



Significant Problems with Utah Election Laws and Procedures

The Utah State Records Board recently ruled that no election records are subject to Utah's open records laws (Government Records and Management Act) because of a flexible statutory definition of "election returns" in combination with other statutes concerning "election returns". Utah's election statutes and procedures do not allow meaningful public oversight over the integrity or accuracy of Utah's electoral process. This results in many types of accidental vote miscount, or deliberate ballot substitution, ballot tampering, voter disenfranchisement, and ballot box stuffing being undetectable.

Security experts agree that any real threat to polling integrity would be likely to come from someone with "inside" or privileged access; it therefore makes little sense to allow the "insiders" to have exclusive oversight responsibility over Utah's elections. Since polling integrity is in the best interest of the voters, it follows that the voters and candidates should be allowed to fulfill primary election oversight functions.

Utah uses the Diebold/Premier TSx electronic-ballot touch-screen voting system and the Diebold/Premier GEMS server that are operated by trade secret software.¹ Utah's voting system, has been proven to be both inaccurate and susceptible to hacking in independent expert studies and in post-election audits conducted in other states.² Legislatures in several States that implemented similar digital recording electronic (DRE) voting systems have recently voted to stop using them and to use more economical, auditable, paper ballot optical scan systems which preserve ballot privacy.³

Problems with Election Statutes:

- Utah election statutes do *not* require
 - that the paper ballot records shall be available for manual audits or that the counting of paper ballots shall be observable by the public and the candidates,
 - public access to election records such as precinct vote counts, election night polling place vote counts, absentee ballot processing, voter registration materials, used or unused or spoiled ballots, etc.,
 - that the public be able to observe election audits,
 - public reconciliation of the number of voters processed with the number of all printed, cast, spoiled, used, and unused ballots,
 - that the public be allowed to know what election procedures will be used prior to an election,
 - public oversight over or expert input into ballot security or audit procedures, or
 - public access to records needed to evaluate the integrity or accuracy of the electoral process.

¹ The software is compiled into machine language that is not humanly readable, not even by computer science experts.

² See *Diebold TSx Evaluation, SECURITY ALERT: May 11, 2006, Critical Security Issues with Diebold TSx* <http://www.blackboxvoting.org/BBVtsxstudy.pdf> and *Diebold TSx Evaluation, SECURITY ALERT: May 22, 2006, Supplemental report, additional observations* <http://www.blackboxvoting.org/BBVtsxstudy-supp.pdf> for a list of other security studies including those conducted by Ohio and California Secretaries of State on Diebold TSx machines, scroll down to the "Security Reports" section of *Security Issues* <http://www.countedascast.com/issues/security.php>

³ Premier Election Systems, formerly Diebold, is the voting machine vendor for Utah's TSx machines. See <http://utahcountvotes.org> for more information or email kathy.dopp@gmail.com In Ohio, a software flaw that causes the Diebold/Premier GEMS central tabulators (the same model that Utah uses) to fail to count the ballots for entire touch-screen memory cards was recently discovered. Also in Ohio the GEMS server was discovered to have database corruption problems causing inaccurate vote counts. Numerous studies by computer scientists have proven that the Premier/Diebold voting system are insecure and susceptible to undetectable hacking. See "Security Reports" <http://www.countedascast.com/issues/security.php> Legislators in VA, FL, MD, TN, and other states have passed legislation requiring the use of paper ballot voting systems.

- retaining ballots, voter registration materials, and other election returns for 24 months as is required by the National Voter Registration Act (NVRA).
- Utah’s election statute prohibits the examination of its pollbooks. This violates the National Voter Registration Act (NVRA). Utah’s election officials are forced to violate Utah’s election statute in order to perform their jobs but enforce Utah’s statute by prohibiting the public from examining pollbooks.
- Utah election statutes require the destruction of unused ballots on election night, this makes it impossible to reconcile that the number of used, unused, and spoiled ballots equals the number of printed ballots.
- Utah election statutes allow county clerks to classify any election records as “election returns” and requires securing “election returns” in the polling locations and then not opening them again, and then destroying all election returns “without opening” after 22 months. County clerks can *not* tally the votes and obey this statute.

Problems with Election Procedures & Policies:

- Utah’s reported unofficial election results are not subjected to any independent post-election accuracy check.⁴
- Utah polling place vote counts are not publicly posted on election night when polls close and the public is not permitted to examine copies of polling place machine vote counts or other summary records, election returns, or ballots.⁵
- Out-of-date Utah election statute seems to assume that votes are hand-counted at polling places, and Utah election officials are forced to violate this statute by examining election returns that are secured during poll closing.
- By not securing and retaining all the memory cards, hard drives and other electronic ballot records for the 22 month retention period and by not destroying these same memory cards and hard drives “without opening” them after the 22 month retention period, Utah election officials are violating Utah’s current election statutes.
- Utah Lt. Governor’s office requires citizens who want to know precinct vote counts to make a formal Government Records and Management Act request. This entails a fee and a delay that may make it impossible for voters to provide information to canvassers or vote count auditors of any patterns consistent with vote miscount. Most states publicly post precinct-level vote counts publicly on the Internet during the canvass period.
- Utah ballot security procedures, if there are any and some other election procedures, are not made publicly available for scrutiny.
- There has not been any formal study of Utah’s voting and election system by independent experts to evaluate Utah’s voting machines and election procedures.

A specific legislative request to modify Utah election statutes and fund a study of Utah’s election systems is posted at: <http://utahcountvotes.org/legislature/UTLegislativeElectionReform.pdf> This document is posted at: <http://utahcountvotes.org/legislature/UTLegislativeElectionReformSummary.pdf> If you would like to be emailed a copy of any document, please email kathy.dopp@gmail.com

⁴ See *Utah’s New Election Audit and Recount Procedures Found Lacking by Utah’s Desert Greens Party and Utah Count Votes*, October 26, 2006 <http://utahcountvotes.org/ltgov/Response2LtGov-Audit-Recount.pdf>

⁵ This is in contrast to states like Montana which allow citizens under the supervision of election officials to manually count ballots to verify the accuracy of machine counts, and is in contrast to the open government policies of most states.