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Around the States

Volusia County's Recurring Nightmare (Part 3)



By Susan Pynchon, Executive Director, Florida Fair Elections Coalition

December 12, 2005

*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 3: "Volusia County is like the Bermuda Triangle"

One of the attorneys for the state Division of Elections said recently, "Volusia County is like the Bermuda Triangle," meaning that Volusia seems to be a crisis-magnet when it comes to voting machine and election problems.

If the county selects the Diebold touch-screens, its Bermuda-Triangle-like problems and reputation will likely continue. A lawsuit against Diebold and against Florida's Division of Elections would not only be likely but necessary, for a variety of reasons.

Paper-ballot proponents have obtained extensive proof that the Diebold TSX certification was rushed through to meet state deadlines and did NOT meet the requirements of state law nor the Florida Voting System Standards.

Numerous certification tests were never performed, including most security tests.

Additionally, one of the four machines provided by Diebold for certification testing failed, forcing the state to conduct its testing on only 3 machines. This fact was never disclosed in the official state testing report. The state refuses to acknowledge this as a 25% failure rate, stating that the TSX failed before certification testing began. The fact is, one out of four machines failed, and whether it failed at the beginning of or during testing is irrelevant. The 25% failure rate is also in line with Diebold's failure rate in certification testing in other states, including California, which reported a 20% failure rate.

The above information was obtained in 20 pages of handwritten notes by David Drury, whose title is "Manager of Certifications."

In his notes, Drury also made the following comment: "Review of provisional ballots may occur before acceptance - this needs to change." Diebold did not make this change and the TSX was certified a week later. This flaw in the TSX means that provisional voters do NOT have a secret vote because their personal information and their voting choices can be reviewed prior to accepting or rejecting their ballots. State law says that no voting system may be approved unless it "permits and requires voting in secrecy." (Florida Statute 101.5606(1)) HAVA voting-system provisions, which will go into effect January 1, 2006, also mandate that all

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voting systems must "preserve the privacy of the voter and the confidentiality of the ballot." (Section 301(a)(1)(C) of the Help America Vote Act)

"A Crazy Way to Run an Election"

There are extensive problems with the "blending" of the op-scan and touch-screen systems, which would operate side-by-side in the precincts if approved. However, the state conducted NO certification tests to determine whether the two systems could operate properly together. There are also no user manuals or instructions to election officials as to how the blended system is supposed to work, although these items are required by the Florida Voting System Standards.

Even Diebold thinks the blended system is "a crazy way to run an election," as evidenced by the following quote about the blended system from Ken Clark, a Diebold Senior Systems Engineer, in a Diebold **internal memo** written in January, 2003:

"My unsolicited two cents is that this is a crazy way to run an election. Expecting jurisdictions to train for and administer two systems is just nuts. It is the worst of a paper-based election with the worst of an electronic election."

Diebold hopes that problems with the blended system will eventually convince Volusia County and their other "blended" system customers to eventually purchase all touch-screens, as evidenced by the following Diebold **internal memo** from system support specialist Mark Earley in response to Ken Clark's memo above:

Hopefully, the ADA requirements and the concerns you point out about maintaining two systems will lead them down the path to full TS [touch-screen].

The blended system problems include a confusing and chaotic election process with two sets of poll tapes in each precinct (one from the op-scan and one from the TSX), two uploads to the elections office from each precinct, two sets of results, and two complete sets of computer and audit logs, one for the op-scan system and one for the TSX.

State Obstruction of the AutoMark

Ion Sancho, Supervisor of Elections in Leon County, has also refused to buy the Diebold touch-screens. Sancho, who achieved national prominence by allowing a team of experts from Black Box Voting to successfully hack into Leon County's voting system and change the results in a mock election, has said, "Touch-screens will only come to Leon County over my dead body." Knowing that Sancho is intractable in his resolve, the state has focused its fire power on Volusia County.

The disabled-accessible voting system that Volusia and Leon counties want to purchase is the AutoMark, a ballot-marking device 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. The AutoMark has been quickly and easily certified in numerous other states.

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Leon and Volusia counties have been prevented from purchasing the AutoMark, however, due to its ongoing lack of state certification. Although the state certified the Diebold TSX touch-screen in less than one month from the time of its initial application, AutoMark's certification has been in limbo for over 10 months. The state has provided a series of untenable excuses for stalling the AutoMark. The most egregious of these was that the state refused to begin certification of the AutoMark until it obtained NASED qualification, despite the fact that the Diebold was not and is not NASED qualified.

The Division of Elections has also required AutoMark to undergo far more extensive testing than the Diebold touch-screen. For example, Diebold was only required to run 10,000 ballots and set up 138 ballot styles.

AutoMark is being required to recreate the programming for the entire Miami-Dade County 2004 election, in which almost 800,000 citizens voted, and must run 40,000 ballots and set up 4,000 ballot styles. The Division of Election's state reason for requiring AutoMark to submit to different test standards is that a new state law will require more ballot styles to be programmed for "precinct reports" of early voting and absentee ballots. This is a lame argument, however, because Diebold will also have to meet the same requirements of the new state law and was never required to prove it could do so.

The Price of Fair Elections

When the councilors rejected Diebold for the second time on June 29, no one dreamed at that time that the state would stall the AutoMark certification beyond the end of this year. At midnight on December 31 the bell will toll, and, according to state law, the county must return the \$780,000 it has received to purchase disabled-accessible voting machines.

Now Volusia finds itself back in the middle of the same nightmare it faced at the June 29 council meeting. The only voting machines certified by the State of Florida remain paperless touch-screen machines (supplied by Diebold, ES&S or Sequoia).

The council must decide between the \$780,000 Diebold touch-screens or the \$2.5 million ES&S all-new voting system, which will eventually include the AutoMark ballot marker, with \$700,000 for either choice reimbursed by HAVA funds. As described above, the AutoMark would allow the county to meet HAVA requirements for disabled voters while retaining its paper ballots and verifiable elections, but it will cost the county an additional \$1.8 million in county funds.

If this \$1.8 million is the price of our democracy, the price of our liberty, the price of fair elections, then it would appear the Volusia County Council really has no other choice -- other than to sue Florida's Division of Elections for its obstruction of the AutoMark certification and for its illegal certification of the Diebold TSX and the Diebold blended system.

It's a miserable choice, and only the state is to blame.

Footnote: The majority of Florida's 52 op-scan counties caved in to the extreme pressure being applied by the state and purchased paperless touch screens for their disabled voters before the arbitrary state-imposed July 1, 2005 deadline.

Lawsuit

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