

Electronic Voting

Faking democracy: Americans don't vote, machines do, & ballot printers can't fix that

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April 7, 2004—Machines will produce 99.4 percent of the election results for the upcoming 2004 presidential election. With all the hoopla over voting machine "glitches," porous software, leaked memos, and the creepy corporations that sell and service these contraptions, and with all the controversy that surrounds campaign financing, voter registration, redistricting issues, and the general privatization of the election process, we are missing the boat on the biggest crisis facing our democracy.

Americans aren't really voting. Machines are. Call it faking democracy.

And no one seems to be challenging it. As far as I can tell from my own investigations and from discussions with law professors, attorneys, and others, there has never been a lawsuit that challenges the right of machines to be used in the voting process. Recent lawsuits that have been filed by Susan Marie Webber of California and Congressman Robert Wexler (D-FL) are based on verification. The plaintiffs want voting machines to produce paper ballots so that voters can verify that the machine's output matched their input. They also want paper ballots for manual audits and recounts.

But these lawsuits, as well as proposed legislation in Congress from Congressman Rush Holt and Senator Bob Graham, leave voting machines in control of election results. The public is being offered a set of false choices—paperless touchscreen voting machines or touchscreen machines with ballot printers. Machine-free elections are not on the menu.

Part of the reason may be that people believe the Help America Vote Act (HAVA) requires states to use voting machines. It does no such thing, not even for the disabled. Another reason the machine-free option is not widely discussed is the popular misconception that people will not "go back" to paper ballots. But they already have. Absentee voting continues to grow in popularity despite real security problems with the chain of custody of the ballots.

It is particularly confounding to this writer that our foremost legal scholars and political scientists have yet to address this issue. Instead, a bold band of tech heads are leading a charge against paperless voting machines. But, they are not looking at the broader constitutional issues. Being technical, they're calling for a technical fix—ballot printers.

The only fix that will give Americans back their constitutional right to vote is to ditch the machines.

In *Bush v. Gore*, the Supreme Court said that a "legal vote" is one in which there is a "clear indication of the intent of the voter." Voting machines (lever, optical scan, touchscreen, the Internet, etc.) produce circumstantial evidence of the voter's intent, at best. Think of voting as a three-step process: marking, casting, and counting ballots. Once a machine is involved in any one of those steps, the result is hard evidence of the machine's output and circumstantial evidence of the voter's input.

Many activists are calling for ballot printers, hand counts, and strict audits to ensure honest election results. That will not fix the problem of using voting machines. Voting rights are for people, not machines.

The voting process must be transparent in order for voting rights to be enforced. Machines are not transparent.

When voting machines are used, critical parts of the Voting Rights Act can't be enforced. Under Section 8 of the Voting Rights Act, 42 U.S.Code §1973f, federal observers are authorized to observe " . . . whether persons who are entitled to vote are being permitted to vote . . . (and) whether votes cast by persons entitled to vote are being properly tabulated . . ."

Under "Prohibited acts" in §1973i, the "Failure or refusal to permit casting or tabulation of vote" . . . can result in civil and criminal penalties. "No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote . . . (and) Whoever . . . knowingly and willfully falsifies or conceals a material fact . . . shall be fined not more than \$10,000 or imprisoned not more than five year, or both."

Voting machines violate those provisions. Vote casting and tabulation take place inside of a box. Federal observers can't observe " . . . whether persons who are entitled to vote are being permitted to vote . . . (and) whether votes cast . . . are being properly tabulated.." Voting machines by their very design "conceals a material fact."

Although, Susan Marie Webber and Congressman Wexler are suing to force states to require manufacturers to attach ballot printers to voting machines, the resulting ballot would still be only circumstantial evidence of the voter's intent. It's been predicted by election officials (and it makes common sense, to boot) that many voters won't bother to verify their ballots. In which case, who is to say if the vote cast matched the voter's intent? Some will say that it's the voter's responsibility to verify their ballot, but that view misses the point. Why should people verify the work of a machine? That puts the voter playing second fiddle to technology. Whose right to vote is it?

The contention that voters too often don't fill out ballots properly or the elections officials too often don't count correctly is not born out by the facts, but is moot, regardless. Again, the right to vote and to observe your vote counted properly belongs to people, not machines.

Consideration of time and convenience is another red herring in this debate. Those issues have simple no-tech solutions, anyway. If officials want a fast ballot count then they can limit the size of the voting precincts or increase the number of election officials. If more elections officials are needed they can be drafted into public service as is done all year around for jury duty. Likewise, voters who don't understand English could order ballots in their own language in advance of an election.

Voting machines have been marketed as "assisting voters" (i.e., President [sic] Bush's Elections Assistance Committee), rather than what they really do, which is to interfere with a citizen's right to vote. It's particularly galling to see the needs of disabled voters used to force voting machines down the throats of the electorate. The simple ballot template, which is used in Rhode Island, Canada, and around the world, allows the blind to vote privately and independently, or as independently as possible. Actually, when the disabled use voting machines they certainly are not voting independently. They are relying on the machine to vote for them, just like able-bodied voters.

It's insane when you think about it. Using machines in elections. Yet, we've been doing it since 1888. How can Americans be so naive? How can we surrender our precious right to vote to some hunk of junk and so few people seem to notice or to care? How can we call ourselves a democracy?

It is painful to think that as African Americans intensified their struggle for the vote in the 1960s, voting machines were already in widespread use and perfectly positioned to control election results, and according to some accounts, were already doing so. Just imagine how the Iraqi people would react if the U.S. government told them that their elections will be electronic and that Halliburton, the Carlyle Group, and Microsoft will provide the machines and the software they run on? Exactly. The Iraqis would burn the place down, some more.

Yet, here we Americans go again. Not connecting the dots. Shooting at the wrong target. Attaching printer machines to the voting machines that don't belong there in the first place. Asking voters to verify a machine's output, leaving the voter's input indirect and in doubt.

I wonder what the United Nations think about a country that fakes democracy? They probably already know.

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