

The Last Transparent Democratic Electoral System in the United States of America Cannot Be Allowed to Perish

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Executive Summary

No legitimate democratic government has ever claimed legitimacy while embracing a power to conduct public elections concealed from election officials and the people.

New York currently has a democratically compliant transparent electoral system. Its overall object is the protection of the franchise through the prevention of error and fraud. This is enabled by minutely detailed duties constitutionally required of election officials who must be able to observe and scrutinize every aspect of the electoral process. These duties in turn are overseen by public observation performed by party representatives, authorized watchers and others, serving to protect against abuse and error while providing a rational basis for public confidence in the election results.

Forty-nine states are now using concealed vote counting systems in which invisible software tabulates the votes, hiding error and fraud. The public, as well as its election officials, have been evicted from their public elections: forbidden to witness the process by which the votes are counted.

As the nation awakens to find that in six short years (since the implementation of the Help America Vote Act) the People have been shut out of the very process that must be open if we are to retain control over our democracy, there is one state that still has a working blueprint. Only in New York are the lessons of 231 years of history not merely history. But the last State standing is about to lose its transparent voting system and with it every safeguard that has protected the franchise from dilution by fraud and irregularities.

This article explains how New York's lever system, as well as its manual paper counting system, have operated to protect the constitutional right of suffrage through carefully prescribed regulations designed to detect, expose and deter fraud and irregularities, employing an observable safeguarded process that anticipates and actively prevents even the opportunities for fraud and error:

- The count must be publicly conducted at the poll site and concluded on election night before the ongoing public surveillance ends and while there is less incentive to misconduct;
- The canvass is to be performed by public officers following minutely prescribed duties which the public can observe and which duties are enforced through those higher standards available to protect the public good, including criminal penalties for breach of duty;
- The count must be publicly committed to an immutable physical record simultaneously created as the canvass proceeds;
- The count must be publicly announced at the poll site simultaneously with all other election districts, before the aggregate of all votes are known and the importance of a few votes one way or the other is understood;
- The publicly observed and maximally safeguarded count on election night is protected from post-election opportunities for fraud by mandating that it is unalterable, except in judicial proceedings challenging title to office;
- Each step of the electoral process is performed by bipartisan election officials who are to be provided every opportunity to know that the results are accurate, watched over by observers starting from the moment fraud or error can intervene until the count is concluded (in the case of lever counted elections this process begins before election day – with observers examining how each lever

machine is programmed to count the votes, observing that the machine is securely locked and prevented from moving as programmed – and continues after election day permitting observers in certain cases to examine the machines to see how they functioned during the election);

- Record evidence of how the votes were counted on election day as well as the paper ballots must be preserved inviolate – never be used to alter the first count, but to be held for safekeeping serving as a further deterrent against fraud and providing the necessary proofs should the People need to challenge the election results in a judicial proceeding;
- Post-election opportunities for fraud are considered so likely that for 231 years New York has never permitted post-election ballots to be used to affect the first count, except in a rare judicial challenge and then only if a jury determined that the ballot boxes had not been disturbed.

The above are some of the essential safeguards which have historically protected New York's constitutionally guaranteed right to vote (Article II, §1) and the right against disfranchisement (Article I, § 1) in recognition that:

*The right of suffrage is one of the most valuable and sacred rights which the Constitution has conferred upon the citizen of the state. About it have been erected many safeguards, with the object of securing to each qualified elector the fullest and freest exercise of his constitutional privilege, and, also, of obtaining the greatest protection against the perpetration of frauds at the polls, which shall be consistent with a certainty that every person entitled to vote shall have his ballot received, deposited and counted.*¹

This article further explains how software-based voting systems destroy every one of these safeguards, encouraging the very fraud that two centuries of regulation has sought to prevent:

*If we destroy any of the safeguards erected and intended to be maintained about the voter, for his protection... we at once do an act in encouragement of the very evil sought to be prevented.*²

In 2005 New York State enacted the Election Reform and Modernization Act (ERMA) scheduled to go into effect in 2009. ERMA intends to "modernize" our voting system using software-based voting machines that conceal the very process by which our votes are counted. Such a radical departure from the very essence of a transparent electoral system deprives candidates, election officials and the People of the very means by which we are supposed to detect and deter fraud or error, thus destroying the integrity of the election in making the will of the electors impossible to ascertain.³ We can no sooner cast off 231 years of accumulated wisdom than we can our Constitution. The last transparent democratic electoral system in the United States of America cannot be allowed to perish.

To learn more visit Re-Media Election Transparency Coalition at www.re-mediaetc.org & please sign the petition at http://www.electiondefensealliance.org/ny_levers_petition in support of our constitutional right to a transparent, secure, theft-detering electoral system.

¹ *Stapleton v Bell*, 74 Sickels 175, 178 179 (Court of Appeals 1890)

² *Nichols v. Board of County Canvassers of Onondaga* 129 N. Y. 395, 432 (Court of Appeals 1891) (emphasis supplied)

³ *"The source of all power is the people, as represented by the electors."* *Matter of Callahan* 200 N.Y. 59, 63 (1910) (emphasis supplied)