

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

By Andrea Novick, Esq. Founder Election Transparency Coalition

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Read the Full Article at:

<http://sites.google.com/site/remediaetc/home/documents/LastTransparentElectoralSystemvic.pdf>

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 State enjoys 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) we have all been shut out of the very processes that must remain open if the citizenry are to retain control over their democracy, there is one state that still has a working blueprint. Only in New York are the lessons of 232 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 dilution of the franchise from fraud and irregularities.

This article explains what New York currently has and will lose if we fail to stop the unconstitutional Election Reform and Modernization Act (ERMA) from replacing New York's transparent lever voting system with a secret vote counting system that permits the invisible processes of software to replace the role of the public and its election officials in protecting the integrity of election outcomes. New York's lever system, as well as its manual paper counting system, has protected the constitutional rights of suffrage by enabling the potential for 100% knowledge through a transparent process that anticipates and actively prevents even the opportunity for fraud and error. Every protection, as described below, is eviscerated by ERMA.

- The count must be publicly conducted at the poll site, ascertained and concluded on election night before the ongoing public surveillance ends and while there is less incentive to misconduct;
- The transparent electoral process must be performed by public election officials following explicitly prescribed duties, under the authority of constitutional election officers, thus enabling maximum control and subjecting the performance of publicly owed duties to the higher standards available for the protection of the public good;
- The count must be publicly announced at the poll site simultaneously with all other election districts, before the aggregate of the votes are known and the importance of a few votes one way or the other is understood;
- Each step of the electoral process must be witnessed such that bipartisan election officials and observers are accorded every opportunity to personally observe and know that the results are accurate, commencing 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 election officials and observers examining how each lever machine is programmed to count the votes, observing that the machine is securely locked to effectively prevent the programming from changing - and continues after election day enabling examination of the machines, if necessary, to reveal error or fraud in the at-elections count);
- The count must be publicly committed to a durable physical record, simultaneously created as the canvass proceeds, which evidence prevails over any unobserved evidence of the count;
- The publicly observed and maximally safeguarded at-elections count must be unalterable, protecting it from post-election opportunities for unobserved fraud understood to be so dangerous and likely that for 232 years New York has forbidden post-election paper ballots to be used to affect the at-elections count, except as an incident to a judicial proceeding and then only if a jury determined the opportunities for ballot tampering had been sufficiently prevented;
- The fraud-detering physical record evidence of how the votes were counted at the election as well as the paper ballots themselves must be preserved inviolate. Paper ballots may not be used post-election, but are to be held for safekeeping as evidence for the public or candidates, preserving the necessary proof to challenge erroneous results.

These essential safeguards have historically protected New York's constitutionally guaranteed right to have public election officers control a transparent process (Art. II, § 8); the right of suffrage (Art. II, §1) and the right against disfranchisement (Art. I, §1), respecting 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 *Stapleton v Bell*, 74 Sickels 175, 178 179 (Court of Appeals 1890)

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.

ERMA, scheduled to go into effect in 2009, intends to "modernize" New York's voting system using software-based voting machines that conceal everything election officials and the public are constitutionally required to observe and protect, and which have been proven vulnerable to undetectable error and fraud. ERMA unconstitutionally deprives election officials, the public and candidates of the very means necessary to detect and deter fraud or error and destroys the integrity of the election by making the will of the electors impossible to ascertain. We can no sooner cast off 232 years of accumulated wisdom and precedence 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.

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)