

California Moves Against Diebold Touch-Screen Voting Machines

by Edward Spannaus

In a major blow against the touch-screen voting swindle—a scam which many fear will be used to steal the November Presidential election—California Secretary of State Kevin Shelley on April 30 barred the use of Diebold touch-screen voting machines in four counties, and asked the state’s Attorney General to pursue criminal and civil proceedings against Diebold, citing its “fraudulent actions.” Shelley also decertified all touchscreen systems in the state until additional security measures are put in place. Diebold has older-style machines installed in ten other counties, which must now either be modified to provide a paper trail, or must meet 23 security standards before they can be used in November.

On April 22, the California Voting Systems and Procedures Panel (VSPP), by a unanimous 8-0 vote, had recommended that the Secretary of State ban the use of the 15,000 Diebold touch-screen voting machines in the four counties for the Nov. 2 Presidential elections. The panel also recommended pursuing civil and criminal charges against Diebold, for violating California election laws.

“We will not tolerate the deceitful conduct of Diebold,” Shelley said. He also vowed that “there will be a paper trail for every single vote cast in the state of California, and it will happen on my watch.”

Last November, the state found out that Diebold had installed uncertified software, without notifying state and county officials. Right before the March 2 primary, Diebold made a last-minute installation of a peripheral device called a “smart-card encoder,” which malfunctioned and caused several hundred precincts to fail to open on time, disenfranchising voters who were turned away.

The VSPP chairman, Undersecretary of State Mark Kyle, said that Diebold had been deceptive about its foreknowledge of problems with the encoders before the March primary. He also accused the company of “bait-and-switch” tactics in trying to pass off uncertified software, as if it had been certified.

A staff report prepared in the Secretary of State’s Office found that Diebold had failed to obtain Federal certification; that it had repeatedly misrepresented the facts, concerning its compliance with Federal testing, to state and county officials; and that during the primary election, Diebold’s machines “failed on a massive scale, resulting in the potential disenfranchisement of voters.”

The report went so far as to conclude that Diebold’s mis-

conduct and misrepresentation “jeopardized the outcome of the March Primary.”

Assistant Secretary of State Marc Carrell said that the decertification amounts to a freeze of Diebold’s business in California, and he called this “a huge embarrassment” for the company, because now, whenever it tries to sell its voting systems to other states and localities, it will have to defend its conduct in California.

A series of legal memoranda obtained by California newspapers, including the *Oakland Tribune*, showed that Diebold lawyers had warned company officers already last Fall, that they should prepare for legal action. They stated that the company had broken California election law by supplying uncertified voting systems to counties, which were then used in the November elections, and that it had also breached its contract with Alameda County. The lawyers noted that the Secretary of State is required to report any violations of law to the state Attorney General and perhaps also to local District Attorneys.

Diebold’s lawyers—in the Los Angeles office of the Cleveland-based Jones Day law firm—drew up a legal budget for Diebold, which included the following items:

- Preliminary legal analysis of potential criminal violations and theories (\$25-40,000);
- White-collar criminal law attorney pre-grand jury investigative advice (\$5-10,000/month);
- A comprehensive position paper which would provide the basis for “persuading prosecuting authorities not to bring criminal charges,” plus press releases, etc. “This is recommended given the exposure. . .” (\$150-250,000).

After the California ruling, Diebold Chairman Walden O’Dell, a major Bush-Cheney contributor and fundraiser, pretended that the company will not be hurt by the California actions, because “whatever goes on in California is separate from what goes on in other states.” However, in the week after the news from the April 22 California actions went out, Diebold stock fell about 8%.

‘Paper Is Coming . . .’

At a further meeting of the VSPP on April 28, the panel considered decertification of *all other electronic voting machines*. The panel stopped short of that drastic step, but it did recommend the following measures:

- All voters should have the option of voting on a paper ballot in November;

Missouri Legislators Want Only Paper Ballots

Legislation to ban all electronic and machine voting, and to use only paper ballots, was recently introduced on April 20 into the Missouri House of Representatives by Rep. Juanita Walton and Rep. James Whorton. The bill also requires that every voter be given a receipt recording his vote. The key section of House Bill No. 1744 reads as follows:

“After August 28, 2004, all elections conducted in this state shall use only paper ballots, and no voting shall be done by ballot card, electronic voting system, marking device, or any machine, nor shall any vote be counted electronically or by any machine. All such ballots shall be counted in accordance with the procedures established for counting paper ballots. . . . Each voter shall be provided with a copy of the voter’s complete ballot for the voter to retain as a voting record.”

A hearing on H.B. 1744 is scheduled to be conducted by the House Committee on Elections on May 5 in Jefferson City.

- New security procedures must be put in place for the November elections, which include vendors submitting their source code to the state, so that it can be placed in escrow;

- No new electronic voting equipment can be purchased before November, unless the equipment produces a voter-verified paper trail, in which the voter can verify his vote before it is submitted.

“Paper is coming to California,” said one VSPP member. “It not a question of if, but a question of when.”

Risking an Election-Day Meltdown?

The VSPP ruling was hot news among opponents of e-voting across the country, and it also sparked some editorial calls for decertification of Diebold machines.

The *San Jose Mercury News* wrote in an editorial: “The public apology by the president of Diebold Election Systems isn’t enough. His company’s promises and excuses for failure ring hollow. . . . In misleading state election officials, the touch-screen voting company destroyed its credibility and damaged voter confidence in elections. Diebold’s conduct justifies the immediate decertification of the latest electronic voting system used in San Diego, Solano, Kern and San Joaquin counties.”

A *New York Times* editorial said that “there are compelling reasons for [Secretary of State Kevin] Shelley to decertify some, and perhaps all,” of the Diebold voting machines in

California. The *Times* cited the widespread malfunctioning of Diebold machines on March, and noted: “It is not hard to program a computer to steal an election,” and that this is why certification by Federal and state monitors is required. The *Times* suggested that Shelley should not only ban Diebold machines, but that he should bar all machines that do not produce a paper trail. “To do otherwise is to risk Election Day meltdowns, and another presidential election in which voters lack faith in the outcome.”

The drive to establish voter-verified paper trails is picking up steam in many states, and also in Congress, where there are a number of bills pending. Two hearings on voting technology are scheduled in Washington during May. The first is a May 5 all-day hearing on electronic voting to be conducted by the new Federal Election Assistance Commission—whose start-up was sabotaged for months by the Bush Administration. The second is a hearing on voting technology to be held on May 12 by the House Government Reform Committee’s Subcommittee on Technology.

However, California legislators have told *EIR* that a paper-trail system would not have prevented *any* of the problems that occurred with Diebold machines on March 2, because the major problem was that the machines didn’t work at all. Forty percent of the precincts opened late in San Diego County, and 20% in Alameda County, because the vote-card encoders didn’t work. A paper trail would have had no effect on this massive disenfranchisement of voters.

One major problem with “paper trails” is that there is no way that the retrofitting of touch-screen machines with printers could be accomplished in time for the November elections. A bigger problem, as computer experts have advised *EIR*, is that the attachment of printers to voting machines adds another element of complexity which is prone to malfunctioning and failure, as anyone familiar with computer printers knows. Such a system which is used only once or twice a year is going to be even more problematic.

LaRouche: Ban All Computer Voting

Democratic candidate Lyndon LaRouche is calling for banning *all* computerized voting systems, and going to a total paper ballot system, as an emergency measure for the November 2004 elections. LaRouche emphasizes that the speed and complexity of computers creates an inherently dangerous and fraud-prone situation, because only a handful of people even know how the machines work. Worse, sometimes the only people in the know are private contractors; even the local officials responsible for running the elections are in the dark.

To those who argue that returning to paper ballots would be slow and inefficient, LaRouche says that this is all the better: The more people involved, the more impediments there are to carrying out vote fraud. The Democratic candidate stresses that a process in which citizens can observe what is going on, is the best way to prevent vote fraud and the stealing of an election.