

# New Hampshire elections: A call to improve integrity and accountability

BY Nancy Tobi

SOURCE: [OpEdNews](#)<sup>i</sup>

An article from Humboldt County, California, ([cited here](#))<sup>ii</sup> and appended below in full) shows what happens when election officials work in friendly and cooperative collaboration with citizen watchdogs to protect democratic elections. Humboldt County Registrar of Voters **Carolyn Crnich** worked with a local citizen election watchdog group to create the **Humboldt Election Transparency Project**. From the article:

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The basic idea behind the first-of-its-kind transparency project is fairly simple: every ballot cast in an election is passed through an optical scanner after being officially counted and the images are then placed online and available for download. Software, created by volunteer Mitch Trachtenberg, then allows viewers to sort the ballots by precinct or race to conduct recounts at their pleasure. Shortly after the election was officially certified Monday, Crnich said she got an e-mail from Trachtenberg saying something was amiss.

“(Eureka’s) Precinct 1E-45 seemed out of kilter,” she said. “The count just wasn’t adding up.” After double checking all of the precinct’s logs and ballots, Crnich said she discovered a deck of 197 vote-by-mail ballots for the precinct that had been run through the ballot counting optical scanner, but did not seem to appear in the final vote tallies.

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Someday, we hope to be able to post a story like this about New Hampshire.

Unfortunately, to this point, NH’s response to citizen pressure has been both defensive and offensive (in every sense of the word).

In fact, according to Bev Harris of Black Box Voting:

"Black Box Voting had recommended the transparency project methodology, specifically, to New Hampshire in 2007, along with another optional method of the transparency project using video to compare input to output. New Hampshire showed absolutely no interest in any of these ideas."

When election watchdogs attempted to [provide citizen oversight during the 2008 Primary recount](#)<sup>iii</sup>, they were met with intimidation and obstructionism. Afterwards, the legislature, at the urging of the Secretary of State, responded by [tacking on a rider to](#)

[pending legislation in order to tighten the noose around our democratic processes and make recounts more difficult to obtain<sup>ivv</sup>](#).

When citizens attempted to provide oversight to the central tally following the 2008 General Election, the state responded by [locking them out and warning them to stay clear of where the counts were being conducted in "nonpublic" rooms within the offices of the Secretary of State<sup>vi</sup>](#).

This kind of obstructionist behavior on the part of our election officials is alarming. Do our public officials remember that they are public servants, that the elections belong to the public, and that open vote counting is mandated by the New Hampshire Constitution?

Here is the New Hampshire story as it stands today.

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In New Hampshire, nearly 90% of our votes are counted by a private corporation with a criminal history using trade secret software with known defects that threaten the integrity of the vote count. This technology was originally developed by a convicted embezzler by the name of Jeffrey Dean. His specialty was alteration of computer records. The corporation that owns and markets the technology has a history of partisan ties and questionable business practices. [It is currently implicated in a lawsuit tying the company to a widespread conspiracy to defraud the nation's elections.<sup>vii</sup>](#)

The Department of State in 2006 unconditionally approved this technology for use in our elections ([http://www.youtube.com/watch?v=3ysheRLXuhA<sup>viii</sup>](http://www.youtube.com/watch?v=3ysheRLXuhA)):



This approval came despite the vendor's own testimony that it is defective in ways that compromise the integrity of election result ([http://www.youtube.com/watch?v=jCt-XAIWMA<sup>ix</sup>](http://www.youtube.com/watch?v=jCt-XAIWMAix)):



The State buys the computer hardware, software, and programming and service and support from a single vendor, LHS Associates. The Vice President of this company is a [convicted felon, a former trafficker of hard drugs](#)<sup>x</sup>.

The State requires no personnel background checks or oversight on LHS Associates and its practices.

Neither the Department of State nor the Legislature has implemented meaningful procedural or statutory checks on the technology. Most local election officials implement no meaningful procedural checks on the technology. In fact, most local election officials, having no guidance otherwise from the Secretary of State, misuse the technology by scanning even *absentee ballots*, despite a [known defect that causes the technology to miscount, not count, or double count, folded and creased ballots](#)<sup>xi</sup>.

A notable exception is Danville Moderator, Wally Fries, who each election conducts a [parallel hand count to check against the machine count](#)<sup>xii</sup>.

For many years, citizens in New Hampshire (specifically the Fair Elections Committee) have tried - unsuccessfully - to convince the Department of State and the NH Legislature to institute meaningful checks and balances to ensure the integrity of our elections given

that a private corporate entity has unconditional control over the count of nearly 90% of our New Hampshire votes.

In 2006, the New Hampshire Secretary of State gave unconditional approval for known defective voting technology.

In 2007, in California, the Secretary of State [decertified the same defective voting technology](#)<sup>xiii</sup>, allowing only conditional recertification with the implementation of procedural checks and balances. The State of New Hampshire ignored [a plea from citizens for NH to respond in kind](#)<sup>xiv</sup>. The state not only did not schedule a rehearing, it did not respond at all to NH citizens' urging for a review and reconsideration in light of the California reports and actions. Not a word.

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### **Defective Technology Approved for Use in NH Elections**

In NH, the Ballot Law Commission is responsible for approving voting equipment. This Commission is by law (**RSA 656:42**) required to establish rules governing their approval process.

The Commission's own rule (Bal 608.01) states:

“The commission shall approve the request following a public hearing if the commission finds that adequate safeguards have been provided to ensure the integrity of election results and the machine or device complies with these rules and the election laws of the State of New Hampshire.”

In 2006, Diebold affiliate LHS Associates submitted voting technology firmware for approval by the NH Ballot Law Commission. At the public hearing, LHS Associates President, John Silvestro, testified that the technology contained 16 critical defects, which had been identified in a report commissioned by the California Secretary of State as rendering the technology highly vulnerable and at unacceptable risk for tampering, failure, and fraud.

A transcript and video of the hearing shows the following interchange between Mr. Silvestro and Commissioner Gregory Martin:

Commissioner Martin: Do you know whether Diebold has responded to the California report of Feb. 14th?

John Silvestro: Yes, they have responded, and there is, they are going to address all of the concerns that are identified in there. There will be a new release of the firmware, which will address all of the concerns, with digital encoding and the arithmetic problem that's on the memory card.

The issue you have before you, and someone might, you might ask your follow up question would be why don't we wait till that, so I'm gonna give you the answer, before you ask that, I'll even answer it. Here's why you can't wait. I might actually have a product in sixty days, okay, and we may actually talk to the Secretary of State about coming back in to do this whole process again. The problem that we have is, is that we have all the machines we need to replace the firmware with. And no-one controls those independent test laboratories.

So before those fixes will be put in the field, they need to go through the independent test laboratories and all of the software and all of the source coding needs to be verified. That might take 30 days, might take 60 days, might take 90 days. We are under a timeline in that we have a November election. So we might well be back in here with a version of the firmware that Diebold has addressed all of the identified items in that report prior to November if time constraints allow for us to go out and replace the firmware. We may not be. So I think we need, to be prudent, it would be to go forward from here, and then evaluate the situation and keep in contact with the Secretary of State's office and let them know where we are in the process.

Commissioner Martin: So Diebold has acknowledged that these are legitimate bugs?

John Silvestro: Yes. Diebold is not, I mean, they understand. You know there is a big difference between, in the business world, the guy down the street coming to tell you, you have a problem and the Secretary of State's office in California. Okay? The Secretary of State's office in California tells you, you have a problem, you pay attention. The Secretary of State's office in New Hampshire tells you, you have a problem, you pay attention. And they acknowledge them, and they are being addressed.

Despite the vendor's own admission and incontrovertible evidence that the technology in question could not "ensure the integrity of election results" per the Commission's own rule, the Ballot Law Commission granted unconditional approval for this defective technology.

The Ballot Law Commission met and approved this firmware in March 2006 after having allowed their rules to lapse in 2004.

In response to a public records request, the NH Department of State sent a package of apparently expired Ballot Law Commission rules enacted in 1996, and wrote:

"Please find attached expired Ballot Law Commission rules that are responsive to your request. We have also attached the history of adoption of rules by the Ballot Law Commission, and RSA 541-A:17, which states that no rule shall be effective for more than 8 years."

In fact, the last time the Commission established rules, as they are statutorily required to do, was in 1996. NH administrative law states that rules are in effect for 8 years. The

Commission has not established new rules since 1996. It is unclear whether lapsed rules remain in effect by default when an agency neglects to establish new rules.

**RSA 656:42 states:**

I. The ballot law commission shall make such rules as may be necessary to ensure the accuracy of voting machines or devices, including rules for the testing of voting machines or devices prior to each election and the submission of testing records to the secretary of state. The ballot law commission shall make such rules as may be necessary in order that voting machines or devices for computerized casting and counting of ballots may be used in this state in such a manner that the election laws may be complied with as far as possible.

The statute clearly states “shall” and not “may”, meaning the Commission is **required** to establish proper rules. This is not optional.

*By allowing the rules to lapse and by not establishing new rules as they are required to do, the Ballot Law Commission’s 2006 approval of new firmware for use in NH elections apparently occurred outside the bounds of the law. If the old rules remained in effect, equipment was approved that failed the rule of ensuring the integrity of election results. If the old rule did not remain in effect, then there were NO rules in effect, which means the approval itself fails statutory requirements.*

Furthermore, in the summer of 2007 internationally recognized computer security expert, Harri Hursti, testified to the NH Legislature and the NH Department of State that the fixed firmware referred to in Mr. Silvestro’s testimony above had in fact been developed by Diebold and was currently implemented in Florida.

Yet the NH Legislature, Ballot Law Commission, and Department of State took no action to obtain the newer version that was supposed to have taken care of these known defects.

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**Delegation of Governmental Functions to a Private Corporation without Imposing Any Legal or Procedural Public Oversight**

The US Office of Budget and Management defines “governmental functions” as follows:

“As a matter of policy, an "inherently governmental function" is a function that is so intimately related to the public interest as to mandate performance by Government employees. These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government.”

Vote counting arguably falls under this definition, especially when considering the level of human knowledge required for interpreting voter intent.

*Has the State of NH outsourced a non-delegatable governmental function by handing over vote counting control to a private corporation for almost 90% of its ballots?*

The State of New Hampshire has in fact, arbitrarily and without practicing any significant oversight whatsoever, delegated this sensitive government function to a private corporation, Diebold Election Systems, and its affiliate, LHS Associates. Additionally, the State allows this private corporation to count NH votes in secret, using proprietary vote counting software hidden from public observation.

*In so doing, the State has not only abrogated its fiduciary responsibilities to its citizens, but it has violated the state constitution, which mandates observable vote counting.*

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### **Using Power and Position to Favor Special Interests over NH Citizens**

Article 32 of the New Hampshire Constitution guarantees observable vote counting as a mechanism for ensuring that our elected public servants receive the consent of the governed via open and honest elections administered under full citizen control and oversight:

Art. 32. Biennial Meetings, How Warned, Governed, and Conducted; Return of Votes, etc. The meetings for the choice of governor, council and senators, shall be warned by warrant from the selectmen, and governed by **a moderator**, who shall, in the presence of the selectmen (whose duty it shall be to attend) **in open meeting**, receive the votes of all the inhabitants of such towns and wards present, and qualified to vote for senators; **and shall, in said meetings, in presence of the said selectmen, and of the town or city clerk, in said meetings, sort and count the said votes, and make a public declaration thereof**, with the name of every person voted for, and the number of votes for each person; and the town or city clerk shall make a fair record of the same at large, in the town book, and shall make out a fair attested copy thereof, to be by him sealed up and directed to the secretary of state, within five days following the election, with a superscription expressing the purport there of.

The Secretary of State employs one full time Assistant Secretary of State who represents the state on the EAC Standards Board, a federal agency with oversight of the nation's election systems. Standards Board member responsibilities include staying up to date and commenting on current voting technologies. This same employee serves on several boards and committees whose sole purpose is research of voting technologies, including security, accuracy, and other related issues. In this capacity, at least one full time employee of the Department of State retains a high level of expertise and awareness of voting technology and the issues around it.

Despite their access to, and comprehensive review of, numerous scientific studies and documented evidence of the risks posed by Diebold optical scanner vote counting technology, the NH Department of State and Legislature have to date implemented no

procedural checks and balances, no oversight on the technology or on the vendor providing and programming the technology.

In the past five years since the establishment of an active citizen watchdog group, the New Hampshire Department of State and the Legislature have habitually ignored or obstructed these citizens' efforts to bring sunshine to what should be public elections, but which are in fact, now privately controlled.

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Examples of defensive and offensive tactics from NH public officials in recent years are described below.

- In 2004 the NH legislature, with the support of the Secretary of State, passed a bill redesigning the NH ballot. The law was written on the advice and consultancy of LHS Associates, Diebold Election Systems vendor for New England. LHS Associates advised the state that Diebold optical scanners were the only voting machine that could read the new ballot design. Additionally, LHS informed the state that the existing firmware in NH's Diebold equipment needed to be replaced with new firmware to read the ballots. The state paid for the replacement of ES&S equipment with Diebold for twenty five NH towns, as well as replacement firmware for every Diebold voting machine in the state. *In other words, as a result of this particular legislation, New Hampshire taxpayers put a substantial sum of money into the pockets of LHS Associates.*
  - A public records request reveals that the initial cost proposal from LHS to conduct these transactions was \$213,000 - \$303,000, with the lower figure being for pre-2002 firmware and the higher figure being for post-2002 firmware.
  - This initial proposal included \$40,000 to provide Manchester and Nashua with new central tabulation software. This new software is the controversial Diebold GEMS software, another "error-prone" product broadly implicated in numerous election tabulation failures throughout the nation. It appears from the state responses to record requests that the state did not purchase the GEMS for Nashua and Manchester, although this has not been confirmed.
  - In response to the same public records request, the Department of State provided one email indicating that the State agreed to purchase 15 used voting machines. In the end, the state was issued two invoices from LHS Associates: one for \$124,555 for the purchase of 29 Diebold Accuvote machines, and another for \$7,120 for the purchase of 178 firmware upgrades to existing Diebold machines.
  - The end result of this legislation was the state conveyed at least \$135,000 to the bank accounts of LHS Associates. But that's not all. Many experts believe that the new firmware now installed in all of NH voting machines is more fraud-friendly than the older version. And NH is now solidly a Diebold-only, 1.94W firmware, state.

- In March 2006 LHS Associates and the Department of State both ignored a comprehensive questionnaire submitted by citizens requesting information ranging from background checks of employees to security protocols to ensure the integrity of the electronic voting process.
- In March 2006 the Ballot Law Commission ignored citizen requests to have the questionnaire to LHS Associates completed before making any decisions to approve voting equipment.
- In March 2006 the Department of State and the Ballot Law Commission ignored several reports submitted to them by citizens, including the Black Box Voting Hursti Report, the CA VSTAAB report, and numerous other supporting information about Diebold equipment risks and vulnerabilities. It appeared only one Commissioner read the information, and he was the lone dissenter in the 2006 approval of 1.94W firmware.
- In March 2006, Secretary Gardner, when asked to testify to the Ballot Law Commission in its hearing to approve Diebold vote counting technology, steered the Commission towards approval by telling a decades-old story of a hand count gone bad in one Manchester ward and implying that machines were therefore necessary. Secretary Gardner did not offer any information regarding how the hand count could have been better managed under currently implemented management methods, and, despite the fact that he had been provided with numerous scientific reports and evidence, the Secretary was notably silent on the question before the committee, which was whether or not the Diebold technology was suitable for use in NH elections.
- Throughout 2006 the Secretary of State ignored numerous citizen requests to include protocols for parallel count on election night in the election procedure manual as a method for checking and balancing the secret machine vote counts.
- In the summer of 2007 the NH Ballot Law Commission ignored citizen requests to revisit their 2006 unconditional approval of Diebold voting technology, following California's decertification of the same technology.
- In the summer of 2007 the NH Legislature and Department of State heard and ignored expert testimony from internationally recognized computer security and election specialists, testifying to the problems with the Diebold voting technology in the state, and suggesting realistic solutions to deal with these problems.
- In December 2007 the NH Secretary of State ignored a formal request from the NH Fair Elections Committee to implement three simple procedures used by the State of Connecticut to provide oversight of the same technology used in New Hampshire elections.

The NH Constitution mandates open counting of votes. Our public officials take an oath to uphold the NH Constitution.

The New Hampshire Department of State and the NH Ballot Law Commission have publicly taken the position that it is up to the Legislature to impose better regulation of voting technology.

But it is fully within existing legal purview of the Ballot Law Commission itself to impose better regulation of this technology; the Commission requires no further guidance from the Legislature to act responsibly and to follow its own rules.

Additionally, although the Office of the Secretary of State has a habit of directing citizens to the Legislature, the Office of the Secretary of State has in fact consistently and persuasively used its position to testify in opposition to help kill all citizen-supported bills seeking to enhance public oversight and impose checks and balances over the private industry and technology now counting nearly 90% of New Hampshire ballots.

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**In February 2007 Deputy Secretary of State Dave Scanlan successfully argued before the House Election Law Committee to not pass HB136, a bill that would have made statutory the Ballot Law Commission's own rule for approving voting technology.**

Scanlan told the House Election Law Committee:

**"...from a practical point of view, we don't want to create language that will eliminate the use of these machines."**

Here is the language in that bill that the Secretary of State's office thought would "eliminate the use of these machines":

Before approving any voting machine or device, the ballot law commission shall, following a public hearing, find that there is clear and convincing evidence that the voting machine or device being examined has been designed and manufactured with adequate safeguards to insure the integrity of election results.

Other citizen-supported legislation the Department of State testified against in 2007-2008 included the following:

- **HB 138: would have required full public disclosure of voting technology information.** Deputy Secretary Scanlan suggested

"we can't require disclosure because the vendor won't go for it" and "we can't make drastic changes like this too quickly".

Turning his back on public observability, Scanlan suggested this bill should only be considered if it was amended to limit access to voting software code to a select group of people.

- **HB141: would have allowed voters to choose paper over electronics.** Contradicting his own previous public statements that voting machines "don't

count every ballot” and only hand counting ensures that every ballot is counted, Secretary Gardner testified in a public hearing on this bill:

“such a change might result in a ballot not being counted.”

Several local election officials testified against the bill, arguing that machines count better than humans, and Deputy Secretary Scanlan, outside of the hearing made public remarks that "activists" would "sabotage" election night counts by standing outside polls and convincing people to choose hand counting.

- **HB192 FN: would have required election night checks and balances on voting machine counts, by requiring a parallel hand count on election night of at least one race for all machine count towns.** (In 2006 the NH Fair Elections Committee had requested that this particular check and balance be included in the Secretary of State Election Procedure Manual, but the Office of the Secretary of State refused to do so.) Ignoring the astronomical and ever rising costs of electronic voting, and foreseeing discrepancies between hand and machine counts, Deputy Secretary Scanlan testified against this bill stating:

" We are concerned with the requirement to have to hand count. This will place increased costs on municipalities....And a discrepancy in the count is of concern."

- **HB574 -FN-L: would have required all machine count jurisdictions to preserve electronic vote data held on the memory cards used in voting machines for the 22 months required by federal law.** This would have clarified that e-vote data falls within this requirement for preservation of voting records, which Asst. Attorney General Jim Kennedy has already stated is the case. Playing up costs versus accountability, Deputy Secretary Scanlan testified against this bill, stating:

" We are concerned that each polling place must purchase multiple cards from which each costs \$250. If the information can be transferred to disc, who will be responsible for that and where will it be stored? The card probably requires a special adapter to record information so do we buy one for each town or just for the Secretary of State office?"

- **HB285: would have protected the public interest by forbidding any officials from entering into nondisclosure agreements having to do with electronic voting equipment or contracts.** This bill was retained so that it could be gutted and replaced entirely with a completely different bill, as described below.

Minutes from the Election Law Committee note that most of the bills listed above were recommended to be killed so that they could be taken up in subcommittee later in the session.

Reports from numerous members of that committee indicate that in fact, the strategy spearheaded by **Committee Chair Representative Jane Clemons (D-Nashua)**, in which she persuaded the committee to kill ALL proposed legislation so that subcommittees would combine the best parts of each proposed bill into one single omnibus bill, was a ruse.

Seasoned legislators have stated privately that this was a disingenuous suggestion, pointing out that history shows that once a Committee recommends killing a bill it more often than not remains dead. But Clemons prevailed, taking advantage of the large number of newly elected legislators.

The result was that the only bill passed by the NH House was **HB285**.

This bill, reportedly largely written to the specifications of the Office of the Secretary of State, sets up a committee to work on election technology - a committee with no citizen representation, whose members are all appointed, and which has no mandate to even consider voting rights (citizen oversight, checks and balances) but rather to simply sharpen the election focus on technology-based elections.

The Secretary of State has appointed as Chair for the committee the same man who sponsored and spearheaded the 2004 ballot redesign legislation discussed above.

And sadly, as mentioned above, the Secretary of State responded to concerns about transparency that had been raised by citizen observers during the 2008 Primary Recounts, by lobbying for amendments to existing bills, to cause the following changes in election law, which will further obstruct checks and balances and citizen oversight of elections:

RSA 660:1 Application. Allows a recount to be requested in a state general election to be requested only if the difference between the applying candidate and the candidate declared elected is less than 20 percent of the total votes cast in the district.

RSA 660:2, IV State General Election Recounts; Fees. Allows the secretary of state to require a person applying for a recount to pay any estimated costs prior to commencing the recount.

RSA 660:3 Number of Recounts. Allows a recount to be requested in a state general election to be requested only if the difference between the applying candidate and the candidate declared elected is less than 20 percent of the total votes cast in the district.

RSA 660:7 Application. Allows a recount to be requested in a state primary election to be requested only if the difference between the applying candidate and the candidate declared elected is less than 20 percent of the total votes cast in the district, and allows a recount to be requested in a presidential primary election only if a candidate received at least 9 percent of the total votes cast.

## **A Call to Action to Improve Accountability and Integrity in NH Elections**

The State of NH must take serious and drastic steps to provide assurance of election integrity to its voters. Here's a start:

**The Office of the Secretary of State must be held accountable, must comply with State law, and follow the statutes and procedures regarding the conduct of elections.**

Disciplinary consequences must be mandated and enforced for the Secretary of State's office for any future violations of any current regulations, of any remedial measures or future regulations.

**The Office of the Secretary of State must represent voter rights rather than the special interests of the private corporation providing electronic voting equipment to the state.** The Office, in its testimony before the Legislature, and in its conduct, appears to use its position to present testimony and implement practices that are biased in support of private special interests and against the interests of the citizens of NH, the NH Constitution, and the responsibilities of its office.

**The Office of the Secretary of State must provide guidance and leadership** and share its expertise and information regarding the costs and documented issues with the voting technology used in the state, as well as the costs and the proper management of hand count elections.

**The Office of the Secretary of State must require and conduct background checks** for all of its employees and all non-State personnel involved with NH elections, and make this information publicly available.

**The Office of the Secretary of State must disclose any conflicts of interest** that exist with any of its employees that may affect their ability to carry out the responsibilities of their office

**The Department of State and its Ballot Law Commission must hold hearings** and come to a determination as to the constitutionality of using secret vote counting technology in the state of NH.

**The Ballot Law Commission of the Department of State must revisit its 2006 decision** to grant unconditional approval of defective technology for use in NH elections, and make an appropriate decision based on its own rule in approving technology, which reads:

“The commission shall approve the request following a public hearing if the commission finds that adequate safeguards have been provided to ensure the integrity of election results and the machine or device complies with these rules and the election laws of the State of New Hampshire.”

**The Department of State and its Ballot Law Commission must implement appropriate procedures and requirements** for contracting with private interests handling such sensitive national security data as NH ballots and vote counting. These procedures and requirements must include background checks for all employees, as well as secure chain of custody provisions, state and public testing and oversight and retention of memory cards, and other requirements and procedures appropriate to the level of security mandated by national security considerations.

**The Attorney General must take responsibility** for overseeing adherence to state and federal election laws and statutes, and penalties must be defined and meted out for violations or noncompliance. Greater scrutiny must be paid by the Attorney General to all election and election recount operations.

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## **HUMBOLDT COUNTY IS VERY DIFFERENT FROM NEW HAMPSHIRE**

SOURCE: [The Times Standard](#)<sup>xv</sup>

Software glitch yields inaccurate election results  
Thadeus Greenon/The Times-Standard  
Posted: 12/05/2008 01:24:16 AM PST

The first of its kind Humboldt Election Transparency Project has uncovered a glitch in the county election's software that resulted in almost 200 ballots not being counted and the county certifying inaccurate election results.

The 197 uncounted ballots would not have changed the outcome of any of the election's races, according to Humboldt County Registrar of Voters Carolyn Crnich.

Crnich said the company that provides the county's election software, Premier Elections Solutions (formerly known as Diebold Election Systems, Inc.), seems to have known about the glitch at least since 2004.

Crnich said a discrepancy in vote counts came to her attention after the election was officially certified by the Humboldt County Board of Supervisors, while she and volunteers were preparing ballot images for the transparency project.

The basic idea behind the first-of-its-kind transparency project is fairly simple: every ballot cast in an election is passed through an optical scanner after being officially counted and the images are then placed online and available for download.

Software, created by volunteer Mitch Trachtenberg, then allows viewers to sort the ballots by precinct or race to conduct recounts at their pleasure.

Shortly after the election was officially certified Monday, Crnich said she got an e-mail from Trachtenberg saying something was amiss.

“(Eureka’s) Precinct 1E-45 seemed out of kilter,” she said. “The count just wasn’t adding up.”

After double checking all of the precinct’s logs and ballots, Crnich said she discovered a deck of 197 vote-by-mail ballots for the precinct that had been run through the ballot counting optical scanner, but did not seem to appear in the final vote tallies.

After exchanging several calls with Premier Elections Solutions, Crnich said she was told that the software begins counting decks of ballots at zero, and that sometimes when a deck is deleted from the machine due to normal complications, the software also deletes the Deck Zero, which in this case was the vote-by-mail ballots from Precinct 1E-45.

Crnich said she then called the Secretary of State’s Office.

“They were very interested and actually offered great congratulations on this project,” Crnich said.

Crnich said she later learned from the Secretary of State’s Office that two other California counties, Santa Barbara and San Luis Obispo, use the same version of GEMS elections software (version 1.18.19), as well as several entire states, including Maryland.

The Secretary of State’s Office was not immediately available for comment by deadline and a late call to Premier Elections Solutions was not answered.

Crnich said it appears that Santa Barbara and San Luis Obispo counties had been informed of the software glitch, and were told how to work around it to avoid having any effect on the election counts.

The Secretary of State’s Office, however, had not been notified of the problem despite having conducted a top-to-bottom review of the state’s elections systems in 2006, according to Crnich.

The scariest part of all this, said Trachtenberg, is that the issue would have never been uncovered without the transparency project.

“Has this happened in other counties or other states?” he asked. “How can we know?”

Crnich also said she was informed by the Secretary of State’s Office that this version of Premier Elections Solutions GEMS software was in use in the highly contested 2000 Florida election before the problem surfaced.

Uncovering the glitch also seems to lend credence to groups of people across the country who, for years, have criticized placing the nation’s elections in the hands of private

companies that dispense vote counting machines that operate with secrete, proprietary codes that, in many cases, leave no paper trail.

Kevin Collins, who volunteers with the transparency project and is one of its charter members, said this never would have been uncovered without Crnich's dedication to transparent elections.

”She deserves a huge amount of credit for devising a system for doing something in Humboldt County that isn't being done anywhere else, and that's auditing 100 percent of the ballots,” Collins said.

The uncovered glitch means little for Humboldt County's election, as it won't change the outcome of any races and, consequently won't even require a re-certification of the election's results, but it has implications that could reverberate throughout the world of elections.

”You just can't trust a secret program to count this stuff because programers make mistakes,” Trachtenberg said. “People have been complaining about secret machine counts and the companies have said these folks are nuts. But, the first time (the transparency project) is done in a general election, it comes up with a problem -- a problem (Premier Elections Solutions) has known about for four years.”

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<sup>i</sup> <http://www.opednews.com/articles/New-Hampshire-elections-A-by-Nancy-Tobi-081205-699.html>

<sup>ii</sup> [http://www.times-standard.com/localnews/ci\\_11145349](http://www.times-standard.com/localnews/ci_11145349)

<sup>iii</sup> <http://www.blackboxvoting.org/video.html>

<sup>iv</sup> <http://www.sos.nh.gov/2008%20Election%20law%20changes.pdf>

<sup>vi</sup> <http://www.bbvforums.org/forums/messages/1954/79361.html>

<sup>vii</sup> <http://www.democracyfornewhampshire.com/node/view/6277>

<sup>viii</sup> <http://www.youtube.com/watch?v=3ysheRLXuhA>

<sup>ix</sup> <http://www.youtube.com/watch?v=jCt-XAIWMA>

<sup>x</sup> <http://www.democracyfornewhampshire.com/node/view/5317>

<sup>xi</sup> <http://www.democracyfornewhampshire.com/node/view/6205>

<sup>xii</sup> <http://www.democracyfornewhampshire.com/node/view/3365>

<sup>xiii</sup> <http://www.democracyfornewhampshire.com/node/view/4460>

<sup>xiv</sup> <http://www.democracyfornewhampshire.com/node/view/4469>

<sup>xv</sup> [http://www.times-standard.com/localnews/ci\\_11145349](http://www.times-standard.com/localnews/ci_11145349)