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Around the States

Volusia County's Recurring Nightmare (Part 1)



By Susan Pynchon, Executive Director, Florida Fair Elections Coalition

December 12, 2005

A Report on the Struggle for Verifiable Elections in Volusia County, Florida

*This report is being published in Three Parts: **Part 1: In the Face of Threats, Intimidation, and Disinformation**, **Part 2: A County Divided**, and **Part 3: "Volusia County is like the Bermuda Triangle"**.*

Part 1: In the Face of Threats, Intimidation and Disinformation

*"Voters vote occasionally...money votes all the time."
unknown author*

We thought we had won a victory in the fight for verifiable elections. We thought we had kept Diebold "paperless" touch-screen voting machines out of Volusia County. But, like a bad penny or a recurring nightmare, the touch-screens just keep coming back.

On December 16, 2005, the Volusia County Council will vote for the FIFTH time whether to accept or reject Diebold TSX "paperless" touch-screen machines to serve the needs of voters with disabilities. Volusia currently has Diebold AccuVote optical scan voting machines but must purchase a disabled-accessible voting system by January 1, 2006 to meet the requirements of the Help American Vote Act (HAVA) and state law.

The council has thus far rejected the Diebold touch-screens in hopes the state would certify an alternative voting system for the disabled that also allows the county to retain 100% paper ballots. The alternative system is the AutoMark, a voting device that has more that has more disabled-accessible features than the Diebold touch-screen, and which also provides full language accessibility. The AutoMark electronically marks paper ballots, which are then fed into the optical scan machine along with the ballots of all other citizens.

Despite the fact that the AutoMark is federally certified and has been quickly and easily certified in other states, the state of Florida has stalled the AutoMark's application since February and appears to have no intention of certifying it before the end of the year.

Brilliant but Convolutd Scheme

State and Local Election Integrity Organizations

Alaska

Count Every Vote Alaska

Arizona

Arizona Citizens for Election Reform
Arizona Citizens for Fair Elections

Arkansas

ArkansasVotes

California

California Election Protection Network
California Voter Foundation

Colorado

CAMBER
Citizens for Verifiable Voting
Coloradoans for Voting Integrity

Connecticut

True Vote Connecticut

Florida

Broward Verified Voting
Election Reform Coalition Pinellas
Florida Fair Elections Coalition
Miami-Dade Election Reform Coalition
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Georgia

Count The Vote
Defenders of Democracy

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Great Strides
Made, Much
More to Do to
Take Back
Democracy!

State Resources

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Voting Equipment & Ballot Design
Voting Procedures
State Recount Laws

Electionline
Paper Trail Legislation
Voter ID Legislation
Felon Voting Legislation

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NCSLnet Search

Verified Voting
Legislation Overview
State Audit

Voting

Hawaii

Safe Vote Hawaii

Illinois

Illinois Ballot Integrity Project

Idaho

Election Integrity Idaho

Iowa

Iowans for Voting Integrity Iowa Voters

Louisiana

Louisiana Counts

Maine

Maine Citizens for Clean Elections

Maryland

TrueVoteMD

Minnesota

Citizens for Election Integrity

Missouri

Missourians for Honest Elections

New Jersey

Coalition for Peace Action Essex County Voting Task Force

New Mexico

United Voters of New Mexico Verified Voting New Mexico Voter Action

New York

New Yorkers for Verified Voting Where's The Paper New York

North Carolina

North Carolina Coalition for Verified Voting

Ohio

Citizen's Alliance for Secure Elections J30 Voting Coalition Ohio Voters Reform

Oregon

Oregon Voter Rights Coalition

Pennsylvania

To date, Diebold touch-screens have been the only option available to the county, since they are the only machines approved for use with the county's current Diebold optical-scan machines.

County Council Chair Frank Bruno, a passionate proponent of paper ballots, has devised a brilliant plan to counter the state's lack of cooperation. He has negotiated with ES&S to provide a completely new voting system to Volusia County, to include all new optical scans and also iVotronics (the ES&S touch-screen), for disabled voters. ES&S has contractually agreed to trade out the iVotronics, dollar-for-dollar, once the AutoMark is approved.

The downside to this plan is that the new ES&S voting system will cost the county about \$2.5 million, as opposed to \$780,000 for the Diebold touch-screens. Although \$700,000 is fully reimbursable from HAVA funds, it appears the \$1.8 million difference for the ES&S system will have to come from the county's coffers, unless additional HAVA funds can be obtained.

The carrot driving the county councilors towards the more expensive option is the hope they will ultimately obtain the AutoMark, thus abiding by the HAVA mandate for disabled accessibility and also allowing the county to achieve the verifiable, auditable elections it has wanted all along.

Fourteen other counties are making similar arrangements with ES&S, although thirteen of those counties already have ES&S optical scan voting systems.

Exhausting Struggle

Volusia County's 9-month struggle to preserve verified elections began in March 2005. It has included four grueling, emotional council meetings, lasting between 4-6 hours each, where Diebold representatives resorted to lies (described below) and the State of Florida issued threats (described below) to convince the Volusia council to buy the Diebold paperless touch-screen machines.

Following are the results of the previous 4 council meetings:

March 10, 2005: The council voted unanimously in favor of paper ballots and verifiable elections.

April 7, 2005: The council, under extreme pressure from the state, voted 5-2 to negotiate a contract with Diebold for purchase of the touch-screens.

June 6, 2005: Following strong public outrage and a campaign to educate county councilors regarding the problems with touch-screens, two councilors changed their vote. This time, the council voted 4-3 to reject Diebold.

Legislation

Model Legislation

Verification Language Audit Language

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State Pages**Alabama****Alaska****Arizona****Arkansas****California****Colorado****Connecticut****Delaware****District of Columbia****Florida****Georgia****Hawaii****Idaho****Illinois****Indiana****Iowa****Kansas****Kentucky****Louisiana****Maine****Maryland****Massachusetts****Michigan****Minnesota****Mississippi****Missouri****Montana****Nebraska****Nevada****New Jersey****New Hampshire****New Mexico****New York****North Carolina****North Dakota****Ohio****Oklahoma****Oregon****Pennsylvania****Rhode Island**

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Coalition for Voting
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PA Verified Voting**

Tennessee

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Utah

Utah Count Votes

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**New Electoral Reform
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House 137-0**

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**Maryland: TrueVoteMD
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Detailing Diebold
Failures, Violations of
State Law**

**Florida: Ion Sancho
Fights Back**

**California: San Francisco
Stays All Paper**

**California: E-Vote
Pioneer Will Return To
Paper Ballots**

June 29, 2005: The council upheld its earlier 4-3 vote and once again rejected the Diebold contract.

Threats and Intimidation

During this period of time and beyond, from March through July, 2005, the state of Florida tried to intimidate the council into purchasing the Diebold machines. Threats came from the Governor's office, the Secretary of State's office, the state Attorney General, and from Ann McFall, Volusia County's Supervisor of Elections, all of whom tried to browbeat the council into approving the Diebold machines before the state-imposed deadline of July 1, 2005. Warnings to some of the councilors who rejected the Diebold contract included the following threats:

- 1) Possible removal from office;
- 2) Possible criminal prosecution;
- 3) Possible lawsuits against the county;
- 4) Possible "personal financial ruin" through lawsuits filed against them individually.

These threats came by phone calls from Governor Jeb Bush's representatives and Secretary of State Glenda Hood's representatives, insinuating that the governor might remove the councilors from office if they did not change their votes; threats came in a personal meeting between the secretary of state's attorneys and our county council chairman; they came in an opinion letter signed by Charlie Crist, the state attorney general, implying criminal liability; and they came in the form of personal warnings by Volusia's Supervisor of Elections Ann McFall, who threatened on local radio to sue the county council and who also told at least two councilors that they faced "personal financial ruin" if lawsuits were to be filed against them individually.

Paul Craft, Chief of the Bureau of Voting Systems Certification, added his own intimidating remarks in a March 7 email to Tim Augustine, Operations Supervisor at the Volusia elections office. Craft wrote to Augustine that if the Council did not approve the Diebold touch-screens before July 1, "the county and the Supervisor of Elections would be at risk for litigation, civil actions by the Florida Election Commission and criminal action from the State Attorney."

Even the county attorney told the council it must abide by the state's July 1 deadline and purchase the Diebold touch screens or face possible criminal prosecution.

It took incredible conviction and courage to stand up to these threats. The four county councilors who voted to reject Diebold did so because they understood that elections are the foundation of our nation and that voters must have confidence in the election process for our democracy to not only thrive, but to survive. They understood that, as technology exists today, the only

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New Mexico: Actually Paper Is Cheaper

Pennsylvania: Touchscreens Are The Problems Looking For a Solution

Maryland: State Board of Elections Admits That Diebold Touchscreens Are Hackable

California: Critics Say State Rush On Touch Screens Risks Secure Voting

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California: Where's The Hearing on Diebold's Security Flaws Discovered By The Secretary of State?

Florida: Wexler Urges Secretary of State To Implement Paper Trail

Pennsylvania: Citizens Respond To Allegations

current voting system that provides truly verifiable, auditable elections is a voting system that uses paper ballots. These councilors, based on their profound understanding of the issues at stake, defied those who threatened them to stand up for what they knew was right.

The four councilors who voted to reject Diebold participated in an act of civil disobedience – an act that ended up being perfectly legal! As events unfolded, it was the threateners who were wrong. A federal judge subsequently ruled against the July 1 purchase deadline, stating that if the Florida legislature had intended for July 1 to be the deadline, it would have said so. The federal judge gave this opinion in the *National Federation of the Blind vs. Volusia County* lawsuit, filed on July 5, and his opinion was subsequently upheld in the 11th Circuit Court of Appeals.

Read Part 2: A County Divided

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