

Mission Impossible: Federal observers & voting machines

By Lynn Landes

November 26, 2002—Just when you thought you couldn't get any more cynical. Guess which state did not have federal observers assigned to it by the U.S. Department of Justice (DOJ) for the 2002 mid-term election?

If you guessed Florida, congratulations, you're living in the real world . . . depressing, but real.

No state could match the staggering number of voting rights complaints due to voting machines and other shenanigans as Florida did in the 2000 presidential election. Yet the Bush administration's DOJ, under Attorney General John Ashcroft, did not see fit to send federal observers to Florida to monitor the voting process in 2002, although observers were sent to several other states. This is surprising news to many people and organizations who were told by DOJ officials that "Justice" would be down there in force.

Even if they had been sent to Florida, how would federal observers "observe" the accuracy of the voting machines there?

"*They wouldn't know that,*" says Neldean Monroe, Voting Rights Program Administrator for the U.S. Office of Personnel Administrator (OPM). Her agency is responsible for the recruiting and training of federal observers who are sent by the DOJ to monitor elections if violations of the Voting Rights Act are suspected.

In an email, Monroe elaborated, "*The only observance of the tallying of the votes is when DOJ specifically requests observers to do so. This rarely occurs, but when it does, it is most often during the day following the election when a county conducts a canvass of challenged or rejected ballots. In this case, federal observers may observe the county representatives as they make determinations on whether to accept a challenged or rejected ballot. Federal observers may also observe the counting of the ballots (or vote tallying) when paper ballots are used.*"

In other words, federal observers can only observe people counting paper ballots, not machines. Monroe confirmed what this writer suspected . . . there is no training and no opportunity for federal observers to observe the accuracy of voting machines.

It's really an enforcement issue. The 15th Amendment to the Constitution is enforced through the provisions of the Voting Rights Act. And the act could be the 'silver bullet' for any litigation in federal court to end the use of voting machines.

Under Section 8 of the Voting Rights Act, 42 U.S.Code § 1973f, federal observers may be 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 . . ." Furthermore, 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 years, 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..” And voting machines by their very design “conceals a material fact.” State-of-the-art voting machines have indecipherable source codes and internal mechanisms that are hidden from inspection by design, and bogus legal contracts that protect the proprietary rights of private companies. Voting machines have known error rates and extensive documentation that they can fail “to permit the casting or tabulation of votes.”

In general, voting machines have a high degree of vulnerability for technical malfunctions and criminal malfeasance. The unavoidable conclusion is that voting machines make the role of the federal observer moot, and in that regard, the Voting Rights Act unenforceable.

So it would seem that the use of voting machines is in violation of federal law . . . and OPM’s policy could make it a culpable partner in this violation. The “smoking gun” is “concealment.” Voting machines conceal what they do and how they do it. They are not transparent. They can’t be observed.

It’s interesting to note that recent lawsuits by voting rights organizations (ACLU, Common Cause, NAACP, etc.) against the use of the old “antiquated” voting machines, are indirectly endorsing state-of-the-art voting machine technology. These groups appear unaware that they’re litigating away the rights of American citizens to open elections for, by, and of the people. What are they thinking?

The U.S. Constitution should be honored and federal laws obeyed. Let’s give federal observers a “Mission Possible”—votes cast and counted by human beings, not secret technology.

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