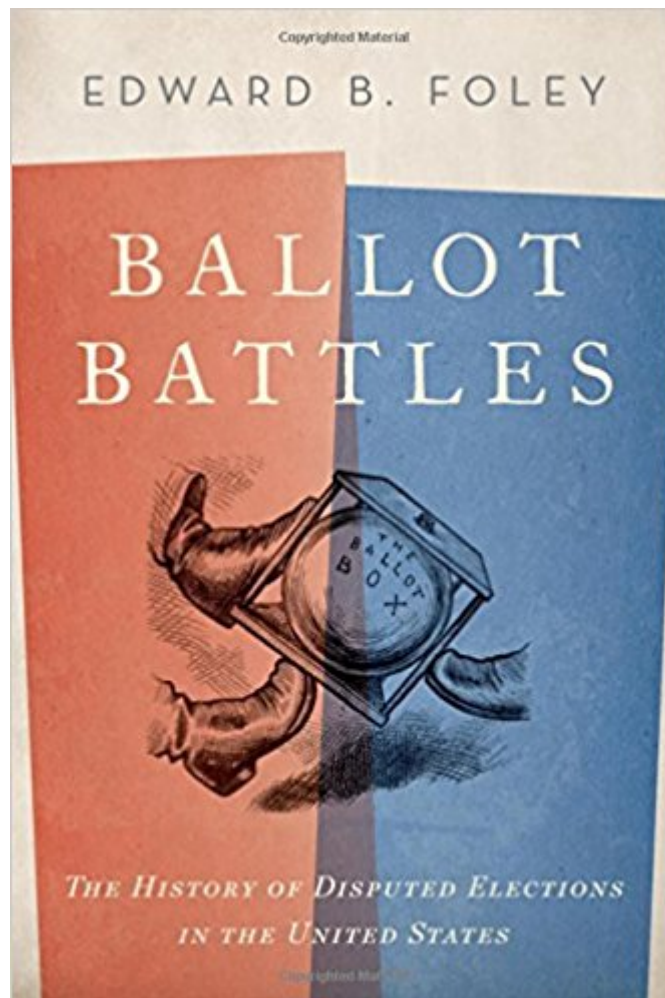




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# Ballot Battles: The History Of Disputed Elections In The United States



## Synopsis

The 2000 presidential race resulted in the highest-profile ballot battle in over a century. But it is far from the only American election determined by a handful of votes and marred by claims of fraud. Since the founding of the nation, violence frequently erupted as the votes were being counted, and more than a few elections produced manifestly unfair results. Despite America's claim to be the world's greatest democracy, its adherence to the basic tenets of democratic elections-the ability to count ballots accurately and fairly even when the stakes are high-has always been shaky. A rigged gubernatorial election in New York in 1792 nearly ended in calls for another revolution, and an 1899 gubernatorial race even resulted in an assassination. Though acts of violence have decreased in frequency over the past century, fairness and accuracy in ballot counting nonetheless remains a basic problem in American political life. In *Ballot Battles*, Edward Foley presents a sweeping history of election controversies in the United States, tracing how their evolution generated legal precedents that ultimately transformed how we determine who wins and who loses. While weaving a narrative spanning over two centuries, Foley repeatedly returns to an originating event: because the Founding Fathers despised parties and never envisioned the emergence of a party system, they wrote a constitution that did not provide clear solutions for high-stakes and highly-contested elections in which two parties could pool resources against one another. Moreover, in the American political system that actually developed, politicians are beholden to the parties which they represent - and elected officials have typically had an outsized say in determining the outcomes of extremely close elections that involve recounts. This underlying structural problem, more than anything else, explains why intense ballot battles that leave one side feeling aggrieved will continue to occur for the foreseeable future. American democracy has improved dramatically over the last two centuries. But the same cannot be said for the ways in which we determine who wins the very close races. From the founding until today, there has been little progress toward fixing the problem. Indeed, supporters of John Jay in 1792 and opponents of Lyndon Johnson in the 1948 Texas Senate race would find it easy to commiserate with Al Gore after the 2000 election. *Ballot Battles* is not only the first full chronicle of contested elections in the US. It also provides a powerful explanation of why the American election system has been-and remains-so ineffective at deciding the tightest races in a way that all sides will agree is fair.

## Book Information

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## Customer Reviews

"The vitality of democracy depends on honest elections and a fair count of the ballots. Yet as Edward Foley demonstrates in this eye-opening study, many close elections at all levels of American government since 1792 have resulted in contested outcomes that violated one or both of these requirements. With no standard mechanism in place to determine fairly the winner of disputed elections, the instability and bitterness that has marked past elections will likely persist into the future, he predicts, unless we can come up with an accepted means of arbitrating disputed results."

-James McPherson, George Henry Davis 1886 Professor of American History (Emeritus), Princeton University, and author of *Battle Cry of Freedom* "Ballot Battles isn't just the most comprehensive study of recounts to date; it's also a lens into our democracy. Foley pairs the clear-eyed perspective of an election lawyer with the idealism of a democratic theorist. He tells us not just who won and why, but who should have won and why we should care. The book is sure to become a touchstone for anyone interested in recounts and of interest to anyone interested in democracy."

-Heather Gerken, J. Skelly Wright Professor of Law, Yale University "Professor Foley is the national expert on recounts, and his book is required reading for anyone who cares about the history and future of American election controversies. Those interested in the history will marvel at the detailed and dramatic retelling of contested election controversies stretching from the Founding Era to our own. For students of contemporary politics and election law, the book provides a sobering lesson on the entrenched features of the American constitutional system that make resolution of such controversies so difficult and unlikely to be solved any time soon."

-Nathaniel Persily, James B. McClatchy Professor of Law, Stanford University "It's hard not to feel outrage and a little dread reading Edward Foley's retelling of ballot battles dating back to the nation's Founding. That's

because, as Foley argues beautifully, American democracy lacks a fair, unbiased, non-partisan way to resolve contested elections. What will happen next time an election's outcome is in limbo? *Ballot Battles* makes a compelling argument that it could well be messy." -Tamara Keith, White House correspondent, NPR News "Foley's examination of the most recent, and best known, ballot battle in 2000 bookends his study of the phenomena... Foley's view of the 2000 controversy may seem counter-intuitive to many, but his exhaustive scholarship and powerful argumentation mean that it is a view that should be taken seriously." -Sean Ledwith, *Reviews in History*

Edward B. Foley is the Charles W. Ebersold and Florence Whitcomb Ebersold Chair in Law and Director of Election Law at The Ohio State University College of Law.

Given as a gift.

I have long been a fan of the papers and other writings of Edward B. Foley of the Moritz College of Law. He writes extensively on the issues associated with close elections, how have been decided since the founding of the United States, and how the process might be improved. To me, it was a highly fascinating read that kept my interest through every page. It should be required reading for anyone interested in Election Integrity. As I would define it, *Ballot Battles* is focused on one component of election integrity, i.e. How close elections have been decided in the U.S., rather than if the vote counting itself was accurate. Foley's work is an important component of election integrity. Further along that vein we could say that Fair Elections go beyond Election Integrity to include fair voter eligibility, access to the polls, candidate access to the ballot, access to the press, and campaign financing etc. *Ballot Battles* follows close elections and the process for deciding the declared winner from 1781 through 2008. While Presidential races from 1800, 1876, and 2000 are important, many other races for the U.S. Senate, U.S. House, and Governors are just as important to history and the challenges remaining today. Reforms have been attempted after major controversies, yet as Foley shows they have been insufficient, including those after 2000. We remain vulnerable. As summarized at one point in *Ballot Battles*: "the 1960 presidential election must be viewed as a failure of American government to operate as a well-functioning democracy. That failure puts 1960 along-side 1876 and, as we shall later consider, 2000 in a disturbing series of instances in which the nation has lacked the institutional capacity to identify accurately the winner of the presidency." There is no easy solution. It would likely require a Constitutional

Amendment. Ultimately, as Foley recommends, following successful models of successful instances of bodies of equal numbers of partisans, with a single respected non-partisan member. That is unlikely to always work, yet that has worked better than the system we are left with for adjudicating close Federal Elections. *Ballot Battles* thoroughly covers the adjudication process and the risks to which we are exposed. Those seeking information on fraud and error in elections will not find the details here. Likewise, those seeking agreement that the Supreme Court erred or acted responsibly in 2000 will find little agreement here, yet much to ponder, much to learn about the law, and the precedents applied to resolve election challenges.

This is a detailed and highly readable history of some of the closest - and most consequential - elections in U.S. history, from New York's 1792 gubernatorial election to Lyndon Johnson's stolen 1948 Senate race, to Bush-Gore 2000 and several state-wide cliffhangers since then. Time after time, the outcome of an important election has been uncertain long after the votes are counted, triggering protracted legal disputes and undermining confidence in our political system. Yet, the author argues, our country has failed repeatedly to address the causes of the chronic problems that bring us the brink of political chaos more often than we care to admit. You won't want to miss the fascinating chapter on the 2000 Presidential election, which is the best 25-page description I've read of how and why Al Gore won the most votes but lost the election. Recommended for anyone interested in American history, politics, elections or law.

*Ballot Battles* examines the entire history of elections in the United States where controversy has resulted due to no nationwide procedures for conducting recounts being prescribed in the constitution. The book starts by describing the process that brought about the constitution and explains why recount procedures for elections were not included. The rest of the book is a historical survey of election controversies from the founding of the United States to present. By remaining silent on the issue of vote counting and recounts, the founders left us a Hodge podge of rules that vary from state to state and on a case by case basis, which is subject to partisan manipulation. How we got to this point is the best part about reading this book. The stories are very colorful and the reader feels himself transported into these electoral fights and feels the candidates' desperation. If you thought Bush vs. Gore was a mess, *Ballot Battles* will reorient your thinking in that such controversies while not on the scale of Bush vs Gore are not uncommon and will continue to happen without a change in the status quo. Necessary reading for those concerned about American Democracy.

Excellent overview of how the mechanics of the election process in the U.S., particularly at the Congressional and presidential level, have broken down and why. I particularly liked that Foley unearthed a number of long-forgotten Congressional election disputes going back to the 19th century, revealing from testimony subsequently taken by the House Committee on Elections, just how precarious the ballot process was then. Imagine people voting in a tavern where drinks are also being served, and so doing fully armed with guns and knives. It almost makes the famous Florida 2000 election recount seem tame in comparison.

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