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Voting machines violate Constitution Who will launch legal challenge?

By Lynn Landes

April 15, 2003—Wanted: one or more really good constitutional lawyers. Why? Voting machines. We need to challenge their use in our elections.

Voting machines violate the Constitution and threaten what's left of American democracy like no terrorist ever could. Only a handful of private companies sell and service the machines that register and tabulate votes in U.S. elections. And it's all done in complete secrecy. We've lost control of our election process and Congress doesn't seem to notice or care.

If this isn't fascism, I don't know what else to call it.

Over the last several years, particularly in 2002, election results in the U.S. have come under increasing suspicion due to widespread voting machine "glitches" and unexpected election upsets. In an overwhelming number of these questionable elections . . . Republicans won. That makes sense. Republicans, such as U.S. Senator Chuck Hagel (R-NE), long ago cornered the market in voting machine sales and service.

Some people think that voting machines can be made 'secure' by incorporating technical safeguards and standards, but that misses the point in law. Once the machine is in the polling booth critical parts of the voting process become unobservable and, therefore, violate Articles I & 2 of the Constitution and the Voting Rights Act. But, to my knowledge no individual or organization, such as the NAACP, ACLU or Common Cause, have challenged the constitutionality of voting machines. Although plenty of distraught candidates have gone to court accusing the voting machines of miscounting their votes, but to little avail.

In a November 1996 article for Relevance magazine, Philip O'Halloran wrote, "Many court cases involving allegations of fraud were brought against vendors of electronic systems. There were no convictions. Was there ever any proof of tampering presented? No. Part of the reason for this may be that during the litigation the plaintiffs were never given access to the vote tabulating program, and hence there was no opportunity for anyone to establish evidence to either prove or disprove the allegations. We should point out that even if the court allowed the plaintiffs' experts to inspect the source-code, there would be no proof that the code provided to the court was, in fact, the selfsame code used in the particular election in question."

They're barking up the wrong tree anyway. How can a machine-produced vote ever constitute a legal vote? Isn't it merely circumstantial evidence of a vote produced by a machine that may or may not have been cast by a voter? In *Bush v. Gore* the Supreme Court said, "A legal vote is one in which there is a 'clear indication of the intent of the voter.'"

Voting machines reflect the action of the machine first and the intent of the voter . . . maybe. When machines are in the voting booth three violations of federal law take place:

1. inability to observe if voting machines properly register votes
2. inability to observe if voting machines properly count votes
3. inability to enforce the Voting Rights Act, because of the inability to observe if voting machines are properly registering or counting votes

Enforcement of the Voting Rights Act requires that federal observers observe whether votes are being "properly tabulated." Civil Rights statutes state, "Observers are authorized to watch all polling place activities, including assistance to voters and the counting of ballots." However, voting machines constitute a concealed tabulation of the vote which cannot be observed by federal examiners, making the examiner's role in that regard moot and the federal Voting Rights Act unenforceable. Neldean Monroe, Voting Rights Program Administrator for the U.S. Office of Personnel Management admitted to this reporter in November of 2002 that there is no training and no opportunity for federal observers to observe the accuracy of voting machines.

There is significant case law that upholds the constitutional right to have votes cast and counted properly. The Supreme Court held in the following three cases:

Allen v. Board of Elections (1969) - "The Act further provides that the term 'voting' shall include all action necessary to make a vote effective in any primary, special, or general election, including, but not limited to, registration, listing or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast with respect to candidates for public or party office and propositions for which votes are received in an election."

Reynolds v Sims (1964) - "It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote and to have their votes counted. In Mosley the Court stated that it is 'as equally unquestionable that the right to have one's vote counted is as open to protection as the right to put a ballot in a box.' The right to vote can neither be denied outright nor destroyed by alteration of ballots nor diluted by ballot-box stuffing. As the Court stated in Classic, 'Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted.'"

Wesberry v. Sanders (1964) - "It is in the light of such history that we must construe Art. I, 2, of the Constitution, which, carrying out the ideas of Madison and those of like views, provides that Representatives shall be chosen 'by the People of the several States' and shall be 'apportioned among the several States according to their respective Numbers.' It is not surprising that our Court has held that this Article gives persons qualified to vote a constitutional right to vote and to have their votes counted."

But that's not happening. Our votes are not being cast or counted openly or properly. As far as we know some madman from Midland is counting them.

Lynn Landes is a freelance journalist. She publishes her articles at EcoTalk.org. Formerly Lynn was a radio show host, a regular commentator for a BBC radio program, and environmental news reporter for DUTV in Philadelphia, Pa.