

# News Release

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FOR IMMEDIATE RELEASE

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## **Registrar Refused to Confirm Compliance with State Elections Code Reports not produced in the last two primary elections as required by law Discrepancy raises concern about the integrity of San Diego elections results**

SAN DIEGO, CA (Nov 3, 2008) – Citizens' Oversight Projects (COPs) submitted a written request to the San Diego County Registrar of Voters on October 3, 2008, requesting confirmation that reports from Diebold ballot scanners would be produced so that the public could review those reports. The Registrar has refused to respond to the request. COPs also notified the County Board of Supervisors, Supervisor Dianne Jacob and the Secretary of State. In addition, Raymond Lutz, coordinator of COPs, spoke during public comment at the October 28 meeting of the San Diego County Board of Supervisors regarding this issue. The Board of Supervisors referred it to the Registrar of Voters.

According to California Elections Code, Section 19370, there is a requirement that precincts using machines must post a statement of result record for all to see. The section is reproduced below, with emphasis added:

19370. As soon as the polls are closed, the precinct board, in the presence of the watchers and all others lawfully present, shall immediately lock the voting machine against voting and open the counting compartments, giving full view of all counter numbers. A board member shall in the order of the offices as their titles are arranged on the machine, read and distinctly announce the name or designating number and letter on each counter for each candidate's name and the result as shown by the counter numbers. He or she shall also in the same manner announce the vote on each measure.

If the machine is provided with a recording device, in lieu of opening the counter compartment the precinct board shall proceed to operate the mechanism to produce the statement of return of votes cast record in a minimum of three copies, remove the irregular ballot, if any, record on the statement of return of votes cast record. The irregular ballot shall be attached to the statement of result record of votes cast for the machine and become a part thereof. One copy of the statement of return of votes cast for each machine shall be posted upon the outside wall of the precinct for all to see. The statement of return of votes cast for each machine for the precinct shall constitute the precinct statement of result of votes cast.

According to a September 21, 2008 article in the Washington Post (“Ohio Voting Machines Contained Programming Error That Dropped Votes”) revealed that the Diebold optical scan voting machines – the type used in San Diego – are subject to a “flaw” in the programming that results in dropped votes. The article said:

The problem was identified after complaints from Ohio elections officials following the March primary there, but the logic error that is the root of the problem has been part of the software for 10 years, said Chris Riggall, a spokesman for Premier Election Solutions, formerly known as Diebold.

The flawed software is on both touch screen and optical scan voting machines made by Premier and the problem with vote counts is most likely to affect larger jurisdictions that feed many memory cards to a central counting database rapidly.

“This is exactly the mode of operation used by our Registrar of Voters and raises concern about the integrity of San Diego elections results,” Lutz said. “The law was written to allow the public to review the scanner tapes when these scanners were used in neighborhood polling places. Now, the same scanners are being used in the Registrar of Voters office, but they produced only a single scanner tape per precinct in the February and June primary elections, and it was not available for public review. The single copy was packed away with the ballots so no one could see them, and in violation of the law.”

The Registrar said that in the earlier elections, they had verbal agreement from the Secretary of State to skip the printing of additional scanner tapes and have complained that the printing of the tapes takes too much time.

However, Sal Magallanez, a local election integrity activist said, “Based on the Registrar of Voter's own calculations, it will add only an extra 2.5 minutes per precinct and when 150 scanners are used for the process an extra 29 minutes to processing the entire county. That's not really a lot to ask for.”

“The public demands access to these scanner tapes so we can perform our oversight duties, and 29 minutes is not a good reason to hide these tapes from public scrutiny,” Lutz said. “Since it would be quite easy for the Registrar to comply with this law, and since public oversight is clearly needed given the evidence that the Diebold scanner being used has a vulnerability, we find it incomprehensible that the Registrar is dragging their feet over this. The law is clear and they should comply to the letter of the law.”

Lutz suggested procedural changes in his letter to the Registrar to bring the Registrar into compliance and to make it feasible to access these tapes and provide the information to the public. “We want to scan the tapes and place them on our website for all to see,” Lutz said. “What is the Registrar afraid?”

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Raymond Lutz is a resident in an unincorporated area of the county, and is a candidate for the 77<sup>th</sup> State Assembly District.

The entire Washington Post article can be accessed here:  
<http://www.copswiki.org/twiki/bin/view/Common/M617>

More information about this project are available at the Copswiki.org website at this link, including the letters sent to the San Diego County Registrar of Voters, the Secretary of State, County Sup. Dianne Jacob, and comments made at the recent Board of Supervisors meeting.  
<http://www.copswiki.org/twiki/bin/view/Common/ScannerTapeReview>

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