

# This Is One Terrorist Threat We Can Thwart Now

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A year ago this month, a freakishly close presidential election focused Americans' attention on the glitches of election codes and voting machines, and spurred talk of election reform. Now, different images haunt our imagination and anti-terrorism legislation is the order of the day. It is not much of a stretch to imagine that future terrorists might target the very foundations of our democracy -- the elections themselves.

Election reform, meet anti-terrorism legislation.

Over the past year, more than 1,500 election bills have been introduced in legislatures across America proposing fixes for what had gone wrong in the past -- everything from modernizing tabulation technology to repealing the electoral college and making Election Day a national holiday. And then the terrorists struck.

Our new awareness of the possibility of terrorism brings into focus a set of problems that have shadowed our voting system for decades. Natural disasters can compromise elections, as can a candidate's election-eve death or incapacitation, whether from natural causes or assassination. If tragedy were to strike in late October or early November, would voters be able to weigh their remaining electoral options? The fallout could be far more destabilizing than the few weeks of uncertainty we lived through last year.

Think back for a moment to the reason Sept. 11 was a specially marked date on New Yorkers' calendars: It was a local election day, with contests that included the city's mayoral primary. As the horrific events unfolded, Gov. George Pataki understood that an orderly and democratically satisfactory election that day was impossible. State law allowed him to postpone the balloting. But current federal law does not permit a similar delay of congressional and presidential elections. The law mandates an election on the first Tuesday after Nov. 1, come hell or high water, terror or trauma.

So suppose that a major presidential or vice presidential candidate dies or is incapacitated shortly before Election Day. A patchwork of state laws governs ballot access and counting, and most states allow national parties to substitute new candidates. But in some situations, parties would lack time to deliberate and state officials would lack time to print revised ballots. Without some postponement, voters might not even know whom they were really voting for. If presidential candidate Smith died, would a vote for Smith be counted as a vote for his or her vice presidential running mate Jones, or for some player to be named later by a conclave of party bigwigs?

An issue of this kind arose last year in Missouri. U.S. Senate candidate Mel Carnahan died in mid-October, but voters nevertheless elected him in November in the expectation that his wife, Jean Carnahan, would be installed in his stead. She was. But had he died closer to the election or had the loser -- then-Sen. John Ashcroft -- been less gracious and more litigious, Missouri might have been almost as tumultuous as Florida last December.

The 1963 assassination of President John F. Kennedy spurred reformers to enact the 25th Amendment, which streamlined issues

of vice presidential succession. But the assassination five years later of the late president's brother -- presidential candidate Robert F. Kennedy -- failed to prompt comparable reform to address the death or disability of presidential candidates. Indeed, had RFK been shot hours before the general election rather than hours after the California primary, the vulnerability of the current system would have been obvious to all -- and would likely have prompted serious discussion of election-postponement legislation.

Election reform to protect against such dramatic assaults will require hard choices. The tight timetable we now have was created by the 20th Amendment in 1933 to shrink the lame-duck period between a president's election and inauguration. The idea was that an incumbent president should yield as quickly as possible -- on Jan. 20, to be precise -- to a new president with a fresh electoral mandate. But shortening that period any further would not only leave less time for counting, recounting and resolving any complaints that arise, it would also make it harder for the eventual winner to assemble his new administration before inauguration. (Last year's shortened transition period surely complicated life for George W. Bush.)

One option would be for federal law to move the federal Election Day to October, with provision for postponement in rare circumstances. This, of course, would widen the very gap between election and inauguration that the 20th Amendment sought to shrink. A better response would thus be to keep Election Day as is, but allow brief postponement in rare circumstances, with streamlined voting technology, statutes and court procedures to ensure enough time for proper counts and recounts.

A sound reform law might also allow for the postponement of the electoral college meeting. State laws often purport to bind electors to vote for the candidate who won the state's popular vote; but

what if this candidate has died or become disabled between Election Day and the day of the meeting?

This actually happened in 1872, when Democrat Horace Greeley died shortly after losing to incumbent Ulysses S. Grant. Some loyal electors voted as pledged -- for the dead man -- and Congress later disregarded their votes. Little turned on Congress's ruling, given that Greeley had clearly lost in November. Had he won, however, surely the fairest result would have been to credit his electoral votes to his running mate. Otherwise, the party that won the presidency on Election Day could conceivably lose it before the inauguration. But Congress in 1873 simply tossed Greeley's votes aside, and that precedent remains a source of potential mischief today. Like ordinary voters, electors should understand in advance whether and how their votes will be counted, and should be able to cast these votes in an atmosphere of calm deliberation. And that may mean allowing for the postponement of the electoral college meeting in a crisis.

The question remains of how -- and by whom -- a postponement should be triggered. Handing this power to the chief justice risks sucking the Supreme Court into partisan politics, the danger of which is well illustrated by last year's controversy surrounding *Bush v. Gore*. The current Federal Election Commission may likewise lack the necessary credibility and impartiality. One possibility would be to let each major party (defined as the top two vote-getters in the previous election) trigger a postponement upon request. Parties would hesitate to delay elections for frivolous or partisan reasons because the voters could immediately punish any postponements seen as gamesmanship.

A final issue is whether, in an emergency, to postpone all federal elections or simply the presidential one. Once again, a law could be drafted to specify the decision maker and vest that person with

considerable discretion. Because federal law controls only federal elections, each state would decide whether to postpone elections for state officers so as to coordinate with the delayed federal election, or whether instead to hold two elections in short order for state and federal officers, respectively.

However all these wrinkles are ironed out, the experiences of this past year have made it clear that election reform proposals cannot afford to focus exclusively on fixing the problems of the past. Our democratic processes need to be protected from much less predictable threats.

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