

The Need for Transparent, Accountable and Verifiable U.S. Elections

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Introduction

Prior to 2000, few people ever bothered to look at the mechanics of voting. Elections were like the sausage factory—people wanted to enjoy the end product without thinking too much about what went into making it.

The 2000 Presidential election vote counting fiasco in Florida brought a huge dose of sunlight and scrutiny into the nuts and bolts of our voting and vote counting processes. Basically lots of people started looking under the rock and we are finding that oversight and security of our voting systems is miserably inadequate. We’ve also learned that election security is incredibly complex. There are thousands of voting jurisdictions in the United States, all with their own systems and procedures.

The loss of transparency has been underway in this country for 40 years, ever since punch card voting was introduced. In most places, the software that is used to tabulate the vote is not verified. This is propriety software, made by private companies, which is being managed by thousands of people with limited computer skills. This software is not required by federal law to meet any security, accuracy or reliability standard. It is unregulated by the federal government and in most states, is poorly regulated.

There are ways to verify the software that’s used to count votes, but in most places it simply isn’t. Now, with the onset of paperless, computerized voting systems, we are moving from voting systems that rely on some degree of software which can be checked for accuracy (but typically isn’t), to systems that rely solely on software and cannot be checked for accuracy.

Election issues arise quadrennially—like a blip on a radar. Now information about the lack of transparency moves at lightening speed across the Internet. This occasional blip in the radar is catalogued. Speculation runs rampant. But due to the opaqueness of the results claims of voter fraud cannot be confirmed or denied.

Even before the November 2nd election, claims of voter suppression and technical problems were being widely discussed. An October 2004 Field Poll found that more than a third of California’s voters were not confident about the integrity of electronic voting machines and one-fifth had little confidence that the Presidential election would be decided fairly.¹

¹ <http://field.com/fieldpollonline/subscribers/RLS2148.pdf>

A post-election Harris Poll found that 16 percent of the public did not think the Presidential election was conducted fairly.² Among those surveyed, Democrats and Independents expressed a much greater lack of confidence than Republicans: 27 percent of Democrats and 15 percent of Independents surveyed said they did not think the election was conducted fairly compared to just 4 percent of Republicans surveyed.

A recent poll in Florida found a wide disparity in voter confidence between the state's Republicans and Democrats.³ Overall, 21 percent of Florida voters were not confident that their votes were counted correctly. The difference in the degree of confidence between Democrats and Republicans is dramatic—95 percent of Republicans said they were very or somewhat confident their vote was counted correctly, while only 58 percent of Democrats expressed the same level of confidence.

Reforms that Promote Transparent, Accountable and Verifiable Elections

1) The federal government should implement a nationwide, voter verified paper record requirement

Unfortunately, this lack of confidence is justified. The problem with electronic voting systems is that they produce results that cannot be publicly verified. After a voter casts an electronic ballot on a touchscreen, there is no paper record of that ballot that is produced which the voter can verify to ensure his ballot was accurately captured by the machine.

Not only is the voter unable to verify that his vote was accurately recorded, but the elections department is also unable to verify whether the votes that are counted and reported are the same as those that were recorded.

Voting systems must protect against two kinds of risks:

- a) accidental errors that result in giving the race to the wrong candidate; and
- b) deliberate vote fraud.

With e-voting systems, it's as if we're trying to eliminate fraud and error by eliminating the ability to detect it. It's like trying to solve your accounting problems by eliminating your accounting department.

Cathy Cox, Georgia's secretary of state, recently wrote in the Atlanta Journal-Constitution that "every major case of vote fraud" in her state has "involved paper ballots" and goes on to describe various ways vote fraud has been committed on paper voting systems.

² http://www.harrisinteractive.com/harris_poll/index.asp?PID=520

³ <http://www.quinnipiac.edu/x12941.xml>

The thing is, vote fraud doesn't disappear just because we change voting systems. We must be realistic and accept the fact that people can and will always try to cheat in elections.

One key reform that has earned widespread support is to implement a requirement that electronic voting machines produce a paper record summarizing the voter's choices that the voter can verify before leaving the polls. This record is not a receipt that the voter keeps—it is a paper backup of that voter's choices which is collected at polling places and later used to verify the final results, and also for recounts.

A voter verified paper record requirement was unanimously passed by the California Legislature and signed into law by Governor Arnold Schwarzenegger this year. California joins Maine, Ohio and Illinois among states that have enacted a voter verified paper trail requirement, and California is the first state where e-voting has been widely deployed to do so.

But we shouldn't have to wait for all 50 states to enact this requirement. Congress needs to pass a national voter verified paper trail requirement. The federal government has the right and the responsibility to ensure accountability in federal elections.

But a voter verified paper record of each individual ballot has little value if it's not used as an audit trail. This leads to my second recommendation:

2) The federal government should require public verification of computerized vote counts

Only two states—California and West Virginia—require computerized vote counts to be publicly verified. This is accomplished by performing a public, manual count of a subset of paper ballots selected at random and then comparing the hand count to the software vote count.

Some states do have so-called “automatic recounts” if the results are within a certain margin. When this occurs, election officials typically just feed the paper ballots back through the counting devices and run the vote counting program again. If there were a software error or computerized vote tampering, this procedure would still not detect it.

If someone suspects there has been a software error, or tampering, they must request a recount. In most places, only candidates can request a recount, and must pay for it up front. Most campaigns have no financial resources left after the election to pay for a recount. Requesting a recount is also a very unpopular choice for a defeated candidate, who must endure being called a “sore loser”. And many election officials shudder at the suggestion of a recount, because it calls their performance into question.

In short, we have placed the burden of verifying elections on candidates, when in fact it is election officials who should be routinely and publicly verifying election results, no matter what the margins are.

There must be a step in between an automated count and a recount, and this is what's missing in the vote counting process right now—routine and public verification.

Because we lack this step, the only way to get a fair and accurate accounting of the Presidential election is through recounts, which is what several political parties are attempting to accomplish in Ohio.

People have one of two opinions about the Presidential election—they either believe the election was fair, or they believe the election was stolen. Either way, the fairness and accuracy of the election is a matter of opinion, not a matter of fact.

Routine, public verification of computerized vote counts would provide the assurance the public needs in order to have confidence in the accuracy of the results.

Election officials who have adopted electronic voting repeatedly assure the public that the results are accurate. We should not have to take their word for it. After all, every election the government is on the ballot. And most election officials work for the same politicians who are running for office. While many election officials strive to be impartial and professional in their duties, some take on roles in political campaigns or are active members of political parties. Such activities raise legitimate doubts in voters' minds about whether elections and vote counting are conducted in a fair and impartial manner. Such doubts could be easily put to rest if computerized election results would be routinely and publicly verified.

It is not enough that election officials, or equipment vendors, or even computer scientists tell us that the results are accurate. Any reasonable person deserves the right and opportunity to see for themselves that the results are accurate.

3) The federal government should set national, mandatory standards for security and procedures

The Help America Vote Act, or HAVA, created the illusion that the more current, 2002 federal standards would be implemented, but they have not. Today all the voting systems in this country, including systems that are receiving federal funding, have only been qualified to the 1990 federal voting system standards, if at all.

It is appalling and unacceptable that there are no mandatory, federal security standards and procedures for voting in the United States. We have left these decisions up to thousands of local jurisdictions, resulting in an enormously complex process that is difficult for everyone—the public, election officials, even vendors—to track and manage.

The federal government has historically been reluctant to interfere in the voting process, as it's viewed as a matter of "states' rights" to decide how elections will be conducted. But when it comes to federal elections, we're all in this together. As a California voter, I have just as much stake in whether Florida's votes are counted accurately as those cast in my own state.

The federal government need not impose a uniform voting system, but it certainly can and should create a mandatory, minimum level of federal standards for voting security in this nation.

In addition to requirements for a voter verified paper record and routine public verification of computerized vote counts, these standards should also:

- ban the use of modems to transfer election results from polling places to central offices;
- prohibit computers that run vote counting software from being connected to the Internet;
- implement “chain of custody” procedures for voting equipment and software;
- require that paper ballots be available as a backup if/when machines fail;
- require vendors to provide election officials with access to their source code; and
- require vendors to disclose corporate information, such as who is on their boards of directors.

Conclusion

The Universal Declaration of Human Rights includes Article 21, which states that “the will of the people shall be the basis of the authority of government” and “shall be expressed in periodic and genuine elections”.⁴

Until we achieve greater transparency and accountability in our voting process, U.S. voters will continue to question how genuine our election results truly are. Congress may reconsider HAVA in the upcoming year, and when it does, it must step up to the election security plate in order to protect the legitimacy of its authority. The United States deserves so much more than this rickety system we have today. We need a voting process that serves as an example, not an embarrassment. We need a process that utilizes computer technology in a responsible, not reckless, manner. Such a system by design must include a voter verified paper record, routine verification of computerized vote counts, and mandatory federal security standards.

⁴ Universal Declaration of Human Rights, Article 21 (3): “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.” <http://www.un.org/Overview/rights.html>.