



Florida Fair Elections Coalition
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Preliminary Report
September 5, 2006 Primary
Volusia County, FL¹

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[IMPORTANT: Please note that this preliminary report was prepared for presentation to the Volusia County Canvassing board prior to the certification of the September 5, 2006 primary. Public records obtained several weeks later not only confirmed these findings, but showed additional serious problems. For a discussion of those problems, see the West Volusia Beacon's award-winning article, [The Tale of the Tapes](#), reprinted here with permission.]

Summary

Turnout for this primary was extremely low. According to the division of elections' site, only 18 percent of Volusia's eligible voters bothered to vote even though they had many venues to do so—two weeks of early voting at four sites across the county, absentee balloting, and voting at the polls on election day. Low turnout usually translates into few problems since neither the equipment nor the workers are subjected to much stress or a variety of circumstances.

Furthermore, Florida Fair Elections Coalition mounted only a very limited monitoring effort, mostly based on poll closings at a dozen or so of the county's 179 precincts and reports from the public. This very small, random sample was not likely to pick up any but the grossest, most widespread problems.

Given these mitigating circumstances, the canvassing board and general public should be alarmed that we found equipment failures in nearly every precinct that we monitored as well as serious security breaches, significant violations of election laws, and generally poor levels of poll worker competency.

¹ Content of this report has not been changed, but formatting changes and minor editorial corrections have been made prior to posting on the FFEC website. We have redacted one name for privacy concerns. Further, original attachments are not included.

Findings

- Touchscreen² machines in many precincts failed to work properly, despite claims by the supervisor of elections office to the contrary. Not only did they malfunction or fail, but at least two of the dozen machines that we observed at closing produced counts that exceeded those shown on poll worker records.
- Dual uploads from each precinct caused reporting problems on election night because of inherent flaws in the system. These flaws were not a surprise. On the contrary, they were revealed in FFEC reports prior to the purchase of the equipment and discussed during county council meetings prior to the purchase of the equipment.
- Reporting problems were exacerbated by a campaign conducted by the elections office to encourage non-disabled voters use the touchscreens.
- Poll workers across Volusia County engaged in an advocacy campaign on behalf of the touchscreen machines that verged on harassment in many cases. One off-duty poll worker was fired for expressing views on the equipment that did not comport with this campaign.
- Elections office personnel committed serious breaches of security involving the touchscreen voting machines that violated the provisions of the state technical advisory issued to deal with the security vulnerabilities of the DREs.
- Poll workers and elections office personnel violated several election laws that resulted in disenfranchisement of at least one voter and prevented citizens from exercising their rights to observe poll closings. These violations are criminal acts.
- Poll worker training on the new equipment was more promotional than instructional. They were not well prepared for machine failures and gave out misleading and erroneous information. Many poll workers did not even have the most basic knowledge of polling place procedures.

Discussion

Voting Machine Failures

Touchscreens

Contrary to reports in the newspaper and statements by elections office personnel, there were numerous failures of the new touchscreen equipment. We started receiving reports of touchscreen failures as soon as the polls opened. We either observed or received reports of failures at the following precincts: 218, 502, 519, 532, 608, 719, 727, 811, and 908. Reported problems included the following:

² Throughout this report the words “touchscreen” and “DRE” are used interchangeably to refer to Direct Recording Electronic voting machines.

- Only presenting a nonpartisan ballot
- Faulty printers (for the poll tapes), which prevented printing a zero tape
- Inability to print a results tape
- Screen freezes and failure to respond to commands
- Bad battery

Since few people bother to call to report failures, we can only assume that it is likely that there were other failures that we are not aware of. The canvassing board should specifically ask for reports of machine failures and malfunctions.

In two precincts—218 and 516—the vote count on the touchscreens did not correspond to the poll workers’ certificates. In 218, both the poll workers and the poll watcher there (who had been intently watching who voted on the touchscreen) agreed that only three people voted on the machine. Yet the machine reported five votes. In precinct 516, the touchscreen recorded 180 votes, but there were only 175 certificates for touchscreen voters. The poll closer said the workers counted the certificates twice.

The only optical scanner failure that was reported to us was in precinct 624. In that precinct, the machine reportedly stopped accepting ballots. The poll workers put ballots in the side pocket as they were supposed to do, until such time as they could be scanned. The poll clerk decided to reboot the machine even though the poll clerk from 625 told him that rebooting hardly ever worked. The poll worker copied down the number from the counter to make sure that it remained the same after the rebooting. It did, and they rescanned the ballots from the side box. It did not occur to them that they could not verify what happened to the counters inside the scanner and that it was appropriate to rescan all the ballots. We highly recommend that all paper ballots from precinct 624 be rescanned before certification of results on Tuesday.

In precinct 516, the poll closer reported that the DRE would not produce a results tape at the end of the day. This is a very serious situation since there is no other way to check if the results of that machine are uploaded correctly to the central tabulator. The canvassing board should ask for the poll tape from that machine and note the time given on the tape.

Problems with Transmission of Results

From the beginning we had predicted there would be problems with dual uploads from the precincts on election night. We had witnessed these problems in the Flagler County municipal election in 2005, when that county first used the DREs and optical scanners together. So we expected problems with the transmission of the results.

It was immediately apparent that there were problems with uploading. Across the county, there were reports of busy phone lines and error messages when trying to upload the voting machines. Poll closers reported that poll workers had difficulty getting the new DREs to upload. One poll clerk told me directly that the uploading problems concerned the new equipment. I asked him if the problem was the busy phone lines. He said, “No, we didn’t have any problem with the optical scanners, the problem was with the new equipment.”

Despite the fact that we were behind a rope, far away from the activities at City Island, it was still apparent that there were problems with transmitting the results from the DREs. The poll closer for precinct 624, Carla Christianson, observed the difficulties while I tried to focus on 625 while simultaneously making numerous phone calls to our attorney at the elections office in order to get us sufficient access to witness the closing properly. We observed that touchscreen machines from other precincts were brought there to be uploaded by two people from the elections office. In addition to precincts 624 and 625 that were located at City Island, we saw what appeared to be DREs from 609, 614, and 629 that were brought to be uploaded. A poll worker at City Island told us that the workers were told in the afternoon that DREs from other locations would be brought to City Island to upload.

We had reports of three optical scanners whose results could not be transmitted from the precinct—502, 620, and one of the three precincts at Sica Hall in Holly Hill. The first two were not transmitted because of busy phone lines. Reportedly, the Sica Hall optical scanner would not transmit results because poll workers forgot to dial 9 for an outside line.

At approximately 11:00 p.m. on election night, Supervisor of Elections Ann McFall announced that 12 machines failed to upload—eight optical scans and four TSXs. We have to assume that this means that these machines were unable to upload from either precincts or drop sites. Our findings suggest that the busy phone lines were the major problem for the optical scanners. For the DREs, the problem in some locations was again the busy phone lines. The DRE according to one poll watcher and poll closer had not redial function and had to shut down and restarted each time the phone line was busy. One suspects that some poll workers just got tired of trying. No doubt, having to upload two rather than one machine from each location is the most likely reason for the busy signals, but there is another possible reason. In Hernando County, poll workers encountered busy signals because the central tabulator malfunctioned and kept accepting results. Hernando County has the same “blended” Diebold system as we do.

Subsequently, we have discovered that all Diebold “Blended” systems across Florida had the same problems with reporting results. Please find attached “Sorting Out Election Night” from the St. Petersburg Times, which describes the problems in Hernando County, which has the same system as we do. You will note that it indicates that poll workers had difficulty getting the machines to upload from the precinct and sent them in to the elections office, that the system reported that precincts were fully uploaded after one of the two machines was uploaded, and that poll workers got a busy signal because the central tabulator at the elections office that accepted results froze up. One can only assume that means the central tabulator. Other newspaper reports are attached regarding similar difficulties in reporting results in Alachua, Leon, Osceola, Polk, Seminole, and St. Lucie counties, all of which have the Diebold “blended” system.

The state Division of Elections apparently knew about this problem in advance because it issued the attached memorandum on its website on August 30, 2006, stating that the

division would “not display the percentage of precincts reporting,” something it has always done in the past. It would have been prudent for the division of elections to have issued a directive to the counties about this problem.

The problems experienced around the state on the Diebold “blended system” confirm what Florida Fair Elections has been stating for over a year, based on test results it obtained from the state Division of Election and on its observation of the municipal election in Flagler County in the fall of 2005: The “blended system” was never tested for compatibility between the optical scan and touchscreen systems as required by state law, and should never have been certified as a complete system.

We were all lucky that this was a small primary election. The catastrophic effect of these problems on a general election, with hotly contested statewide races, can only be imagined. Let’s hope that we can get this fixed prior to that time. The attached newspaper account from Hernando County is not comforting in that respect. Diebold spokesman, David Bear, is quoted as explaining that the results were not reported incorrectly—only differently. Apparently, Bear believes that “100 percent precincts reporting” is a matter of interpretation or perhaps it depends on what the definition of “100 percent” is.

Serious Security Breaches and Violations of Law

Carla Christianson, who was attempting to observe the closing at 624, witnessed a number of serious security breaches and violations of law that are corroborated by others at City Island as well. Her account is attached to this report. Please see the following section on poll closings for a full account of how elections staff personnel severely limited our ability to witness the closing, in violation of state law.

Removal of Memory Card Seals

First, Ms. Christianson, who is an experienced poll watcher and member of FFEC, observed that Nancy from the elections office removed the memory card seals from both DREs (624 and 625) at approximately 6:45. Ms. Christianson asked the poll clerk at 625 to confirm that what she removed were the memory card seals. He did so. Nancy then left the building with the seals. When she returned, Ms. Christianson asked her if she could see the seals. Nancy told her no, that they were already in her car. Carla repeated that she had a right to see the seals. Nancy responded, “Well, you’re not going to see them.”

There are several serious problems here. First, Nancy removed the seals from the memory cards prior to closing, which is a violation of security. Further, she did so without having the removal witnessed by another person and without filling out the appropriate paperwork to record that the number was the same as when the machine arrived. All of these measures were required in connection with new security enhancements required by the state division of elections. These measures are necessary because these machines have very serious security vulnerabilities.

In addition, Nancy removed the seals from the building and did not pack them in the bag with the machine and the card as required by security procedures. We are very concerned

at what possible reason someone could have for taking security seals to their car. Furthermore, the seal was removed intact, meaning that it is possible for seals to be removed and replaced without detection unless the number is checked. This important part of the election was not appropriately handled or preserved.

Machines Transported Without Seals

Despite our limited ability to observe activities at City Island, Carla and I were able to see that the elections office personnel—Nancy and another woman with short very blond hair—were having difficulty getting the touchscreens to upload. It took approximately half an hour before both were uploaded. At some point DREs from other precincts began arriving. We could identify them because they were in red bags with the precinct number on the outside. Afterwards, I asked Carla if she had noticed whether or not the bags were sealed when they arrived. (I thought they were not sealed and wanted to confirm that fact.) She said they were not. She said that each bag was opened and the seal was removed from the inside of the bag and then the machine. The woman with the blond hair held the seal while Nancy connected the DRE and transmitted the results. When they were finished, the machine was put back in the bag and sealed. We saw DREs from 609, 614, and 629 uploaded in this fashion. We do not know if others were uploaded since we left when the closing was finished at both precincts and went outside to copy the results from the poll tapes posted on the door. When we went outside, there was a long line of cars that were waiting to drop off their equipment. A poll worker also later confirmed that the bags were not sealed when they arrived.

Early Closing of Polls

As stated above, Nancy removed the seals from the memory cards on the DREs fifteen minutes before the statutory close of the polls. Workers in both precincts waited until 7:00 p.m. to begin closing down the polls. I was not in a position to see the door through which voters had to enter the room. When Carla and I left the polls (between 8:30 and 9:00), Carla overheard a woman tell the poll clerk from 625 (Charles Mims) that she had arrived to vote before closing but not been allowed to come in and vote. Carla then called the poll worker from 624 (whom she knew) and verified that a voter had arrived before 7:00 but was not able to gain entrance to the polling place because the metal door at the front of the building had already been closed. The staff inside forgot to open the exit door beside the metal door to allow voters to access the polls. Consequently, a woman arrived to vote and could not gain entrance. Not allowing a voter who arrives prior to official closing to vote is a crime under Florida law. F.S. § 104.061 makes it a third degree felony to willfully interfere with a voter casting a ballot, It is a first degree misdemeanor for an election official to willfully neglect their duties under the law. F.S. § 101. 061. Either statute could apply and both probably would be charged were a complaint filed.

Problems with Poll Closings

On the east side of the county, we had ten people who volunteered to do poll closings. As you know, by state law, as many as three people per precinct may observe the closing of the polls and the counting of the ballots. The Miami-Dade Election Reform Coalition has conducted poll closings for years in that county. These people do not have to be

authorized poll watchers—only voters. Of these, most were experienced poll watchers. We made sure that they had a check list and a copy of the Florida statute that authorized them to witness poll closings. F.S. § 101.5614 It is a misdemeanor to prevent citizens from witnessing the closing. F S.§ 104.29

Of our ten poll closers, one was told that she could not observe whatsoever (precinct 532). Two were kept so far away that they were effectively prevented from witnessing the count. I was one of the latter. At least three other poll closers were told that they could not observe the closing, but were permitted to do so when they produced the Florida statute authorizing citizens to observe the closing. So a majority of our poll closers experienced problems being allowed to observe poll closing as permitted by law.

The accounts of the three poll closers who were prevented from observing poll closing as permitted by statute are attached hereto. In the opinion of Kitty Garber, research director for FFEC and one of the poll closers, there was no legitimate reason why they should have been prevented from observing as allowed by law:

“I have been working as an elections office, poll watcher, and poll closer for thirty years. This is the first time I have had an elections official call in sheriff’s deputies to prevent me from doing my job. It was extremely unpleasant and intimidating. If I had been allowed to continue observing the closing in the way that I always did, my presence would not have delayed or impeded in any way the polling clerk or the poll workers in the discharge of their duties. Nancy’s insistence on obstructing our ability to witness the process, as we are allowed to do by law, in fact disrupted what was an orderly process until that time.”

Further, at no time did I see Carla Christianson act in any way that could be possibly interpreted to be “disruptive.” She merely asked a question.” (Kitty Garber)

Vera Krukemeier who attempted to observe the closing in precinct 532 reported that she was embarrassed and humiliated by the actions of the poll workers at that precinct who refused to look at the statute or call the elections office to determine what to do. She was summarily told to leave the building.

It is not unreasonable to expect poll workers to be familiar with the basic elections laws pertaining to their conduct of their jobs. Election officials in other states are given booklets containing the elections and have to sign statements that they have read these laws and will uphold them. Certainly, polling clerks should be familiar with the law. They should have a copy with them at the polls. When there is a dispute, they should contact the elections office for guidance. In no circumstance, should elections office personnel or poll workers threaten or attempt to intimidate poll watchers or poll closers who are attempting to exercise their rights as citizens. That too is a crime. F.S. § 104.0615

Touchscreen Advocacy Campaign

Beginning with the first day of early voting, we received many reports that voters were being pressured to vote on the touchscreens. One elderly woman reported that she voted on the touchscreen even though she had expressed her preference to vote on paper because she felt intimidated by the poll worker. Other voters also told us that they were urged to try the touchscreens even after they expressed a preference for a paper ballot. Sometimes, poll workers continued to argue with voters or ridiculed their choice to vote on paper.

In at least two circumstances, when voters said they wanted a paper trail, they were mistakenly told that the touchscreen has a paper trail. This is expressly untrue. See , *Security Analysis of the Diebold AccuBasic Interpreter*, David Wagner, David Jefferson and Matt Bishop The Elections Office was informed that the ballot images could have no relation to the voters' choices many times. They chose to continue the misleading dialogue they used when trying to obtain these machines. One poll clerk told a voter that by law he was not allowed to tell her if the optical scanner had a paper trail. Poll workers were reportedly chided by staff from the elections office when they reported that no one had voted on the touchscreen. Another poll worker told a neighbor that she thought only touchscreens would be available on election day. Several poll workers told voters that Volusia County would soon be going to all touchscreens.

During early voting an off-duty poll worker was fired after she reacted to pressure to vote on the touchscreen by expressing a negative opinion about the equipment. This clearly had a chilling effect on the other poll workers. Several told us that they feared being fired because too few people had voted on the touchscreen in their precinct or because they didn't cooperate with the advocacy campaign. If it was "political speech" for the off-duty pollworker, to state that she didn't like the machines, how can it be proper for the pollworkers to advocate using them?

This advocacy campaign is inappropriate on many levels. First, the optical scanners are our primary voting equipment. The purchase of the touchscreens was only authorized by the county council reluctantly after a long battle with the state. The council was assured that the machines were being purchased to meet requirements for state-certified disabled accessible machines, not to replace our current voting system. They were also told that no one would be required to vote on them if they did not wish to do so. Conduct by poll workers and elections office personnel comes perilously close to the line at best.

Advocating the use of the touchscreens by non-disabled citizens is just plain irresponsible at this point. We don't own a sufficient number of touchscreens to serve regular voters. In polling places where people were being urged to use the machines, we had lines on Tuesday, even though turnout was pitiful! Imagine what it would be like if we had the turnout expected for this year's general election—never mind the turnout for a presidential year.

Perhaps the most obvious problem is that disabled voters have the right to expect that the equipment purchased for their use is available when they arrive at the polls, not

unnecessarily tied up with voters who could be using the available optical scanners just as easily.

In addition, the reporting problems experienced on election night were unnecessarily worsened by the campaign to have more people use the disabled accessible equipment. On election night, the results posted on the website indicated 100 percent of precincts had reported. The only indication of a problem was a note at the top of the screen that said that touchscreen results were not included. Of course, those of us who were doing poll closings were aware that there was a problem with getting the touchscreens to upload. Our central tabulator is set up to accept only one upload from a precinct on election day. This is a security feature to prevent results from being either deliberately or unintentionally altered after the upload. In addition, there is a state law that requires that a voting system be able to report from the precinct one total representing all results from all the machines at that precinct.

The newspaper account implied that these problems were unexpected; on the contrary, they were well known, discussed before the purchase of the equipment, and occurred all over the state of Florida. Several of us from Florida Fair Elections Coalition specifically asked about the accumulation of results at the precinct after we found out that the so-called “optical scan accumulator adaptor” listed in our purchase agreement did not actually exist and was only in the research and development stage. In addition, we observed and issued a report about the problem with two uploads per precinct on election night that was experienced in the September 2005 municipal election in nearby Flagler county. Flagler has the same Diebold “blended” system as Volusia County.

So essentially, the problem is that the blended system that was sold to Volusia, Flagler, and 29 other counties in Florida does not blend, isn't a system, and never should have been certified as such. It is two different types of equipment that happen to be made by a single manufacturer. They were never designed to be used together nor were they tested together as a system. Florida law requires one certified system per county.

When asked for the users' manual for the blended system, Maria Mathews, an attorney at the state division of elections said that “blended system” is just “what they call it” and doesn't imply anything.

It is important to note that the problems experienced in this election would not have occurred if we had been allowed by the state to buy a ballot marker for disabled voters. The ballot marker would have allowed us to keep 100 percent paper ballots. The ballots from that ballot marker would have been scanned through the optical scanner, and we would have only had one upload per precinct on election night. The ballot marker would have allowed us to have only one system for processing everyone's ballot and thus avoided any private-ballot issues as well.

It is easy to see that the more people who use this add-on to our system, the bigger the problem on election night. If the elections staff continues to encourage non-disabled people to use these machines, we are headed for even greater problems as the outcome of

many races will probably not be determined until the next day. In addition, to obtain these results we will need to bypass fundamental security measures.

The supervisor of elections has alleged that the program to get more people to use the touchscreens is based on the need to protect the private vote of disabled voters. This issue too was brought up FFEC in its October 2005 report and in discussion before the county council prior to the acquisition of the equipment. In fact, since most precincts had no disabled voters, the campaign ended up exposing voters to loss of private vote unnecessarily as in several precincts only two or three people voted on the touchscreens. Because they were of different parties, their votes were revealed to the poll worker just as easily as if he or she had assisted them in voting. So the touchscreen only gave the illusion of a private vote.

Recommendations to the Canvassing Board

Specific:

1. Rescan all ballots from precinct 624 (report attached)
2. Ask for optical scan poll tape from precinct 516, which could not print a poll tape at the precinct, and determine what time it was printed, Unless it can be proved that the poll tape was run prior to uploading results to the central tabulator, the ballots from this precinct will need to be rescanned.
3. Check TSX results from precincts 218 and 516 to reconcile machine counts with the poll register and voter certificates.
4. Ask for computer logs and status reports to see when machines were uploaded and how many votes were uploaded from each precinct by both the optical scan and the TSX. Evaluate error messages. At the very least, the canvassing board should add up the totals from every optical scan poll tape and every TSX poll tape, including absentee, early, and provisional ballots, to assure that the final totals as published are correct.
5. Check TSX results from precincts 218 and 516 to reconcile machine counts with certificates.
6. Ask for reports on all equipment failures and malfunctions, including repair records.
7. Ask to see the reconciliation reports of poll registers, voter certificates, and machine counts to determine if other precincts could not be reconciled.
7. Recommend that the Supervisor of Elections office send a letter of apology to Vera Krukemeier and Carla Christianson for their treatment by elections office staff and poll workers, with copies to the relevant staff members.

7. Take appropriate action regarding election staff who have violated election laws and security procedures.

General:

1. Ask for a thorough audit of this election by the state, or preferably an independent auditor, to determine what problems existed and how to resolve or minimize them before the general election in November. Because this election was very small, it offers a unique opportunity to do this without an undue expenditure of time and money. It also offers us the opportunity to ward off more significant problems in November.
2. Insist that the elections' office must immediately cease its advocacy campaign on behalf of the DREs. As posted on the division of election's website (attached), Volusia County's method of precinct tabulation is optical scan and its disabled accessible system is the TSX.
3. Voters have the right to expect to be able to vote without undue harassment. If indeed it is political speech to advocate a voting system, then the poll workers may not do so. If it is not, the poll worker who was fired should be reinstated. In any case, it should be made clear to the voter that they may choose the system with which they are comfortable and not be berated for choosing to vote more securely.
4. Recommend that poll workers receive additional training prior to the November general election to make sure that they understand that: (1) the optical scanners are our primary voting system, (2) non-disabled voters should be encouraged to vote on our primary system; (3) no DRE certified in Florida produces a voter-verified paper audit trail; (4) there are no plans to switch to all DREs; and (5) citizens have the right to observe poll closings and come near enough to witness the count.
5. Institute measures to protect poll workers from retribution so that they feel free to report problems.
6. Work with Election Protection and other community organizations to develop a consensus on acceptable procedures for poll closing, including a list of what kinds of information can be obtained, what procedures can be observed, what constitutes "disruptive" behavior, and what remedies are available to resolve problems on election night.