriminatory and provides for second-chance voting and voter verification. History offers myriad examples of using equipment, people, and processes to manipulate elections and disenfranchise voters. We owe it to ourselves and our future to have robust, well-designed election systems to preserve the bedrock of our democracy.”

The Commission’s study concludes:

“In the 2001, in two reports and in testimony to Congress, the Commission issued recommendations to address problems it found in Florida and nationwide regarding the right to vote and to have one’s vote counted. HAVA the Help America Vote Act of 2002, 116 Stat. 1666 provided solutions to numerous problems, and adopted many but not all of the Commission’s recommendations. However, HAVA enactment and implementation have been slow, for example, critical monies have not yet been distributed to the states. Moreover, Congress has never fully appropriated the level of funding authorized under HAVA. Thus, it will be difficult if not impossible for states to build the necessary election infrastructure by November….the potential is real and present for significant problems on voting day that once again will compromise the right to vote. Avoiding this will require unprecedented effort by all with authority and responsibility for implementing HAVA and voting generally, and will necessitate extraordinary cooperation and coordination between federal and state officials, as well as among various state and local officials…

…..The 2000 elections showed that, although the nation has come a long way, we are still far from reaching the goal of universal democratic participation. The 2004 elections will test again the nation’s resolve to ensure voting rights.”


Following the 2000 election and the Bush v. Gore Supreme Court decisions, the House of Delegates at the 2001 Midyear Meeting adopted a Resolution calling for review by appropriate ABA entities of “the nature and causes of the problems experienced in the 2000 Presidential election in connection with the casting, counting, and challenging of votes for a State’s Presidential electors” (Resolution 104; ABA “Green Book” 2001-02, p. 269). At the 2001 Annual Meeting, the House adopted, and recommended to all election officials, Election Administration Guidelines and Commentary, dated August 2001 (Resolution 112A; ABA “Green Book, P. 265.

The Resolution recommended in this Report builds upon these prior Resolutions which grew out the 2000 election experience. It seeks to have the ABA take a pro-active role, in counting room, by lending our profession’s expertise to avoiding and resolving problems in the presidential voting process. It seeks to prevent a recurrence of Bush v. Gore in 2004.
Between the deadline for reports and resolutions to be submitted (May 7) and the Annual Meeting three months later, further developments in this volatile area will doubtless occur. Even as this Report is being in early May the Election Assistance Commission established by Congress is holding hearings on problems addressed herein. The proponent of this Resolution anticipates and would welcome the submission by other delegates and concerned ABA entities of amendments or substitutes which take account of the situation as it appears in August 2004 – when we convene in the period between the two major parties’ Presidential nominating conventions. The Task Force approach is designed to enable the ABA to respond appropriately to developing events and issues. But it is important to preserve a place on the Annual Meeting calendar for the procedural and legal problems of the 2004 presidential election process to be considered and discussed by the house. It is in that spirit that this Resolution is respectfully submitted.

Robert L. Weinberg  
Delegate, District of Columbia Bar  
August 2004
GENERAL INFORMATION FORM

1. **Brief summary of recommendation**
   That the ABA establish a Task Force to monitor the fairness and reliability of the procedures employed in the 2004 presidential election for the casting and tabulation of votes.

2. **Approval by submitting entity**
   Approved by delegate submitting the Resolution on May 4, 2004

3. **Previously submitted to House of Delegates?**
   No.

4. **What existing Association policies are relevant to this recommendation?**
   Numerous ABA Resolutions support improvements designed to ensure fairness in voting procedures for the presidency and other offices.

5. **Explain what urgency exists requiring action at the meeting.**
   The 2004 Annual Meeting is the last meeting of the House prior to the November 2004 presidential election.

6. **Cost to the Association**
   None.

7. **Conflicts of Interest.**
   None.

8. **Referrals**
   The Executive Summary of the Resolution will be circulated to all entities represented in the House, including the Administrative Law Section, the State and Local Government Law Section, the Individual Rights Section, and the Standing Committee on Election Law.

9. **Contact Person (prior to meeting)**
   Robert L. Weinberg, Esq., 5171 N. 37th Road, Arlington, VA 22207-1825, phone (703) 534-3919, fax (703) 241-7504, e-mail bob.Weinberg@aya.yale.edu.

10. **Contact person/presenter (at the Annual Meeting)**
    Same as no. 9.