

WASHINGTON WEEKLY

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Electoral Dysfunction

National election procedures in the United States are a hodgepodge of state rules, despite a very detailed procedure once states have completed their work. Probably the most peculiar aspect of a very arcane system is the reality that the Constitution permits someone other than a person who receives the most votes throughout the country to become the President-elect. No matter how strange this may seem in a one person/one vote federal republic, participants settled on this system after rejecting just about every other idea of selecting our national Executive.¹

Although the U.S. election process is arcane, at some level we must accept that it is a perfect reflection of an imperfect form of governance.

The U.S. election system has survived (with several modifications) 216 years of stress, notwithstanding all the flaws inherent in the process. Another indisputable point is that none of the myriad reform suggestions have met the thresholds required to supplant current procedures. *The Political Science Quarterly* provides an informative, spirited debate on the virtues of the Electoral College.² Although the U.S. election process is obscure, at some level we must accept that it is a perfect reflection of an imperfect form of governance.

Attendees of the 1787 Constitutional Convention grappled futilely for weeks over how to structure national elections. The eventual compromise sought to preserve states' rights over how they managed the process while protecting the ideal that a president must be popularly chosen by Americans across the country. The sordid reality of slavery forced conventioners to accommodate the South; adding two Electoral votes for each state (the so-called Senate

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FDIC Chairman Don Powell is the latest federal regulator to support stronger oversight of housing GSEs.

Health Care: The D.C.

Congress remains in recess, but that has not stopped policy risks visiting health insurers in the form of subpoenas. Flu politics appear contagious.

Geopolitical Risks

The Middle East flared again; the EU and the United States developed a public difference over Iran's nuclear program; and the insurgency in Iraq gained strength and money.

¹ Michael I. Meyerson, *Political Numeracy: Mathematical Perspectives on Our Chaotic Constitution* (New York: W.W. Norton & Company, 2002).

² Jack N. Rakove, "Presidential Selection: Electoral Fallacies," and Judith A. Best, "Presidential Selection: Complex Problems and Simple Solutions," *The Political Science Quarterly* (Spring 2004).

**PLEASE REFER TO THE BACK COVER FOR ANALYST CERTIFICATION
AND IMPORTANT DISCLOSURES.**

bump) sought to appease smaller states. Nonetheless, constitutional framers were adamant about a firm timetable, as described in the accompanying table, which shows crucial dates for the upcoming election.

We'll Know Before Santa Comes to Town, Probably

Date	Event
November 2, 2004	General Election The voters in each state choose slates of electors to serve in the Electoral College. Forty-eight of the fifty States and the District of Columbia are "winner take all" (ME and NE are the exceptions).
Mid-November through December 13, 2004	Transmission of Certificates of Ascertainment to NARA The Ascertainment lists the names of the electors appointed and the number of votes cast for each person. The governors must submit the certificates "as soon as practicable," after their states certify election results. They should be transmitted no later than December 13 (but Federal law sets no penalty for missing the deadline).
December 7, 2004	Meetings of Electors and Transmission of Certificates of Vote to NARA The electors meet in their state to select the President and Vice President of the United States. No Constitutional provision or federal law requires electors to vote in accordance with the popular vote in their states.
December 22, 2004	Deadline for Receipt of Electoral Votes at NARA The President of the Senate and the archivist should have the electoral votes in hand by December 22, 2004 (but states face no legal penalty for failure to comply).
On or before January 3, 2005	Transmission of Certificates of Ascertainment to Congress As the new Congress assembles, the archivist transmits copies of the Certificates of Ascertainment to Congress. This is, in part, a ceremonial occasion. Informal meetings may take place earlier.
January 6, 2005	Counting Electoral Votes in Congress Congress meets in joint session to count the electoral votes (Congress may pass a law to change the date). The President and Vice President must achieve a majority of electoral votes (270) to be elected. In the absence of a majority, the House selects the President, and the Senate selects the Vice President.
January 20, 2005, noon	Inauguration The President-elect takes the Oath of Office and becomes President of the United States.

Source: National Archives and Records Administration (NARA)

Four years after the debacle in Florida, fears of a similar outcome are rampant.

Four years after the debacle in Florida that precipitated national bewilderment (some would say education) over the power of the Judiciary in popular elections, fears of a similar outcome are rampant. Complaints about the history and function of the Electoral College are commonplace fare on talk radio, the Internet, and other mass media. On whole, we view this as a positive outcome; more Americans are relearning civics because of the unusual stakes perceived by most voters.

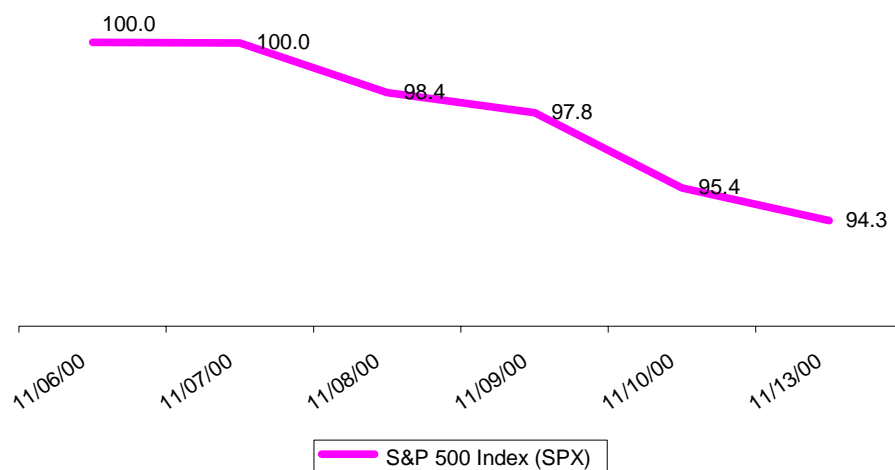
In an October 21 Gallup poll, 36% of respondents approved strongly of President Bush, while 37% strongly disapproved. Two weeks ago, Gallup found that 89% of Americans are paying "quite a lot" of attention to the presidential race, levels not seen since the 1980 Reagan/Carter contest. These data are only some of the indicators of a tight race with above-average voter interest, along with high viewership of all four televised debates this fall and surges in voter registration all year.

It is unlikely that, barring a Bush victory in most close races or an uncontested Kerry win in Florida, the world will know the next President-elect only a day or two after the November 2 elections.

According to a recent *Washington Post* story, known flaws in the electoral system have caused both dominant political parties to disperse thousands of lawyers in key states throughout the country trained to help prevent abuses and to file legal challenges if deemed necessary.³ In such an environment, it is unlikely that, barring a Bush victory in most close races or an uncontested Kerry win in Florida, the world will know the next President-elect only a day or two after the November 2 elections.

Markets do not appear worried about a repeat of 2000, either because people do not anticipate another litigated outcome or because investors rightly have faith in the system to handle credible challenges. As is true in most instances, however, markets loathe uncertainty. Election Day 2000 was November 7, and five trading days through the subsequent Monday—when it became clear that the courts would decide the vote—the S&P 500 sold off (see the accompanying chart).

One Equity Market's Election Week Returns: S&P 500, November 6–13, 2000



FactSet

Our sense is that, absent a hellish, prolonged constitutional crisis, markets will digest the uncertainty before the year-end holidays and prepare for a challenging 2005 regardless of electoral outcomes.

Regardless of current views on the Electoral College or the 2004 presidential candidates, supporters of the next President-elect will be less vociferous in their opposition to the current system, and certainly opponents of whoever is inaugurated next January will more bitterly press their case for change. Our sense is that, absent a hellish, prolonged constitutional crisis on the heels of an election that once again may be decided by nine people no voter approved, markets will digest the uncertainty before the year-end holidays and prepare for a challenging 2005 regardless of electoral outcomes.

³ Jo Becker and Thomas B. Edsall, "Charges, Countercharges Exchanged Over Fraudulent Voting," *The Washington Post*, 21 October, 2004, sec. A10.

Financial Institutions

FDIC Chairman Supports Like Powers for Bank and GSE Regulators

While Congress is unlikely to legislate GSE regulatory reform during its postelection session, some Washington policymakers continue to address the issue. For instance, in remarks last week to the America's Community Bankers trade group, FDIC Chairman Don Powell said that Congress should look at how insured banks and thrifts are regulated.

Powell supports greater powers and more tools for GSE regulator.

In his speech, Powell supported "greater powers and more tools" for the GSE regulator, following principles of bank regulation. In his view, those include (1) independence of the political process; (2) authority to determine its own budget; and (3) strong supervision and enforcement powers, including the ability to set capital requirements and appoint a receiver if need be.⁴

Powell said, "Over the years, these principles have allowed bank regulators to effectively contain the spread of problems. I cannot imagine why similar principles would not be equally effective in regulating GSEs."

Concern about insured depository holdings of GSE debt and mortgage-backed securities (MBSs) and potential systemic risk was raised in 2000, when Treasury Under Secretary Gary Gensler testified in support of repealing GSE exemptions from banks' investment security limits and loan to one borrower limits.⁵ House Capital Markets Subcommittee Chairman Richard Baker (R-LA) pointed out recently that approximately 40% of FDIC-insured institutions hold GSE debt equivalent to 100% or more of their Tier 1 capital.

The FDIC chairman's remarks indicate sustained effort by administration to urge Congressional action.

Powell said that FDIC-insured institutions hold more than \$1 trillion in MBSs, primarily issued by Fannie Mae and Freddie Mac, and have borrowed around \$533 billion in Federal Home Loan Bank (FHLB) advances, as of mid-2004. The chairman noted that the FDIC has been concerned about overuse of FHLB advances, but said, "for the most part, institutions are using advances responsibly as part of their overall funding strategies."

Powell added, "Insured institutions are not exposed to excessive risk as a result of their interaction with the GSEs under currently foreseeable scenarios."

The FDIC chairman's remarks clearly indicate a sustained effort by the Bush administration to urge Congressional action giving a new GSE regulator stronger, bank regulator-like powers.

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⁴ Remarks by Donald E. Powell Chairman Before the America's Community Bankers Annual Convention, October 18, 2004 (<http://www.fdic.gov/news/news/press/2004/pr10904.html>).

⁵ Treasury Under Secretary Gary Gensler, "House Banking Subcommittee on Capital Markets, Securities and Government Sponsored Enterprises," March 22, 2000 (<http://www.treas.gov/press/releases/ls479.htm>).

Health Care: The D.C. Pulse

Sector	Recent Developments
Brand-Pharma Generics Biotech Med-Tech	<ul style="list-style-type: none"> • Flu Politics Continue <ul style="list-style-type: none"> ▶ Aventis will produce an additional 2.6 million doses of flu vaccine. ▶ Members of Congress received flu vaccine in the office of Senate Majority Leader Bill Frist (R-TN). ▶ The recently passed FSC/ETI bill included a provision adding flu to the Vaccine Compensation Fund by assessing a \$0.75 tax on every dose. ▶ Several bills have been introduced to prevent future shortages by authorizing research and funding for outreach efforts, offering tax credits for new suppliers, creating vaccine stockpiles, and guaranteeing federal markets (similar to Bioshield proposals). ▶ Democrats rolled out a series of advertisements criticizing President Bush over vaccine failures, while Republicans said that medical liability concerns hindered domestic manufacturing of vaccines. ▶ Concerns have focused on whether Chiron can produce any vaccine in 2005; we are unlikely to gain further information until after the 90-day MHRA suspension ends in the United Kingdom. • Bulk Purchasing and Reimportation <p>The Canadian Internet Pharmacy organization (CIPA) reemphasized its pledge not to sell to bulk purchasers, instead focusing on individuals. The move underscores the real pressure that exporting pharmacies face in Canada amid at least some fears that the government could step in and restrict the practice. As long as the Canadian pharmacies focus on the individual market, the Canadian government is unlikely to step in to stop reimportation, in our view. Minnesota and Illinois have "passive reimportation" programs that allow state employees to purchase individually, not through any type of bulk purchasing mechanism.</p> • Bulk Purchasing and Medicare <p>The American Medical Association (AMA) adopted a policy supporting bulk purchasing of drugs under the new Medicare bill, noting benefits that the VA and other federal agencies already receive from this practice. In our view, the preliminary MMA regulations from CMS will take a more aggressive stance on drug pricing than anticipated. While CMS will certainly not negotiate prices, it will enter the bid process with a firm expectation of the range in which pricing should come in.</p>
Facilities Managed Care PBMs	<ul style="list-style-type: none"> • Spitzer Strikes Again <p>New York Attorney General Elliot Spitzer (D) served subpoenas on Aetna and Cigna, as he moves his insurance industry investigation of bid rigging and collusion to health insurers. However, the health insurance sector is structured quite differently; thus, it is unclear whether Spitzer will find significant violations. At the same time, we expect continued pressure from further subpoenas (none are expected for "weeks") from Spitzer, while Washington examines the extent to which it may become involved. The depth and aggressiveness of Spitzer's inquiry are likely to create a strong push for federal intervention.</p> • Hospice Care Under Continued Scrutiny <p>The GAO released a report on hospice care, finding Medicare rates to be approximately 10% higher than the cost of providing care. From 1992 to 2002, Medicare payments for hospice facilities grew fivefold while the number of Medicare patients participating grew fourfold. The GAO recommended that CMS collect comprehensive data to determine whether payment methodologies need modification. CMS agreed with the GAO's recommendations, but indicated that it needs funds to perform this research.</p>
Election Watch	<ul style="list-style-type: none"> • A Health Care Draft? <p>As Senator John Kerry (D-MA) and President Bush traded barbs about the reinstatement of a military draft, some reports indicated that the Selective Service System is updating a confidential plan to draft 36,000 health care workers. The Pentagon responded late last week, saying, "We have incredible capacity, so we don't see the need for any call-up of additional medical personnel."</p> • Medicare Premiums <p>Medicare premiums remain a potent issue on the campaign trail. The Social Security Administration announced a cost of living adjustment of 2.7% for 2005, but most of the increase will be taken up by the historic increase in Medicare premiums. Democrats renewed their call for a cap on Medicare premium increases.</p> • Obesity and Elections <p>Treasury Secretary John Snow, at an appearance in Pennsylvania, continued to discuss the idea that obesity is playing an increasing role in the rise of health care costs. The same week, Emory University Professor Ken Thorpe released as study in <i>Health Affairs</i>, finding that 27% of the rise in health care costs is linked to obesity.</p>

Source: Lehman Brothers

GPR Weekly

Issue	The Week Just Past	Our Call
<p>Iraq</p> <p>After careful evaluation, the chiefs of staff have advised me that U.K. forces are able to undertake the proposed operation, that there is a compelling military operational justification for doing so, and that it entails a militarily acceptable level of risk for U.K. forces.</p> <p>— Geoff Hoon, British Defense Secretary on the redeployment of British troops in Iraq</p>	<ul style="list-style-type: none"> • Troops: In response to the escalating situation between the Iraqi interim government and a group of Sunni Muslim scholars representing 3,000 Sunni mosques in Iraq, the British Defense Secretary has committed approximately 850 troops to the region for a term he described as being “weeks rather than months”; redeployment of British troops in and around Fallujah is likely to further incite the entrenched insurgents in the region and ratchet up coalition forces’ incursions, in our view; according to the Sunni scholars, any forceful act by the interim government in Fallujah will result in a boycott of January elections • IMF: The IMF released a report last week on the state of foreign funding status of Iraq; included is an optimistic set of economic guidance for 2004-09, pointing to GDP growth of 52% for 2004 and subdued inflation; the IMF did warn of the high risk level associated with foreign investment in Iraq, due to prolonged fighting and escalating debt, an underestimation of the risk, in our view • Attacks: Militants continued to focus their attacks on security workers and foreigners in the region; mortar attacks on security posts in Baghdad and suicide car bombers targeting U.S. convoys in and around the city left at least 15 dead and approximately 100 injured, while a joint British and Iraqi citizen working as director of international aid agency CARE was abducted 	<p>Short-Term Catalysts</p> <ul style="list-style-type: none"> • Increased stability through decreases in factional violence, not the January 31 election, would be the first major inflection point for foreign investment positions in Iraq <p>Long-Term Call</p> <ul style="list-style-type: none"> • Iraqi elections are miniscule in comparison with the monumental task of reconstruction, and the broader ideological conflict gaining ground in the country amid the U.S.’s prolonged presence
<p>Terrorism/Iran</p> <p>We expect that our legitimate rights be recognized and that Iran not be deprived of nuclear technology.</p> <p>— Iranian President Mohammad Khatami, on the potential difficulties in striking a nuclear compromise with the EU</p>	<ul style="list-style-type: none"> • Terrorism: As Spanish television stations broadcast the March 11 Madrid bombings for the first time, Spanish police arrested seven insurgents suspected of plotting similar attacks against Spain’s National Court; seized documents suggest that the group had planned to detonate a truck loaded with more than 1,000 pounds of explosives outside the courthouse, although no explosives were found during the arrests; the militants’ choice of the National Court (where the March bombers are being tried) highlight the extent to which terrorists will continue to focus on symbolic government targets rather than vulnerable soft targets; while the early detection and breakup of a large cell working on a long-term, operationally complex plot was a positive step, neither the U.S. nor European countries have committed significant resources to protect more vulnerable soft targets against smaller cells undertaking relatively simple operations • Iran: The results of an initial meeting between EU representatives and an Iranian delegation are not yet clear, but it is unlikely that Iran will agree to a constructive deal to disarm its nuclear energy program and to increased IAEA transparency in exchange for imported nuclear fuel and international clearance to acquire a light water research reactor, in our view; if a second meeting to take place within the next week were to lead to concessions of nuclear equipment or transparency, the opportunity for Iran to renege yet again remains 	<p>Short-Term Catalysts</p> <ul style="list-style-type: none"> • Iran waffles on U.S./EU incentive package, leaving IAEA’s November transparency deadline as the next major inflection point <p>Long-Term Call</p> <ul style="list-style-type: none"> • Continued threats to the U.S. and Israel, and disregard for the EU and IAEA, shift focus to escalating situation between Iran and Israel
<p>Other Developments</p> <p>I have made sacrifices for the national interests of Afghanistan and I am ready to make another sacrifice.</p> <p>— Yunus Qanuni, presidential candidate and former education minister, on dropping claims of voting irregularities</p>	<ul style="list-style-type: none"> • Afghanistan: Preliminary ballot counting in Afghanistan reaffirms our belief that current President Hamid Karzai will retain his position in a landslide victory (he is leading his closest challenger by a 42% margin); election protests from challengers appear to have dissipated, but we reaffirm that election dynamics will not significantly ameliorate the deep structural problems in the country (see “GPR Weekly,” October 15, 2004) • Ukraine: The Ukrainian presidential election scheduled for October 31 will determine the fate of democracy in the former Soviet republic; while polling indicates that democracy will continue, fears of vote rigging and the influence of a Russian move to consolidate power remain 	<p>Short-Term Catalysts</p> <ul style="list-style-type: none"> • Election protests have mostly dissipated, but final vote counts have potential to reenergize challengers’ opposition and political volatility <p>Long-Term Call</p> <ul style="list-style-type: none"> • Afghanistan’s development or lack thereof sheds light on the difficulty of Iraq policymaking

Source: Lehman Brothers

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